

No. 25-904

IN THE
Supreme Court of the United States

LA UNION DEL PUEBLO ENTERO,
Petitioner,

v.

KEN PAXTON, ATTORNEY GENERAL OF TEXAS, ET AL.,
Respondents.

*On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit*

**RESPONDENT HARRIS COUNTY DISTRICT
ATTORNEY SEAN TEARE'S RESPONSE TO
PETITION FOR WRIT OF CERTIORARI**

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QUESTION PRESENTED

Respondent Harris County District Attorney Sean Teare does not take any position on the question presented in Petitioner's petition for writ of certiorari. Consequently, Mr. Teare does not provide a Question Presented in this brief.

CORPORATE DISCLOSURE STATEMENT

Respondent is not a corporation.

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INTRODUCTION

A number of organizations that assist voters in casting ballots in Texas sued several state officials and district attorneys challenging provisions of a Texas law that regulates voter-assistance organizations, arguing that the state statute is preempted by Section 208 of the Voting Rights Act. The Harris County District Attorney's Office (the "HCDAO") moved to dismiss on the grounds of sovereign immunity and Plaintiffs' standing to sue the HCDAO, but the district court disagreed in part, allowing Plaintiffs claims to proceed against the HCDAO as to four of the provisions in the statute. Following a bench trial, the district court permanently enjoined the complained-of provisions, rejecting the HCDAO's standing argument and holding the provisions preempted. On appeal, the Fifth Circuit reversed, holding that Plaintiffs lacked standing as to all defendants as to two of the challenged provisions, but reaching the merits on the remaining two provisions and holding them not to be preempted.

Petitioner, one of the Plaintiff organizations below, asks this Court to determine whether Section 208 preempts one of the latter two provisions, *viz.*, a provision prohibiting compensation for voter assistance. The HCDAO has never taken a position on the merits of Plaintiffs' preemption claim, and does not do so in this response as ordered by the Court. The HCDAO continues to maintain that the HCDAO is not a proper defendant to Plaintiffs' claims, based on sovereign immunity and core Article III standing requirements.

STATEMENT OF THE CASE

I. Legal and Factual Background

A. The HCDAO Was Not Originally a Party to This Litigation and Offered to Stipulate to Non-Enforcement Pending Its Outcome.

This case began as several different lawsuits against Texas state officials challenging on federal constitutional and statutory grounds an election law bill (“S.B. 1”) that the Texas Legislature passed during its second special session in 2021. The HCDAO was not a party to any of the lawsuits as initially filed. After the Texas Court of Criminal Appeals held that the Texas Attorney General lacks jurisdiction to initiate criminal prosecutions without the expressly conveyed authority of a local prosecutor, *State v. Stephens*, 663 S.W.3d 45 (Tex. Crim. App. 2021), various of the Plaintiffs, including Petitioner, amended their complaints to include as defendants the district attorneys of several major urban counties in Texas, including the HCDAO.

Plaintiffs did not allege, and no evidence was adduced at trial to support the contention, that the HCDAO had ever: (1) supported the passage of S.B. 1; (2) interpreted any provision of S.B. 1 as prohibiting much less criminalizing any of the Plaintiffs’ activities; or (3) taken or even threatened any investigative or enforcement actions under any provision of S.B. 1 against anyone engaging in conduct similar to Plaintiffs, much less against any of the Plaintiffs or one or more of its members.

Shortly after the HCDAO was joined in the litigation, the HCDAO offered to stipulate to the non-

enforcement of any of the challenged S.B. 1 provisions pending disposition of the litigation in exchange for Plaintiffs' agreement not to "seek attorneys' fees, penalties, damages, expert fees, court costs, or other expenses" and to allow the HCDAO to avoid the costs and burdens of litigating the case. Plaintiffs declined.

B. The District Court Dismissed Plaintiffs' Claims Against the Harris County District Attorney That Did Not Involve Criminal Laws, and the Fifth Circuit Dismissed Plaintiffs' Constitutional Claims.

The HCDAO filed a motion to dismiss claims concerning provisions of S.B. 1 that did not establish new criminal law provisions or amend existing ones, based on sovereign immunity principles and Plaintiffs' lack of standing to bring such claims against the HCDAO. These non-criminal-law claims included challenges to S.B. 1 provisions addressing drive-through voting (Section 3.04), voting hours (Section 3.09), and straight-ticket voting (Section 3.15). The district court partially granted the HCDAO's motion, dismissing without prejudice claims that did not challenge criminal offenses under the Texas Election Code, but allowed other claims against the HCDAO to proceed, holding that the HCDAO was not immune from constitutional claims and that Plaintiffs had standing to pursue these claims. (HCDAO maintains that some of the provisions identified by the district court also did not concern criminal laws and that, under the district court's reasoning, those claims should not have been allowed to proceed to trial against the HCDAO.)

The HCDAO filed an interlocutory appeal to the Fifth Circuit from the partial denial of its motion to dismiss, again arguing sovereign immunity and lack of standing. The Fifth Circuit issued its decision in that appeal after the district court conducted a bench trial in September and October of 2023, but before any rulings were issued. The Fifth Circuit’s decision partially reversed the district court, ordering the additional dismissal of the constitutional claims against the HCDAO based on sovereign immunity. *Mi Familia Vota v. Ogg*, 105 F.4th 313 (5th Cir. 2024). In short, the Fifth Circuit held that to bring claims against a Texas district attorney under the exception to sovereign immunity under *Ex parte Young*, 209 U.S. 123, 28 S. Ct. 441, 52 L. Ed. 714 (1908), plaintiffs challenging a criminal law enacted by the Texas Legislature are required to plead and prove more than the fact that a district attorney holds his or her elected office. *Mi Familia Vota*, 105 F.4th at 326. In its opinion, Fifth Circuit also noted that “it may be necessary for the district court to reexamine the issue of standing in light of our decision today” because neither the complaint nor the briefing “provide[d] a clear delineation of how [Plaintiffs’] injuries [were] attributable to their statutory claims independent of their constitutional claims.” *Id.* at 334.

C. The District Permanently Enjoined Enforcement of S.B. 1; the Fifth Circuit Reversed.

On September 28, 2024, the district court issued a decision holding that Section 7.04 of S.B. 1 was unconstitutional. *La Union del Pueblo Entero v. Abbott*, 751 F. Supp. 3d 673, 732 (W.D. Tex. 2024), *rev’d*, 167 F.4th 743 (5th Cir. 2026) That ruling and

injunction did not include the HCDAO, because the Fifth Circuit had already dismissed the constitutional claims against the HCDAO. *Id.* at 701, n. 18.

On October 11, 2024, the district court issued a decision holding that Sections 6.03, 6.04, 6.05, 6.06, 6.07, and 7.04 of S.B. 1 are preempted by Section 208 of the Voting Rights Act and ordering *inter alia* that “all county and local prosecutors, as agents of the State of Texas, are permanently enjoined” from their enforcement. *La Union Del Pueblo Entero v. Abbott*, 753 F. Supp. 3d 515, 589 (W.D. Tex. 2024), *rev’d and vacated*, 151 F.4th 273 (5th Cir. 2025). Again, the district court did not reach Plaintiffs’ claims under Sections 6.03 or 6.07 of S.B. 1 against the HCDAO. Thus, the parts of the district court’s permanent injunction specified as applying to the HCDAO were only those addressing S.B. 1 Sections 6.04, 6.05, 6.06, and 7.04. (Sections 6.04 and 6.05 concern oath and disclosure requirements for persons who assist voters in casting ballots; Sections 6.06 and 7.04 prohibit persons who are compensated or who are paid ballot harvesters from providing such assistance.)

On its second appeal to the Fifth Circuit, the HCDAO argued, as relevant here, that Plaintiffs had failed to establish an ability to meet the *Ex parte Young* exception to sovereign immunity or standing requirements because two of the provisions at issue (Section 6.04 and 6.05) are not criminal laws within HCDAO’s enforcement jurisdiction and because, as to the remaining provisions (6.06 and 7.04), Plaintiffs at trial did not show an “imminent” and “certainly impending” threat of prosecution or any other injury in fact sufficient to establish standing. *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013). With

respect to Sections 6.04 and 6.05, the Fifth Circuit concluded that none of the Plaintiffs had standing to challenge those provisions because their expressed fear that their members would be prosecuted for violating them was speculative and therefore failed to show an Article III injury. *La Union Del Pueblo Entero*, 151 F.4th at 282. As to Sections 6.06 and 7.04, the Fifth Circuit agreed with the district court that two Plaintiffs had standing to challenge these provisions, but reversed nonetheless, holding that the provisions were not preempted by Section 208 of the Voting Rights Act. *Id.* (citing 52 U.S.C. § 10508).

Petitioner La Unión del Pueblo Entero was among the Plaintiffs below and now seeks this Court's review as to preemption of Section 6.06, which purports to prohibit compensating, soliciting compensation, or offering to compensate another person for assisting voters to vote by mail. Tex. Elec. Code § 86.0105(a), (c).

As stated in its brief to the Fifth Circuit in the underlying proceedings, the HCDAO has the utmost respect for the Plaintiffs, including Petitioner, whose claims against the HCDAO led to portions of the district court's order awarding relief against the HCDAO. However, the HCDAO is simply not a proper party to these claims, and accordingly the HCDAO respectfully declines to take a position on the merits of Petitioner's preemption claim.

ARGUMENT

Respondent HCDAO does not take any position on the question presented in Petitioner's petition for writ of certiorari, or whether the petition should be granted or denied.

CONCLUSION

The HCDAO takes no position on the question presented in this case or whether this Court should grant or deny the petition.

Respectfully submitted,

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