

Nos. 25-904 & 25-916

In the Supreme Court of the United States

LA UNION DEL PUEBLO ENTERO, PETITIONER

v.

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

OCA – GREATER HOUSTON, PETITIONER

v.

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

*ON PETITIONS FOR WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT*

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Section 208 of the Voting Rights Act (VRA) guarantees a voter who needs assistance the right to be helped by “a person of the voter’s choice,” subject to two enumerated exceptions. 52 U.S.C. § 10508.

Section 6.06 of Texas Senate Bill 1 (SB1) prohibits compensating any person for assisting a mail-in voter unless the assistor is “an attendant or caregiver previously known to the voter.” Tex. Elec. Code § 86.0105.

The question presented is whether Section 208, which preserves the right to an assistor of the voter’s choice, preempts Section 6.06 of SB1, which prohibits compensation for mail-in-voting assistance but does not prohibit anyone from assisting.

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INTRODUCTION

The Court should deny the petitions because they present a splitless request for error correction and meet none of this Court's traditional criteria for granting certiorari.

At the outset, the Fifth Circuit is the first court of appeals to address whether Section 208 of the VRA impliedly preempts a State's restriction on compensation for mail-in-voter assistance. Because no other circuit has spoken to the issue, there is no conflict for this Court to resolve. Nor does either petition present any reason to think that, had this case come before another circuit, that court would have arrived at a different conclusion regarding preemption. With no split, further percolation is warranted.

Regardless, the Fifth Circuit correctly held that Section 208 of the VRA does not impliedly preempt Texas's prohibition on compensated voter assistance for mail-in voting, so the Court should not expend its limited resources on this case. Petitioners ask this Court to hold that Congress, by enacting a one-sentence provision permitting voters to obtain assistance from a person of their choice rather than a person selected for them by the government, silently stripped every State of authority to regulate the financial conditions under which third parties provide mail-in-voter assistance. That is not what Section 208 says or does.

Section 208 addresses who may assist a voter by guaranteeing eligible voters the right to choose from among legally eligible persons. Section 6.06 of Texas's SB1 addresses a different question: whether an assistor may be compensated. The federal statute regulates persons; the Texas law regulates transactions.

Compliance with both is straightforward: a voter selects any willing, eligible assistor, and no compensation changes hands. To displace Texas’s exercise of its sovereign authority over election administration, Petitioners must demonstrate a “clear and manifest” congressional purpose to do so. They cannot, because Section 208 says nothing about compensation. Where Congress has not spoken, the presumption against preemption controls.

The petitions should be denied.

STATEMENT

I. Statutory Background

A. Section 208 of the Voting Rights Act

In 1982, Congress amended the Voting Rights Act (VRA) to add Section 208, which 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, 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.

Congress enacted Section 208 to address a specific problem. State laws had required blind, disabled, and low-literacy voters to receive assistance only from election officials. That requirement compromised ballot secrecy, discouraged voting, and left voters vulnerable to manipulation. The Senate Report observes that “[i]t is only natural that many such voters may feel apprehensive about casting a ballot in the presence of, or may be misled by, someone other than a person of their own choice.” S. Rep. No. 97-417, at 62 (1982).

Congress’s response was targeted. It guaranteed eligible voters the right to receive assistance from “a person of the voter’s choice”—not from a person selected for

them by the government—and excluded two categories of individuals: the voter’s employer (or its agent) and an officer or agent of the voter’s labor union. 52 U.S.C. § 10508. Both exclusions are categorical and identity based. They are defined by the assistor’s relationship to the voter, and they protect against “possible intimidation or manipulation of the voter.” S. Rep. No. 97-417, at 62.

Section 208 says nothing about whether assistors may be compensated.

B. Texas’s regulation of voter-assistance conduct

Texas has long regulated how voter assistance is provided. Texas law requires assistors to provide their names and residential addresses, swear an oath, and refrain from assisting voters who have not requested help, marking ballots contrary to the voter’s wishes, or attempting to influence or coerce voters. Tex. Elec. Code §§ 64.032(d), 64.034, 64.036, 276.013. Each regulation addresses the conduct surrounding assistance. None excludes any person from the universe of eligible assistors.

In the wake of the 2020 election, the Texas Legislature enacted the Texas Election Integrity Protection Act (SB1), a comprehensive election-administration bill designed to ensure that “application of th[e] [Texas Election] [C]ode and the conduct of elections be uniform and consistent throughout this state to reduce the likelihood of fraud in the conduct of elections, protect the secrecy of the ballot, promote voter access, and ensure that all legally cast ballots are counted.” *Id.* § 1.0015.

Relevant here, Section 6.06 of SB1 (codified at Tex. Elec. Code § 86.0105) makes it a felony when any person “compensates or offers to compensate another person for assisting voters” who vote by mail, or who “solicits,

receives, or accepts compensation” for doing so. The provision exempts from that compensation prohibition “an attendant or caregiver previously known to the voter.” *Id.* § 86.0105(f).

II. Procedural History

Upon SB1’s passage, dozens of organizations and individuals sued several state and local officials to enjoin enforcement of more than three dozen separate provisions of the law. Although these plaintiffs asserted a slew of claims, the only one at issue in this appeal is Petitioners’ claim that Section 6.06 of SB1 is impliedly preempted by Section 208 of the VRA.

After a bench trial, the district court agreed with Petitioners and held that Section 6.06 was preempted by Section 208 because Section 6.06 “facially restrict[s] the class of *people* who are eligible to provide voting assistance beyond the categories of prohibited individuals identified in the text of [Section 208].” *La Union del Pueblo Entero v. Abbott*, 753 F. Supp. 3d 515, 580 (W.D. Tex. 2024) (emphasis added), *rev’d and vacated*, *La Union del Pueblo Entero v. Abbott (LUPE)*, 151 F.4th 273 (5th Cir. 2025).

A divided panel of the Fifth Circuit reversed, holding that Section 208 does not preempt Section 6.06. OCA Pet. App. 33a. The panel majority began by explaining that “[t]his case involves only conflict preemption,” and analyzed the claim through the “purposes and objectives” branch of the implied conflict preemption test. OCA Pet. App. 22a. The panel explained that prevailing on this theory required Petitioners to show Congress’s “clear and manifest” purpose to displace state law, and the panel applied the presumption against preemption because SB1 represents Texas’s exercise of

its historic police powers over election administration. OCA Pet. App. 23a–24a.

“[S]tart[ing] with Section 208’s text,” the panel majority rejected the district court’s expansive reading of the phrase “a person of the voter’s choice” as preempting any state restriction on the universe of eligible assistors beyond Section 208’s two enumerated exceptions. OCA Pet. App. 24a–26a. That reading, the panel majority explained, would eliminate state laws barring voter assistance by candidates, minors, election judges, armed persons, and others—a result Congress plainly did not intend. OCA Pet. App. 24a–25a. “Context and common sense,” the panel majority concluded, counsel a more restrained reading that guarantees eligible voters help from a person of their choice while permitting States to superintend voter assistance. OCA Pet. App. 26a.

The panel majority then rejected Petitioners’ bid for application of the *expressio unius* canon for two reasons. First, that canon would produce the same absurd results as Petitioners’ and the district court’s maximalist textual reading. OCA Pet. App. 28a–30a. Second, Section 208’s identity-based exclusions and Section 6.06’s compensation restriction are conceptually different: they do not form the kind of associated series that triggers the negative-implication inference. OCA Pet. App. 29a–30a.

Finally, the panel majority held that legislative history cannot supply the “clear and manifest” congressional intent that must appear in the statute itself, and that the legislative history behind Section 208 undercuts Petitioners’ preemption argument because it recognizes States’ legitimate rights to establish necessary election procedures. OCA Pet. App. 30a–33a.

Judge Graves dissented. Petitioners did not seek rehearing en banc.

REASONS FOR DENYING THE PETITIONS

I. Petitioners Identify No Genuine Circuit Split Requiring this Court’s Resolution.

The Fifth Circuit is the first and only court of appeals to decide whether Section 208 preempts a state law prohibiting compensation for mail-in-voter assistance. Where no other circuit has addressed the relevant legal question, there is no split for this Court to resolve. Sup. Ct. R. 10(a); *Braxton v. United States*, 500 U.S. 344, 347 (1991).

Petitioners tacitly acknowledge this by placing their claims of a conflict of authority in a footnote containing a string cite of district-court cases, OCA Pet. 20 & n.7, and in the final few pages of their brief, LUPE Pet. 25–30. The assertions of a conflict in authority are incorrect.

A. OCA relies on a series of inapposite district court cases.

OCA attempts to derive a conflict of authority from district court decisions that allegedly conflict with the Fifth Circuit’s decision. OCA Pet. 20 & n.7. But Rule 10(a) speaks of conflicts among “United States court[s] of appeals,” not district courts. District court decisions, however numerous, do not create a conflict that warrants this Court’s review. Sup. Ct. R. 10(a). OCA’s petition, at most, suggests further percolation is warranted to see if a split among the circuits materializes. *See* OCA Pet. 26 & n.9 (compiling additional list of district-court cases as evidence that Section 208 challenges are now recurrent).

Even if district court decisions could constitute a split of authority warranting this Court’s intervention, six of the seven cited cases are not in conflict with the Fifth Circuit’s decision because each presents a Section 208 challenge to state laws restricting *who* may assist, not (as

here) whether an assistor may be compensated. *See League of Women Voters of Ohio v. LaRose*, 741 F. Supp. 3d 694 (N.D. Ohio 2024) (Section 208 challenge to state law limiting voting assistance to postal carriers or authorized relatives); *Disability Rights Miss. v. Fitch*, 684 F. Supp. 3d 517, 519-20 (S.D. Miss. 2023), *vacated and remanded*, No. 23-60463, 2024 WL 3843803 (5th Cir. Aug. 14, 2024) (Section 208 challenge to statute limiting who may collect and transmit another person’s mail-in ballot); *Ark. United v. Thurston*, 626 F. Supp. 3d 1064 (W.D. Ark. 2022) (Section 208 challenge to statute prohibiting anyone other than an election official from providing assistance to more than six voters), *rev’d on other grounds*, 146 F.4th 673 (8th Cir. 2025); *Disability Rights N.C. v. N.C. State Bd. of Elections*, 602 F. Supp. 3d 872 (E.D.N.C. 2022) (Section 208 challenge to state laws barring nursing home staff and other facility employees from assisting disabled residents with voting, limiting that assistance to close relatives and legal guardians); *Carey v. Wis. Elections Comm’n*, 624 F. Supp. 3d 1020, 1023–24, 1032–34 (W.D. Wis. 2022) (Section 208 challenge to statute prohibiting third parties from returning absentee ballot on another person’s behalf); *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158 (M.D.N.C. 2020) (Section 208 challenge to state law limiting assistance to near-relatives and legal guardians).

Because those cases addressed only person-based restrictions, they do not conflict with the Fifth Circuit’s decision. A holding that Section 208 preempts a person-based restriction says nothing about whether it preempts a transaction-based restriction.

Only one of OCA’s cited cases involved a state law regulating compensation for voting assistance. There, a district court preliminarily enjoined provisions of an

Alabama law prohibiting payment or gifts for absentee-ballot-application assistance, concluding that Section 208 likely preempts them. *Ala. State Conf. of NAACP v. Marshall*, No. 2:24-CV-00420-RDP, 2024 WL 4282082, at *7 (N.D. Ala. Sept. 24, 2024). On appeal, however, the Eleventh Circuit declined to reach the preemption question and instead certified four questions to the Alabama Supreme Court concerning the scope of the challenged provisions—including whether they reach the conduct at issue at all. *Ala. State Conf. of NAACP v. Att’y Gen. of Ala.*, 161 F.4th 1286, 1295–1300 (11th Cir. 2025). A single, non-final district court decision (now on appeal and pending state-law clarification) does not establish a conflict warranting this Court’s review. If anything, it confirms that further percolation is warranted: the Eleventh Circuit’s eventual decision, informed by the Alabama Supreme Court’s construction of state law, will provide a far better vehicle should a genuine conflict among the courts of appeals emerge.

B. LUPE identifies no circuit split over the proper methodology for conflict preemption analysis.

For its part, LUPE argues that the decision below presents a circuit split over the proper analytical methodology for resolving conflict preemption questions. Specifically, it contends that the Fifth Circuit’s decision to address the conflict preemption question through the purposes-and-objectives branch of that inquiry without first conducting an impossibility analysis conflicts with how other circuits have applied the preemption doctrine in the context of other statutes. LUPE Pet. 11–18; 25–30. This argument is meritless for two reasons.

First, LUPE points to no case that sets forth a mandatory analytic sequencing for an implied conflict preemption analysis—or even a case requiring a court to consider both “impossibility” and “obstacle” preemption in every case. The ultimate touchstone for conflict preemption analysis is “identification of an actual conflict.” *Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 884 (2000) (citation modified). This Court’s cases establish that such an implied conflict occurs *either* “where it is impossible for a private party to comply with both state and federal requirements, *or* where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *English v. Gen. Elec. Co.*, 496 U.S. 72, 79 (1990) (emphasis added) (citation modified).

But in undertaking the analysis, a court may choose the more appropriate analytic framework for making the ultimate determination about the existence of an actual implied conflict. Even LUPE’s own cases (at 27–29) confirm as much. In several, the court undertook an obstacle preemption analysis without first making an impossibility inquiry. *See, e.g., Churchill Downs Tech. Initiatives Co. v. Mich. Gaming Control Bd.*, 162 F.4th 631, 638–40 (6th Cir. 2025); *Voter Reference Found. v. Torrez*, 160 F.4th 1068, 1080–84 (10th Cir. 2025); *Mi Familia Vota v. Fontes*, 129 F.4th 691, 709–12 (9th Cir. 2025).

True, LUPE identifies (at 25–26) some cases in which a court found it prudent to begin with an impossibility analysis. *See, e.g., Iowa Migrant Movement for Just. v. Bird*, 157 F.4th 904 (8th Cir. 2025); *Horseman’s Benevolent & Protective Ass’n–Ohio Div., Inc. v. DeWine*, 666 F.3d 997 (6th Cir. 2012). But in those cases, the courts presumably found the impossibility analysis more applicable because the statutes at issue were

textually irreconcilable on their face. As described below, Section 208 and Section 6.06 are not. They regulate different things, and compliance with both is straightforward. Variation in analytical sequencing across unrelated statutes does not create a circuit split. It is the ordinary variation that arises when different cases present different legal issues.

LUPE separately suggests (at 25–26, 28–29), that the Fifth Circuit did not apply the correct conflict preemption analysis because it supposedly “did not examine the text” of the statutes for evidence of a direct conflict. *See also* OCA Pet. 1–2, 13–15, 21–22 (repeatedly and erroneously arguing that the Fifth Circuit ignored the text); *but cf.* OCA Pet. 21, 23 (simultaneously accusing the Fifth Circuit of a “contrived misreading” of Section 208 and also “reject[ing] the text” in favor of “policy consequences”). The analysis in the decision below speaks for itself: “We start with Section 208’s text.” OCA Pet. App. 24a. The court simply rejected Petitioners’ and the district court’s overly expansive reading of the statute and its erroneous resort to the *expressio unius* canon of construction. OCA Pet. App. 28a–30a. That disagreement—at most, a request for error correction—hardly amounts to a circuit split that warrants this Court’s attention. Petitioners are incorrect to refashion this disagreement as the Fifth Circuit adopting the wrong framework.

Second, none of LUPE’s cases involves Section 208 or any analogous federal statute. *See, e.g., Voter Reference Found.*, 160 F.4th at 1080–84 (preemption question under the National Voter Registration Act); *Iowa Migrant Movement for Just.*, 157 F.4th 904 (preemption question under the Immigration and Naturalization Act); *Horseman’s Benevolent & Protective Ass’n–Ohio Div.*,

Inc., 666 F.3d 997 (preemption question under the Interstate Horseracing Act).

When different cases address preemption by different federal statutes, there is no conflict requiring this Court’s intervention to assure uniformity of federal law. Put differently, Rule 10(a) requires a conflict on “the same important matter.” Here, the “important matter” is whether Section 208 preempts a state-law ban on compensated mail-in-voting assistance, not the abstract sequencing of a court’s preemption analysis. Nothing in LUPE’s petition indicates that this case would have come out differently had it arisen in any other circuit. LUPE’s petition presents no true circuit split.

II. The Decision Below Is Correct.

Lacking any genuine circuit split, the petitions constitute little more than a request for error correction. Indeed, Petitioners’ lead argument for review—comprising nearly three-quarters of each of their arguments—is that the Fifth Circuit’s decision is “incorrect” and “misconstrued” Section 208. LUPE Pet. 11–25; OCA Pet. 14–24. This Court is not in the business of ordinary error correction. *See* S. Shapiro, K. Geller, T. Bishop, E. Hartnett, & D. Himmelfarb, *Supreme Court Practice* § 5.12(c)(3) (11th ed. 2019).

Nor is there any error to correct: the Fifth Circuit correctly resolved the preemption question. Implied conflict preemption is the only theory Petitioners advance. Under it, the Supremacy Clause requires a state law to yield when, for example, “a regulated party cannot comply with both federal and state directives.” *Martin v. United States*, 605 U.S. 395, 409 (2025); *accord Hencely v. Fluor Corp.*, 146 S. Ct. 1086, 1093 (2026) (same). It requires meeting a “high threshold,” *Chamber of Com. of U.S. v. Whiting*, 563 U.S. 582, 607 (2011)

(plurality op.) (citation omitted), particularly where preemption would alter the settled “balance between national and local power,” *Bond v. United States*, 572 U.S. 844, 866 (2014). And the “power to regulate elections” is one power that the “Framers of the Constitution intended the States to keep for themselves.” *Shelby County v. Holder*, 570 U.S. 529, 543 (2013) (citation omitted).

Where a federal statute is silent on the regulated subject, as Section 208 is on compensation, “clear and manifest” intent to preempt cannot be assumed from that silence. *Wyeth v. Levine*, 555 U.S. 555, 565 (2009) (citation omitted). In other words, there “is no federal pre-emption *in vacuo*, without a constitutional text or a federal statute to assert it.” *P.R. Dep’t of Consumer Affairs v. Isla Petroleum Corp.*, 485 U.S. 495, 503 (1988).

Section 208 and Section 6.06 are fully compatible: Texas law does not prevent mail-in voters from choosing the assistors of their choice; it simply prevents them from compensating those assistors. Petitioners’ maximalist reading of the phrase “a person of the voter’s choice” under federal law is untenable. The presumption against preemption independently confirms that result. And Petitioners’ remaining arguments, including their reliance on *OCA I*, do not change the result.

A. The textual analysis Petitioners demand is fatal to their preemption claim.

Both Petitioners fault the panel majority for not beginning with a side-by-side textual comparison of Section 208 and Section 6.06. But the textual analysis only confirms that the Fifth Circuit was right to reject their implied preemption argument.

Section 208 provides that a voter who needs assistance may receive it from “a person of the voter’s

choice,” subject to two identity-based exclusions. 52 U.S.C. § 10508. Section 6.06, on the other hand, provides that no person may compensate or receive compensation for assisting a mail-in voter. Tex. Elec. Code § 86.0105. Compliance with both is straightforward: A voter selects any willing, eligible person, that person then provides assistance, and no compensation changes hands. The two statutes are simultaneously satisfied. That is the textual analysis. It takes one paragraph, and it resolves this case.

LUPE seems to concede as much when it acknowledges that Section 6.06 “makes it impossible for a voter who is otherwise eligible under Section 208 to choose an assister *who receives compensation.*” LUPE Pet. 16 (emphasis added). The italicized words are doing all the work. The voter may still choose any assister—including any LUPE or OCA employee—provided the assister is not compensated. Section 6.06 says nothing about whom a voter may choose. It speaks only to whether the chosen assister may be compensated. Where the statutes do not conflict, there is nothing to preempt.

That distinction tracks Section 208’s own structural logic. Congress excluded employers and union officials from the pool of available assistors because of the coercive leverage those relationships give an assister over a voter. Section 6.06 reflects the Texas Legislature’s judgment, consistent with its parallel ban on paid vote harvesting, that compensated mail-in-ballot assistance creates analogous risks of undue influence. *See, e.g.,* Tex. Elec. Code § 1.0015 (emphasizing legislative intent to “reduce the likelihood of fraud in the conduct of elections” and “protect the secrecy of the ballot”). Financial incentives, like pre-existing coercive relationships, can cause assistors to prioritize ballot completion over the voter’s genuine wishes. Section 6.06

thus operates in conjunction with Congress’s purposes and objectives in Section 208, not against them. And in the specific context of mail-in voting, where the oversight protections of in-person voting are absent, the Legislature’s judgment that compensation creates heightened risks is precisely the kind of election-administration judgment that Section 208 leaves to the States.

The impossibility theory therefore fails on its own terms. This Court reaffirmed just last month that where a regulated party can “comply with both” federal and state law simultaneously, there is no preemption. *Hencely*, 146 S. Ct. at 1095 (citation omitted). LUPE’s lead authorities prove that rule. In *Mutual Pharm. Co. v. Bartlett*, 570 U.S. 472 (2013), New Hampshire tort law required a generic drug manufacturer to strengthen its product’s warnings, while federal law prohibited generic manufacturers from making any unilateral changes to their labels. State law thus commanded the very action federal law prohibited, making simultaneous compliance impossible. *Id.* at 486–87. *Maryland v. Louisiana*, 451 U.S. 725 (1981), was the same: Louisiana directed pipeline companies to treat a state tax as a processing cost passed on to consumers, while the Federal Energy Regulatory Commission had exclusive authority under the Natural Gas Act to determine how such costs were allocated. *Id.* at 747–50. Again, one sovereign commanded what the other forbade. That hallmark of impossibility is absent here. Section 208 does not tell States to allow compensated voter assistance. It says nothing about compensation at all. A statute’s silence does not command anything.

LUPE’s reliance on *Arizona v. United States*, 567 U.S. 387 (2012), is similarly misplaced. *Arizona* involved the Immigration and Nationality Act, a comprehensive

federal scheme that affirmatively regulated the subjects at issue—alien registration, unauthorized employment, and the removal process—in detail. *Id.* at 400–10. According to the Court, Arizona’s challenged provisions conflicted with that affirmative federal scheme by either duplicating its requirements with added state penalties, criminalizing conduct Congress had deliberately chosen not to criminalize, or delegating to state officers enforcement discretion the federal scheme reserved to federal officials. *Id.* Each conflict arose because Congress had spoken directly to the regulated subject, and thus the Court held that Arizona crossed a line Congress had drawn. Section 208 draws no line about compensation. Where Congress has not spoken, there is no federal command to conflict with, and the presumption against preemption controls. *Wyeth*, 555 U.S. at 565.

LUPE also invokes (at 5) a Senate Report’s reference to the “trusted person” a voter should be able to bring to the polls. That framing cuts against Petitioners’ theory. A person who will help a voter only for compensation is not the disinterested, trusted assistant Congress enacted Section 208 to protect. Section 208 was enacted to ensure voters could receive help from people they genuinely trust, not to guarantee that organizational employees could be compensated for providing it. Section 6.06 restricts the financial incentive that can cause an assistor to prioritize organizational goals over a voter’s choices.

OCA nevertheless frets that Section 6.06 will criminalize the provision of “tokens of appreciation” for supplying voter assistance, such as “water, food, Gatorade, or t-shirts.” OCA Pet. 10; OCA Pet. App. 22a, 31a, 73a. The Fifth Circuit has already explained in a related appeal why this interpretation of the term

“compensation” is implausible and erroneous. *See La Union del Pueblo Entero v. Abbott*, 167 F.4th 743, 757–58 (5th Cir. 2026).

In any event, Section 6.06 itself confirms that the trusted-person concern is exactly what animates the compensation ban. The compensation prohibition does not apply to “an attendant or caregiver previously known to the voter.” Tex. Elec. Code § 86.0105(f). That exemption tracks the Senate Report’s concern precisely: someone a voter already knows and trusts is free to be compensated for helping. What the statute targets is a paid stranger. That is the same structural concern that led Congress to exclude employers and union officials from Section 208’s universe of eligible assistors. Section 6.06 applies the same logic to a different setting. It operates in harmony with Section 208’s purposes, not against them.

B. Petitioners’ maximalist reading of Section 208 is untenable.

The panel majority correctly held that Petitioners’ interpretation of “a person of the voter’s choice” cannot bear the weight they place on the phrase and thus does not support their implied conflict preemption argument. That conclusion follows from Petitioners’ own implicit concessions about existing state law.

States routinely restrict who may serve as a voter assistor in ways that go beyond Section 208’s two exclusions. They bar voter assistance by candidates, candidates’ relatives, minors, election judges, and poll watchers. *See, e.g.*, Haw. Rev. Stat. Ann. § 11-139 (prohibiting assistance by “a candidate for any office that is listed on the ballot”); Mich. Comp. Laws Ann. § 168.751 (prohibiting assistance by anyone not “over 18 years of age”); 25 Pa. Stat. and Cons. Stat. Ann. § 3058(b)

(prohibiting assistance by “the judge of election”); Ga. Code Ann. § 21-2-409(b) (prohibiting assistance by a candidate’s “mother, father, grandparent, aunt, uncle, sister, brother, spouse, son, daughter, niece, nephew, grandchild, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law, or sister-in-law”); Miss. Code Ann. § 23-15-549 (prohibiting assistance by candidates, their spouses and children, and any “poll watcher”).

The panel majority catalogued these examples below. OCA Pet. App. 24a–25a n.16. Under Petitioners’ reading, where “a person of the voter’s choice” means any person not in Section 208’s two enumerated exceptions, every one of those laws is preempted. Yet Petitioners cite no Section 208 challenge to any such law in any reported decision. No court has held them preempted.

These state laws survive Section 208 preemption for good reason. Some bar assistance by candidates, election judges, and poll watchers, people whose roles create structural conflicts of interest that could compromise a voter’s autonomy. Those restrictions mirror Section 208’s own logic. A law saying “the candidate cannot assist” is conceptually identical to Section 208 saying “the employer cannot assist”: both exclude a person whose relationship to the voter and the voting process gives him a stake in how the voter marks the ballot. Other laws bar assistance by minors or persons not present at the polling place. Those restrictions ensure that assistance comes from someone capable of providing it. What all these laws share is that they restrict *who* may assist. They define the eligible pool by reference to the assistor’s identity, role, or capacity.

Section 6.06 does none of that. It does not exclude anyone from the pool of eligible assistors. Every Texan legally eligible to assist remains free to do so. Section

6.06 regulates only the financial conditions under which assistance is provided. That is a categorically different kind of regulation. Petitioners' theory treats all three categories—role conflicts, capacity limits, and compensation rules—as if they raise identical preemption questions. They do not. The first two restrict persons; the third restricts transactions. Collapsing that distinction erases the line Congress drew when it chose to address who may assist rather than how assistance may be arranged.

Further, under Petitioners' theory, States could not bar assistance by a person carrying a firearm in a polling place, an electioneer actively promoting a candidate's campaign, or someone who is incarcerated. The panel majority was right that Congress did not intend that absurd result. OCA Pet. App. 25a–26a n.17.

The panel majority also correctly rejected Petitioners' attempted distinction between “generally applicable” laws (such as bans on firearms in polling places) and “targeted” voter-assistance regulations. As the panel majority explained: “We see no difference, though. If Section 208 does not preempt a state law providing that ‘No firearms are allowed in a polling place,’ then it also does not preempt a state law providing that ‘Persons carrying a firearm cannot assist voters in a polling place.’” OCA Pet. App. 25a–26a n.17. The state laws barring candidates, minors, and election judges from assisting are themselves targeted voter-assistance regulations, drafted in the very terms Petitioners say Section 208 preempts. Yet they plainly survive. Section 6.06, which prohibits only compensated mail-in-voter assistance, survives as well.

C. The presumption against preemption independently confirms the result.

The presumption against preemption further buttresses the Fifth Circuit's conclusion that Section 208 does not impliedly conflict preempt Section 6.06.

Election administration is among the most traditional of state responsibilities. *Shelby County*, 570 U.S. at 543. Section 6.06 represents Texas's exercise of its historic police powers in that domain. Where preemption would alter the federal-state balance—as it would here, by stripping every state of authority to regulate compensation for ballot assistance—the presumption is reinforced. *Bond*, 572 U.S. at 862.

The presumption is not merely a tiebreaker; it is a substantive legal rule that requires affirmative textual evidence of congressional intent to displace state law. *Wyeth*, 555 U.S. at 565. Silence is not that evidence.

None of Petitioners' counterarguments changes the result.

First, OCA invokes *Florida State Conference of NAACP v. Browning*, 522 F.3d 1153 (11th Cir. 2008), a case that involved the Help America Vote Act (HAVA)—not the VRA. OCA Pet. 24. *Browning* undermines OCA's position rather than supports it. HAVA affirmatively addressed the subject at issue: it directly regulated voter registration databases and identification requirements, and expressly required States to verify voter identification numbers. 522 F.3d at 1168. Even so, the Eleventh Circuit held that HAVA did *not* preempt Florida's more stringent state matching requirement, because Congress had not spoken clearly enough to displace state voter registration law. *Id.* at 1168–72. The lesson of *Browning* is that sometimes even a federal statute that affirmatively regulates a subject may not

preempt a related state law. If HAVA’s direct treatment of voter identification was insufficient to preempt the Florida law, then Section 208’s complete silence on compensated voter assistance cannot preempt Section 6.06.

Second, OCA’s reliance on *Lopez v. Monterey County*, 525 U.S. 266 (1999), fails. OCA Pet. 15. *Lopez* addressed the VRA’s erstwhile Section 5 preclearance requirement, an expressly preemptive provision that required covered jurisdictions to obtain federal preclearance before changing voting laws. 525 U.S. at 269–70. Section 208 contains no preclearance requirement, no express preemption clause, and no directive to States about the financial terms of voter assistance. *Lopez*’s reasoning about an express preemption provision says nothing about a provision that is silent on the regulated subject.

Third, OCA cites a September 2024 DOJ Fact Sheet stating that “State and local authorities may not impose further restrictions on a voter’s choice of assistor.” OCA Pet. 18. The Fact Sheet supports the State, not OCA. By its own terms, it addresses a voter’s “choice of an assistor,” meaning *who* may assist. U.S. Dep’t of Just., Voting Rights Fact Sheet 2 (Sept. 2024), <https://perma.cc/64QZ-3PYV>. Even assuming States may not narrow the universe of legally eligible assistors—which is not at all clear, as discussed above—they may certainly regulate the financial conditions under which assistance is provided. To the extent OCA reads the Fact Sheet to address compensation directly (which it does not), agency guidance cannot expand a statute’s preemptive scope beyond what its text supports. Executive-branch positions on voting-rights questions also vary across administrations. A single

administration’s guidance cannot fix the meaning of a 1982 statute.

Fourth, Petitioners turn to legislative history, OCA Pet. 18–19, LUPE Pet. 20–22, 29, which cannot supply the “clear and manifest” intent that must appear in the statute itself, *Deanda v. Becerra*, 96 F.4th 750, 765 (5th Cir. 2024). Resort to legislative history in the preemption context “is a flashing red sign that no ‘clear and manifest’ intent to preempt is shown” in the actual law. *Id.**

In any event, the Senate Report supports Texas. It recognizes States’ “legitimate right . . . to establish necessary election procedures” and predicted that Section 208 would preempt state laws “only to the extent that they unduly burden” the right recognized in the statute. S. Rep. No. 97-417, at 63 (1982). The Report’s specific examples involve laws barring persons from providing assistance based on who they are. It expresses no view about whether States can regulate the financial conditions of assistance. Section 6.06 does not “unduly

* The district court implied that, because the VRA was passed pursuant to Congress’s enforcement powers under the Fifteenth Amendment, the VRA categorically overrides the presumption. OCA Pet. App. 201a–202a. That argument confuses *authority* to preempt with *intent* to preempt. The question is not whether Congress can preempt state law—everyone agrees it can, and Congress has broad authority to do so under the Reconstruction Amendments. *See* U.S. Const. amend. XV, § 2. The question is whether, when enacting Section 208, Congress intended to preempt a statute like Section 6.06. The Reconstruction Amendments grant enforcement power. They do not themselves supply the clear and manifest intent the presumption demands. *See Bond*, 572 U.S. at 857–58 (holding that even where Congress possesses constitutional authority to legislate, “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” (cleaned up)).

burden” any voter’s choice of assistor. Again, it restricts compensation, not persons.

D. Petitioners’ remaining arguments fail.

1. Petitioners argue that because Section 208 enumerates two excluded groups, “additional exceptions are not to be implied.” OCA Pet. 17; *see also* LUPE Pet. 22–23. But the *expressio unius* canon requires an “associated group or series” of items sufficient to justify the “inference that items not mentioned were excluded by deliberate choice, not inadvertence.” *Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 168 (2003) (citation omitted). The canon does not apply “unless it is fair to suppose that Congress considered the unnamed possibility and meant to say no to it.” *Id.*

Section 208’s two exclusions are categorical and identity-based, defined by the assistor’s relationship to the voter. Section 6.06 is conditional and conduct-based—it prohibits compensation. They are not items in the same series. As the panel majority put it: “The fact that Congress did not want voters to be assisted by their employers or unions says nothing about whether Congress wanted voters to be assisted by [compensated] ballot harvesters.” OCA Pet. App. 30a.

The inference Petitioners draw is facially implausible. Congress’s silence about compensation no more implies federal authorization of unlimited compensation for voter assistance than Congress’s silence about minor assistors implies federal protection of assistance by twelve-year-olds. The most natural reading is that Congress identified two specific coercive relationships and addressed them, leaving matters like compensation to ordinary state regulation.

2. OCA argues that Section 208 guarantees access to any assistor who is “willing and able,” and that States

may not impose restrictions impacting willingness. OCA Pet. 17–20.

This argument collapses on itself. A person who is willing to assist a voter only if compensated is, by definition, unwilling to assist for free. Section 208 has nothing to say about would-be assistors who condition their willingness to assist on compensation terms the State has chosen to prohibit. An assistor who will help only for a fee is simply an unwilling assistor when the fee is unavailable. That is no different, as a matter of Section 208 analysis, from any other person who declines to assist unless certain conditions are met. *Cf.* OCA Pet. 17 (“Of course, a voter’s freedom to choose an assistor is inherently constrained by the assistor’s own willingness and availability.”).

The DOJ Fact Sheet cited by OCA confirms the point. The Fact Sheet says Section 208 protects “available and willing” assistors. OCA Pet. 18 (citation omitted). Section 6.06 takes nothing away from that protection. Every eligible Texan willing to assist for free remains free to do so. Section 208 does not require Texas to allow paid-for voter assistance in the context of mail-in voting. It requires Texas to respect a voter’s choice among willing, eligible voting assistors. And it does. The distinction that matters is between legal eligibility and practical availability. Section 208 protects the former; it has nothing to say about the latter.

3. OCA invokes *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564 (1982), arguing that the absurdity canon requires reading Section 208 to preserve only restrictions on persons who are unable, rather than merely unwilling, to assist. OCA Pet. 23 & n.8. The canon requires an “alternative interpretation[] consistent with the legislative purpose.” *Griffin*, 458 U.S. at 575. The Fifth Circuit identified that alternative: Section 208

guarantees meaningful choice within a legislatively defined class of eligible assistors. That reading is not absurd. It is the only reading that survives contact with the unchallenged state laws restricting candidates, minors, and judges from providing assistance, regardless of whether they are willing and able.

4. OCA argues that the word “a” in “a person of the voter’s choice” independently compels its maximalist reading of Section 208. OCA Pet. 16. The argument draws on Justice Alito’s *Hewitt* dissent and then-Judge Barrett’s *Uriarte* dissent. *Hewitt v. United States*, 606 U.S. 419, 447–48 (2025) (Alito, J., dissenting); *United States v. Uriarte*, 975 F.3d 596, 607 (7th Cir. 2020) (Barrett, J., dissenting).

The decision below fully addressed this argument, explaining that Petitioners’ “abstruse grammatical debate misses the point” because the panel majority was “not reading a single article but an entire phrase, ‘a person of the voter’s choice.’ Neither that text nor its context requires a maximalist reading that would bulldoze numerous state election laws.” OCA Pet. App. 26a n.18.

Justice Alito’s *Hewitt* dissent reinforces the panel majority’s reading. Justice Alito argued that “a sentence” in the First Step Act means any sentence historically imposed (including one later vacated) and that courts should not narrow the noun “sentence” by reading in an unwritten limiting adjective like “valid” or “in force.” *Hewitt*, 606 U.S. at 447–48 (Alito, J., dissenting). His point was that “a,” as an indefinite article, signals an unspecified particular of a class and resists judicial narrowing of the noun it modifies. *Id.*

OCA tries to deploy the same indefinite article for a fundamentally different purpose. OCA does not ask the Court to resist narrowing the noun “person.” It asks the

Court to delete the phrase “of the voter’s choice” so that “a person” means any person at large rather than a person the voter has chosen. That is not what the indefinite article does. It leaves the identity of the particular person unspecified; it does not authorize courts to excise the modifier that defines the class from which the person must come. As Justice Alito’s cited authority confirms, “a” means “some undetermined or unspecified particular” of the relevant class. *McFadden v. United States*, 576 U.S. 186, 191 (2015) (citation omitted). The relevant class here is a person of the voter’s choice. Section 6.06 does not prohibit voters from choosing anyone; it prohibits them (or a third party) from compensating the assistor.

5. OCA argues that the panel majority broke from the Fifth Circuit’s earlier decision in *OCA-Greater Houston v. Texas (OCA I)*, 867 F.3d 604 (5th Cir. 2017). OCA Pet. 20–21. This is not only irrelevant for purposes of certiorari but also incorrect.

OCA I addressed a different question: “At bottom, the question presented by this case is how broadly to read the term ‘to vote’ in Section 208 of the VRA.” 867 F.3d at 614. The court resolved the dispute by reference to the VRA’s statutory definition of “vote” in 52 U.S.C. § 10310(c)(1), holding that “the unambiguous language of the VRA resolves the parties’ disagreement.” *Id.* The holding was narrow: “the limitation on voter choice expressed in Tex. Elec. Code § 61.033 impermissibly narrows the right guaranteed by Section 208.” *Id.* at 615. *OCA I* addresses the meaning of “vote.” It does not interpret “a person of the voter’s choice,” and it does not address compensation.

OCA argues that *OCA I* “recognizes that Section 208 guarantees voters assistance from a person of their choice,” such that the panel majority “broke not just

from Section 208's text, but also from judicial consensus applying it." OCA Pet. 20–21. That argument mischaracterizes *OCA I*. The decision below correctly recognizes that *OCA I*'s often-cited statement was “merely summarizing the background law in an introductory section” and “was not interpreting the language of Section 208.” OCA Pet. App. 28a n.19. In other words, *OCA I* merely quotes Section 208. Citing *OCA I* for the proposition that any restriction on voter assistance is preempted is circular reasoning.

Finally, Petitioners' decision not to seek rehearing en banc removes any remaining doubt about whether *OCA I* was controlling on the question presented. En banc rehearing is the proper procedural avenue for correcting a panel decision that conflicts with prior circuit precedent. *See* Fed. R. App. P. 40(b)(2)(A). If *OCA I* genuinely controlled the panel below, en banc rehearing would have been warranted to ensure uniformity of circuit precedent. If, as Petitioners contend, there is an intra-circuit split of Fifth Circuit authority, then the uncertainty of the Fifth Circuit's position only further weighs against certiorari.

III. This Case Is a Poor Vehicle for Consideration of the Section 208 Preemption Question.

Even if the Court were inclined to address the Section 208 preemption issue, this case is a poor vehicle for considering that question for at least two reasons.

First, Petitioners, two get-out-the-vote organizations, lack a cause of action to assert claims under Section 208 of the VRA. Section 208 creates rights, if at all, for certain “voter[s] who require[] assistance,” 52 U.S.C. § 10508, not non-voting organizational entities like Petitioners who wish to supply that assistance.

Regardless, the VRA does not create a private right of action to enforce Section 208. *See* Petition for Writ of Certiorari, *Turtle Mountain Band of Chippewa Indians v. Howe*, No. 25-253 (U.S. Sept. 2, 2025) (pending certiorari petition asking the Court to consider this question in the context of Section 2 of the VRA). When Congress wanted to provide an enforcement mechanism for the rights Section 208 secures, it did so expressly through the Voting Accessibility for the Elderly and Handicapped Act (VAEHA), enacted after Section 208. The VAEHA directly cross-references Section 208 and provides a tailored enforcement scheme for the rights Section 208 secures. *See* 52 U.S.C. § 20104(c) (requiring “[t]he chief election officer of each State” to provide public notice of the availability of “assistance to handicapped and elderly voters under [Section 208]”); *id.* § 20105(a) (authorizing “the United States Attorney General or a person who is personally aggrieved” by noncompliance with section 20104 to “bring an action for declaratory or injunctive relief”). The existence of those other enforcement schemes “suggests that Congress intended to preclude others.” *Alexander v. Sandoval*, 532 U.S. 275, 290 (2001).

Petitioners have argued that Section 3 of the VRA, 52 U.S.C. § 10302, supplies them a private right of action for their Section 208 claim. But Section 3 merely authorizes a court to appoint federal observers and suspend the use of tests and devices that abridge the right to vote *if and when* “the Attorney General or an aggrieved person institutes a proceeding under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment.” 52 U.S.C. § 10302(a); *see id.* § 10302(b). Those provisions presuppose the existence of a cause of action for an aggrieved person, but they do not *create*

one. *Ark. State Conf. NAACP v. Ark. Bd. of Apportionment*, 86 F.4th 1204, 1211–12 (8th Cir. 2023).

Nor can 42 U.S.C. § 1983 supply the missing cause of action here. Neither Petitioner brought their Section 208 claim via Section 1983. *See* ROA.6347–50 (operative LUPE complaint); ROA.6429–31 (operative OCA complaint). Even if they had, and even assuming Section 208 confers private rights on certain voters, the detailed enforcement provisions that Congress provided elsewhere in the VRA indicate that “a more restrictive private remedy” was intended. *See Health & Hosp. Corp. of Marion Cnty. v. Talevski*, 599 U.S. 166, 188 (2023) (citation omitted); 52 U.S.C. §§ 10308(d), 10504, 20105(a).

Second, the district court lacked jurisdiction to enjoin the Texas Secretary of State and Attorney General from enforcing Section 6.06—a provision of criminal law—because neither state official has relevant prosecutorial authority. As the Fifth Circuit recently confirmed in a related appeal, neither the Secretary nor the Attorney General enforces Section 6.06. *See La Union del Pueblo Entero v. Nelson*, 163 F.4th 239, 262–67, 272–73 (5th Cir. 2025).

That fact precludes Petitioners from satisfying Article III’s traceability and redressability requirements because any injury under Section 208 of the VRA must be traceable to the conduct of the defendant and redressable by an injunction against the defendant. *California v. Texas*, 593 U.S. 659, 669–70 (2021).

Any grant of certiorari would require the Court to sift through these antecedent issues before addressing the preemption issue on which Petitioners seek certiorari.

CONCLUSION

The petitions for writs of certiorari should be denied.

Respectfully submitted.

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