

No. 25-904

IN THE
Supreme Court of the United States

LA UNIÓN DEL PUEBLO ENTERO,

Petitioner,

v.

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

Respondents.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit**

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Section 208 of the Voting Rights Act provides that “[a]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter’s choice.” 52 U.S.C. § 10508. In 2021, Texas modernized its Election Code to address concerns of voter fraud and intimidation. Those updates included provisions addressing the assistance provided to disabled and English-limited voters, a subset of voters Congress found to be “more susceptible ... to having their vote unduly influenced” when it enacted Section 208. S. Rep. No. 97-417, at 62 (1982). Part of those updates also focused on voting by mail, which takes place outside the supervision of election officials and is thus particularly susceptible to undue influence. Accordingly, Texas law now prevents assistants from being compensated for their assistance to individuals who vote by mail.

Petitioner challenges this rule, arguing that Section 208 forbids all State regulation of who may assist voters. Petitioner presented no evidence at trial that this rule has prevented voters from casting their ballots or finding assistance to do so.

The questions presented are:

1. Does Petitioner have standing?
2. Does Section 208 provide Petitioner with a private right of action?
3. Is Section 208 a proper exercise of congressional authority under the Fourteenth Amendment?
4. Does Section 208 preempt all state laws regulating who may provide assistance to voters?

RULE 29.6 STATEMENT

No Respondent has a parent corporation. None are publicly held, and no publicly held company, either directly or indirectly, holds 10% or more interest in any of Respondents.

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INTRODUCTION

Section 208 of the Voting Rights Act (VRA) gives disabled and English-limited voters the right to bring someone to help them at the polling place, thus preventing States from forcing voters to rely on the assistance of State-chosen assistors. Texas law likewise guarantees voters the chance to rely on a person of their choice to help cast their ballot. Moreover, in an effort to prevent undue influence by paid political operatives, Texas prohibits assistors from receiving compensation for assisting with mail voting.

Petitioner finds an intractable conflict in this complementary framework. To Petitioner, Congress intended Section 208 to enshrine absolute voter preference, to the detriment of all State regulation of election assistance. Thus, although States may ban felons from *voting*, they may not prevent them from *assisting* voters. Nor, on Petitioner's read, can States bar candidates, poll watchers, or even gun-toting campaign staffers from providing assistance.

Nothing in Section 208's text requires Petitioner's "breathtaking[]" result, as the Fifth Circuit rightly held. Pet.App.24a–25a. And nothing in its petition calls for this Court's review.

Petitioner invites this Court to weigh in on Section 208's preemptive reach, a question *no* federal court of appeals had ever considered before this case. There is thus no split for this Court to resolve. Rather, Petitioner quibbles only with the way the Fifth Circuit went about its analysis, claiming its opinion is in tension with cases having nothing to do with the VRA. Petitioner is wrong on that score, but it does not matter regardless: "[F]ederal law is [*not*] being

administered in different ways in different parts of the country.” *Beaulieu v. United States*, 497 U.S. 1038, 1039 (1990) (White, J., dissenting from denial of certiorari).

So at most, Petitioner asks this Court for mere error correction. But Petitioner is wrong at every turn. It says the Fifth Circuit should not have applied a presumption against preemption, even though this Court’s precedent mandates that presumption. It claims the Fifth Circuit rejected impossibility preemption as an analytical category, but the court correctly found this case does not even present the issue. Petitioner also asks this Court to second-guess the Fifth Circuit’s obstacle-preemption analysis, but the panel rightly marched through text, context, and legislative history to find no preemption.

Regardless, this Court would need to address a host of thorny questions before it could decide Section 208’s preemptive reach. It is unclear how Petitioner has standing to bring its challenge: Section 208 provides rights to *voters*, not *assistors*, yet Petitioner bases its claim on the desire for its employees to serve as assistors. Moreover, Section 208 supplies no private right of action—the Attorney General, not private plaintiffs, is tasked with enforcing it. And before the Court could accept Petitioner’s suggested interpretation, it would need to address whether Section 208 is “congruen[t] and proportional[.]” to the injuries Congress sought to redress. *City of Boerne v. Flores*, 521 U.S. 507, 520 (1997).

Petitioner has asked this Court to take up a splitless question in a case plagued by perplexing vehicle issues. The Court should deny the petition.

STATEMENT OF THE CASE

A. Legal background

Congress enacted the VRA in 1965 “[t]o enforce the fifteenth amendment to the Constitution of the United States, and for other purposes.” Voting Rights Act of 1965, 79 Stat. 437. As an exercise of Congress’s enforcement powers under the Fourteenth and Fifteenth Amendments, the VRA’s provisions generally focus on combating discrimination against racial minorities. *See Shelby County v. Holder*, 570 U.S. 529, 536 (2013).

In the 1982 amendments to the VRA, Congress turned its attention from racial minorities to voters “unable to exercise their rights to vote without obtaining assistance.” S. Rep. No. 97-417, at 62 (1982). Although all States at that time permitted voters with a disability or inability to read or write to receive assistance while casting a ballot, a few jurisdictions required voters to accept assistance from election officials. *Id.* at 62–63 & n.207. This created the possibility that voters with disabilities, not wanting assistance from State-chosen assistors, might be “discourage[d] ... from voting for fear of intimidation or lack of privacy.” *Id.* at 62 & n.207; *see also* Subcomm. on the Constitution of the S. Comm. on the Judiciary, Appendix to Hearings on S. 1992, at 393 (Jan. 27, 28, Feb. 1, 2, 4, 11, 12, 25, and March 1, 1982) (voters “resent[ed] having a total stranger look on while they [were] voting”).

To address the potential problems posed by having election officials as the sole resource for voter assistance, Congress added Section 208 to the VRA. It 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 disavowed any intent to effect a sea change in the regulation of elections. Instead it sought merely to “conform[]” State practice “to the pattern[,] already in use in many states,” of permitting voters to choose an assistor, rather than having one assigned to them. S. Rep. No. 97-417, at 64. At the same time, Congress recognized that States possess “the legitimate right ... to establish necessary election procedures, subject to the overriding principle that such procedures shall be designed to protect the rights of voters.” *Id.* at 63. States could thus, if they saw fit, “authorize different kinds of assistance for the blind as opposed to the illiterate.” *Id.* And in keeping with its overarching concern that voters requiring assistance “are more susceptible ... to having their vote unduly influenced or manipulated,” Congress encouraged States to develop “voter assistance procedures, including measures to assure privacy for the voter and the secrecy of his vote ... in a manner which encourages greater participation in our electoral process.” *Id.* at 62–63.

In response to Section 208’s enactment, the few States that required assistance from election officials updated their regulations to align with Section 208. *See, e.g.,* R.A. Taggart & J.C. Henegan, *The Mississippi Election Code of 1986: An Overview*, 56 Miss.

L.J. 535, 551 (1986) (Mississippi removed reference to “assistance of one of the [election] managers” in response to Section 208). States continued to provide reasonable guardrails on assistance to protect vulnerable voters. *See, e.g.*, Haw. Rev. Stat. § 11-139(a) (candidates cannot provide assistance); N.C. Gen. Stat. § 163-166.8(c)(2) (assistor may not “make or keep any memorandum of anything which occurs within the voting booth”).

Given its limited reach, Section 208 was rarely the subject of litigation in the decades after its enactment. In recent years, however, groups have brought numerous Section 208 claims across the country. *See, e.g., Priorities USA v. Nessel*, 628 F. Supp. 3d 716 (E.D. Mich. 2022); *Ark. United v. Thurston*, 626 F. Supp. 3d 1064 (W.D. Ark. 2022); *Carey v. Wis. Elections Comm’n*, 624 F. Supp. 3d 1020 (W.D. Wis. 2022); *Disability Rights N.C. v. N.C. State Bd. of Elections*, 602 F. Supp. 3d 872 (E.D.N.C. 2022); *Ala. State Conf. of the NAACP v. Marshall*, 2024 WL 4448841 (N.D. Ala. Oct. 4, 2024); *State ex rel. Ohio Democratic Party v. LaRose*, 2024-Ohio-4953 (2024); *In re DSCC*, 950 N.W.2d 280 (Minn. 2020). But aside from the Fifth Circuit’s decision below, no federal court of appeals has ever decided whether Section 208 preempts a state law.

B. Factual and procedural history

1. For more than two decades before Section 208’s enactment, Texas permitted voters to “select any qualified voter residing in the precinct to assist him.” Tex. Elec. Code Art. 8.13 (1957).

In 2021, the Texas Legislature passed amendments to the Texas Election Code. Act of Aug. 31,

2021, 87th Leg., 2d C.S., ch. 1, 2021 Tex. Gen. Laws 3873. These revisions, known as Senate Bill 1 (S.B.1), were designed to provide consistent election procedures across the state and address concerns of voter fraud and intimidation. *See* Tex. Elec. Code § 1.0015. Among other things, the bill updated Texas’s early voting procedures, established identification requirements for mail voting, and regulated the rights of poll watchers.

S.B.1 included voter-assistance amendments intended to “provid[e] for appropriate voting assistance to elderly and disabled voters” and “ban[] ‘vote harvesting,’” a practice that targets mail voting and raises risks of voter intimidation, undue influence, and outright fraud. Bill Analysis, H.B. 3, House Committee Report; *see also* Pet.App.84a n.12 (vote-harvesting ban restricted to mail ballots); *Veasey v. Abbott*, 830 F.3d 216, 239 (5th Cir. 2016) (“the potential and reality of fraud is much greater in the mail-in ballot context than with in-person voting”). These amendments continue Texas’s longstanding requirement that assistors swear an oath they will not attempt to influence a voter’s choices and update the oath’s text to clarify that assistors swear on penalty of perjury, as already true under Texas law. Tex. Elec. Code § 64.034. Assistors must now complete a basic form disclosing their name, address, relationship to the voter, and whether they received any compensation for their assistance. *Id.* § 64.0322.

The amendments also prohibit those who assist mail voters from receiving compensation for their assistance—which occurs away from the polling place and necessarily cannot be supervised by election officials—and mail voters are likewise prohibited from

offering or providing compensation. *Id.* § 86.0105. This restriction on compensating assistants does not apply to caregivers previously known to the voter or to those assisting in-person voters. *Id.*

The Texas Legislature passed S.B.1 on August 31, 2021. As enacted, the soonest it could go into effect without the action of the Texas governor was ninety-one days after September 2, 2021. S.B.1, § 10.04.

2. La Unión del Pueblo Entero (LUPE), Petitioner here, sued to enjoin S.B.1 on September 3, 2021. LUPE brought a host of claims challenging several of S.B.1's provisions, including under the Fourteenth and Fifteenth Amendments and various provisions of the VRA and ADA. The District Court consolidated LUPE's case with cases brought by over a dozen other individuals and interest groups, and Respondents intervened. The court conducted a six-week bench trial in September and October 2023. No voters testified at trial that § 6.06, S.B.1's compensation restriction, has eliminated their access to voter assistance or prevented them from voting.

Since trial, the District Court has issued a series of opinions addressing the assorted plaintiffs' claims. Rather than decide the various claims together, the court has ruled on individual claims one at a time, always in favor of plaintiffs. This piecemeal approach has required Respondents to appeal multiple times, and the Fifth Circuit has invariably stayed or reversed (or both) all of the District Court's decisions to date.¹ The Fifth Circuit has been unable to divine

¹ See *La Unión Del Pueblo Entero v. Abbott*, 167 F.4th 743 (5th Cir. 2026) (reversing holding that S.B.1's prohibition on paid vote harvesting violates First Amendment and is unconstitu-

the District Court’s reason for deciding issues serially. *La Unión Del Pueblo Entero v. Abbott*, 167 F.4th at 752–53.

As relevant to this petition, the District Court held that Section 208 preempts S.B.1’s voter-assistance provisions. Adopting Petitioner’s position, the court held that by providing that voters may receive help from “a person of the voter’s choice,” Section 208 prevents any limitations on voter choice beyond those mentioned in Section 208 (a voter’s employer or union). Pet.App.178a. To the court, Section 208 prioritizes voter preference above all else and forbids any State regulation that might “discourage[] assistance.” Pet.App.190a. The court thus invalidated S.B.1’s oath requirement, its requirement that assis-tors disclose certain information on a form, and its ban on paid voter assistance for mail voting. Pet.App.214a–20a.

tionally vague); Pet.App.1a–33a (reversing holdings that Petitioner had standing to challenge various provisions of S.B.1 and that Section 208 preempts other provisions); *United States v. Paxton*, 148 F.4th 335, 338 (5th Cir. 2025) (reversing holding that S.B.1’s identification requirement violates the Civil Rights Act’s Materiality Provision); *La Unión Del Pueblo Entero v. Abbott*, 119 F.4th 404, 409 (5th Cir. 2024) (staying invalidation of S.B.1’s vote-harvesting ban); *Mi Familia Vota v. Ogg*, 105 F.4th 313, 333 (5th Cir. 2024) (reversing holding that District Attorney Ogg was a proper defendant); *La Unión Del Pueblo Entero v. Abbott*, 68 F.4th 228, 231 (5th Cir. 2024) (reversing rejection of non-party state legislators’ legislative-privilege assertion); *United States v. Paxton*, No. 23-50885, ECF 80-1, at 5 (5th Cir. Dec. 15, 2023) (staying invalidation of voter-identification requirement for mail ballots); *La Unión Del Pueblo Entero v. Abbott*, 29 F.4th 299, 304 (5th Cir. 2022) (reversing denial of intervention).

3. Respondents and the State defendants appealed, and the Fifth Circuit reversed.

The court first found that because there was no evidence any plaintiff planned to violate the revised oath or the new disclosure requirements, no plaintiff had standing to challenge those provisions. Pet.App.11a–17a. The court then turned to S.B.1’s § 6.06. There it found that Petitioner had standing because Petitioner paid its employees to provide mail-voting assistance to eligible voters, but S.B.1 prohibits such compensation. Pet.App.19a.

On the merits, Petitioner had argued that, under Section 208, voter preference trumps all State law regarding who may provide voter assistance—Congress intended for voters to be able to use “any assistor” they wanted, subject only to Section 208’s restrictions on employers and unions. LU-PE.CA5.Br.1. Thus, for example, states could not even “ban convicted felons from assisting voters.” *Id.* at 34. To Petitioner, Section 208 preempts any law that might “deter assistors” or “discourage them from providing assistance.” *Id.* at 25–26.

The Fifth Circuit disagreed. It listed the various forms of preemption—express, field, and conflict—and found that obstacle preemption was the only form of preemption possibly presented by the case. Pet.App.21a–22a. It further noted that, under this Court’s precedent, “a presumption *against* preemption” applied, mandating a finding against preemption unless Section 208 “expresses Congress’s ‘clear and manifest purpose’” to preempt state law. Pet.App.22a–23a.

The court began with Section 208’s text, which “guarantee[s] eligible voters help from ‘a person’ of their choice.” Pet.App.26a. It found the District Court and Petitioner had taken a “breathtakingly” broad reading that “negate[d] any state law that restricts the universe of assistors.” Pet.App.24a–25a (cleaned up). A narrower, more “common sense” reading clarified that “eligible voters” are entitled to “help from ‘a person’ of their choice,” but States are still permitted to “superintend voter assistance” under their constitutionally granted authority to regulate elections. Pet.App.26a. And that narrower reading was bolstered by the absence of anything in Section 208 demonstrating “Congress’s ‘clear and manifest’ intent to preempt” any and all regulations of voter assistance. *Id.*

The Fifth Circuit then found that Section 208’s list of some categories of individuals who may not serve as assistors did not justify application of the *expressio unius* canon. Pet.App.28a–30a. And though Section 208’s legislative history did not control, a fair reading of that history showed that it “cut against preemption, not in favor of it.” Pet.App.30a–33a.

REASONS FOR DENYING THE PETITION

I. THERE IS NO CIRCUIT SPLIT.

Petitioner has asked this Court to decide whether Section 208 preempts a State law regulating who may assist voters. Pet.i. But there is no split on that question. Indeed, aside from this case, no circuit court has ever addressed preemption under Section 208. Petitioner simply disagrees with the result below and seeks error correction.

With no relevant split for this Court to review, Petitioner instead claims that the Fifth Circuit conducts its “preemption analysis” differently from other circuits. Pet.25. That is incorrect.

And even if the Fifth Circuit had taken a different approach to preemption, it would not matter for this petition. This Court takes up circuit conflicts only when “federal law is being administered in different ways in different parts of the country,” *Beaulieu*, 497 U.S. at 1039 (White, J., dissenting from denial of certiorari), *not* when circuits merely go about their “analysis” differently.

A. There is no split on Petitioner’s Question Presented.

Petitioner does not argue that any other court of appeals has decided whether Section 208 preempts a State law. Nor could it: As far as Respondents can tell, no other circuit has ever addressed the question.

Arkansas United v. Thurston, 146 F.4th 673 (8th Cir. 2025), and *Alabama State Conference of the NAACP v. Attorney General, Alabama*, 161 F.4th 1286 (11th Cir. 2025) (per curiam), appear to be the only circuit-court cases outside the Fifth Circuit that

even mention “preemption” in the Section 208 context. But neither circuit reached the issue. The Eighth Circuit denied relief because “the text and structure of § 208 do not create a private right of action.” 146 F.4th at 676. The Eleventh Circuit declined to interpret Section 208’s reach and instead certified questions regarding the challenged statute to the Alabama Supreme Court. *See* 161 F.4th at 1295–96.

So no other circuit has ever reached the issue of Section 208 preemption. The Court should deny the petition for this reason alone.

B. The Fifth Circuit’s preemption analysis does not differ from other circuits.

With no relevant circuit split on its Question Presented, Petitioner instead suggests that the Fifth Circuit’s “preemption analysis” conflicts with other circuit caselaw involving completely different federal statutes. Pet.25–30 (citing cases about “interstate off-track betting,” “a state immigration statute,” “a Michigan law regulating horse-betting,” etc.). But no split exists.

1. Petitioner’s lead “split” posits that other circuits analyze impossibility preemption *before* turning to obstacle preemption, but not the Fifth Circuit. Pet.25. To Petitioner, the correct analysis is to “recognize that conflict preemption occurs when the state and federal statutes directly conflict or where compliance with both statutes is an impossibility.” Pet.26–27.

Even a cursory look at recent Fifth Circuit caselaw shows that court, like all circuits, conducts impossi-

bility-preemption analysis in cases in which it applies. *See, e.g., AbbVie, Inc. v. Murrill*, 166 F.4th 528, 540 (5th Cir. 2026) (“Conflict preemption applies ... where complying with both federal law and state law is impossible”); *Crystal Clear Special Util. Dist. v. Jackson*, 142 F.4th 351, 364 (5th Cir. 2025) (same); *Est. of Miranda v. Navistar, Inc.*, 23 F.4th 500, 504 (5th Cir. 2022) (“[C]onflict preemption occurs ‘where it is impossible for a private party to comply with both state and federal requirements’”); *Aldridge v. Miss. Dep’t of Corr.*, 990 F.3d 868, 875 (5th Cir. 2021) (similar); *E.T. v. Paxton*, 19 F.4th 760, 768 (5th Cir. 2021) (“State action can directly conflict with federal action if a provision of state law may be incompatible with a federal statute such that compliance with both is a physical impossibility” (cleaned up)).

And just like other circuits, the Fifth Circuit addresses impossibility preemption before turning to obstacle preemption when both issues are presented. *See, e.g., Murrill*, 166 F.4th at 540–41 (looking for direct conflict before turning to obstacle preemption); *Aldridge*, 990 F.3d at 875 (same); *E.T.*, 19 F.4th at 768 (same); *Miranda*, 23 F.4th at 505–07 (deciding case under impossibility preemption—“the first type of conflict preemption”).

Below, the Fifth Circuit did not purport to disturb that settled circuit caselaw, and not even the dissent claimed the majority had broken with circuit precedent or created any circuit split. Instead, after listing the various types of preemption analysis available, the panel found that “[t]his case involves only conflict preemption and, specifically, the variant known as ‘purposes and objectives’ preemption.”

Pet.App.21a–22a. In other words, although another “variant” of conflict preemption exists, it was not implicated here.

Rightly so. As explained more fully in Part II.B below, it is easy to comply with both Section 208 and S.B.1. For one thing, voters may opt to vote in person and use a compensated assistor. For another, voters opting to vote by mail may use a compensated caregiver previously known to the voter. Mail voters also may simply not compensate their assistor. And if an eligible mail voter insists on choosing an assistor like a LUPE employee who is paid to help community members, the employee need only go off the clock for the time it takes to help the voter fill out the ballot. Compliance with both Section 208 and S.B.1 is certainly not a “physical impossibility.”

The panel below did not “abandon[]” impossibility preemption, Pet.25, which is alive and well in the Fifth Circuit. Instead, it correctly found that this case did not even present the issue.

2. Petitioner also faults the Fifth Circuit for supposedly “not basing its purposes and objectives analysis on the language, structure, or legislative history of the federal statute,” allegedly splitting with the Sixth, Ninth, and Tenth Circuits. Pet.27.

It is hard to know what opinion Petitioner is reading. The Fifth Circuit “*start[ed] with Section 208’s text.*” Pet.App.24a (emphasis added). It recognized the phrase “a person of the voter’s choice” could be “read literally to negate any state law that restricts the universe of assistors.” Pet.App.25a. It just found that reading improbable because many state laws would fall under Petitioner’s “maximalist” interpre-

tation, and Section 208’s text simply guarantees assistance from “a person,” without more. Pet.App.24a–26a. It also considered the application of the *expressio unius* canon to Section 208’s text and found this did not counsel in favor of preemption. See Pet.App.28a–30a. Petitioner cannot seriously claim that, by this analysis, the Fifth Circuit has somehow staked out a new position where text plays no role in preemption analysis.

Petitioner’s assertion that the Fifth Circuit ignored structure and legislative history is equally head-scratching. From what Respondents can tell, though Petitioner invokes the term “structure” several times, nothing in the petition looks to the wider context of the VRA for any “structural” point. (This is unsurprising, seeing that Section 208 is the *only* part of the VRA that addresses voters with disabilities.) And the Fifth Circuit analyzed Section 208’s legislative history explicitly and found that it neither controlled nor even helped Petitioner’s arguments. See Pet.App.30a–33a.

Though Petitioner disagrees with the panel’s analysis and wants this Court to adopt its preferred interpretation, it has “not identif[ied] a lower court conflict” and instead “ask[s] the court to engage in mere error correction.” *Price v. Dunn*, 587 U.S. 999, 1007 (2019) (Thomas, J., concurring in denial of certiorari). The petition should be denied.

C. This Court does not take cases to resolve claimed analytical differences.

Petitioner points only to preemption cases addressing unrelated statutes, claiming the Fifth Circuit’s “preemption *analysis*” conflicts with the preemption

analysis of other circuits. Pet.25 (emphasis added). That claim is meritless, as Respondents have just explained. But even if the Fifth Circuit’s analytical framework were different from other circuits, that *still* would not be a reason for this Court’s review.

This Court grants review when a circuit court has “entered a decision in conflict with the decision of another United States court of appeals on the *same* important matter.” Sup. Ct. R. 10(a) (emphasis added). Variations in analytical steps (to the extent they even exist) do not count as the “same matter.” To qualify for review, “there must be a real or ‘intolerable’ conflict on the same matter of law or fact, *not merely an inconsistency ... in the general principles utilized.*” Stephen M. Shapiro et al., *Supreme Court Practice* § 4.3 (11th ed. 2019) (emphasis added).

This Court looks for genuine conflicts that are “outcome determinative,” *id.* at § 4.3 n.21, not opportunities to change the order of a circuit’s analytical steps, *see* Pet.25, or to explain what items to consider when analyzing an issue, *see* Pet.27. “A genuine conflict ... arises when it may be said with confidence that two courts have decided the same legal issue in opposite ways, based on their holdings in different cases with very similar facts.” Shapiro, *supra*, § 4.3. That is precisely *not* what Petitioner presents here. The petition does not merit this Court’s review.

II. THE FIFTH CIRCUIT CORRECTLY HELD THAT SECTION 208 DOES NOT PREEMPT S.B.1.

A. The Fifth Circuit rightly applied a presumption against preemption, but it did not matter regardless.

Petitioner says the Fifth Circuit should not have applied a presumption against preemption. Pet.24–25. That is both wrong and beside the point. The Fifth Circuit rightly reasoned that, to accept Petitioner’s preemption argument, Section 208’s text must demonstrate Congress’s “clear and manifest” intention to preempt State law. Pet.App.23a (quoting *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996)). But regardless, the Fifth Circuit’s decision did not rest on any presumption. The court first found against preemption based on Section 208’s text, and the presumption against preemption only reinforced the result.

1. This Court’s precedent establishes a presumption against preemption. Because “the States are independent sovereigns in our federal system,” courts should “presume[] that Congress does not cavalierly pre-empt” State law. *Medtronic*, 518 U.S. at 485. The starting point of preemption analysis, therefore, is “the assumption that the historic police powers of the States are not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.” *Altria Grp., Inc. v. Good*, 555 U.S. 70, 77 (2008); *see also, e.g., CTS Corp. v. Waldburger*, 573 U.S. 1, 18–19 (2014) (presumption is “well-established”); *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981) (preemption analysis “starts with the

basic assumption that Congress did not intend to displace state law”).

And not only does a presumption against preemption apply, that presumption is *heightened* here, for the presumption “applies with particular force when Congress has legislated in a field traditionally occupied by the States.” *Altria*, 555 U.S. at 77; *see also Medtronic*, 518 U.S. at 475 (presumption strengthened in areas that are “primarily, and historically, matters of local concern” (cleaned up)). Section 208 covers all elections, including State and local elections, which are undoubtedly a traditional field of State regulation. *Shelby County*, 570 U.S. at 543 (Tenth Amendment reserves for States “the power to regulate elections”). As the Fifth Circuit correctly found, “S.B.1 represents the exercise of Texas’s historic police powers in administering elections,” Pet.App.22a, and Petitioner does not disagree, *see* Pet.24. Federalism concerns thus warrant a strong presumption to “provide[] assurance that the federal-state balance will not be disturbed unintentionally by Congress or unnecessarily by the courts.” *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977) (cleaned up).

Petitioner tries to claim an exception: To Petitioner, “there is a history of significant federal presence” in State and local elections, and thus the presumption against preemption does not apply. Pet.24. Not so. The Court applied this limited exception in a case involving “national and international maritime commerce,” a field where “Congress has legislated ... from the earliest days of the Republic.” *United States v. Locke*, 529 U.S. 89, 108 (2000). Congressional regulation of State and local elections in gen-

eral, and the rights of disabled voters in particular, hardly goes back to the “earliest days of the Republic”—Section 208 was enacted in 1982. And though federal law may seek “uniformity of regulation” in the field of “maritime commerce,” *id.*, it has the *opposite* goal when it comes to State regulation of elections, where local variation is a celebrated feature of our federalist system, *see, e.g., Shelby County*, 570 U.S. at 543.

So the Fifth Circuit was right to apply a heightened presumption against preemption here. And even worse for Petitioner’s case, this heightened presumption is at its zenith when a preemption claim is based on an *implied* conflict between State and federal law. “[W]hen the claim is that federal law impliedly pre-empts state law, we require a ‘strong’ showing of a conflict[.]” *PLIVA, Inc. v. Mensing*, 564 U.S. 604, 641–42 (2011) (Sotomayor, J., dissenting). The Court insists on this “strong showing” for both the impossibility and obstacle species of implied preemption: The Court has characterized impossibility preemption as a “demanding defense,” *Wyeth v. Levine*, 555 U.S. 555, 573 (2009), and its “precedents ‘establish that a high threshold must be met if a state law is to be pre-empted for conflicting with the purposes of a federal Act.’” *Chamber of Com. of U.S. v. Whiting*, 563 U.S. 582, 607 (2011).

2. Petitioner’s claim that the Fifth Circuit should not have applied a presumption against preemption is meritless. But it also does not matter because the Fifth Circuit found no preemption *before* applying any presumption.

Petitioner simply misreads the Fifth Circuit’s opinion when it says the court found the presumption “dispositive.” Pet.24. The Fifth Circuit did not begin its analysis with the presumption or find that the presumption controlled. *See* Pet.App.24a–26a. Rather, the panel “start[ed] with Section 208’s text” and analyzed whether the District Court’s reading—that Section 208 forbids any additional restrictions on who can assist—was the best interpretation available. *Id.* The court concluded that a better reading is that eligible voters get to choose their assistants, but this choice is not unfettered, with States still permitted to “superintend voter assistance.” Pet.App.26a.

Only after reaching that interpretation did the court point out that the presumption against preemption supported its interpretation of Section 208. *Id.* (“Recall, moreover, that we are reading the phrase, not in the abstract, but in the context of a preemption claim that faces steep odds.”). The court’s use of “moreover” shows that it would have reached its interpretation without any presumption. The presumption that S.B.1 and Section 208 can coexist merely bolstered its conclusions.

B. Section 208 does not preempt S.B.1.

This Court has recognized several types of preemption—“express preemption,” “field preemption,” and two types of “conflict preemption” (“impossibility” and “obstacle”). *See ONEOK, Inc. v. Learjet, Inc.*, 575 U.S. 373, 376–77 (2015). Petitioner raises both impossibility preemption and obstacle preemption. Both arguments are without merit. The Fifth

Circuit rightly found, under this Court’s precedent, that Section 208 does not preempt S.B.1.

1. This is not an impossibility-preemption case.

a. Petitioner’s lead argument asserts an “actual conflict” between Section 208 and S.B.1, such that it is “impossible” to comply with both. Pet.15–16. This Court has traditionally referred to this type of conflict preemption as “impossibility preemption,” see *Mut. Pharm. Co. v. Bartlett*, 570 U.S. 472, 488 (2013), and it applies only when “compliance with both federal and state regulations is a physical impossibility,” *Arizona v. United States*, 567 U.S. 387, 399 (2012); see also Pet.11, 12–14, 16 (acknowledging this test). Petitioner’s challenge flunks that test. It is not “physically impossible” to “comply” with both Section 208 and S.B.1.

First, Section 208 confers a *right* to bring an assistor to the voting booth and does not impose a *duty* on anyone. So it is inapt to speak of a voter “complying” with Section 208. And since Section 208 provides a right to *receive* assistance and not a right to *provide* assistance, assistors do not “comply” with Section 208 either. Since this is not a “dual compliance” case, *Fla. Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 143 (1963), it does not even present an impossibility-preemption issue.

Regardless, it is certainly not “physically impossible” to comply with both Section 208 and S.B.1. Eligible voters can still receive “assistance by a person of [their] choice,” 52 U.S.C. § 10508: When voting by mail, they simply must refrain from “compensat[ing]” their assistor or from choosing a paid political opera-

tive or someone who otherwise “receives ... compensation” to be their assistor, Tex. Elec. Code § 86.0105(a). Mail voters can select a compensated caregiver previously known to them. Or voters can vote in person with a paid assistor. At trial, no plaintiff presented evidence that compensated, previously unknown assistors are the only available source for mail-voting help. And though Section 208 provides neither a right nor a duty to provide assistance, anyone compensated to do election work can comply with S.B.1 simply by declining to provide assistance or by going off the clock while assisting mail voters. Voters and assistors alike can comply with both Section 208 and S.B.1.

b. Petitioner says the Fifth Circuit failed even to consider whether impossibility preemption might apply and instead rejected that analytical framework entirely. Pet.17,25. That just misreads the opinion below.

The Fifth Circuit did not “[e]schew[]” or “abandon[]” the impossibility-preemption test. Pet.18,25. It simply found Petitioner’s challenge did not even present the issue. As the Fifth Circuit put it, “This case involves only ... the variant [of conflict preemption] known as ‘purposes and objectives’ preemption.” Pet.App.22a. Nowhere did the court indicate it was rejecting the “physical impossibility” test. Instead it found that Petitioner’s only colorable argument was for obstacle preemption (also known as “purposes and objectives” preemption). This was clearly right—as Respondents have just explained, it is certainly “physically possible” to vote by mail with the assistance of someone who is not compensated for their assistance, to vote by mail using a compensated

caregiver previously known to the voter, or to vote in person with a compensated assistor.

Petitioner also claims the Fifth Circuit refused to “conduct the required ‘straightforward textual’ comparison ... essential” for the impossibility-preemption analysis. Pet.17. Again, not so. The panel’s review “start[ed] with Section 208’s text” and proceeded to consider context and legislative history. Pet.App.24a–33a. That it did so while considering obstacle preemption, not impossibility preemption, is simply a result of Petitioner’s failure to present even a colorable impossibility-preemption issue.

2. The Fifth Circuit’s obstacle-preemption analysis was correct.

As a fallback, Petitioner says that obstacle preemption applies. That test permits a preemption finding only when state law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Hughes v. Talen Energy Mktg., LLC*, 578 U.S. 150, 163 (2016). Obstacle-preemption claims face a “high threshold” that forbids any “freewheeling judicial inquiry into whether a state statute is in tension with federal objectives.” *Whiting*, 563 U.S. at 607; see Pet.App.22a. Here again, the Fifth Circuit got it right. Petitioner has not satisfied the requirements for obstacle preemption.

a. “[S]tart with Section 208’s text,” as the Fifth Circuit did. Pet.App.24a. The statute says only that a disabled or limited-English voter “may be given assistance by *a* person of the voter’s choice.” (emphasis added). It does not say that voters must receive assistance by “*the*” or “*any*” “person of the voter’s

choice,” or from “the voter’s *first choice* of assistor.” “When used as an indefinite article, ‘a’ means ‘[s]ome undetermined or unspecified particular.’” *McFadden v. United States*, 576 U.S. 186, 191 (2015) (quoting Webster’s New International Dictionary 1 (2d ed. 1954)). Section 208 permits voters to bring a person they have chosen to the voting booth and prevents States from selecting voters’ only option. The statute does not enshrine absolute voter preference to the negation of all State regulation of voter assistance.

That Section 208 says “a person” instead of “any person” is especially significant given that, earlier in the same sentence, it refers to “*any voter*.” See *Pulsifer v. United States*, 601 U.S. 124, 149 (2024) (“the same term usually has the same meaning and different terms usually have different meanings”). If Congress had wanted “any voter” to have the right to use “any person” he or she wanted, it could have said so. But it did not.

b. Petitioner faults the Fifth Circuit for applying the canon against absurdity to find it unlikely Congress intended to federalize voter-assistance law and strike down any number of common-sense State laws in this area. Pet.18. But the court was right to do so in its textual analysis. See *Whitman v. Am. Trucking Ass’ns, Inc.*, 531 U.S. 457, 468 (2001) (“Congress ... does not, one might say, hide elephants in mouseholes.”).

On Petitioner’s unfettered interpretation of Section 208, States are powerless to impose restrictions beyond the two categories identified in Section 208. LUPE.CA5.Br.34. So, for example, States “cannot impose ... a restriction” “ban[ning] convicted felons

from assisting voters.” *Id.* Nor could a State enact a law saying that voters may not bring an assistor who is carrying a gun. *Id.* at 35. (Though, confusingly, Petitioner said States could ban guns at polling places, just so long as the law did not mention *assistors’* guns.² *Id.*)

The Fifth Circuit correctly found that nothing in Section 208’s text demanded Petitioner’s “breathtakingly broad reading” of the statute. Pet.App.24a (cleaned up). If Petitioner were right, any number of State laws would fall. *See id.* Pet.App.24a n.16 (listing Michigan’s ban on minor assistance, Pennsylvania’s ban on assistance from judge of elections, and bans on candidate assistance by Hawaii, Georgia, and Mississippi); *see also, e.g.*, La. Stat. Ann. § 18:564(B)(2) (“No [precinct’s] commissioner-in-charge can assist a voter”); Cal. Elec. Code § 14282(c) (no assistance from individuals who want to divulge voter’s ballot choices); Va. Code Ann. § 24.2-604.5 (poll watchers cannot assist).

Instead, “a more restrained reading” of Section 208 is better. Pet.App.26a. Nothing in the text’s statement that eligible voters “may be given assistance by a person of the voter’s choice” manifests Congress’s intention to regulate all questions of who may assist. Section 208 indicates voters may receive assistance from a person they have chosen, but States may continue to “superintend voter assistance.” *Id.*

² As the Fifth Circuit recognized, this concession “give[s] away the store.” Pet.App.25a. A ban on guns at the polling place bans assistors with guns. If the former is permissible, so is the latter. *See id.* & n.17.

Ironically, Petitioner claims that the Fifth Circuit’s interpretation of Section 208 yields “no limiting principle,” when it is *Petitioner’s* interpretation that is unbounded. Pet.23. To Petitioner, no regulation of who may provide assistance is permitted. Though States may ban felons from *voting*, they apparently cannot prevent felons from *assisting voters*. Nor can they forbid candidates, poll watchers, paid campaign operatives, or gun-toting minors. Petitioner says that by simply providing that voters may seek assistance from “a person of [their] choice,” Congress made voter choice reign supreme.³ Section 208’s text does not demand that “breathtakingly broad interpretation.” Pet.App.24a (cleaned up).

An extreme State limitation on voter assistance—such as a law permitting voters to use only an immediate family member or a law requiring voters to register their chosen assistor with the State months before an election or forfeit all chance for assistance—might present a Section 208 issue. S.B.1 does not present such a hard case. The Fifth Circuit did not need to define the precise line for where a State law might run afoul of Section 208. S.B.1 is clearly within Texas’s prerogative to “superintend voter assistance.” Pet.App.26a.

³ Perhaps to provide some limit to its interpretation, Petitioner says “nothing in Section 208 suggests a congressional purpose to force states to procure the physical presence of assisters who are otherwise barred from entering the polling place.” Pet.19. True, but no one has argued that. Petitioner’s position is that States cannot bar *anyone* from providing assistance; if a voter has chosen an assistor, that choice trumps all State law to the contrary. Section 208’s text does not compel that result.

c. Nor does the *expressio unius* canon help Petitioner. See Pet.23.

As the Fifth Circuit acknowledged, *expressio unius* is not an inexorable command. Pet.App.29a (“The canon does not apply to every statutory list”). “Virtually all the authorities” who discuss that canon “emphasize that it must be applied with great caution, since its application depends so much on context.” Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 107 (2012). An everyday example demonstrates the point. If a sign outside a restaurant says “No dogs allowed,” a reasonable person would not assume that all animals not mentioned on the sign—tigers, monkeys, and so forth—are permitted. *Id.*; see also *Biden v. Nebraska*, 600 U.S. 477, 512 (2023) (Barrett, J., concurring) (“Context also includes common sense.”).

Here, context forecloses Petitioner’s interpretation. Like the restaurant owner who encounters dogs more often than giraffes, Congress likely singled out voters’ employers and unions because they can easily exert improper influence and voters might frequently choose them (or be coerced into choosing them). See Pet.App.29a. It is implausible that, by specifying those two categories of assistors, Congress intended that all else goes—from assistors who simply do not want to comply with state law to candidates to dangerous felons to convicted vote fraudsters. Applying *expressio unius* to reach that absurd result would abuse the canon.

And as the Fifth Circuit observed, the canon does not apply to “conceptually different” items not included on the list. *Id.* at 30a. A voter’s employer or

union already has a “relationship to the voter.” *Id.* Paid political operatives and ballot harvesters do not. Since S.B.1 and Section 208 regulate different categories of potential improper influence, *expressio unius* does not require a finding of preemption. In fact, any argument by implication using *expressio unius* is inappropriate here due to the presumption against preemption, which requires a “clear and manifest” congressional intention to preempt. *Medtronic*, 518 U.S. at 485.

d. Last, Petitioner wrongly contends that the “structure of the Voting Rights Act and the legislative history of Section 208” support preemption. Pet.19–23.

Though Petitioner invokes “structure” multiple times, Respondents cannot find a structural point in the petition. *See id.* (Petitioner raises the *expressio unius* canon, Pet.23, but this is a textual issue, not an argument about the VRA’s broader structure.) Besides, any structural argument would be unavailing because Section 208 is the *only* VRA provision addressing voters with disabilities.

So Petitioner focuses only on legislative history. *See* Pet.19–23. But as the Fifth Circuit pointed out, “a committee report is not the law.” Pet.App.30a. Recognizing this puts legislative history in its proper place—only the law as “passed by Congress and signed by the President” controls. *Id.* at 30a–31a.

Moreover, “legislative history cannot overcome the presumption against preemption.” Pet.App.31a. The Fifth Circuit did not “reject[] any view of congressional purpose that would displace state laws.” Pet.19. It simply recognized that the presumption

requires a “clear and manifest” intent to preempt, and scattered statements from a committee report do not fit the bill, especially because this Court’s precedent does not permit “freewheeling judicial inquiry into whether a state statute is in tension with federal objectives.” *Whiting*, 563 U.S. at 607. Intuiting broad purposes like “increas[ing] voter participation” and “eliminat[ing] discrimination” is precisely the “freewheeling” approach forbidden in this context. Nor does Petitioner explain how Texas’s efforts to prevent paid political operatives from unduly influencing voters will increase discrimination or present a major obstacle to voter participation.

And, fatal for Petitioner’s legislative-history arguments, “even if the Senate Report [for Section 208] were relevant, it would cut against preemption, not in favor of it.” Pet.App.31a. The legislative history confirms that, in response to the concern that voters did not want “a total stranger look[ing] on while they [were] voting,” Congress enacted Section 208 merely to prevent States from forcing voters to accept assistance from election officials. Appendix to Hearings on S. 1992, *supra*, at 393; *see* S. Rep. No. 97-417, at 62–63 & n.207.

Nothing in the Senate Report indicates any congressional intent to bar States from continuing their traditional administration of elections.⁴ Most rele-

⁴ Petitioner’s reliance on *Arizona v. United States* is unavailing. Pet.22–23. That statute involved a “comprehensive framework for ‘combating the employment of illegal aliens’” and was enacted after a commission to study the issue specifically recommended against the criminal penalties in the State law preempted there. 567 U.S. at 404–06. Section 208—the VRA’s

vant to this petition, the report says nothing about State regulation of assistors who help with *mail voting*, far removed from the oversight of election officials who could prevent intimidation or undue influence. Rather, Congress recognized States’ “legitimate right ... to establish necessary election procedures” and *encouraged* the development of “voter assistance procedures, including measures to assure privacy for the voter and the secrecy of his vote ... in a manner which encourages greater participation in our electoral process.” S. Rep. No. 97-417, at 62–63. If States may “authorize different kinds of assistance for the blind as opposed to the illiterate,” *id.* at 63, they may certainly bar assistors who refuse to provide the authorized forms of assistance.

* * *

The Fifth Circuit got its preemption analysis right. Though Petitioner may disagree with Texas’s policy tradeoffs in S.B.1, nothing in Section 208’s text, structure, or legislative history indicates S.B.1 “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Hughes*, 578 U.S. at 163.

III. THE PETITION PRESENTS MULTIPLE FATAL VEHICLE PROBLEMS.

The petition presents no circuit split for this Court to resolve, and the Fifth Circuit was right on the merits below. The petition should also be denied for another reason: The Court would need to wade into a “mare’s nest” of intractable issues before reaching

only provision addressing assistance for disabled voters—is not remotely the same.

Petitioner’s Question Presented. *Arizona v. City & County of San Francisco*, 596 U.S. 763, 766 (2022) (Roberts, J., concurring). Petitioner does not even attempt to argue this is a good vehicle for the questions presented, nor could it.

A. Petitioner lacks standing.

1. If the Court grants the petition, it would first need to consider Petitioner’s standing. The Fifth Circuit rightly held that Petitioner lacked standing for most of its challenges. *See* Pet.App.11a–17a. It found that Petitioner had standing to bring a Section 208 challenge to S.B.1’s compensation restrictions because Petitioner pays its employees to help voters fill out their ballots. Pet.App.18a–20a. This outcome appeared to rest on a theory of organizational standing. *See* Pet.App.18a–19a (S.B.1 “bars conduct the organization engages in—namely, compensating staffers for assisting voters”).

Respectfully, the Fifth Circuit erred. Section 208 does not guarantee a right for *assistors* to provide assistance, but for *voters* to receive assistance. *See* 52 U.S.C. § 10508 (“Any voter who requires assistance ... may be given assistance by a person of the voter’s choice”). Petitioner and its assistance-providing employees are not in a position to assert *voters’* Section 208 rights. “Ordinarily, a party must assert his own legal rights and cannot rest his claim to relief on the legal rights of third parties.” *Sessions v. Morales-Santana*, 582 U.S. 47, 57 (2017) (cleaned up). Petitioner cannot qualify for any of the exceptions to the rule against third-party standing—eligible voters can “protect [their] own interests” and do not have the requisite “close relationship,”

such as a familial relationship, with community organizations like Petitioner. *Id.* Petitioner has no standing to challenge S.B.1 under Section 208.

2. Nor could an associational-standing theory rescue Petitioner’s case. At various points below, Petitioner claimed to assert its *members’* Section 208 rights. Though the Fifth Circuit and the District Court mentioned associational standing as an available standing theory, *see* Pet.App.10a,156a, their standing analysis for § 6.06 of S.B.1—the only S.B.1 provision challenged here—considered organizational standing alone, *see* Pet.App.18a–20a,168a–70a.

This Court is not in a position to pass on Petitioner’s associational standing in the first instance. *See Rivers v. Guerrero*, 605 U.S. 443, 458 (2025) (this is “a Court of review, not of first view”). Such an inquiry would present knotty factual questions, given that *no voters* who testified at trial said § 6.06 has eliminated access to assistance or has kept them from voting by mail. Now is not the time to comb through the record and determine whether Petitioner has presented sufficient evidence to show S.B.1 has injured its members. And, in all events, at least one member of this Court has questioned associational standing’s viability under Article III. *See FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 397–405 (2024) (Thomas, J., concurring).

3. Petitioner’s standing suffers from another fatal flaw—it filed suit too early. A plaintiff must have “Article III standing at the outset of the litigation.” *Friends of the Earth, Inc. v. Laidlaw Env’t Servs. (TOC), Inc.*, 528 U.S. 167, 180 (2000). Here, Petitioner sued mere days after the Texas Legislature passed

S.B.1, at a time when it was unclear if and when S.B.1 might go into effect.

S.B.1 passed the Texas Legislature on August 31, 2021. According to the bill, the soonest it could go into effect without action by the Texas governor was ninety-one days after September 2, 2021. S.B.1, § 10.04. Petitioner sued on September 3, 2021, *months* before S.B.1 was slated to possibly take effect. At that point, it was not clear that it would ever go into force because the Texas governor could veto S.B.1, and it lacked the requisite two-thirds majority support to override a veto. *See* Tex. Const. art. IV, § 14; *see also* Tex. S.J., 87th Leg., 2d C.S. 84 (daily ed. Aug. 11, 2021) (18–11 vote); *id.* at 188 (daily ed. Aug. 31, 2021) (18–13 vote); Tex. H.J., 87th Leg., 2d C.S. 319–20 (daily ed. Aug. 31, 2021) (80–41 vote).

Governor Abbott eventually signed S.B.1 into law on September 7, 2021, four days after Petitioner filed suit. But as far as Respondents are aware, there is nothing in the record to indicate whether, as of September 3 when Petitioner sued, the governor had committed to signing the bill as passed, had reservations about any of the bill’s provisions, or was considering a veto. In other words, there appears to be no evidence that Petitioner had standing “at the outset of litigation.” *Friends of the Earth*, 528 U.S. at 180.

Though this fatal standing flaw was raised below, the Fifth Circuit did not address it. This Court is not in a position to determine in the first instance whether Petitioner had Article III standing when the case began.

B. Section 208 does not provide a private right of action.

Even if Petitioner had standing to sue under Section 208, nothing in the VRA would give Petitioner the right to sue. Below, Petitioner suggested VRA § 3 implicitly creates a right to privately enforce Section 208. LUPE.CA5.Br.46–47. But argument-by-implication fails in this context, *see Ark. State Conf. NAACP v. Ark. Bd. of Apportionment*, 86 F.4th 1204, 1211–13 (8th Cir. 2023) (no private right of action under § 3), especially considering that “Congress ... knows how to create a cause of action,” *Hernandez v. Mesa*, 589 U.S. 93, 118 (2020) (Thomas, J., concurring). Other sections of the VRA show Congress intended for the Attorney General, not private litigants, to enforce Section 208, *see* 52 U.S.C. § 10308(d), and this Court has “repeatedly said that a decision to create a private right of action is one better left to legislative judgment,” particularly when Congress evinces a preference for “enforcement ... check[ed] ... by prosecutorial discretion,” *Sosa v. Alvarez-Machain*, 542 U.S. 692, 727 (2004).

A properly instituted Section 208 action by the Attorney General could present an appropriate opportunity for this Court to address the statute’s meaning and scope. The necessarily antecedent issue of private enforcement makes this a poor vehicle to address Petitioner’s question.

C. Petitioner’s preferred reading of Section 208 unnecessarily raises constitutional issues.

Granting the petition would force this Court to confront a fraught constitutional problem: If Section

208 has the scope Petitioner claims, was its enactment a proper exercise of Congress's authority under the Fourteenth Amendment?

Although the VRA's race-related provisions are authorized by the Fifteenth Amendment, *see United States v. Bd. of Comm'rs*, 435 U.S. 110, 126–27 (1978), Section 208's protections for voters with disabilities can be plausibly traced only to the Fourteenth Amendment's Equal Protection Clause, which guarantees the “equal protection of the laws.” U.S. Const. amend. XIV, § 1. For Section 208 to be proper under the Fourteenth Amendment, its protection for voters with disabilities must exhibit “congruence and proportionality” with the injuries Congress sought to address. *Boerne*, 521 U.S. at 520.

But because the Fourteenth Amendment provides only limited protection based on disability, Petitioner's reading of Section 208 dooms its constitutionality. “States are not required by the Fourteenth Amendment to make special accommodations for the disabled, so long as their actions towards such individuals are rational.” *Bd. of Trs. v. Garrett*, 531 U.S. 356, 367 (2001). Thus, short of “a pattern of irrational state discrimination” against voters with disabilities, *id.* at 368, Congress cannot enact a wholesale preemption of State voter-assistance laws, *see Boerne*, 521 U.S. at 520. The Fourteenth Amendment does not authorize the sweeping construction of Section 208 suggested by Petitioner, given that Congress did not even attempt to gather a record of behavior by States and local governments that would amount to unconstitutional discrimination against voters with disabilities.

Constitutional avoidance suggests letting the Fifth Circuit’s judgment lie. The petition purports to present only a preemption question, but difficult constitutional issues lurk under the hood of Petitioner’s chosen vehicle. Rather than invite this issue, the Court should deny the petition.

D. The Court should wait to consider Section 208’s preemptive reach.

1. As Respondents explained above, Section 208 has only recently emerged as a focus of voting litigation. The issue of Section 208 preemption has just begun to reach the circuit courts, *see Thurston*, 146 F.4th 673; *Ala. State Conference of NAACP*, 161 F.4th 1286, and the Fifth Circuit is the first court of appeals ever to address it.

This counsels in favor of patience. This Court’s “thoughtful colleagues on the district and circuit benches” are currently wrestling with the issues presented by the petition, and their “experience ... could yield insights (or reveal pitfalls)” regarding an issue that only the Fifth Circuit has had opportunity to decide. *Maslenjak v. United States*, 582 U.S. 335, 354 (2017) (Gorsuch, J., concurring). Prudence favors allowing further percolation on this issue.

2. Allowing further percolation would also permit this Court to select a vehicle that presented Section 208’s full scope, not its application to mail voting alone. Petitioner challenges only Texas’s limits on compensation for the assistance of *mail* voters. *See* Pet.i. Under this Court’s precedent, States are not even required to provide mail voting. *See McDonald v. Bd. of Election Comm’rs of Chi.*, 394 U.S. 802, 807–11 (1969). Since Texas law permits compensa-

tion for those who assist in-person voters, this Court's review would be limited to Section 208's application to mail voting. The Court should not grant a Section 208 petition that applies so narrowly.

CONCLUSION

The Court should deny the petition.

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