

**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,

Defendant.

Civil Action No. 24 Civ. 420 (RDP)

**PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION TO STAY PENDING
APPEAL**

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INTRODUCTION

Every election, Plaintiff organizations help thousands of disabled and low literacy voters who request assistance. Since this Court’s preliminary injunction, Plaintiffs have tirelessly worked to respond to countless more requests from such voters before the absentee application window closes at the end of the month. Defendant’s motion to halt that ongoing work fails on every factor. At the outset, this Court’s preliminary injunction simply requires compliance with Section 208 of the Voting Rights Act, a four-decade old federal law that entitles certain voters to “assistance by a person of the *voter’s choice*.” 52 U.S.C. § 10508 (emphasis added). Nothing in Section 208 allows Alabama to limit that choice. Nor does Defendant’s brief undermine this Court’s holdings that SB1 “obvious[ly]” denies Section-208 voters the assistance of their choice and that the “injunction does not in any way prevent Alabama from prosecuting voter fraud.” Doc. 76 at 11-12. Indeed, the injunction does “not require the Attorney General to do anything.” *Id.* at 7. The injunction does, however, remove the real fear of future prosecution from chosen assistors—including those family, friends, caregivers, volunteers, or nursing home staff whom Defendant concedes “commonly” provide necessary assistance to many voters, Doc. 78 at 9-10. Moreover, Congress enacted Section 208 to remedy states’ history of denying assistance to disabled and low-literacy voters based on alleged concerns about fraud. A stay would cause widespread harm to Alabama’s most vulnerable voters in overt defiance of federal law. For the foregoing reasons, this Court should deny Defendant’s Motion to Stay.

LEGAL STANDARD

“A stay is not a matter of right, even if irreparable injury might otherwise result.” *Nken v. Holder*, 556 U.S. 418, 433 (2009) (internal citations omitted). As such, “[a] stay of a preliminary injunction requires the exercise of [] judicial discretion, and the party requesting the stay must

demonstrate that the circumstances justify the exercise of that discretion.” *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1317 (11th Cir. 2019). In determining whether a stay is warranted, courts consider “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Nken*, 556 U.S. at 434. To satisfy his burden under the first two factors, “the party seeking the stay must show more than the mere possibility of success on the merits or of irreparable injury.” *Democratic Exec. Comm. of Fla.*, 915 F.3d at 1317 (internal citations omitted).

LEGAL ARGUMENT

Based on this Court’s previous and correct reasoning, Defendant cannot satisfy a single stay factor. First, based on Section 208’s plain text and the overwhelming weight of the caselaw, this Court has already correctly held that Defendant is highly unlikely to succeed on the merits. Doc. 69 at 49-60; Doc. 76 at 3-5. Second, Defendant suffers no injury from the injunction. Doc. 76 at 6-7. Third, Plaintiffs and Section-208 voters statewide will be irreparably injured from a stay, as Plaintiffs are now urgently assisting voters per the injunction. *Id.* at 5-6. Fourth, the public would likewise suffer from an abrupt stay that would greatly curtail assistance for Section-208 voters by needlessly inserting ambiguity into who can assist voters without fear of prosecution. *Id.* at 6-7. Finally, despite Defendant’s attempt to contrive material disputes of fact, this Court appropriately determined that the issue of whether Section 208 preempts SB 1 involved a “pure legal question,” which plainly did not require an evidentiary hearing to resolve. *Id.* at 8-9.

I. Defendant Is Highly Unlikely to Succeed on the Merits.

Defendant cannot satisfy the first stay factor because he is unlikely to succeed on the merits. In granting the preliminary injunction, this Court explicitly found the opposite, that Plaintiffs are likely to succeed on the merits. Doc. 76 at 5. Section 208’s text, the weight of authority (including case law and the Senate Report), and Defendant’s own brief support this Court’s prior conclusions.

Under Section 208, “[a]ny voter” who is blind, disabled or unable to read or write is entitled to “assistance by a person of the voter’s choice,” other than their employer or union agent. 52 U.S.C. § 10508. Section 208 contains no exemptions for state laws, nor otherwise gives states the authority to overwrite it with limits on voter’s choice. The Submission, Payment, and Gift Provisions of SB1 (together, the “Challenged Restrictions”), like any other state restrictions that preclude Section-208 voters from selecting their assistors, are preempted by the plain text of Section 208, regardless of the number of voters impacted or the nature of the burden. Doc. 69 at 53-59; Doc. 76 at 5.

A state law conflicts with federal law, and is therefore preempted by it, when it “stands as an obstacle to the accomplishment and execution” of Congress’s “full purposes and objectives.” *Lamps Plus, Inc. v. Varela*, 139 S. Ct. 1407, 1415 (2019). State law is preempted so long as Congress clearly states its intent to regulate “areas of traditional state responsibility,” *Bond v. United States*, 572 U.S. 844, 858 (2014). Here, as this Court already held, “Section 208 provides such a clear statement,” directing that Section-208 voters receive assistance with absentee voting from anyone of their choice. Doc. 69 at 49-50; *accord* 52 U.S.C. § 10310(c)(1) (defining the terms “vote” or “voting” to include “all action necessary to make a vote effective” in any election).

Nonetheless, Defendant asks this Court to ignore Section 208’s clear text and the Court’s own prior well-reasoned rulings in favor of Defendant’s various recycled and groundless arguments. In misapprehending this Court’s prior statement that the “Section 208 [language], ‘a

person of the voter's choice,' is ambiguous," Doc. 76 at 4; *cf.* Doc. 78. at 3, Defendant argues that Section 208 does not preempt SB 1. But Defendant's argument ignores critical context. The Court found Section 208 "ambiguous" only as to the scope of the "choice" that Congress intended to provide for voters. Doc. 76 at 4 (internal citations and quotation marks omitted). Resolving this ambiguity required the Court to examine Section 208's legislative history, leading to the determination that "Congress intended that state laws which unduly burden the right recognized in Section 208 are preempted." *Id.*; *see Club Madonna Inc. v. City of Miami Beach*, 42 F.4th 1231, 1253 (11th Cir. 2022) (noting that courts must "examine the statutory text, its regulatory framework, and, if necessary, the legislative history" to decide whether Congress deliberately chose to preempt state law).

This Court further held that, "[t]aken in proper context," the Senate Report's references to phrases such as "unduly burden" and "dependent upon the facts" relate to the "question of what the challenged state law prohibits." Doc. 76 at 10-11. Based on this understanding, the Court "easily" concluded that "SB 1 unduly burdens the rights of Section-208 voters to make a choice about who may assist them in obtaining and returning an absentee ballot." *Id.* at 4. And so, contrary to Defendant's assertion, Doc. 78 at 3-4, Plaintiffs were not required to identify a certain number of voters who face particular burdens to demonstrate Section 208 preemption. Factual evidence of the extent of any burden on voters is "unnecessary to the court's injunctive-relief determination." Doc. 76 at 9; *see, also, e.g., OCA-Greater Houston v. Texas*, 867 F.3d 604, 614-15 (5th Cir. 2017) (affirming summary judgment for plaintiff on claim that Section 208 preempted state law restricting the interpretation assistance); *League of Women Voters of Ohio v. LaRose*, No. 23 Civ. 2414, 2024 WL 3495332, at *15 (N.D. Ohio July 22, 2024) (summary judgment for plaintiffs on claim that state limits on absentee assistance violated Section 208); *Disability Rts. N.C. v. N.C.*

State Bd. of Elections, No. 5:21-CV-361, 2022 WL 2678884, at *7 (E.D.N.C. July 11, 2022) (similar); *Ark. United v. Thurston*, 626 F. Supp. 3d 1064, 1087 (W.D. Ark. 2022) (similar).

In any event, this Court was correct in determining that it is “obvious” that SB 1 denies the right of Section-208 voters to the assistance of their choice. Doc. 76 at 11. Despite Defendant’s attempt to minimize the facts, and Plaintiffs not needing to identify affected voters, Plaintiffs have identified multiple affected Section-208 voters. For example, because it is unlawful for anyone to submit another person’s “completed absentee ballot application” under the Submission Restriction, Ala. Code § 17-11-4(c)(2), Ms. Faraino’s mother could be prosecuted simply for mailing in or dropping off her application. *See* Doc. 74-3 ¶ 6; *cf.* Doc. 78 at 4. Defendant’s own examples demonstrate that SB 1 could subject many Section-208 assistors to prosecution. As Defendant concedes, “[v]oters residing in assisted living or nursing home facilities *commonly* receive assistance from nurses, staff, and other residents.” Doc. 78 at 9 (emphasis added). And yet the Submission Restrictions makes it a crime for such nurses, staff, and other residents to simply drop off completed applications in the mailbox. Ala. Code § 17-11-4(c)(2). SB 1 creates similar liability for a “family member, friend, caregiver, or volunteer” who returns a Section-208 voter’s application. *Cf.* Doc. 78 at 10. Defendant’s only response is that SB 1 allows such help, *id.* at 5 (citing Ala. Code § 17-11-4(e)). But this Court has already ruled that the Submission Restriction clearly states that “*no one* can assist” Section-208 voters. Doc. 69 at 54 (emphasis in original).

Similarly, under the Payment and Gift Provisions, Plaintiffs and other nurses, caregivers, family, friends, or volunteers who knowingly receive even a nominal gift or fee to assist a Section-208 voter—even if that voter provides this token—are also subject to prosecution. Ala. Code §§ 17-11-4(c)(2), 17-11-4(d)(1)-(d)(2). For example, Dr. Peebles would choose ADAP as his assistor, Doc. 74-4 ¶ 8, because, in the 2020 election, a paid ADAP staffer “assisted [him] with

completing [his] absentee ballot application,” and, as Defendant notes, sent him a link to the application, *id.* at ¶ 5. That is, paid staff “knowingly” both “distribut[ed]” and “complet[ed]” his application, which SB 1 punishes as a “Class C felony.” Ala. Code § 17-11-4(d)(1). Dozens of other disabled voters have reached out to paid ADAP staff, like Ms. Watkins, for similar assistance. Doc. 74-5 ¶¶ 5-6, 9. Dr. Peebles also reasonably does not want his “paid care attendants” to assist him because SB 1 “put[s] [his] attendants in the position of risking a criminal conviction” merely for knowingly helping him to vote. Doc. 74-4 ¶ 8. Similarly, Mr. Courie and Mr. McKee are chronically disabled voters whose *chosen* assistor is a volunteer from the League of Women Voters. Doc. 74-1 at ¶¶ 4-6; Doc. 74-2 ¶¶ 4-6. Under the Gift Provision, however, a volunteer who helps them could be prosecuted for knowingly receiving “gifted pens and t-shirts” to do this work. Doc. 74-1 ¶¶ 6-7, Doc. 74-2 ¶¶ 6-7; *see* Ala. Code § 17-11-4(d)(1) (“[I]t shall be unlawful for a third party to knowingly receive . . . gift for . . . completing, . . . obtaining, or delivering a voter’s absentee ballot application”). Defendant ignores the Payment and Gift Provisions. Instead, he offers an atextual limit on criminal liability under SB 1 where “assistance can only be induced through compensation.” Doc. 78 at 4. SB 1, however, contains no such requirement. As this Court has held, “common sense indicates that when Section-208 voters are deprived of their federal right to choose who they want to assist them” the “very types of problems” identified by Plaintiffs “will ensue.” Doc. 76 at 9. In other words, although not required, this evidence only reinforces the clear conflict with federal law.

Additionally, Defendant’s assertion that SB 1 affects “so few” people is as inaccurate as it is irrelevant. Doc. 76 at 4 (citing *Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 885 (2000)). In *Geier*, the Supreme Court noted in dicta that if a regulation affected “so few” regulated entities that the regulation did not stand as an obstacle to the broader goals of the federal law, “it is

possible” the regulation “could escape preemption.” *Geier*, 529 U.S. at 885. But that is not this case. Defendant admits that thousands of Alabamians with disabilities vote absentee. Doc. 76 at 8. And Section 208 guarantees a voter the assistor “of one’s choice,” yet Defendant admits SB 1 restricts such assistance. Doc. 78 at 9 (asserting that “disabled voters have ample time to secure whatever assistance they *may require* to vote in November” but not the assistance they *may choose*) (emphasis added); *see also* July 31, 2024 Hearing Tr. at 28:12-25 (counsel for Defendant agreeing that SB 1 would limit such assistance). As such, SB 1 unequivocally “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress” to guarantee the assistance of one’s choice. *Geier*, 529 U.S. at 876, 886.

To be clear, nothing in SB 1 limits the law to only “stand as an obstacle to the paid ballot harvester” that Defendant warns about, *cf.* Doc. 78 at 5; rather, SB 1 broadly prohibits all forms of assistance with submitting absentee ballot applications and bars Section-208 assistors from receiving any form of payment or gift. Again, Plaintiffs do not challenge the laws which already criminalize the coercion, intimidation, or fraudulent inducement of voters; by definition, those do not constitute “choice.” And as this Court has noted, the injunction only suspends SB 1 for Section-208 voters and assistors, SB 1 otherwise remains in place and Alabama may use it to prosecute anyone who is paid to assist or who delivers applications for voters who are neither disabled, blind, nor unable to read or write. Doc. 76 at 12. Other election laws also prevent the behavior that Defendant purports to be concerned about. Doc. 76 at 6-7; *see also, e.g.*, Doc 57 at 25 (“Plaintiffs do not dispute that the State has an interest in implementing reasonable restrictions on election conduct. And in fact, the State has many laws on the books which already do that.”). Indeed, Defendant’s own evidence supports the assertion that these actions are already illegal. For example, Defendant’s declarant Mr. Biggs avers that he prosecuted such crimes. *See* Doc. 46-1

¶¶ 4-7; 73-1 ¶¶ 4-7. As such, Defendant’s conflation of coercive or intimidating behavior with the assistance of one’s choosing—including the assistance by anyone who submits a ballot application for another or those who are “paid” or receive a “gift”—is simply an attempted end run around Alabama’s obligations under Section 208.

Thus, as this Court “easily” concluded, “SB 1 unduly burdens the rights of Section-208 voters to make a choice about who may assist them in obtaining and returning an absentee ballot.” Doc. 76 at 4. Defendant’s attempt to rehash arguments repeatedly rejected by this Court and mischaracterization of the undisputed facts confirms he is highly unlikely to succeed on appeal.

II. Defendant Suffers No Injury from this Court’s Injunction.

Defendant suffers *no* injury from this Court’s injunction, let alone an irreparable injury. As an initial matter, the State has no interest in defending provisions that violate federal law. *See Democratic Exec. Comm. of Fla.*, 915 F.3d at 1331 (“[W]hile federalism certainly respects states’ rights, it also demands the supremacy of federal law when state law offends federally protected rights.”); *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”). This is particularly true where, as here, the injunction does not prevent the State from furthering any of its asserted interests.

As this Court noted, “[i]ssuance of the contemplated injunction would not require the Attorney General to do anything.” Doc 76 at 7. The injunction, which simply protects Section-208 voters and *those who they request to assist them*, does not require any affirmative action on the part of Defendant. Nor does it impose any new obligation to provide assistance; it just requires what has long been guaranteed by federal law. *See LaRose*, 2024 WL 3495332, at *19 (concluding that a Section-208 injunction against a state law would “not alter the entirety of [state] election

laws,” nor “require a sweeping change that will interfere with the administration of other voting laws”). Indeed, since at least the passage of the Voting Rights Act of 1965, Alabama has been required to protect voters covered by Section 208. *See* S. Rep. No. 97-417, 97th Cong., 2d Sess. at 63 (May 25, 1982) (“The implicit requirement of the ban on literacy tests in covered jurisdictions [including Alabama] which the 1965 Voting Rights Act imposed, is that illiterate voters in those districts may not be denied assistance at the polls.”). Section 208 was codified in 1982 to expand upon this right. Moreover, if SB 1 did already exempt Section-208 voters as Defendant argues, then one wonders if Defendant has any interest in staying an injunction that merely restates that exemption.

As this Court further pointed out, the injunction still allows Defendant to pursue the myriad other election crimes against *any* voter or assistor, regardless of whether that voter is blind, disabled, or illiterate. *See* Doc. 76 at 11. As such, Defendant is free to pursue the “serial fraudsters from assisting voters with the absentee voting process,” or otherwise prosecute “pernicious actors are permitted to target those in the electorate most susceptible to intimidation and manipulation.” Doc. 78 at 5-7. Indeed, SB 1 would not stop Defendant from pursuing a single offense that they have cited in their briefing or their declarations. And even if there was any alleged harm to Defendant (which there is not), it is outweighed by the clear conflict with federal law.¹

¹ *See also, e.g., LaRose*, 2024 WL 3495332, at *18 (granting summary judgment for Section 208 plaintiffs despite political party Intervenor’s suggestion that that an injunction might expose political party to “new illegitimate competitive tactics” because the “clear violation of [the] federally guaranteed voting right” under Section 208 outweighed any alleged harm); *Ark. United*, 626 F. Supp. 3d at 1086 (granting summary judgment for Section 208 plaintiffs despite State’s contention that the challenged law was “not preempted because it serves Arkansas’s compelling interests in election integrity, fighting voter fraud, and easing burdens on poll workers,” given lack of “any authority carving out an exception to the Supremacy Clause when a state has a compelling interest in enacting a statute that conflicts with federal law”).

III. Plaintiffs Will Be Irreparably Injured If A Stay Is Granted.

On the other hand, Plaintiffs and their members will be irreparably injured if a stay is granted, for substantially the same reasons that this Court already found irreparable harm in its Preliminary Injunction analysis. *See* Doc. 76 at 11-12. With the election mere weeks away, any stay revoking the right of Section 208 protected voters to receive Plaintiffs' assistance, which is often critical for those voters to access their fundamental right to vote, indisputably constitutes irreparable harm. *Gonzalez v. Kemp*, 470 F. Supp 3d 1343, 1351 (N.D. Ga.), *aff'd sub nom. Gonzalez v. Governor of Georgia*, 978 F.3d 1266 (11th Cir. 2020) (quoting *Jones v Governor of Fla.*, 950 F.3d 795, 828 (11th Cir. 2020)). The potential fear of prosecution under SB 1 also constitutes irreparable harm for all Plaintiffs. *See Ga. Latino Ali. for Human Rights v. Governor of Ga.*, 691 F.3d 1250, 1269 (11th Cir. 2012). Plaintiffs who would usually assist voters have already lost 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 many of those opportunities for voter engagement have been permanently lost. *See League of Women Voters v. Newby*, 838 F.3d 1, 9 (D.C. Cir. 2016) (finding irreparable harm where policies "ma[d]e it more difficult for [plaintiff organizations] to accomplish their primary mission of registering voters"); *Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1355 (11th Cir. 2005) (holding that an organization suffered "significant, irreparable harm" resulting from state law restrictions on voter registration drives). Indeed, "organizations with core voter-advocacy missions, like Plaintiffs in this case, are irreparably harmed when the defendant's actions perceptibly impair the organization's programs, making it more difficult to carry out its mission." *Democracy N. Carolina v. N. Carolina State Bd. of Elections*, 476 F. Supp. 3d 158 (M.D.N.C. 2020) (internal citations and quotation marks omitted).

Defendant's retort that "Plaintiffs can educate voters about the absentee election process," misses the point. Doc. 78 at 9. As discussed, Plaintiffs have demonstrated that SB 1 caused them to stop assisting Section-208 voters who rely on Plaintiffs' voter assistance to apply for an absentee ballot. *E.g.*, Doc. 34-3 ¶ 24; Doc. 34-4 ¶¶ 12-14; Doc. 34-5 ¶¶ 14, 30-31; Doc. 74-4 ¶ 8; Doc. 74-1 ¶¶ 6-7; Doc. 74-2 ¶¶ 6-7. As Mr. Courie notes, "[m]y neighbor [the League volunteer] is the only person I know who *could* help me and *wants* to help me." Doc. 74-1 ¶ 9. Moreover, as a result of the preliminary injunction, Plaintiffs have resumed their work by assisting Section-208 voters who request their assistance. Decl. of Kathy Jones in Opposition to Def.'s Mot. to Stay ¶¶ 3-8. Section-208 voters have affirmatively reached out to Plaintiffs since the Court's injunction went into effect; "where voters have clearly identified as falling into one of the Section 208 protected categories, LWVAL has been able to resume providing assistance with the absentee ballot application form instead of turning them down." *Id.* ¶ 8. Staying the injunction now would create untenable whiplash for Plaintiffs and blind, disabled, and illiterate voters across the State. *Id.* ¶¶ 8-10.

Defendant has never disputed that SB 1 forecloses entire categories of assistors, including Plaintiffs—nor could he. And as this Court noted it is "not a close call" that SB 1 will result in irreparable injury because "the language of SB 1's Submission Restriction and Payment and Gift Provisions purports to criminalize the act of giving Section 208 assistance to a voter." Doc. 76 at 5. As such, this factor also weighs heavily against a stay.

IV. The Public Interest Does Not Favor A Stay.

As this Court recognized, “it is clearly in the public’s interest to ensure that every eligible voter may exercise” their right to vote. Doc. 76 at 7. The “limited injunction” issued by this Court does that in ensuring that eligible disabled, blind, and low literacy voters can obtain the absentee ballot application assistance they are entitled to receive under federal law. *Id.* at 7; *see also LaRose*, 2024 WL 3495332, at *19 (finding that a “limited” injunction affecting Section-208 voters did not burden the state insofar as it “only” affected a “subset of (a subset of) voters” and “clarified their rights under existing federal law”). Defendant asserts that the injunction harms the public interest by preventing the enforcement of state law, Doc. 78 at 6-7, but as discussed, it is beyond reproach that there is no public interest in enforcing provisions that violate federal law. *See supra* Part II.

Although this Court has observed that the impact on 208 voters is a matter of “common sense” given SB 1’s restrictions, the public interest is only underscored by the broad scope of individuals entitled to the assistance prohibited by SB 1. Approximately 18% of all Alabamians are over 65 years old.² According to the Centers for Disease Control, more than 30% of all adults (or about 1.5 million people) in Alabama have some form of disability, including many with mobility and vision impairments.³ For Alabamians over 65 years old, the number rises to nearly

² *See* Ex. 1 to Decl. of Laurel Hattix in Opposition to Def.’s Mot. to Stay (United States Census Bureau, *Alabama QuickFacts*, <https://www.census.gov/quickfacts/fact/table/AL/PST045223>).

³ *See* Ex. 2 to Decl. of Laurel Hattix (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>).

half (47.8%).⁴ Approximately six percent of Alabamians are blind (over 300,000 people) and ten percent of adults—over 450,000 people—in Alabama have “serious difficulty doing errands alone.”⁵ Many of these individuals often can *only* exercise the right to vote by casting absentee ballots—including, individuals who are confined to a bed, reside in nursing homes or hospitals, or face other mobility and physical restrictions on their movement. Doc. 34-3 ¶ 22; Doc. 34-7 ¶¶ 6, 9, 14. As discussed below, many of these individuals depend on assistance from others, including from Plaintiffs, with the absentee ballot application process, yet SB 1 would criminalize this help absent the injunction. Doc. 34-4 ¶¶ 20-21; Doc. 34-5 ¶ 24; Doc. 34-3 ¶¶ 22, 32; Doc. 34-7 ¶¶ 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. Doc. 34-7 ¶ 14.

Additionally, per the National Center for Education Statistics, Alabama has the 44th lowest literacy rate in the country.⁶ Statewide, 24% of Alabamians aged 16 and older have below basic literacy—at best, they are only able to read short sentences of familiar words.⁷ Several counties have even higher levels of low literacy adults. For example, in Wilcox, Marengo, and Perry counties, 40%, 41% and 32%, respectively, of adults have below basic literacy skills.⁸ In 2022, among students in the eighth grade, 56% of Black Alabamians and 46% of Latino Alabamians,

⁴ *See id.*

⁵ *See* Ex. 3 to Decl. of Laurel Hattix (Centers for Disease Control and Prevention, *Disability and Health Promotion-Alabama*, <https://www.cdc.gov/ncbddd/disabilityandhealth/impacts/alabama.html>).

⁶ Ex. 4 to Decl. of Laurel Hattix (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>).

⁷ Ex. 5 to Decl. of Laurel Hattix (*State Summary Card: Alabama*, National Center for Education Statistics: U.S. Skills Map, <https://nces.ed.gov/surveys/piaac/skillsmap/>)

⁸ *Id.*

compared to 28% of white Alabamians, had “below” basic literacy skills.⁹ Further, per the U.S. Census, among the state’s citizen voting-age population, 27% of Spanish-speakers speak English “less than very well.”¹⁰ 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 to complete the application process. Doc. 34-4 ¶ 20; Doc. 34-7 ¶ 4. SB 1’s restrictions severely limit their access to such assistance and therefore severely burden their right to vote.

Without evidence,¹¹ Defendant continues to insist that the alleged presence of voter fraud and intimidation in Alabama should justify SB 1’s enforcement. But at this Court noted, “nothing

⁹ Ex. 4 to Decl. of Laurel Hattix.

¹⁰ Ex. 6 to Decl. of Laurel Hattix (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/>); Ex. 7 to Decl. of Laurel Hattix (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)).

¹¹ Even if it were relevant, the statistics Defendant proffered as evidence of absentee voter fraud are both misleading and nonprobative. Defendant relies on U.S. Census Bureau disability rates, but the percentages it cites include individuals under the age of 18 and thus do not reflect the percentage of eligible voters with a disability. More fundamentally, since disability is just one of many permitted reasons to vote absentee in Alabama, a particular county’s absentee voter rate cannot be explained by disability rates alone. Among other permitted reasons, a person can vote absentee if they expect to be out of the county or work a 10+ hour shift on Election Day. Ala. Code § 17-11-3(1), (3). In Wilcox, Marengo, and Perry counties, as examples, 65.3%, 54.4%, and 71.9% of workers, respectively, have jobs outside the county where they live. See Ex. 8 to Decl. of Laurel Hattix (Alabama Department of Labor – Labor Market Information Division Wilcox County Profile, <https://www2.labor.alabama.gov/workforcedev/CountyProfiles/Wilcox%20County.pdf>) at 11; Ex. 9 to Decl. of Laurel Hattix (Alabama Department of Labor – Labor Market Information Division Marengo County Profile, <https://www2.labor.alabama.gov/workforcedev/CountyProfiles/marengo%20County.pdf>) at 11; Ex. 10 to Decl. of Laurel Hattix (Alabama Department of Labor – Labor Market Information Division Perry County Profile, <https://www2.labor.alabama.gov/workforcedev/CountyProfiles/perry%20County.pdf>) at 11;

in this injunction would limit Alabama from investigating and addressing fraud in the procurement of absentee ballots.” Doc. 76 at 7; *see also supra* Part II. Defendant may disagree with the Court’s conclusion, but his attempt to adduce irrelevant factual disputes into the public interest analysis should be swiftly rejected. Simply put, there can be no facts which justify the enforcement of a preempted state law, let alone when the injunction in no way undermines the State’s asserted interest. As the Court noted, “[r]egarding the balance of the equities, the irreparable harm of not being able to obtain legally protected assistance is significant, and any harm inflicted on the public is insignificant given the limited scope of this preliminary injunction.” Doc 76 at 12. Accordingly, “the public interest weigh[s] heavily in favor of” the injunction. *Id.* at 7.

V. The Court Was Not Required to Hold An Evidentiary Hearing.

Finally, because there were no serious (let alone material) factual disputes, this Court appropriately determined that an evidentiary hearing was not required to grant Plaintiffs’ their requested relief. Section 208 preemption is a “pure legal question.” Doc. 76 at 8-9; *Priorities USA v. Nessel*, 628 F. Supp. 3d 716, 732 (E.D. Mich. 2022) (citing *Mich. Consol. Gas Co. v. Panhandle E. Pipe Line Co.*, 887 F.2d 1295, 1299 (6th Cir. 1989)). In this Circuit, “[a]n evidentiary hearing is required for entry of a preliminary injunction only where facts are bitterly contested and credibility determinations must be made to decide whether injunctive relief should issue.” *Cumulus Media, Inc. v. Clear Channel Commc’ns, Inc.*, 304 F.3d 1167, 1178 (11th Cir. 2002) (emphasis added) (quotation marks and citation omitted).

Despite Defendant’s protestations of “[c]redibility issues and disputes of material fact,” Doc. 78 at 10, at no point does Defendant seriously contest any relevant fact. For example, “whether necessary assistance could be obtained by someone other than a paid operative” is not relevant to determining whether a voter can receive assistance from a person of her choice. *Cf.* Doc. 78 at 10. And, despite Defendant’s feigned ignorance about whether “we [are] to understand

from [Ms. Watkins's] testimony that but for SB1, she would be these [] callers' assistor of choice," Doc. 78 at 10, Ms. Watkins specifically testified that "I [] receive calls and emails from individuals with disabilities who need help with the absentee voting process." Doc. 74-5 ¶ 9. Ms. Watkins knew "that these callers *needed* assistance" because they asked for her help. Doc. 78 at 10 (emphasis in original). Defendant's unpersuasive attempt to contrive a dispute falls flat when one simply reads the evidence in context. Furthermore, the Court explicitly presumed that all of the evidence Defendant sought to present was true, but nevertheless found that evidence as missing the focus of conflict preemption, in which the Court is "to compare Section 208 and SB 1" since it is purely a question of law. Doc. 76 at 13.

Further, Defendant's reliance on *Echostar* is misplaced. There, the Eleventh Circuit held that only where the other evidence "is insufficient by itself to support factual findings" should the district court avoid "accept[ing] one construction of the evidence and reject the other without the benefit of an evidentiary hearing." *CBS Broad, Inc. v. EchoStar Commc'ns Corp.*, 265 F.3d 1193, 1207–08 (11th Cir. 2001). Moreover, unlike the district court in *Echostar*, this Court gave Defendant the "opportunity to rebut" Plaintiffs' evidence with additional documentary evidence over Plaintiffs' objections. *Compare* Doc. 72 (Plaintiffs' objections to additional documentary evidence) *and* Doc. 76 (assessing the additional documentary evidence of the parties) *with* *EchoStar*, 265 F.3d at 1206. After providing Defendant the additional opportunity to rebut Plaintiffs' evidence, this Court correctly held that "the parties have not shown there are any real disputes of fact, and certainly not any disputes of material fact." Doc. 76 at 13. Defendant's arguments essentially boil down to a disagreement with this Court's legal conclusion, which is an insufficient reason to insist on an evidentiary hearing.

* * *

In sum, none of the stay factors weigh in Defendant’s favor. “The first two factors are the most critical,” *Democratic Exec. Comm. of Fla.*, 915 F.3d at 1317, and Defendant has offered no argument suggesting success on the merits, nor any suggestion of an injury on their part. On the other hand, Plaintiffs have shown a strong public interest and irreparable injury in denying Section-208 voters the assistor of their choice. As Plaintiffs continue providing vital assistance to Section-208 voters who need assistance applying for an absentee ballot, this Court should not countenance Defendant’s attempt to thwart that vital work and the application of clear federal law.

CONCLUSION

For the foregoing reasons, Defendants’ Motion to Stay should be denied.

Dated this 1st day of October, 2024.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of October, 2024, I electronically filed the foregoing with the Clerk of Court for the United States District Court for the Northern District of Alabama using the CM/ECF system thereby serving all counsel of record.

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