

No. 24-13111

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

ALABAMA STATE CONFERENCE OF THE NAACP, ET AL.,
Plaintiffs-Appellees

v.

ATTORNEY GENERAL, STATE OF ALABAMA,
Defendant-Appellant

On Appeal from the United States District Court
for the Northern District of Alabama
No. 2:24-cv-00420 (Proctor, J.)

**BRIEF OF THE STATES OF MISSISSIPPI, ARKANSAS, FLORIDA,
LOUISIANA, AND TEXAS AS AMICI CURIAE IN SUPPORT OF
DEFENDANT-APPELLANT AND REVERSAL**

LYNN FITCH
Attorney General
SCOTT G. STEWART
Solicitor General
JUSTIN L. MATHENY
Deputy Solicitor General
MISSISSIPPI ATTORNEY
GENERAL'S OFFICE
P.O. Box 220
Jackson, MS 39205-0220
Telephone: (601) 359-3680
E-mail: justin.matheny@ago.ms.gov
Counsel for Amici Curiae

CERTIFICATE OF INTERESTED PERSONS

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1, the undersigned counsel certifies that, to the best of my knowledge, the individuals and entities named in the Certificate of Interested Persons in Defendant-Appellant's opening brief reflect a complete list of persons who may have an interest in the outcome of this case.

s/ Justin L. Matheny
Justin L. Matheny
Counsel for Amici Curiae

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**STATEMENT OF THE ISSUES, INTEREST OF AMICI CURIAE,
AND SUMMARY OF ARGUMENT**

This Court should reverse the district court’s order enjoining the enforcement of Ala. Code § 17-11-4 (SB1), a law addressing ballot harvesting—a practice that risks fraud, imperils election integrity, and exploits the vulnerable.

SB1 generally restricts (1) submitting someone else’s completed absentee-ballot application and (2) paying or receiving pay for harvesting absentee-ballot applications. The district court ruled that those restrictions are likely preempted by Section 208 of the Voting Rights Act, which provides 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 a person of the voter’s choice, other than the voter’s employer or agent of that employer or officer or agent of the voter’s union.” 52 U.S.C. § 10508. This Court should reject that ruling because it defies Section 208’s text, structure, and purpose. On application submission: SB1 expressly permits “voter[s] who require[] assistance to vote by reason of blindness, disability, or inability to read or write” to receive “assistance” with voting—including absentee-ballot-application submission—from “an individual of the voter’s choice,” Ala. Code § 17-11-4(e), so it accords with Section 208. On paid ballot harvesting: SB1 does not prevent a voter from receiving voting assistance from *anyone*—it just bars paying or receiving pay for providing that assistance—and so it too

aligns with Section 208. Even if these provisions did burden voting assistance, they are reasonable regulations that Section 208 leaves States free to adopt.

Amici curiae—the States of Mississippi, Arkansas, Florida, Louisiana, and Texas—have election laws that have been challenged under Section 208.* As in this case, litigants have sought to use Section 208 to block amici’s laws combatting voter fraud, promoting election integrity, and protecting voters from undue influence and manipulation. Amici thus have a strong interest in a sound understanding of Section 208. They submit this brief to emphasize two points that reinforce the text-based reasons for rejecting the decision below. First, in addition to Section 208’s text, structure, and purpose, important background principles reinforce that Section 208 leaves States leeway to reasonably regulate voting assistance—including the ways that assistance is provided. Second, deeming laws like SB1 to be preempted improperly thwarts state efforts to further the powerful public interests that underlie Section 208 itself.

* The States may file this brief without the parties’ consent or leave of the Court. Fed. R. App. P. 29(a)(2).

ARGUMENT

I. Text, Structure, Purpose, And Background Principles Confirm That Section 208 Permits States To Reasonably Regulate The Right To Voting Assistance.

Section 208's text, structure, and purpose show that the statute does not guarantee a boundless right to voting assistance. Ala. Br. 24-36. Rather, the statute leaves States free to reasonably regulate how and by whom that assistance is provided.

Start with the text. Section 208 establishes a right for covered voters to receive assistance from “*a* person of the voter’s choice.” 52 U.S.C. § 10508 (emphasis added). If Congress wanted to establish an unrestricted right to assistance, it would have said “*any* person of the voter’s choice” or “*the* person of the voter’s choice.” It did not. Section 208 must be read to adopt a right to voting assistance that is narrower than the right it would have adopted if it guaranteed assistance from *any person* or *the person* of the voter’s choice. Section 208 thus guarantees a robust but limited right to assistance that leaves States leeway to regulate that assistance.

Statutory structure confirms this. Section 208 includes both the phrases “[a]ny voter” and “the voter[].” So Congress showed that it knew to use the expansive *any* or the absolute *the* when it wanted to sweep broadly. It did not do that when it identified the scope of the assistance to which a voter is entitled: it referred to “a” person, leaving States room to reasonably regulate the universe of persons from whom a voter may

receive assistance. Congress also included specific limitations on the right to assistance, further showing that the right it protects is limited. Section 208 excludes two categories of persons—the voter’s employer and union officials—from serving as assistants, due to self-evident concerns about undue influence over the voter. By coupling those exclusions with the phrase “a person” (again, rather than *any person* or *the person*) in describing the voter’s choice, Congress left it to States to adopt further exclusions when necessary to protect voters.

This view of Section 208 promotes the provision’s purposes. Section 208 reflects Congress’ dual aims to “assure meaningful voting assistance and to avoid possible intimidation or manipulation of the voter.” S. Rep. No. 97-417, at 62. Section 208 thus provides a right to assistance and ensures that voters are ultimately responsible for choosing (and may choose) their assistants. At the same time, Section 208 mitigates the risk of undue influence by barring certain groups (employers and union officials) from providing assistance and by leaving States leeway to adopt further regulations. In this way, Congress allowed certain voters to receive assistance while ensuring that uniquely “susceptible” voters are protected from “hav[ing] their actual preference overborne by the influence of those assisting them.” *Ibid.* Indeed, Congress expected that States would exercise their “legitimate” authority “to establish necessary election procedures” that carry through Section 208’s aims. *Id.* at 63. It envisioned that States would “establish[]” reasonable regulations that

“encourage[] greater participation in our electoral process” and “protect the rights of voters.” *Id.* at 62-63. The “rights of voters” (*id.* at 63) include not only the right to assistance, but also the rights of all voters—including those covered by Section 208—to have their votes “protected from the diluting effect” of votes tainted by fraud or manipulation, *Gray v. Sanders*, 372 U.S. 368, 380 (1963), and to be shielded from “confusion and undue influence” when casting their own ballots, *Burson v. Freeman*, 504 U.S. 191, 199 (1992) (plurality opinion).

Background principles reinforce the text-based view that Section 208 leaves States leeway to reasonably regulate voting assistance.

First, under our constitutional design, the Framers “intended the States to keep for themselves ... the power to regulate elections.” *State v. Meadows*, 88 F.4th 1331, 1346 (11th Cir. 2023). Although the federal government may exercise “significant control over federal elections,” *Shelby County v. Holder*, 570 U.S. 529, 543 (2013), States retain “broad powers to determine the conditions under which the right of suffrage may be exercised,” *Thompson v. Secretary of State for the State of Alabama*, 65 F.4th 1288, 1307 (11th Cir. 2023). This structural feature of our constitutional system supports reading Section 208 to leave States the authority to reasonably regulate voting assistance.

Second, state laws addressing voter fraud and manipulation fulfill States’ “traditional ... responsibility” to deter and punish crime. *Bond v. United States*, 572 U.S. 844, 858 (2014). “[T]he punishment of local

criminal activity” is “[p]erhaps the clearest example of traditional state authority.” *Ibid.* So “it is incumbent upon the federal courts to be certain of Congress’ intent before finding that federal law overrides” “the usual constitutional balance of federal and state powers” in this context. *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991).

Third, “federalism concerns” dictate that when the text of a federal statute “is susceptible of more than one plausible reading,” courts should ordinarily “accept the reading that disfavors pre-emption.” *Murphy v. Dulay*, 768 F.3d 1360, 1367, 1368 (11th Cir. 2014) (quoting *Altria Group, Inc. v. Good*, 555 U.S. 70, 77 (2008)). “This presumption applies not only to whether Congress intends preemption but also to ‘the *scope* of its intended invalidation of state law.” *Id.* at 1367 (quoting *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996)). Where (as here) “Congress has legislated ... in a field which the States have traditionally occupied,” courts “start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was” Congress’s “clear and manifest purpose.” *Medtronic*, 518 U.S. at 485 (internal quotation marks omitted). Preemption overrides the democratic will of a State’s citizens and interferes with the States’ role as “independent sovereigns in our federal system.” *Ibid.* So even if there were doubt that Section 208 leaves States power to reasonably regulate voting assistance, principles of federalism would require avoiding a view of Section 208 that overrides reasonable state regulations like SB1.

These principles confirm that Section 208 allows covered voters to choose a person who will assist them, but it does not grant voters the right to make that choice without limitation. By allowing assistance from “a person of the voter’s choice,” Congress ensured that the voter would make the ultimate choice to receive assistance. And it preserved States’ ability to regulate that assistance, so long as they do so reasonably. SB1 is consistent with all of these principles. Ala. Br. 39-48.

II. Reading Section 208 To Preempt Reasonable Ballot-Harvesting Laws—Like SB1—Harms The Public Interest.

Ballot-harvesting laws like SB1 protect voters and promote important state aims—including the aims underlying Section 208—while imposing only minimal burdens. Reading Section 208 to preempt such laws thus harms the public interest.

First, ballot-harvesting laws like SB1 serve the “strong and entirely legitimate state interest” in “the prevention of fraud.” *Brnovich v. Democratic National Committee*, 141 S. Ct. 2321, 2340 (2021). “[V]oter fraud” has occurred “throughout this Nation’s history” and is a perennial “risk” in elections. *Crawford v. Marion County Election Board*, 553 U.S. 181, 195, 196 (2008) (plurality opinion). And “the potential and reality of fraud is much greater in the mail-in ballot context.” *Veasey v. Abbott*, 830 F.3d 216, 239 (5th Cir. 2016) (en banc). The bipartisan Commission on Federal Election Reform co-chaired by former President Jimmy Carter and Secretary of State James A. Baker, III thus observed that “[a]bsentee

ballots remain the largest source of potential voter fraud.” Commission on Federal Election Reform, *Building Confidence in U.S. Elections* 46 (2005). And “[o]rganized absentee ballot fraud of sufficient scope to corrupt an election is no doomsday hypothetical.” *Democratic National Committee v. Hobbs*, 948 F.3d 989, 1071 (9th Cir. 2020) (en banc) (Bybee, J., dissenting), *rev’d and remanded sub nom. Brnovich v. Democratic National Committee*, 141 S. Ct. 2321 (2021). It happened in North Carolina in 2018, for example, where the results of a race for a seat in the House of Representatives were invalidated because of fraudulent mail-in ballots. *Brnovich*, 141 S. Ct. at 2348; *see also Greater Birmingham Ministries v. Secretary of State for State of Alabama*, 992 F.3d 1299, 1305 (11th Cir. 2021) (noting “high-profile ... and well-documented cases of absentee voter fraud that captured the public attention of Alabamians” in the 1990s); Ala. Br. 4-9 (describing fraud in Alabama and other States). The Commission on Federal Election Reform thus specifically recommended that States adopt laws to restrict the handling of absentee ballots. *Building Confidence* 46-47. Laws like SB1 deliver on that recommendation.

Second, by promoting confidence in elections, ballot-harvesting laws like SB1 enhance citizens’ participation in democracy. Fraud “undermine[s] public confidence in the fairness of elections and the perceived legitimacy of the announced outcome.” *Brnovich*, 141 S. Ct. at 2340; *see also Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam)

“Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government.”). Safeguarding election integrity thus “has independent significance, because it encourages citizen participation in the democratic process.” *Crawford*, 553 U.S. at 197 (plurality opinion). And in enacting Section 208, Congress responded to concerns that voters who need assistance were “discourage[d] ... from voting for fear of intimidation or lack of privacy.” S. Rep. No. 97-417, at 62 n.207. Congress left States to further Section 208’s ends by “establish[ing]” regulations that “encourage[] greater participation in [the] electoral process” and “protect the rights of voters.” *Id.* at 62-63. Laws like SB1 do that, by advancing election integrity and protecting voters from fraud and manipulation.

Last, ballot-harvesting restrictions serve the “compelling interest in protecting voters from confusion and undue influence.” *Burson*, 504 U.S. at 199 (plurality opinion). They minimize those risks by restricting when third parties can handle ballots, including third parties who are more likely to exploit absentee voters. In this way, laws like SB1 again advance a key aim of Section 208. That statute reflects Congress’s concern that blind, disabled, and illiterate voters are “more susceptible than the ordinary voter to having their vote unduly influenced or manipulated.” S. Rep. No. 97-417, at 62; *see ibid.* (such voters risk “hav[ing] their actual preference overborne by the influence of those assisting them or be[ing] misled into voting for someone other than the

candidate of their choice”). That concern is even more potent for absentee voting because mail-in voters are “more susceptible to pressure, overt and subtle, or to intimidation.” *Building Confidence* 46; *see Brnovich*, 141 S. Ct. at 2348 (“[T]hird-party ballot collection can lead to pressure and intimidation.”). So ballot-harvesting laws like SB1 help protect voters who cast votes outside the traditional polling place.

The district court in this case recognized that “the presence of voter fraud in Alabama” “is undisputed,” yet it thought that “enjoining two narrow provisions of SB 1 only as they apply to Section 208 voters will not ... prevent Alabama from prosecuting voter fraud when it occurs.” D. Ct. Dkt. 76 at 12. But SB1 proactively targets specific dangers—like organized ballot-harvesting schemes—and thus serves powerful interests beyond prosecuting fraud after the fact. State legislatures “should be permitted to respond to potential deficiencies in the electoral process with foresight rather than reactively.” *Munro v. Socialist Workers Party*, 479 U.S. 189, 195 (1986). And “a State may take action to *prevent* election fraud without waiting for it to occur and be detected within its own borders.” *Brnovich*, 141 S. Ct. at 2348 (emphasis added); *see Ala. Br. 13-14*, 40-48. By deterring fraud and manipulation, SB1 promotes “[c]onfidence in the integrity of our electoral processes,” which is “essential to the functioning of our participatory democracy.” *Purcell*, 549 U.S. at 4. The injunction against SB1 thus undermines the public interest.

CONCLUSION

Consistent with Section 208's text, structure, and purpose and with background legal principles, SB1 preserves voters' right to receive assistance with voting while advancing strong public interests. Section 208 does not preempt SB 1. The district court was wrong to rule otherwise. This Court should reverse that court's order enjoining SB1's enforcement.

Respectfully submitted,

LYNN FITCH
Attorney General

s/ Justin L. Matheny

SCOTT G. STEWART
Solicitor General

JUSTIN L. MATHENY
Deputy Solicitor General

MISSISSIPPI ATTORNEY
GENERAL'S OFFICE

P.O. Box 220

Jackson, MS 39205-0220

Telephone: (601) 359-3680

E-mail: justin.matheny@ago.ms.gov

Counsel for Amici Curiae

Dated: December 9, 2024

Counsel for Additional Amici States

TIM GRIFFIN
Attorney General
State of Arkansas

ASHLEY MOODY
Attorney General
State of Florida

LIZ MURRILL
Attorney General
State of Louisiana

KEN PAXTON
Attorney General
State of Texas

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CERTIFICATE OF COMPLIANCE

This brief complies with the content and form requirements of Fed. R. App. P. 29(a)(4)-(5) and 32(a) and Eleventh Circuit Rule 29, and comports with the word-limitation requirements of those rules because the brief, excluding the parts of the document exempted by Fed. R. App. P. 32, contains 2406 words. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in proportionally spaced typeface, including serifs, using Microsoft Word 2016, in Century Schoolbook 14-point font.

Dated: December 9, 2024

s/ Justin L. Matheny
Justin L. Matheny
Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I, Justin L. Matheny, hereby certify that the foregoing brief has been filed with the Clerk of Court using the Court's electronic filing system, which sent notification of such filing to all counsel of record.

Dated: December 9, 2024

s/ Justin L. Matheny
Justin L. Matheny
Counsel for Amici Curiae