

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

ALABAMA STATE CONFERENCE OF
THE NAACP, *et al.*,

Plaintiffs,

v.

STEVE MARSHALL, in his official capacity
as Alabama Attorney General, *et al.*,

Defendants.

Civil Action No. 24 Civ. 420
Chief Judge R. David Proctor

HEARING REQUESTED

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

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INTRODUCTION

Plaintiffs¹ are civil rights, faith-based, and disability rights organizations that promote civic participation by educating and assisting Alabamians to vote, including by assisting voters with the multi-step application process for voting absentee. Alabama Senate Bill 1 (“SB 1”)² is a sweeping and vague statute that turns such civic and neighborly engagement into serious crimes. Plaintiffs seek a preliminary injunction against four provisions of SB 1 that unconstitutionally restrict their speech and activities regarding absentee assistance and violate federal law (the “Challenged Provisions”).³

As Plaintiffs prepare to undertake civic engagement activities for the November 2024 general election, the Challenged Provisions are severely restricting their ability under the First and Fourteenth Amendments to speak and engage with each other and with voters who require absentee application assistance. The Challenged Provisions also violate the right of disabled, blind, and low literacy voters to assistance guaranteed by Section 208 of the Voting Rights Act (“VRA”). And the Challenged Provisions appear to prohibit voter assistance that Plaintiff ADAP is federally mandated to undertake under the Help America Vote Act of 2002 (“HAVA”). Plaintiffs respectfully request that the Challenged Provisions be preliminarily enjoined to prevent these serious ongoing harms.

¹ Plaintiffs are the Alabama State Conference of the NAACP (“Alabama NAACP”), League of Women Voters of Alabama and League of Women Voters of Alabama Education Fund (collectively, “LWVAL”), Greater Birmingham Ministries (“GBM”), and Alabama Disabilities Advocacy Program (“ADAP”).

² See 2024 Alabama Laws Act 2024-33 (S.B. 1), https://1.next.westlaw.com/Document/I193614D0E76211EEBDB185AF89C5BCF3/View/FullText.html?VR=3.0&RS=cblt1.0&__lrTS=20240501162006477&transitionType=Default&contextData=%28sc.Default%29. Section 1 of SB 1 amends Ala. Code Section 17-11-4, which governs absentee applications. Sections 2, 3, and 4 of SB 1 contain other provisions. Hereinafter, citations to Section 1 of SB 1 will be denoted by “§ 17-11-4.” Citations to other sections of SB 1 will be identified by section number.

³ As described below, the Challenged Provisions are: (i) the Payment Provisions (§ 17-11-4(d)(1)-(d)(2)), (ii) the Gift Provisions (§ 17-11-4(d)(1)-(2)), (iii) the Prefilling Restriction (§ 17-11-4(b)(2)), and (iv) the Submission Restriction (§ 17-11-4(c)(2)).

FACTUAL BACKGROUND

I. Alabama's Multi-Step Process for Applying to Vote Absentee.

Under Alabama law, with limited emergency exceptions, absentee voting is permitted only if a voter: (i) will be absent from the county of residence on Election Day; (ii) is ill or has a physical disability that prevents a trip to the polling place; (iii) is enrolled as a student at an educational institution located outside the county of his or her personal residence, attendance at which prevents his or her attendance at the polls; (iv) is an appointed election officer or poll watcher at a polling place other than their regular polling place; (v) is working a required shift of ten hours or more that coincides with polling hours; (vi) is a caregiver for a family member (to the second degree of kinship) and the family member is confined to their home; (vii) is currently incarcerated in prison or jail, but has not been convicted of a felony involving moral turpitude; (viii) is a member of, or spouse or dependent of a member of, the Armed Forces of the United States or is similarly qualified to vote absentee pursuant to the federal Uniformed and Overseas Citizens Absentee Voting Act.⁴ There is no broad right to vote absentee for everyone over 65, nor for everyone with a disability.

For the subset of voters who do qualify to vote absentee, there is a multi-step process for applying to do so. The application form is specified by the Alabama Secretary of State and, under SB 1, Alabama no longer allows voters to request absentee ballots without using this form.⁵ The current application is two pages and includes various fields for the voter to complete, including full name, physical and mailing addresses, e-mail address, date of birth, personal and work phone numbers, driver's license or social security number, and election(s) in which they are applying to vote absentee.⁶ The application also requires the voter to review and select from the list of excuses

⁴ Ala. Code § 17-11-3.

⁵ *Id.* § 17-11-4(a).

⁶ Alabama's generic absentee application form is available on the Alabama Secretary of State's website.

to vote absentee and lists the Alabama crimes that disqualify an individual from voting as well as the penalties for failing to properly fill out and submit the form.

The application can be accessed in one of the following ways: (i) online, downloaded, and printed, (ii) in hard copy from the relevant county Absentee Election Manager; or (iii) in hard copy by mail, if a written request is first sent to the Absentee Election Manager.⁷ The form then must be completed fully and correctly, including by obtaining a witness signature if the voter signs by mark.⁸ The completed application packet also must include a printed copy of the voter's valid photo identification. Then, the application packet must be returned to the Absentee Election Manager either in person or by mail/commercial carrier.⁹ Absentee applications must be received by the Absentee Election Manager seven days prior to the relevant election if submitted by mail (or five days prior if submitted in person).¹⁰ Voters must submit separate applications for elections more than 42 days apart.

II. SB 1's Enactment and the Challenged Provisions.

On March 19, 2024, the Alabama Legislature enacted SB 1. The Governor signed the bill into law the next day. In key part, SB 1 amends Ala. Code § 17-11-4, which governs absentee applications, to add new restrictions and criminal penalties.¹¹ The Challenged Provisions are:

- **Payment Provisions**: SB 1 makes it “unlawful for a third party to knowingly receive a

⁷ Ala. Sec'y of State, “Absentee Voting Information,” <https://www.sos.alabama.gov/alabama-votes/voter/absentee-voting>.

⁸ Ala. Code § 17-11-4(b)(1).

⁹ *Id.* §§ 17-11-3(a), 17-11-4(c)(1).

¹⁰ *Id.* § 17-11-3(b).

¹¹ SB 1 specifies that it goes into effect “immediately following its passage and approval by the governor, or its otherwise becoming law.” SB 1 at Section 4. However, Defendant Secretary of State Wes Allen, who is responsible for “provid[ing] uniform guidance for election activities,” Ala. Code § 17-1-3(a), has advised that SB 1 will go into effect for the November 5, 2024 general election. *See* Mike Cason, AL.com, “Sec’y of State Wes Allen says Alabama’s new absentee voting law in effect for November election” (Mar. 23, 2024), <https://www.al.com/news/2024/03/secretary-of-state-wes-allen-says-alabamas-new-absentee-voting-law-in-effect-for-november-election.html>; *see also* Ala. Const. art. IV § 111.08 (providing that “the implementation date for any bill enacted by the Legislature in a calendar year in which a general election is to be held and relating to the conduct of the general election shall be at least six months before the general election”).

payment,” or “knowingly pay . . . a third party,” to “distribute, order, request, collect, prefill, complete, obtain, or deliver a voter’s absentee ballot application.” § 17-11-4(d)(1)-(d)(2). These provisions carry a Class B or C felony penalty (Class C for assistors who “receive a payment” and Class B for those who “pay” such assistor). *Id.*

- **Gift Provisions**: SB 1 makes it “unlawful for a third party to knowingly receive a . . . gift,” or “knowingly . . . provide a gift,” to a “third party” to “distribute, order, request, collect, prefill, complete, obtain, or deliver a voter’s absentee ballot application.” § 17-11-4(d)(1)-(d)(2). These provisions carry a Class B or C felony penalty (Class C for assistors who “receive a . . . gift” and Class B for those who “provide a gift” to such assistor). *Id.*
- **Prefilling Restriction**: SB 1 makes it “unlawful for any person to knowingly distribute an absentee ballot application to a voter that is prefilled with the voter’s name or any other information required on the application form.” § 17-11-4(b)(2). This provision carries a Class A misdemeanor penalty. SB 1 § 2.
- **Submission Restriction**: SB 1 makes it “unlawful for an individual to submit a completed absentee ballot application to the absentee election manager other than his or her own application,” unless that person is seeking emergency medical treatment within five days before an election. § 17-11-4(c)(2). The application “may be submitted” by personally dropping off one’s own application with the Absentee Election Manager or returning one’s own application in the mail/commercial carrier. *Id.* This provision carries a Class A misdemeanor penalty. SB 1 § 2.

In Alabama, Class B felonies carry a sentence of up to 20 years,¹² Class C felonies carry a

¹² Ala. Code § 13A-5-6. Other Class B felonies include first-degree manslaughter and second-degree rape. *Id.* §§ 13A-6-3, 13A-6-2.

sentence of up to 10 years,¹³ and Class A misdemeanors carry a sentence of up to one year and a \$6,000 fine.¹⁴ SB 1 does not define any of the statutory terms that trigger criminal liability, including no definitions for “payment,” “gift,” “third-party,” “prefill,” “distribute,” or “submit.”

SB 1 also newly requires that voters apply for absentee ballots using the Secretary of State’s specified printed form; Alabama no longer allows handwritten absentee requests. § 17-11-4(a). Elsewhere, SB 1 states “[a]ny applicant may receive assistance in filling out the application as he or she desires. . . .” § 17-11-4 (b)(1). SB 1 also states that “[a]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by an individual 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.” § 17-11-4(e).

III. Proffered Justification for SB 1.

Proponents repeatedly and consistently asserted that SB 1’s justification was to target so-called absentee “ballot harvesting.” SB 1’s sponsor, Senator Garlan Gudger, averred that SB 1 is intended to address “ballot harvesting” by “groups or individuals seek[ing] to profit off the absentee voting process.”¹⁵ For example, he testified before the Senate State Government Affairs Committee that “this bill is meant for ballot harvesting.”¹⁶

Upon signing SB 1, Governor Kay Ivey stated that the bill would “ban[] ballot harvesting.”¹⁷ Defendant Secretary of State Wes Allen commented: “[t]he passage of SB1 signals to ballot harvesters that Alabama votes are not for sale. The Alabama Legislature and Governor

¹³ *Id.* § 13A-5-6. Other Class C felonies include third-degree robbery and first-degree stalking. *Id.* §§ 13A-6-90, 13A-8-43.

¹⁴ *Id.* §§ 13A-5-7, 13A-5-12. Other Class A misdemeanors include third-degree domestic violence and cruelty to animals. *Id.* §§ 13A-6-132, 13A-11-241.

¹⁵ Jacob Holmes, Ala. Political Reporter, “Legislature passes bill criminalizing ballot harvesting” (Mar. 8, 2024), <https://www.alreporter.com/2024/03/08/legislature-passes-bill-criminalizing-ballot-harvesting/>.

¹⁶ Ex. B to Decl. of Lauren Bishop (“Bishop Decl.”) at 34:9-10.

¹⁷ Ala. Office of the Governor, “Governor Ivey Signs Senate Bill 1, Bans Ballot Harvesting” (Mar. 20, 2024), <https://governor.alabama.gov/newsroom/2024/03/governor-ivey-signs-senate-bill-1-bans-ballot-harvesting/>.

Ivey have made it clear that Alabama voters have the right to cast their own vote without undue influence.”¹⁸

Neither SB 1’s sponsor nor the Governor nor Defendant Allen has ever explained what is meant by “taking people’s votes”; what “ballot harvesting” is; whose votes have been “for sale”; what “undue influence” occurs; or the relationship between absentee ballot *applications* and any of these purported concerns. Likewise, legislative proceedings did not include any actual evidence of problems regarding “ballot harvesting,” either in general or with respect to absentee voting specifically.¹⁹ During legislative proceedings, members of the public, including Plaintiffs, provided extensive testimony about the lack of evidence of voter fraud or problems with “ballot harvesting,” vagueness of the terms used in SB 1, and likelihood that SB 1’s criminal sanctions would severely chill voter assistance across the state.²⁰

IV. SB 1’s Impact on Alabama Voters and on Plaintiffs’ Ability to Assist Such Voters.

For those who qualify, absentee voting provides access to the franchise when in-person voting would be challenging if not impossible. But because of the numerous steps involved in applying to vote absentee, such voters (including senior citizen, disabled, blind, low literacy, and incarcerated voters) often rely on assistance in the process from family, neighbors, and civic organizations like Plaintiffs. SB 1 severely impacts voters who require such assistance, as well as assistors like Plaintiffs who would fill this need.

A. SB 1’s Impact on Voters.

Senior Citizen and Disabled Voters. Approximately 18% of all Alabamians are over 65 years old.²¹ According to the Centers for Disease Control, more than 30% of all adults in Alabama

¹⁸ *Id.*

¹⁹ See Exs. A & B to Bishop Decl.

²⁰ See *id.*; Doc. 1 (Compl.) ¶¶ 54-59 (quoting public testimony).

²¹ See United States Census Bureau, *Alabama QuickFacts* <https://www.census.gov/quickfacts/fact/table/AL/PST045223>. (last accessed May 1, 2024).

have some form of disability, including many with mobility and vision impairments.²² For Alabamians over 65 years old, the number rises to nearly half (47.8%).²³ Approximately nine percent of adults in Alabama have “serious difficulty doing errands alone.”²⁴

Many of these individuals often can *only* access the right to vote by casting absentee ballots, such as individuals confined to a bed, with mobility impairments or other impairments, or whose movement is restricted (such as individuals in jail, prison, or state mental health or forensic hospitals). Decl. of Scott Douglas (“GBM Decl”) ¶ 22; Decl. of Nicole Watkins (“ADAP Watkins Decl.”) ¶¶ 6, 9, 14. And moreover, as discussed below, many of these individuals depend on assistance from others, including from Plaintiffs, to exercise this right, including the absentee application assistance that may now be criminalized under SB 1. Decl. of Benard Simelton (“Alabama NAACP Decl.”) ¶¶ 20-21; Decl. of Kathy Jones (“LWVAL Decl.”) ¶ 24; GBM Decl. ¶¶ 22, 32; ADAP Watkins Decl. ¶¶ 11-14. If denied an accessible absentee voting process, many of these individuals would effectively be precluded from participating in what for them is the only way to vote. ADAP Watkins Decl. ¶ 14.

Illiterate and Low Literacy Voters. Per the National Center for Education Statistics, Alabama has the 44th lowest literacy rate in the country.²⁵ In 2022, 56% of Black Alabamians and 46% of Latino Alabamians, compared to 28% of white Alabamians, had “below” basic literacy

²² See Centers for Disease Control and Prevention Disability and Health Data System (DHDS), *Alabama*, <https://dhds.cdc.gov/SP?LocationId=01&CategoryId=DISEST&ShowFootnotes=true&showMode=&IndicatorIds=STATTYPE,AGEIND,SEXIND,RACEIND,VETIND&pnl0=Chart,false,YR6,CAT1,BO1,,,,AGEADJPREV&pnl1=Chart,false,YR6,DISSTAT,,,,PREV&pnl2=Chart,false,YR6,DISSTAT,,,,AGEADJPREV&pnl3=Chart,false,YR6,DISSTAT,,,,AGEADJPREV&pnl4=Chart,false,YR6,DISSTAT,,,,AGEADJPREV&t=1714216511663> . (last accessed May 1, 2024)

²³ See *id.*

²⁴ See Centers for Disease Control and Prevention, *Disability and Health Promotion- Alabama*, <https://www.cdc.gov/ncbddd/disabilityandhealth/impacts/alabama.html> (last accessed May 1, 2024).

²⁵ Institute of Education Sciences- National Center for Education Statistics, *2022 Reading State Snapshot Report, Alabama* (2022), <https://nces.ed.gov/nationsreportcard/subject/publications/stt2022/pdf/2023010AL8.pdf> (last accessed May 1, 2024).

skills in the eighth grade.²⁶ Further, per U.S. Census estimates, among the state’s citizen voting-age population, 27% of Spanish-speakers speak English “less than very well.”²⁷ Given the reading comprehension and writing required to apply for an absentee ballot and the fact that Alabama does not offer its absentee applications in languages other than English, many illiterate and low literacy Alabamians require assistance from others, including from Plaintiffs, to complete the application process. Alabama NAACP Decl. ¶ 20; ADAP Watkins Decl. ¶ 4. SB 1’s restrictions severely limit their access to such assistance and therefore severely burden their right to vote.

Incarcerated Voters. In Alabama, voters who are incarcerated and who have not been convicted of a crime of “moral turpitude,” including pre-trial detainees, remain eligible to vote.²⁸ As of February 2024, the Alabama Department of Corrections had over 27,000 inmates in its jurisdiction (including jails and prisons).²⁹ According to the National Institute on Corrections, the jail population in Alabama was 16,520 in 2020.³⁰

Incarceration is one of the state’s qualifying excuses to vote absentee.³¹ Because no county in Alabama provides jail- or prison-based voting sites, absentee voting is the only way that eligible incarcerated voters are able to vote. GBM Decl. ¶ 22. Given the number of steps involved in applying for an absentee ballot and the confinement restrictions to which incarcerated voters are subject (such as limitations on access to the internet, printers/copiers, and mailing supplies) eligible

²⁶ *Id.*

²⁷ United States Census Bureau, *Why We Ask Questions About Language Spoken at Home*, <https://www.census.gov/acs/www/about/why-we-ask-each-question/language/> (last accessed May 1, 2024); United States Census Bureau, "Language Spoken at Home." *American Community Survey, ACS 1-Year Estimates Subject Tables, Table S1601*, 2022, [https://data.census.gov/table/ACSST1Y2022.S1601?t=Language Spoken at Home&g=040XX00US01&moe=false](https://data.census.gov/table/ACSST1Y2022.S1601?t=Language%20Spoken%20at%20Home&g=040XX00US01&moe=false). (last accessed May 1, 2024).

²⁸ Ala. Const. art. VIII § 177 (2022); Ala. Code § 17-3-30.1(c).

²⁹ Alabama Department of Corrections, *Monthly Statistical Report for February 2024*, <https://doc.alabama.gov/docs/MonthlyRpts/February%202024.pdf> (last accessed May 1, 2024).

³⁰ National Institute of Corrections, *Alabama State Statistics Information*, <https://nicic.gov/resources/nic-library/state-statistics/2020/alabama-2020> (last accessed May 1, 2024).

³¹ Ala. Code § 17-11-3.

incarcerated voters depend on assistance from others, like Plaintiffs GBM and Alabama NAACP and prison or jail staff, to vote. Alabama NAACP Decl. ¶¶ 12; GBM Decl. ¶¶ 22, 29.

B. SB 1's Impact on Plaintiffs.

As described further herein and in Plaintiffs' accompanying declarations, Plaintiffs have paid staff and volunteers who assist voters with absentee applications, *e.g.*, by providing the printed applications, helping voters to read, understand, and complete applications, and providing envelopes and postage so that applications can be returned. This includes voters who depend on assistance with the application process, such as senior citizen, disabled, low literacy, and incarcerated voters. Because of SB 1's extreme vagueness and severe criminal penalties, SB 1 restricts Plaintiffs from engaging in absentee application assistance, which is a critical part of how they convey their message to encourage participation in the democratic process.

Alabama NAACP. Plaintiff Alabama NAACP is the state conference of the National Association for the Advancement of Colored People, Inc. and is a nonpartisan organization dedicated to ensuring the political, educational, social, and economic equality of Black Americans and all other Americans and to eliminate racial discrimination in the democratic process. Alabama NAACP Decl. ¶¶ 2, 5. Voter assistance activities, including absentee ballot application assistance, are a core part of the Alabama NAACP's voter education and engagement programs and are part of its mission to encourage participation in the democratic process. *Id.* ¶ 7. The Alabama NAACP's activities have included assistance for voters in nursing homes and jails who could not otherwise vote without such assistance, such as by providing hard copies of the application and mailing supplies. *Id.* ¶ 12. For the November 2024 election and going forward, the Alabama NAACP would like to continue engaging in absentee ballot application assistance for its members and Alabamians more broadly. *Id.* ¶ 22.

LWVAL. Plaintiff LWVAL is comprised of nonpartisan, nonprofit, grassroots organizations that seek to encourage informed and active participation in government, work to increase understanding of major public policy issues, and influence public policy through education and advocacy. LWVAL's voter services teams engage voters, including by assisting with the absentee process. LWVAL Decl. ¶¶ 9-13. To that end, LWVAL provides regular training to its local chapter leaders, their members, their volunteers, and to their nonpartisan partners to assist voters in getting registered, applying for an absentee ballot, and voting absentee. *Id.* ¶ 10. LWVAL considers its absentee application assistance to be an expression of its core values. *Id.* ¶ 11. As recently as the March 2024 primary election, LWVAL volunteers have assisted voters with absentee ballot applications, including senior citizens who require assistance, and voters with disabilities. *Id.* ¶ 5. LWVAL's assistance has included providing printed applications, making photocopies of voters' photo IDs, working with the voter to ensure the application is accurately filled out, and providing envelopes and postage to submit such application. *Id.* ¶ 18. For the year 2024 and after, LWVAL hopes to engage in absentee ballot application assistance on behalf of its members and the communities it serves across the state of Alabama. *Id.* ¶ 6.

GBM. Plaintiff GBM is a multi-faith, multi-racial, membership organization that provides emergency services to people in need and engages people to build a strong, supportive, and engaged community and to build a more just society for all. GBM Decl. ¶ 5. GBM is a nonpartisan, nonprofit organization. *Id.* ¶ 2. To promote civic engagement in the communities it serves, GBM engages in voter education and assistance, including discussing civics with incarcerated individuals and assisting Alabamians to register to vote, restore their voting rights, and encourage them to vote, including by absentee ballot. *Id.* ¶ 6. GBM engages in voter assistance to express a clear message: voting is a person's fundamental right and is the key to advancing civil and human

rights in Alabama. *Id.* ¶ 7. GBM provides printed absentee applications, pens, and mailing supplies to eligible voters and GBM’s staff and volunteers also spend time with each voter to ensure that their application is marked correctly and completely. *Id.* ¶ 12. As recently as the March 2024 primary election, GBM paid staff and volunteers assisted voters with absentee ballot applications, including eligible incarcerated voters who are in prison or jail. *Id.* ¶¶ 3, 21. For the November 2024 general election and in the future, GBM would like to engage in absentee ballot application assistance on behalf of the communities it serves in the Greater Birmingham area and across Alabama. *Id.* ¶ 4.

ADAP. Plaintiff ADAP is the duly authorized Protection and Advocacy Program (“P&A”) of Alabama, as designated under federal law.³² Decl. of Nancy Anderson (“ADAP Anderson Decl.”) ¶ 2. As such, ADAP provides legal services to Alabama residents with disabilities to promote their rights and all Alabama voters with disabilities are constituents of ADAP. *Id.* As a P&A, ADAP is accountable to members of the disability community and is authorized under federal law to represent the interests of Alabamans with disabilities. *Id.* ADAP’s mission is to achieve equality in opportunity for people with disabilities, including in voting. *Id.* Through its work, ADAP seeks to convey the message that voting should be accessible to all, regardless of disability status. *Id.* ¶ 9. ADAP has a staff member whose primary responsibility is to undertake voter education and promote voting rights for people with disabilities, including by assisting them with applying for absentee ballots and helping residential facility staff to do the same. *Id.* ¶¶ 7-8; ADAP Watkins Decl. ¶¶ 2-10. ADAP receives a federal grant under HAVA to undertake this work. ADAP Anderson Decl. ¶¶ 5-10; ADAP Watkins Decl. ¶ 2. As recently as the March 2024 primary election, ADAP assisted disabled voters with absentee applications. ADAP Watkins Decl. ¶ 10.

³² See 42 U.S.C. § 15041 *et seq.*; 42 U.S.C. § 10801 *et seq.*; 29 U.S.C. § 794e *et seq.*

ADAP would like to continue its work, and indeed its legal obligation, to assist its disabled constituents with absentee applications for the November 2024 general election and beyond.

ADAP Watkins Decl. ¶ 11.

* * *

If not for SB 1, Plaintiffs would assist voters with absentee applications for the November 2024 general election and beyond. However, Plaintiffs and their paid staff and volunteers are unlikely to engage in these activities given their reasonable fear of criminal prosecution if they continue any assistance with absentee applications. Alabama NAACP Decl. ¶¶ 19-21; LWVAL Decl. ¶ 27; GBM Decl. ¶ 33; ADAP Watkins Decl. ¶¶ 11, 14. As a result of SB 1, Plaintiffs are being forced to cancel speech and expressive activities regarding absentee application assistance. Alabama NAACP Decl. ¶ 17; LWVAL Decl. ¶ 26; GBM Decl. ¶¶ 24-31; ADAP Watkins Decl. ¶ 14. Plaintiff ADAP, which receives federal funding to conduct absentee application assistance that is now possibly criminalized under SB 1, has also directed its staff not to engage in this work notwithstanding its federal obligation to do so. ADAP Anderson Decl. ¶ 12; ADAP Watkins Decl. ¶ 14. Some of Plaintiffs' members and constituents are also fearful that they could face criminal prosecution under SB 1 for simply receiving assistance with their absentee applications. Alabama NAACP Decl. ¶ 21; ADAP Watkins Decl. ¶¶ 12-13. Accordingly, it is likely that at least some of these voters will forego assistance even if they need it and may not even vote at all. ADAP Watkins Decl. ¶ 14.

ARGUMENT

A preliminary injunction is warranted if Plaintiffs establish: (1) a substantial likelihood of success on the merits; (2) irreparable harm absent an injunction; (3) the harm they will experience outweighs any injury the opposing party may experience under the injunction; and (4) the injunction would not be adverse to the public interest. *Honeyfund.com Inc. v. Governor*, 94 F.4th 1272, 1277 (11th Cir. 2024). Plaintiffs satisfy all four requirements.

I. Plaintiffs Have Standing.

As a threshold matter, Plaintiffs have standing. *First*, Plaintiffs have direct standing to bring their First and Fourteenth Amendment claims because the “credible threat” of criminal liability chills Plaintiffs’ speech. *Wollschlaeger v. Governor of Fla.*, 848 F.3d 1293, 1304 (11th Cir. 2017) (en banc). When a plaintiff challenging a law is the subject of its enforcement, “there is ordinarily little question that the [government’s] action or inaction has caused him injury[.]” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561–62 (1992). Here, SB 1’s restrictions force Plaintiffs to limit their First Amendment activities due to their “actual and well-founded fear that the law will be enforced against them.” *Virginia v. Am. Booksellers Ass’n, Inc.*, 484 U.S. 383, 393 (1988). This direct First Amendment harm alone confers standing on Plaintiffs. *See Wilson v. State Bar of Ga.*, 132 F.3d 1422, 1428 (11th Cir. 1998) (explaining that “the injury is self-censorship”).

In addition, each Plaintiff has direct standing to bring their claims because they have cancelled and/or restricted planned voter assistance activities and been forced to divert resources to educate and respond to SB 1’s changes to the law. Alabama NAACP Decl. ¶¶ 14-16; LWVAL Decl. ¶¶ 26-31; GBM Decl. ¶¶ 24-31; ADAP Anderson Decl. ¶ 12; ADAP Watkins Decl. ¶¶ 12-14; *see, e.g., Fla. State Conf. of NAACP v. Browning*, 522 F.3d 1153, 1165–66 (11th Cir. 2008) (recognizing organizational standing where organizations “reasonably anticipate[d] that they [would] have to divert personnel and time to educating volunteers and [affected individuals] on

compliance” with the statute’s requirements). Plaintiff ADAP also has direct standing to bring its claim under HAVA because SB 1 harms its ability to engage in voter assistance that it is federally mandated to undertake pursuant to HAVA. ADAP Anderson Decl. ¶¶ 12-13.

Second, Plaintiffs have associational standing on behalf of their members and constituents. *See Baughcum v. Jackson*, 92 F.4th 1024, 1031 (11th Cir. 2024) (explaining that associational standing exists where (i) members “otherwise have standing to sue,” (ii) “the interests the lawsuit seeks to protect must be germane to the [organization’s] purpose,” and (iii) “the claim can be resolved . . . without the participation of individual members”). Not only has Plaintiffs’ speech been chilled by a reasonable fear of enforcement of SB 1, *see Wilson*, 132 F.3d at 1428, but Plaintiffs also have cancelled plans for absentee voter assistance programming because of fear of criminal liability for themselves and their members and volunteers. Alabama NAACP Decl. ¶ 17; LWVAL Decl. ¶¶ 26, 31; GBM Decl. ¶¶ 30-31; ADAP Anderson Decl. ¶ 12; ADAP Watkins Decl. ¶ 14. Further, Plaintiffs’ blind, disabled, and/or low literacy members and constituents are suffering injury to their right to receive assistance under Section 208. Alabama NAACP Decl. ¶ 12; LWVAL Decl. ¶¶ 24-25; GBM Decl. ¶ 33; ADAP Anderson Decl. ¶ 12; ADAP Watkins Decl. ¶ 14.

And, because these injuries are “directly traceable to the passage of [SB 1],” they “would be redressed by enjoining each provision.” *Ga. Latino All. for Hum. Rts. v. Governor of Ga.*, 691 F.3d 1250, 1260 (11th Cir. 2012).

II. Plaintiffs Are Substantially Likely to Succeed on the Merits of their Constitutional Claims.

A. SB 1 Unconstitutionally Burdens Plaintiffs’ Core Political Speech and Associational Activity.

The First Amendment squarely protects Plaintiffs’ absentee ballot application assistance activities for three reasons. *First*, because this assistance is interactive communication about voting, its restriction limits core political speech. *Second*, absentee ballot application assistance is

also expressive conduct conveying a message about the importance of voting. *Third*, providing this assistance is one of Plaintiffs’ chosen means of associating with others in the pursuit of their shared social and political goals. Thus, by broadly criminalizing absentee ballot application assistance activities, the Challenged Provisions severely burden Plaintiffs’ First Amendment rights to speech, expressive conduct, and association.

1. Absentee Application Assistance Is Core Political Speech.

The “dissemination of information [is] speech within the meaning of the First Amendment.” *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 570 (2011). And the First Amendment “affords the broadest protection” to core political speech, especially to “[d]iscussion of public issues” related to the political process. *Buckley v. Valeo*, 424 U.S. 1, 14 (1976). Our country has a “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.” *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). For that reason, “there is practically universal agreement that a major purpose of [the First Amendment] was to protect the free discussion of governmental affairs,” including “all such matters relating to political processes.” *Mills v. Alabama*, 384 U.S. 214, 218–19 (1966). Consistent with these fundamental principles, activities that “involve[] interactive communication concerning political change” are “appropriately described as ‘core political speech’” and are subject to special First Amendment scrutiny. *See Meyer v. Grant*, 486 U.S. 414, 421–22 (1988); *Vill. of Schaumburg v. Citizens for a Better Env’t*, 444 U.S. 620, 628–32 (1980).

Here, Plaintiffs’ absentee ballot assistance activities are core political speech because Plaintiffs accomplish their assistance through interactive communications that encourage others to vote. *See League of Women Voters of Fla. v. Browning*, 863 F. Supp. 2d 1155, 1158 (N.D. Fla. 2012) (“[E]ncouraging others to register to vote” is “pure speech,” and, because that speech is political in nature, it is a “core First Amendment activity.”). As a central part of that political

speech, Plaintiffs regularly hold and participate in events at which they distribute absentee ballot applications to voters, answer questions about the absentee voting process, and assist eligible voters with completing their applications. Alabama NAACP Decl. ¶ 8, 9, 11; LWVAL Decl. ¶ 14; GBM Decl. ¶ 11; ADAP Watkins Decl. ¶ 5. It would be impossible for Plaintiffs to assist voters with their applications without “disclos[ing]” and “disseminat[ing] information,” including by speaking with voters about how to fill out their applications. *NetChoice, LLC v. Att’y Gen., Fla.*, 34 F.4th 1196, 1210 (11th Cir. 2022) (quotation marks omitted). Because Plaintiffs’ absentee ballot application assistance “depends on[] and cannot be separated from” Plaintiffs’ speech, the Challenged Provisions are “functionally a regulation of speech.” *Honeyfund.com Inc.*, 94 F.4th at 1278; see *Voting for Am., Inc. v. Steen*, 732 F.3d 382, 389 (5th Cir. 2013) (recognizing that activities including “distributing” registration forms and “helping voters to fill out their forms” involve speech (quotation marks omitted)). Moreover, Plaintiffs’ speech is political in nature because it facilitates and encourages voting. See *VoteAmerica v. Raffensperger*, No. 21 Civ. 1390, 2023 WL 6296928, at *9 (N.D. Ga. Sept. 27, 2023) (“Encouraging others to vote or engage in the political process is the essence of First Amendment expression.”). Accordingly, regulation of absentee ballot application assistance “must be undertaken with due regard for the reality” that state regulation will affect “the flow” of Plaintiffs’ core political speech. *Schaumburg*, 444 U.S. at 632.

2. Absentee Application Assistance Is Expressive Conduct.

And beyond involving direct speech, Plaintiffs’ absentee ballot application activities are also expressive conduct. *Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 901 F.3d 1235, 1240 (11th Cir. 2018) (citing *Texas v. Johnson*, 491 U.S. 397, 404 (1989)) (noting that constitutional protection for political expression “does not end at the spoken or written word,” but extends with equal force to expressive conduct).

Conduct is sufficiently expressive to fall within the scope of the First Amendment if (1) there was an “intent to convey a particularized message,” and (2) the “surrounding circumstances” would lead a reasonable person to interpret the conduct as conveying “*some* sort of message.” *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1270 (11th Cir. 2004) (emphasis in original). Several contextual factors are relevant to determining whether conduct is likely to be understood as expressive, including: (1) whether the activity accompanies speech; (2) whether the activity will be open to all; (3) whether the activity takes place in a traditional public forum; (4) whether the activity addresses an issue of public concern; and (5) the history of a particular symbol or type of conduct. *See Burns v. Town of Palm Beach*, 999 F.3d 1317, 1344–45 (11th Cir. 2021); *Food Not Bombs*, 901 F.3d at 1242–44.

Plaintiffs’ absentee assistance activities constitute expressive conduct under this standard. Plaintiffs intend to convey the message that voting is important and accessible, and that every eligible voter should exercise their right to vote regardless of senior citizen status, disability, or incarceration when they engage in absentee ballot application assistance. Alabama NAACP Decl. ¶ 6; LWVAL Decl. ¶¶ 7, 10–12, 17; GBM Decl. ¶ 7; ADAP Anderson Decl. ¶ 9. Thus, the first *Holloman* factor is met. 370 F.3d at 1270.

And a reasonable person would interpret Plaintiffs’ absentee assistance activities as conveying some message. Plaintiffs’ absentee assistance is intertwined with direct communication about the importance and accessibility of voting. *See League of Women Voters v. Hargett*, 400 F. Supp. 3d 706, 720 (M.D. Tenn. 2019) (“As a matter of simple behavioral fact . . . the collection and submission of the applications gathered in a voter registration drive is intertwined with speech and association.”) (citing *League of Women Voters of Fla. v. Cobb*, 447 F. Supp. 2d 1314, 1334 (S.D. Fla. 2006)) (quotation marks omitted). Plaintiffs also engage in voter assistance and

education events that are open to everyone, and which occur in both traditional public fora and “places ‘historically associated with the exercise of First Amendment rights,’” such as public parks. *Food Not Bombs*, 901 F.3d at 1242 (quoting *Carey v. Brown*, 447 U.S. 455, 460 (1980)); Alabama NAACP Decl. ¶ 11; LWVAL Decl. ¶ 14; GBM Decl. ¶¶ 11, 18. Plaintiffs’ absentee assistance plainly addresses a matter of public concern. *See Raffensperger*, 2023 WL 6296928, at *9 (noting that “discussing the right to vote and urging participation in the political process is a matter of societal concern”). Finally, a reasonable observer would find the long history of voter assistance efforts to counteract voting restrictions (including by Plaintiffs) and the Alabama legislature’s history of attempting to criminalize and outlaw that same voter assistance to be “instructive” in interpreting Plaintiffs’ assistance activities as conveying a pro-voting message. *Food Not Bombs*, 901 F.3d at 1243; *see, e.g.*, Alabama NAACP Decl. ¶ 16; LWVAL Decl. ¶¶ 1, 5; GBM Decl. ¶¶ 22-23; ADAP Anderson Decl. ¶ 2; Doc. 1 ¶¶ 36-46; *see also, e.g.*, *NAACP v. Alabama ex rel. Flowers*, 377 U.S. 288 (1964); *United States v. Atkins*, 323 F.2d 733, 735 (5th Cir. 1963); *Harris v. Siegelman*, 695 F. Supp. 517 (M.D. Ala. 1988).

3. Absentee Ballot Application Assistance is Associational Activity.

Plaintiffs’ absentee application assistance also is protected associational activity. The First Amendment’s broad protection of political expression also encompasses the “right to associate with others in pursuit of” shared political goals. *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984). Indeed, “[i]t is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the . . . freedom of speech.” *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460 (1958). Accordingly, “state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny.” *Id.* at 460–61; *see also NAACP v. Button*, 371 U.S. 415, 428–31, 37 (1963).

As noted, Plaintiffs engage in absentee ballot application assistance to express their mission of ensuring equal access to the right to vote, regardless of race, age, disability, or incarceration status. Plaintiffs also provide this assistance as a means of associating with voters, including those who cannot vote without such assistance, as well as with other civic engagement organizations. Alabama NAACP Decl. ¶ 12; LWVAL Decl. ¶ 19; GBM Decl. ¶¶ 19-20; ADAP Watkins Decl. ¶¶ 9-10. Accordingly, Plaintiffs’ absentee ballot application assistance is protected by the freedom of association. *See VoteAmerica v. Schwab*, 576 F. Supp. 3d 862, 875 (D. Kan. 2021) (“Public endeavors which ‘assist people with voter registration’ . . . and which expend resources ‘to broaden the electorate to include allegedly under-served communities,’ qualify as expressive conduct which implicates the First Amendment freedom of association.”) (citation omitted).

4. SB 1 Restricts the Amount and Effectiveness of Plaintiffs’ Political Speech, Expressive Conduct, and Associational Activity.

The Challenged Provisions unconstitutionally burden political expression because they reduce both the amount and effectiveness of Plaintiffs’ political speech, expressive conduct, and associational activity. In *Meyer*, the Supreme Court held that a law impermissibly restricts political expression where, as under the Payment Provisions here, Plaintiffs are prohibited from using paid staff to communicate their message because such prohibition “has the inevitable effect of reducing the total quantum of speech on a public issue,” such as participation in our country’s democratic process through absentee voting. 486 U.S. at 423.³³

The First Amendment also protects a speaker’s right “to select . . . the most effective means” of expressing their message. *Id.* at 424. The Challenged Provisions prevent Plaintiffs’ most effective means of communicating that voters can and should exercise their right to vote, including

³³ The Gift Provisions further may prohibit Plaintiffs from even lessening the burden of volunteering at long events by providing volunteers at long events with food and water.

by voting absentee, and assisting them to do so. There is no other way for Plaintiffs to meaningfully assist voters with their applications. Among these, the Payment, Prefilling, and Submission Restrictions impede Plaintiffs from engaging in speech designed to encourage senior, disabled, or incarcerated people to vote by helping them to fill out and submit their absentee ballot applications. *See Meyer*, 486 U.S. at 424 (explaining that “direct one-on-one communication” is “the most effective, fundamental, and perhaps economical avenue of political discourse”). SB 1 also serves to undermine Plaintiffs’ message that every eligible person should vote, and that voting should be accessible to all eligible voters. Likewise, the Gift Provisions impede Plaintiffs, *inter alia*, from providing stamps and envelopes to be provided to voters who may need them. The Challenged Provisions also restrict Plaintiffs from associating with voters and with one another to provide one-on-one assistance with absentee ballot applications. Thus, by prohibiting absentee assistance, the Challenged Provisions severely restrict the quantum and chosen method of Plaintiffs’ speech and association.

5. Defendants Cannot Meet Their Burden to Establish That SB 1 Serves a Compelling and Narrowly Tailored Government Interest.

State laws like SB 1 burdening the freedoms of speech and association are subject to strict scrutiny. *See Weaver v. Boomer*, 309 F.3d 1312, 1319 (11th Cir. 2002) (“The proper test to be applied to determine the constitutionality of restrictions on ‘core political speech’ is strict scrutiny.”). Strict scrutiny applies to election-related laws that, as here, directly regulate protected speech and associational activity. *See, e.g., McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 344–47 (1995). “When a State’s election law directly regulates core political speech, we have always subjected the challenged restriction to strict scrutiny and required that the legislation be narrowly tailored to serve a compelling governmental interest.” *Buckley v. Am. Const. L. Found.*,

Inc., 525 U.S. 182, 207 (1999) (Thomas, J., concurring).³⁴ Under strict scrutiny, Defendants bear the burden of establishing that SB 1 is necessary to serve a compelling and narrowly tailored government interest. *See Buckley*, 525 U.S. at 207. This is a “well-nigh insurmountable” burden. *Meyer*, 486 U.S. at 425.

Here, Defendants cannot satisfy strict scrutiny, or indeed any level of scrutiny, to justify SB 1’s intrusion on constitutional rights. Defendants bear the burden of proving, through evidence “that the recited harms are real, not merely conjectural, and that the regulation [of speech] will in fact alleviate these harms in a direct and material way.” *Turner Broadcasting Sys., Inc. v. F.C.C.*, 512 U.S. 622, 664 (1994). Fatally, there is no interest—let alone a compelling interest—served by SB 1. The sole purported interest for SB 1 was to target so-called “ballot harvesting” (*i.e.*, the collection of absentee ballots) by “groups or individuals seek[ing] to profit off of the absentee voting process.”³⁵ But SB 1 does not regulate the collection of absentee ballots. It only regulates assistance with *applications* to vote absentee and has no provisions about absentee ballots themselves. Moreover, during SB 1’s consideration and passage, there was no evidence at all as to why preventing absentee ballot collection is a compelling state interest or how any such interest is served by SB 1.³⁶ There is simply no nexus—let alone a compelling and narrowly tailored one—between *any* purported governmental interest and the conduct that SB 1 regulates.

Defendants also fail to meet their burden to show that the Challenged Restrictions are narrowly tailored. There are far less restrictive means to achieve any interest regarding “ballot

³⁴ Even if the Court determines that Plaintiffs’ absentee ballot application assistance is expressive conduct rather than speech, strict scrutiny still applies to the Challenged Provisions. Content-based restrictions on expressive conduct receive strict scrutiny. *R.A.V. v. City of St. Paul*, 505 U.S. 377, 382 (1992). The Challenged Provisions are content-based because they apply only to expressive conduct related to a particular topic: absentee ballot applications. *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015) (“Government regulation of speech is content based if a law applies to particular speech because of the topic discussed.”).

³⁵ Jacob Holmes, *Legislature passes bill criminalizing “ballot harvesting”*, Ala. Political Reporter (Mar. 8, 2024), <https://www.alreporter.com/2024/03/08/legislature-passes-bill-criminalizing-ballot-harvesting/>.

³⁶ *See* Exs. A & B to Bishop Decl.

harvesting.” Except in rare circumstances, Alabama prohibits anyone other than a voter from collecting and returning absentee ballots.³⁷ Additionally, Alabama has long criminalized conduct such as vote buying, voter intimidation, and voter bribery.³⁸ Furthermore, as next discussed, the Challenged Provisions are also unconstitutionally vague and overbroad—thus by definition, not narrowly tailored.

B. SB 1 is Unconstitutionally Vague.

The Challenged Provisions also are void-for-vagueness in violation of the First and Fourteenth Amendments. “Vague laws contravene the first essential of due process” that individuals must be afforded “fair notice of what the law demands of them.” *United States v. Davis*, 139 S. Ct. 2319, 2326 (2019) (quotation marks omitted). Here, in the First Amendment context, vague laws raise especial concern because they “force potential speakers to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked, thus silencing more speech [and expression] than intended.” *Wollschlaeger*, 848 F.3d at 1320 (cleaned up). Accordingly, “standards of permissible statutory vagueness” impacting First Amendment freedoms “are strict.” *NAACP v. Button*, 371 U.S. 415, 432–33 (1963).

A law “can be impermissibly vague for either of two independent reasons.” *Wollschlaeger*, 848 F.3d at 1319–20. *First*, “if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits.” *Id.* *Second*, “if it authorizes or even encourages arbitrary and discriminatory enforcement.” *Id.* Both conditions are plainly met here.

1. SB 1 Fails to Provide Ordinary People Reasonable Notice of What it Prohibits.

First, the Challenged Provisions are impermissibly vague because they lend themselves to varying interpretations and thus give no fair warning as to what they proscribe. Under SB 1, each

³⁷ See Ala. Code § 17-11-9.

³⁸ See *Id.* §§ 17-17-33, 38, 39.

of the terms “payment,” “gift,” “third-party,” “pre-fill,” “distribute,” and “submit” are triggers for serious criminal liability but their scope is left ambiguous.

In particular, the Payment Provisions do not define what constitutes a “payment” thereunder. It is unclear, for example, whether it is limited to monetary payments specifically for the assistance of a voter with their absentee application, or whether an employee’s general salary, reimbursement for general expenses, or even a non-monetary token would be implicated. Alabama NAACP Decl. ¶ 18; GBM Decl. ¶ 29. “Payment” could even be read to cover funding that the federal government gives Plaintiff ADAP to assist disabled and blind voters with their absentee applications, ADAP Anderson Decl. ¶¶ 11-12; ADAP Watkins Decl. ¶ 14, and salaries paid by the State of Alabama to jail and prison employees who might similarly help eligible incarcerated voters, GBM Decl. ¶ 27. Absurdly then, agencies of the federal or state government could be held liable for paying people who assist voters to apply absentee.

The Gift Provisions similarly fail to provide any (let alone reasonable) notice about what they prohibit. Plaintiffs and others are left to wonder whether *even providing the very materials required to apply to vote absentee* (e.g., a postage stamp, envelope, printing supplies, or a printed unfilled application) are considered “gifts.” Moreover, it is unclear whether the term “gift” could be construed as encompassing Plaintiffs’ provision of items like t-shirts, pens, or gas cards to volunteers, regardless of whether their provision is expressly connected to absentee ballot application assistance. Alabama NAACP Decl. ¶ 18; GBM Decl. ¶ 27.

SB 1 also does not define the term “third party,” which purports to identify who would be regulated by the Payment and Gift Provisions. As a result, individuals who are conducting necessary (and even mandatory) voter assistance activities are possibly liable under these provisions. This includes potential Class C felony liability for any potential “third parties” in the

absentee application process such as staff in jails, prisons, and residential care facilities, as well as employees or volunteers of organizations like Plaintiffs, who otherwise cannot obtain and/or return an absentee ballot application and will thus be denied the right to vote. ADAP Watkins Decl. ¶ 11. And similarly, due to this vagueness, the law also imposes potential Class B felony liability for employers (like Plaintiffs and governmental entities) who employ such “third parties” to engage in this assistance as part of their job duties. *Id.*

Next, SB 1 amorphously prohibits “prefill[ing]” an absentee application, triggering a Class A misdemeanor under the Prefilling Provision (even without any “payment” or “gift” for such conduct), or a Class B or C felony under the Payment or Gift Provisions. There is no temporal or other guidance as to what constitutes “prefilling,” meaning that any assistance in completing an absentee application could be deemed criminal under SB 1. Alabama NAACP Decl. ¶ 19; ADAP Watkins Decl. ¶ 11. This term is especially vague given that SB 1 elsewhere conflictingly states that “[a]ny applicant may receive assistance in filling out the application as he or she desires”—suggesting that while an applicant may receive assistance without fear of criminal sanction, any person providing it could be subject to criminal penalties. And because “prefilling” is criminalized under the Prefilling Provision independent of the Payment or Gift Provisions, an even broader net of would-be assistors (including family and neighbors who are not paid staff or volunteers) face potential liability.

SB 1 also makes it a crime to “distribut[e]” another voter’s absentee application under the Prefilling Restriction and Payment or Gift Provisions. But the scope of the term “distribute” is wholly unclear in both places. For example, under the Prefilling Restriction, it is unclear whether a person could be prosecuted even where a voter requests an application from Plaintiffs, accurately provides Plaintiffs with the required information, and Plaintiffs merely fill in that information on

the application before “distributing” or handing it to the voter. Under the Payment or Gift Provisions, it is unclear whether Plaintiffs’ paid staff and volunteers can even provide blank applications to disabled or incarcerated voters who have no way to print the form for themselves or if doing so itself runs afoul of the ban on “distribut[ing].” ADAP Watkins Decl. ¶ 11.

The Submission Restriction also is impermissibly vague. Although the Submission Restriction identifies how a voter may “submit” their absentee application (*i.e.*, in person or by mail/commercial carrier), it provides no notice about whether a voter may consent to a third party delivering their application on their behalf—including in situations where senior citizen, disabled, blind, or incarcerated voters would otherwise have no way to return their application. Alabama NAACP Decl. ¶ 21; GBM Decl. ¶ 22; ADAP Watkins Decl. ¶ 11. And because the Submission Restriction applies to any assistor regardless of any “payment” or “gift,” it means that even a grandchild who walks their grandparent’s application to the mailbox could face criminal liability for doing so.

* * *

Rife with ambiguity, SB 1 will force Plaintiffs and others to steer “far wide of the unlawful zone” for fear of engaging in speech and expressive activities that could risk criminal prosecution. In the First Amendment context, the “government may regulate . . . only with narrow specificity.” *Button*, 371 U.S. at 433. It fails to do so and the Challenged Provisions must be enjoined for this reason alone.

2. The Challenged Provisions Authorize and Encourage Arbitrary Enforcement.

The Challenged Provisions also must be enjoined because their ambiguity authorizes and encourages arbitrary enforcement. *See Kolender v. Lawson*, 461 U.S. 352, 358 (1983) (“Where the legislature fails to provide” law enforcement with “such minimal guidelines,” this “may permit a

standardless sweep that allows policemen, prosecutors, and juries to pursue their personal predilections.”) (cleaned up and internal quotations omitted).

Indeed, during the legislative process, bill sponsor Senator Gudger testified that the provision of a “stamp [or] sticker” could be considered an impermissible “gift” under the statute.³⁹ He also acknowledged that SB 1 raised concerns about criminalizing “the grandfather giving the grandson \$5 for gas money.”⁴⁰ His testimony underscores that SB 1 is drafted so as to invite arbitrary enforcement. SB 1 also was touted by Senator Gudger as responding to higher rates of absentee voting in certain Black Belt counties during the 2022 primary election,⁴¹ though he offered no cogent argument suggesting there was any wrongdoing connected with the higher usage rate of absentee ballots in those counties.⁴² This presents serious risk that enforcement under SB 1 could be selectively focused on such areas (and on Plaintiffs and others who assist voters in these parts of the state). Given this legislative history, and the extensive ambiguity of the statute, the danger that the Challenged Provisions will be selectively enforced is substantial.

Without fair notice of what SB 1 proscribes, Plaintiffs and others who would provide voting assistance are forced to choose between either “silence and self-censorship” or “proceed[ing] with their speech and potentially fac[ing] punishment according to [] arbitrary whims.” *Wollschlaeger*, 848 F.3d at 1323. This cannot be countenanced, particularly not given the First Amendment freedoms at stake.

³⁹ Ex. A to Bishop Decl. at 33:17-20.

⁴⁰ *Id.* at 28:7-9.

⁴¹ *See* Ex. A to Bishop Decl. at 28:11-29:12; John Sharpe, AL.com, “Absentee ‘ballot harvesting’ bill advances in House amid questions about proof” (Feb. 28, 2024), <https://www.al.com/news/2024/02/absentee-ballot-harvesting-bill-advances-in-house-amid-questions-about-proof.html>.

⁴² *See id.*

C. SB 1 is Unconstitutionally Overbroad.

The Challenged Provisions also must be struck down as unconstitutionally overbroad. Laws restricting First Amendment freedoms “may be invalidated as overbroad if a substantial number of its applications are unconstitutional, judged in relation to the statute’s plainly legitimate sweep.” *United States v. Stevens*, 559 U.S. 460, 473 (2010) (quotations omitted); see *FF Cosmetics FL, Inc. v. City of Miami Beach*, 866 F.3d 1290, 1304 (11th Cir. 2017) (citation omitted).

SB 1 regulates a sweeping amount of non-commercial political speech and constitutionally protected expressive conduct, see *supra* Argument Section II.A, and lacks any reasonable bounds in doing so. As discussed, SB 1 supposedly targets “ballot harvesting” yet it relates only to absentee applications and does not advance any governmental interest in regulating absentee ballots. Further, the Payment or Gift Provisions so broadly criminalize voter assistance that it appears to sweep in even those employees and volunteers who help disabled, blind, and low literacy voters entitled to such assistance under Section 208 of the VRA or incarcerated voters who cannot vote without such assistance. Further confirming their overbreadth, the Payment Provisions also apparently prohibit governmental employees such as elections or prison officials from helping voters obtain, complete, and submit their absentee applications as part of their jobs. Indeed, even employees or volunteers of political campaigns could be liable under these provisions—flatly inconsistent with the Supreme Court’s repeated admonition that the First Amendment “has its fullest and most urgent application precisely to the conduct of campaigns for political office.” *Fed. Election Commission v. Cruz*, 596 U.S. 289 (2022) (quotation marks and citation omitted).

The Prefilling and Submission Restrictions are similarly untethered to any legitimate purpose: under these restrictions, anyone (even a family member helping another family member, or someone helping a voter entitled to such help under Section 208) might be charged with a misdemeanor for writing the voter’s name on their application or placing their completed

application in the mailbox. Moreover, the Prefilling Restriction also appears to apply even where there could be no conceivable concern because the application is requested by a voter, the voter provides their assistor the information to include on the form, and that information is accurate. This expansive reach blatantly exceeds any legitimate sweep and violates the First Amendment.

III. Plaintiffs Are Substantially Likely to Succeed on the Merits of Their Claim Under Section 208 of the Voting Rights Act

Section 208 of the VRA provides: “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,” except for “the voter’s employer or agent of that employer or officer or agent of the voter’s union.” 52 U.S.C. § 10508; *see Arkansas United v. Thurston*, 626 F. Supp. 3d 1064, 1085 (W.D. Ark. 2022) (“With the exception of the voter’s employer or union representative, Congress wrote § 208 to allow voters to choose any assistor they want”).

Section 208 “plainly contemplates more than the mechanical act of filling out the ballot sheet” and “includes steps in the voting process before entering the ballot box.” *OCA-Greater Houston v. Texas*, 867 F.3d 604, 615 (2017). Section 208’s broad protections extend to the absentee application process. *See* 52 U.S.C. § 10310(c)(1) (defining “vote” and “voting” under the VRA to encompass “all action necessary to make a vote effective . . . , including, but not limited to, . . . action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly.”).

Congress enacted Section 208 specifically to address the “significant effect” that limiting assistance has on those “groups of citizens [who] are unable to exercise their rights to vote without obtaining assistance in voting” and “avoid denial or infringement on their right to vote.” S. Rep. No. 97-417, 62 (1982). As explained, disabled, blind, and low literacy voters are especially likely to need to vote absentee and require assistance with the absentee voting applications.

The Challenged Provisions of SB 1 violate Section 208 by infringing on the universe of lawful assistors provided by Section 208 and as a result, obstructing Congress’s purposes and goals in ensuring equal access for disabled, blind, and low literacy voters. And because SB 1 conflicts with Section 208, SB 1 is preempted.

A. SB 1 Infringes on Federally Protected Assistance to Disabled, Blind, and Low Literacy Voters.

Restrictions that preclude or limit assistors violate Section 208. *See Arkansas United*, 626 F. Supp. 3d at 1085 (finding Section 208 preempted state law prohibiting assistors from helping more than six voters). In enacting Section 208, “Congress contemplated the vulnerability of [certain] voters when it discussed providing unrestricted choice of assist[ors] and provided two explicitly excluded groups. States are not permitted to limit the right to assistance further.” *Disability Rights N.C. v. N.C. State Bd. of Elections*, No. 21 Civ. 361, 2022 WL 2678884, at *5 (E.D.N.C. July 11, 2022).

Here, by imposing criminal penalties on both assistors and voters, SB 1 violates Section 208 because it impermissibly narrows the right of disabled, blind, and low literacy voters to receive assistance from a person of their choosing. Because SB 1 “provides that there **shall** be a criminal outcome for violations [by assistors]; [the danger of prosecution] is not speculative or imaginary in nature.” *Disability Rights Miss. v. Fitch*, No. 23 Civ. 350, 2023 WL 4748788, at *3 (S.D. Miss. July 25, 2023) (emphasis in original). Rather, “the contents of the statute promise to chill the enthusiasm of those affected.” *Id.* Among other things, SB 1’s Payment or Gift Provisions criminalize any person who “receive[s] a payment or gift” for assisting a voter (a Class C felony) and appears to exclude such assistors like Plaintiffs from giving assistance to voters entitled to it under Section 208. These provisions also criminalize those paying or giving gifts to assistors (a Class B felony)—with no distinction for Section 208-eligible voters who might offer payment or

gift in exchange for the assistance, like a small token of appreciation. The Prefilling and Submission Restrictions likewise criminalize application assistance such as writing a voter's name on their form or placing the voter's form in the mail for them—even assistance for Section 208-eligible voters who are physically unable to carry out these essential steps in applying to vote absentee. This clearly violates the protections enshrined in Section 208.

To be clear, that SB 1 recites Section 208's language in § 17-11-4(e) does not cure this violation. Like Section 208, SB 1 Section 17-11-4(e) states: "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," except for "the voter's employer or agent of that employer or officer or agent of the voter's union." But at the same time, SB 1 contains the Challenged Provisions criminalizing broad categories of assistance—with no distinction, as discussed, for situations where assistance is being given pursuant to § 17-11-4(e) (or Section 208). *Cf. OCA-Greater Houston*, 867 F.3d at 615 ("[A] state cannot restrict this federally guaranteed right [under Section 208] by enacting a statute tracking its language, then defining terms more restrictively than as federally defined."). SB 1 also does not define "vote" or "voting" as broadly as the VRA—it does not define those terms at all—further compounding the ambiguity as to what conduct is permitted. Therefore, it appears that a voter or assistor engaging in Section 208-protected conduct could still face liability under the Challenged Provisions.

SB 1's separate, differently worded provision protecting military and overseas voters confirms the failure of SB 1 to protect Section 208 assistance. Directly below Section 17-11-4(e) and in the same section as the Challenged Provisions, Section 17-11-4(f) provides: "Voters voting by absentee ballot through the Uniformed and Overseas Citizens Absentee Voting Act **are not subject to this section**" (emphasis added). Section 17-11-4(f) makes plain that the Legislature

understood how to exempt other federally protected voters fully and without ambiguity from the Challenged Provisions. By contrast, Section 17-11-4(e) pointedly does not contain similar language stating that conduct thereunder is “not subject to this section” (*i.e.*, not subject to the Challenged Provisions). That the Legislature did not include this “not subject to” language for Section 208 voters or assistors underscores this violation of federal law.

B. Because SB 1 Conflicts with Section 208, It Is Preempted.

The Supremacy Clause of the United States Constitution “invalidates state laws that interfere with or are contrary to federal law.” *Hillsborough Cty., v. Automated Med. Lab., Inc.*, 471 U.S. 707, 712 (1985) (internal quotation omitted). A state law conflicts with a federal law when it “stands as an obstacle to the accomplishment and execution” of Congress’s “full purposes and objectives.” *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941).

As set forth above, SB 1 violates Section 208 because it infringes on the right of voters who are blind, disabled, and low literacy to voting assistance from an assistor of their choice. Further, because of its restrictions on these voters, SB 1 would criminalize conduct expressly protected and authorized under the VRA. SB 1 thus creates an impermissible barrier to accomplishing the full purposes and goals of Congress under the statute. Accordingly, SB 1 is constitutionally preempted by Section 208.

IV. Plaintiff ADAP Is Substantially Likely to Succeed on the Merits of Its HAVA Claim.

Plaintiff ADAP is also substantially likely to succeed on the merits of its claim that SB 1 is preempted by HAVA,⁴³ a federal law which provides ADAP with funding to undertake absentee application assistance that is now apparently criminalized by SB 1.

In enacting HAVA, Congress created a grant called “Protection and Advocacy for Voting

⁴³ HAVA is codified at 52 U.S.C. §§ 20901 to 21145.

Assistance” (“PAVA”). The PAVA program is an integrated system of federal P&A grants to states to support legal advocacy services to protect the legal and human rights of individuals with disabilities and gives state P&As broad rights in carrying out their work.⁴⁴ Under PAVA, the federal government is required “to pay the protection and advocacy [(“P&A”)]⁴⁵ system of each State to ensure full participation in the electoral process for individuals with disabilities, including registering to vote, casting a vote, and accessing polling places.” 52 U.S.C. § 21061(a). ADAP is the designated Alabama P&A for all the federal P&A grant programs, including PAVA. ADAP Anderson Decl. ¶ 2.

ADAP has a full-time employee whose primary duties focus on implementing the agency’s PAVA grant mandate: ensuring the “full participation in the electoral process for individuals with disabilities, including registering to vote, casting a vote, and accessing polling places.” 52 U.S.C. § 21061(a); ADAP Anderson Decl. ¶ 7. This requires the employee to work with and assist voters with disabilities, including with absentee voting, and to provide education to other organizations or persons on what and how someone can assist a person with a disability to vote. ADAP Watkins Decl. ¶ 3. This employee provides direct assistance to voters in filling out their absentee ballot applications. *Id.* ¶ 5.

Under SB 1, however, ADAP’s required work under the PAVA grant subjects the organization and its employees to potential criminal liability. Specifically, the Payment Provisions specifically prohibit and make it a Class B felony for someone to “receive a payment” to assist a

⁴⁴ Protection and Advocacy for Persons with Developmental Disabilities (“PADD”) program, 42 U.S.C. §§ 15041-15045; Protection and Advocacy for Individuals with Mental Illness Act (“PAIMI”), 42 U.S.C. § 10801-10851; the Protection and Advocacy for Individual Rights Program of the Rehabilitation Act, (“PAIR”) 29 U.S.C. § 794e; Protection and Advocacy for Assistive Technology (“PAAT”), 29 U.S.C. §§ 3001-3058; Protection and Advocacy for Beneficiaries of Social Security (“PABSS”), 42 U.S.C. §§ 1320b-21; Protection and Advocacy for Individuals with Traumatic Brain Injury (“PATBI”), 42 U.S.C §§ 300d-53; Protection and Advocacy for Voting Access (“PAVA”), 52 U.S.C. §§ 21061-21062; the Client Assistance Program (“CAP”), Public Law 113-128; Protection and Advocacy for Beneficiaries with Representative Payees (“PABRP”), Public Law 115 – 165.

⁴⁵ As defined in 42 U.S.C. § 15002.

voter, including a voter with a disability. As explained, SB 1’s recitation of Section 208’s text does not shield assistors from liability, even where the assistor is required by federal law to provide that assistance, as ADAP is here. SB 1 thus apparently criminalizes and prohibits conduct explicitly authorized under HAVA as applied to ADAP. Indeed, the federal government may run afoul of the Payment Provisions by following federal law in allocating funds under PAVA.

As discussed, where a state law “stands as an obstacle to the accomplishment and execution” of Congress’s “full purposes and objectives,” it is preempted under the Supremacy Clause. *Hines*, 312 U.S. at 67. SB 1 makes it impossible for ADAP to fulfill its duties or congressional mandate under PAVA to ensure the “the full participation of persons with disabilities in the voting process.” 52 U.S.C. § 21061(a). SB 1’s prohibitions are thus preempted by HAVA.

V. Plaintiffs Will Suffer Irreparable Harm Absent Preliminary Relief.

Absent a preliminary injunction, Plaintiffs will suffer irreparable injuries with respect to the November 2024 general election and beyond. “The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 11 F.4th 1266, 1286 (11th Cir. 2021) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). SB 1 threatens to penalize Plaintiffs’ speech and conduct, causing Plaintiffs to dramatically reduce and fundamentally alter their communications to Alabama voters. This “direct penalization” of First Amendment rights is “per se irreparable.” *Otto v. City of Boca Raton, Fla.*, 981 F.3d 854, 870 (11th Cir. 2020).

Moreover, SB 1 severely burdens, if not entirely forecloses, the right to vote for Plaintiffs’ members and constituents and many other Alabamians—including senior, disabled, blind, low literacy, and incarcerated voters who depend on absentee voting but cannot vote absentee without assistance with their applications. “[M]issing the opportunity to vote [amounts to] an irreparable [injury].” *Gonzalez v. Governor of Ga.*, 978 F.3d 1266, 1272 (11th Cir. 2020). “[O]nce the election

occurs, there can be no do-over and no redress. The injury to these voters is real and completely irreparable if nothing is done to enjoin th[ese] law[s].” *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014).

Irreparable harm also exists where, as here, voting can become so burdensome for citizens with disabilities or low literacy skills that “they may be dissuaded from attempting to vote at all.” *Westchester Disabled on the Move, Inc. v. Cnty. of Westchester*, 346 F. Supp. 2d 473, 477-78 (S.D.N.Y. 2004); *cf. also Gaston County v. United States*, 395 U.S. 285, 295 (1969) (accepting that some low literacy voters may “not attempt to register, knowing that they could not meet the [state’s strict] standard”); S. Rep. 97-417, at *62 (noting that some Section 208 voters faced with casting their vote under “adverse circumstances” will “in fact elect to forfeit their right to vote”). Beyond the risk of complete disenfranchisement, blind, disabled, or low literacy voters face irreparable harm even if they ultimately find a way to vote but experience additional burdens to doing so. *Cf. Westchester Disabled on the Move*, 346 F. Supp. 2d at 477-78 (explaining that denying disabled voters access to in person voting creates irreparable injury even if they are still ultimately able to vote another way).

Further, Plaintiffs who would usually assist voters will lose opportunities to do so under SB 1. Those missed opportunities to help voters constitute irreparable harm not only because unassisted voters may not be able to vote at all but also because those opportunities for voter engagement will have been lost forever. The potential fear of prosecution under SB 1 also constitutes irreparable harm for all Plaintiffs. *See Ga. Latino All. for Human Rights v. Governor of Ga.*, 691 F.3d 1250, 1269 (11th Cir. 2012). SB 1 additionally frustrates Plaintiffs’ missions by diverting resources. Thus, Plaintiffs unequivocally face irreparable harm if SB 1 is not enjoined.

VI. The Balance of the Equities Weighs in Plaintiffs' Favor and a Preliminary Injunction Serves the Public Interest.

The ongoing injury to Plaintiffs far outweighs any interest that the Defendants may have in enforcing SB 1, and the public will be best served by an injunction. Plaintiffs are suffering grave violations of their constitutional and statutory rights. The State has no interest in defending provisions that violate federal law. *See United States v. Alabama*, 691 F.3d 1269, 1301 (11th Cir. 2012) (“Frustration of federal statutes and prerogatives are not in the public interest.”); *KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1272 (11th Cir. 2006) (holding that neither city nor public had any interest in “enforcing an unconstitutional ordinance”). And since Defendant Allen has stated that SB 1 will first be enforced for the November 2024 general election, an injunction now is in the public interest as it preserves the status quo.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that their Motion for Preliminary Injunction be granted.

DATED: May 2, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed a copy of the foregoing and accompanying documents with the Clerk of Court using the CM/ECF system which provides electronic notice of filing to all counsel of record.

DATED: May 2, 2024

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