

IN THE
Supreme Court of the United States

LA UNIÓN DEL PUEBLO ENTERO,
Petitioner,
v.

WARREN K. PAXTON, *in his official capacity as
Attorney General of Texas*; STATE OF TEXAS;
JANE NELSON, *in her official capacity as Texas
Secretary of State*; HARRIS COUNTY REPUBLICAN
PARTY; DALLAS COUNTY REPUBLICAN PARTY;
NATIONAL REPUBLICAN SENATORIAL COMMITTEE;
NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE;
SEAN TEARE, *Harris County District Attorney*;
REPUBLICAN NATIONAL COMMITTEE,
Respondents.

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

**REPLY BRIEF IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Petitioner La Unión del Pueblo Entero incorporates the statement made in the Petition filed in this case on January 24, 2026.

RELATED PROCEEDINGS

In addition to the related proceedings described in Petitioner's Petition for Writ of Certiorari, filed January 24, 2026, OCA – Greater Houston, a plaintiff in this action before the district court and appellant before the Fifth Circuit, filed a petition for writ of certiorari seeking review of the Fifth Circuit's order on January 26, 2026 (No. 25-916).

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INTRODUCTION

State Respondents agree that “Section 208 was enacted to ensure voters could receive help from people they genuinely trust.” State Resp. 15; *see also* State Resp. 2–3 (acknowledging that Section 208 grants voters “the right to receive assistance from ‘a person of their choice’—not from a person selected for them by the government”) (quoting 52 U.S.C. § 10508). State Respondents also concede that S.B. 1 prevents voters from choosing their assister when that assister is an employee of a social services organization, such as LUPE. State Resp. 13. Thus, although LUPE employees are well-known by LUPE members and are “people they genuinely trust,” S.B. 1 bars voters from choosing assistance from LUPE employees. *Id.* at 15. This directly conflicts with the protections afforded to such voters under Section 208.

None of the arguments in Respondents’ briefs save S.B. 1 from conflict preemption. First, courts may not decline to examine impossibility preemption. Second, Congress is not required to enumerate all of the categories of excluded assisters in order for Section 208 to have preemptive effect. Third, Section 208 does not authorize states to expand the categories of excluded assisters beyond those already set out by Congress.

The panel majority’s abandonment of impossibility preemption puts the Fifth Circuit at odds with other circuits. This split and the erroneous ruling below call for an exercise of this Court’s supervisory power.

REASONS FOR GRANTING THE PETITION

Respondents’ arguments regarding the circuit split avoid the issue—that the panel majority created a new conflict preemption doctrine that splits from other circuits.

I. THE PANEL MAJORITY CREATED A SPLIT IN HOW CIRCUIT COURTS ANALYZE PREEMPTION

Preemption analysis is not a “Choose Your Own Adventure” book in which courts are free to explore one, but ignore other, bases for conflict preemption. *See* State Resp. 9 (arguing that “a court may choose” one analytical framework). *But see Arizona v. United States*, 567 U.S. 387, 399 (2012) (“[S]tate laws are preempted when they conflict with federal law. This includes cases where ‘compliance with both federal and state regulations is a physical impossibility[.]’” (citation omitted)).

The mandatory conflict preemption analysis, and the one other circuits employ, requires a court to examine impossibility before concluding that a statute is not conflict preempted. If a court concludes that a statute is conflict preempted on “purposes and objectives” grounds, it need not examine whether a statute is impossibility preempted. *See, e.g., Churchill Downs Tech. Initiatives Co. v. Mich. Gaming Control Bd.*, 162 F.4th 631, 638 (6th Cir. 2025) (recognizing both impossibility and purposes tests then concluding the state statute was preempted on purposes grounds); *see also Voter Reference Found., LLC v. Torrez*, 160 F.4th 1068, 1080 (10th Cir. 2025) (same). And a court is free to find preemption on both grounds. *See Mi Familia Vota v. Fontes*, 129 F.4th 691, 710 (9th Cir. 2025). But if a court finds that a statute is not preempted on

“purposes and objectives” grounds, it must also examine impossibility.

Hencely v. Fluor Corp., on which State Respondents rely, reiterates: “[W]hen a regulated party cannot comply with both federal and state directives, the Supremacy Clause tells us the state law must yield.” 146 S. Ct. 1086, 1093 (2026) (quoting *Martin v. United States*, 605 U.S. 395, 409 (2025)); *see also* State Resp. 11 (“[T]he Supremacy Clause requires a state law to yield when, for example, ‘a regulated party cannot comply with both federal and state directives.’” (quoting *Martin*, 605 U.S. at 409)).

The panel majority never mentioned impossibility in its decision and certainly did not undertake that required analysis before concluding that S.B. 1 is not conflict preempted. *See, e.g.*, Pet. App. 32a (“Recall, moreover, that this is a ‘purposes and objectives’ claim.”).

Although the panel majority purported to “start with Section 208’s text” (Pet. App. 24a), it insisted that “nothing compels us to read” the text to mean what it says. Pet. App. 26a. *See also id.* at 25a (concluding it was “[u]nlikely” and “absurd[]” that Section 208 means what it says). Respondents concede that the panel majority did “not begin[] with a side-by-side textual comparison of Section 208 and Section 6.06[.]” State Resp. 12. *See also* Repub. Resp. 23 (“The panel’s review ‘start[ed] with Section 208’s text’ . . . while considering obstacle preemption, not impossibility preemption[.]”); State Resp. 4 (“The panel majority . . . analyzed the claim through the ‘purposes and objectives’ branch of the implied conflict preemption test.”).

The panel majority then erroneously concluded that “the district court erred by relying on the text of

Section 208 to find preemption of the Compensation Provisions.” Pet. App. 26a. The opposite is true. Comparing the text to conduct the impossibility analysis is a key step employed by other circuits and this Court. “[T]he same important matter” warranting the Court’s intervention here is preemption analysis itself. State Resp. 11 (quoting Sup. Ct. R. 10(a)).

II. THE DECISION BELOW IS INCORRECT

A. State Law Does Not Displace Section 208

State Respondents double down on the panel majority’s erroneous conclusion that a voter’s right to her chosen assister is defined first by the state. *See, e.g.,* State Resp. 23–24 (“Section 208 guarantees meaningful choice *within a legislatively defined class* of eligible assistors.”) (emphasis added). In Respondents’ view, Section 208 “permit[s] States to superintend voter assistance” by limiting who can serve as an assister before Section 208 comes into play. State Resp. 5; *see also* State Resp. 2 (asserting “[c]ompliance with both is straightforward” because the State limits the pool of “eligible assistor[s]” before the voter may choose from any remaining classes); Repub. Resp. 26 (“S.B.1 is clearly within Texas’s prerogative to ‘superintend voter assistance.’”) (citation omitted).

But Congress did not say that states may limit the right to assistance before Section 208’s guarantees apply. Instead, Congress provided disabled and low-literate voters the right to choose their assisters, and Congress set out the exceptions. 52 U.S.C. § 10508 (A voter has the right to “assistance by a person of the voter’s choice,” subject to four enumerated exceptions: “the voter’s employer or agent of that employer or officer or agent of the voter’s union.”).

In replacing Congress’s judgment with its own, the panel majority abandoned “the principle that it is Congress rather than the courts that pre-empts state law.” *Chamber of Com. of U.S. v. Whiting*, 563 U.S. 582, 607 (2011) (quoting *Gade v. Nat’l Solid Wastes Mgmt. Ass’n*, 505 U.S. 88, 111 (1992) (Kennedy, J., concurring in part and concurring in the judgment)).

B. Section 208’s Preemptive Effect Is Not Limited to Its Enumerated Categories

State Respondents argue that by granting the right to choose one’s assister, and naming four categories of excluded assisters (employers, union officers and their agents), Congress invited states to designate as many additional categories of excluded assisters as they want. In other words, states can ban unlimited additional categories of assisters, as long as Congress did not expressly permit them to assist. *See* State Resp. 3 (“Section 208 says nothing about whether assistors may be compensated.”).

State Respondents rely on *Puerto Rico Department of Consumer Affairs v. Isla Petroleum Corp.*, 485 U.S. 495 (1988) (State Resp. 12), but that case supports Petitioner’s argument: the Court explains that “[w]hile we have frequently said that pre-emption analysis requires ascertaining congressional intent, we have never meant that to signify congressional intent in a vacuum, unrelated to the giving of meaning to an enacted statutory text.” *P.R. Dep’t of Consumer Affs.*, 485 U.S. at 501 (internal citation omitted) (citing *La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 369 (1986)).

In Section 208, Congress chose to define the right in terms of the voter’s choice. And by excluding employers, union officials and their agents from the

pool of assisters from which a voter has the right to choose, Congress struck a balance between protecting and empowering voters. States may not disturb that balance, and Respondents' approach impermissibly collapses implied preemption into express preemption.

**C. The Presumption Against Preemption
Is Inapplicable to This Case and in Any
Event Is Overcome by the Plain
Meaning of Section 208**

State Respondents incorrectly assert that the presumption against preemption applies here. State Resp. 19. Regulation of federal elections does not fall within the states' "historic police powers" because states derive their authority to regulate federal elections from a delegation of power by the U.S. Constitution. *Cook v. Gralike*, 531 U.S. 510, 522–23 (2001). State Respondents concede that "Congress has broad authority to do so under the Reconstruction Amendments." See State Resp. 21 n.* (citing U.S. Const. amend. XV, § 2). As the dissent below correctly observed, the Voting Rights Act "authorizes federal intrusion into sensitive areas of state and local policy making[.]" Pet. App. 56a (quoting *Lopez v. Monterey Cnty.*, 525 U.S. 266, 282 (1999)).

Respondents pluck from *Shelby* the assertion that "the 'power to regulate elections' is one power that the 'Framers of the Constitution intended the States to keep for themselves,'" (State Resp. 12 (quoting *Shelby Cnty. v. Holder*, 570 U.S. 529, 543 (2013)); see also Repub. Resp. 18) but then ignore the next sentence: "Of course, the Federal Government retains significant control over federal elections." *Shelby Cnty.*, 570 U.S. at 543.

Even if the presumption applied here, and it does not, Section 208 demonstrates “the clear and manifest purpose of Congress,” *Wyeth v. Levine*, 555 U.S. 555, 565 (2009), by creating only four exceptions to a voter’s right to choose an assister. 52 U.S.C. § 10508. State Respondents misread *Wyeth* when they assert that Congress must provide “affirmative textual evidence” to preempt state law. State Resp. 19. *Wyeth* says no such thing, and a requirement that Congress include preemptive text, as explained above, improperly collapses implied preemption into express preemption.

D. S.B. 1 Is Preempted Because It Excludes “Categories” of Persons as Assisters

State Respondents take two wrong approaches to S.B. 1’s obvious conflict with Section 208. The first is denial. *See, e.g.*, State Resp. 17 (asserting that S.B. 1 “does not exclude anyone from the pool of eligible assisters”); *id.* at 13 (“Section 6.06 says nothing about whom a voter may choose.”).

The second wrong approach is State Respondents’ attempt to draw a distinction between S.B. 1 and Section 208 by claiming that S.B. 1 regulates “transactions” but not “persons[.]” *See* State Resp. 10 (“Section 208 and Section 6.06 . . . regulate different things.”); State Resp. 18 (arguing that S.B. 1 “restricts transactions”).

State Respondents frankly admit that “the trusted-person concern is exactly what animates the compensation ban” that bars LUPE employees from assisting. State Resp. 16. State Respondents’ characterization of LUPE employees as a category of people gives away the store.

Section 208’s four excluded categories are just as identity- and transaction-based as S.B. 1. All of

Section 208’s excluded categories—employers, union officials and their agents—are paid, and “compensation” defines their interaction with the voter. On the flip side, the assisters excluded by S.B. 1 have a “relationship to the voter.” State Resp. 22.¹

State Respondents have no convincing argument that S.B. 1 is not a “person-based restriction[]” when S.B. 1 prohibits voters from choosing assistance from LUPE employees they know and trust. State Resp. 7.²

S.B. 1’s assistance restriction is far broader than “simply prevent[ing voters] from compensating th[eir] assistors,” State Resp. 12, because it bans assistance from employees of social services agencies, *see id.* at 13 (claiming that S.B. 1 permits a voter to choose an assister as long as “no compensation changes hands”); *id.* at 22 (describing compensation as “conduct-based” even when the voter does not pay the assister). S.B. 1 bars voters from choosing assisters whose job duties include providing voter assistance, unless the assister is “an attendant or caregiver previously known to the voter.” Tex. Elec. Code § 86.0105(f) (2025). S.B. 1’s broad language prevents voters not only from choosing assisters they know and trust at LUPE, but also any other individual whose job includes helping others with daily tasks, including a hospital social worker,

¹ For this same reason, State Respondents are unable to escape the *expressio unius* canon which prohibited the panel majority from implying additional exceptions. *See* State Resp. at 5 (conceding that an “associated series [] triggers the negative-implication inference”).

² Republican Respondents’ claim that a LUPE employee “need only go off the clock for the time it takes to help the voter fill out the ballot” assumes, without evidence, that LUPE’s employees are hourly, not salaried, workers, and have the ability to “go off the clock” in the middle of their work day. Repub. Resp. 14.

employee of a homeless shelter, or an administrative assistant at City Hall who walks next door to the polling place on Election Day to assist voters. Not every voter who needs assistance has “an attendant or caregiver previously known to the voter;” and it is routine for voters who need help to turn to social services employees for assistance. *Id.*

State Respondents’ frequent, misapplied labels cannot save their argument. State Respondents variously describe the assisters prohibited under S.B. 1 as people paid by the voter (LUPE assisters are not), strangers to the voter (LUPE assisters are not) and “ballot harvesters” (LUPE assisters are not). *See* State Resp. 2 (arguing S.B. 1 ensures that “no compensation changes hands”); *id.* at 16 (“What the statute targets is a paid stranger.”); *id.* at 22 (asserting S.B. 1 is meant to target “ballot harvesters”). LUPE assisters, and many other social service workers are exactly the known and trusted assisters that Congress intended to make available to voters.

E. A Claimed Shared Purpose Cannot Overcome Conflict

Like the panel majority’s erroneous ruling, State Respondents argue that S.B. 1 is not conflict preempted because it “operates in conjunction with Congress’s purposes and objectives in Section 208[.]” State Resp. 13–14. But this Court has never authorized collapsing impossibility conflict preemption into the “purposes and objectives” test. Also, S.B. 1 poses an obstacle to Congress achieving its purposes and objectives.

A claimed shared purpose does not afford states unlimited power to regulate who may assist. Unlike

existing Texas statutes that prohibit voter coercion and fraud, S.B. 1 sweeps in and targets the neighbor's son paid \$20 as a thank you, the friend treated to lunch in exchange for help filling out a ballot, the City Hall secretary who assists voters, and the employee of a social services organization like LUPE.

Respondents' overly-expansive interpretation of purposes and objectives preemption replaces the inquiry into congressional intent with a state veto power over federal policy. In Section 208, Congress excluded four categories of assisters and otherwise gave voters the right to choose who may assist. 52 U.S.C. § 10508. And although State Respondents assert that reading the plain language of Section 208 is "maximalist," (State Resp. 16), it is State Respondents who take a maximalist approach when they claim no limits on their ability to regulate who may serve as an assister, as long as the state claims that the restriction "operates in harmony" with federal law. *Id.*

III. RESPONDENTS' VEHICLE OBJECTIONS LACK MERIT

Respondents' unsuccessful arguments in the court below fare no better as repackaged "vehicle" concerns.

First, the panel majority exercised jurisdiction over the case and decided the merits issues on appeal here; the case is a good vehicle whether or not the panel took up the question of private right of action. *See, e.g., Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005) ("Because these defensive pleas were not addressed by the Court of Appeals, and mindful that we are a court of review, not of first view, we do not consider them here.").

Second, the panel majority concluded that LUPE has standing. S.B. 1 directly regulates LUPE's

activities and bars LUPE's members from voting with the assistance of their chosen helpers. *See, e.g.*, Pet. App. 169a (citing testimony that LUPE members could no longer vote with their chosen assistants who were LUPE staff).

Finally, Respondents try but fail to sow confusion about the parties in this case. State Respondents suggest that they are not proper parties, *see* State Resp. 28, but ignore the fact that the case involves state and local defendants. *See* Pet. App. 7a–8a (describing defendants who are district attorneys and local election officials).

Respondent Sean Teare, the Harris County District Attorney, indicates that he “does not take any position on the question presented” in the Petition. Teare Resp. 6. Nevertheless, Mr. Teare misleadingly asserts that the claims of “the Plaintiffs, including Petitioner . . . against the HCDAO led to portions of the district court’s order awarding relief against the HCDAO,” *id.*, and that “various of the Plaintiffs, including Petitioner, amended their complaints to include as defendants the district attorneys of several major urban counties in Texas, including the HCDAO,” *id.* at 2. Mr. Teare is incorrect. LUPE did not name Mr. Teare or his predecessor, Kim Ogg, in its complaint, and has never maintained any claims against him in his official capacity or otherwise. Accordingly, when Mr. Teare asserts that he challenged “Plaintiffs’ lack of standing to bring . . . claims against the HCDAO,” at most he is describing arguments he raised against different plaintiffs in the case below. Those parties, and their specific facts, are not before the Court on this Petition. In any event, as Mr. Teare concedes, the Fifth Circuit concluded that LUPE had standing to challenge Section 6.06 of S.B. 1. *See id.* at 6 (citing *La Union del*

Pueblo Entero v. Abbott, 151 F.4th 273, 282 (5th Cir. 2025)).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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