No. 25-916

IN THE

Supreme Court of the United States

OCA-GREATER HOUSTON,

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

John M. Gore
Counsel of Record
E. Stewart Crosland
David Wreesman
JONES DAY
51 Louisiana Ave., NW
Washington, DC 20001
(202) 879-3939
jmgore@jonesday.com

Counsel for Respondents Harris County Republican Party, Dallas County Republican Party, National Republican Senatorial Committee, National Republican Congressional Committee, Republican National Committee

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 assistors 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.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i
RULE 29.6 STATEMENT ii
TABLE OF AUTHORITIES v
INTRODUCTION 1
STATEMENT OF THE CASE 3
A. Legal background 3
B. Factual and procedural history 5
REASONS FOR DENYING THE PETITION 11
I. THERE IS NO CIRCUIT SPLIT. 11
A. There is no split on Petitioner's Question Presented. 11
B. Petitioner's purported 1–1 split is illusory. 12
C. This Court does not take cases to resolve claimed analytical differences. 13
II. THE FIFTH CIRCUIT CORRECTLY HELD THAT SECTION 208 DOES NOT PREEMPT S.B.1. 14
A. The Fifth Circuit rightly applied a presumption against preemption, but it did not matter regardless. 14
B. Section 208 does not preempt S.B.1. 18
1. This is not an impossibility-preemption case. 20

2. The Fifth Circuit's obstacle-preemption analysis was correct. 21

III. THE PETITION PRESENTS MULTIPLE FATAL VEHICLE PROBLEMS. 28

A. Petitioner lacks standing. 29

B. Section 208 does not provide a private right of action. 32

C. Petitioner's preferred reading of Section 208 unnecessarily raises constitutional issues. 33

D. The Court should wait to consider Section 208's preemptive reach. 34

CONCLUSION 36

TABLE OF AUTHORITIES

Page(s)

CASES

Ala. State Conf. of the NAACP v. Marshall,
2024 WL 4448841 (N.D. Ala. Oct. 4, 2024) 5

Ala. State Conf. of the NAACP v. Att'y Gen., Ala.,
161 F.4th 1286 (11th Cir. 2025) 12, 34

Altria Grp., Inc. v. Good,
555 U.S. 70 (2008) 15

Arizona v. City & County of San Francisco,
596 U.S. 763 (2022) 29

Arizona v. United States,
567 U.S. 387 (2012) 19

Ark. State Conf. NAACP v. Ark. Bd. of Apportionment,
86 F.4th 1204 (8th Cir. 2023) 32

Ark. United v. Thurston,
626 F. Supp. 3d 1064 (W.D. Ark. 2022) 5

Ark. United v. Thurston,
146 F.4th 673 (8th Cir. 2025) 12, 34

Bd. of Trs. v. Garrett,
531 U.S. 356 (2001) 33

Beaulieu v. United States,
497 U.S. 1038 (1990) 2, 11

Biden v. Nebraska,
600 U.S. 477 (2023) 25

Buckman Co. v. Plaintiffs' Legal Comm.,
531 U.S. 341 (2001) 16

Carey v. Wis. Elections Comm'n,
624 F. Supp. 3d 1020 (W.D. Wis. 2022) 5

Chamber of Com. of U.S. v. Whiting,
563 U.S. 582 (2011) 17, 19

City of Boerne v. Flores,
521 U.S. 507 (1997) 2, 33

CTS Corp. v. Waldburger,
573 U.S. 1 (2014) 15

Disability Rights N.C. v. N.C. State Bd. of Elections,
602 F. Supp. 3d 872 (E.D.N.C. 2022) 5

FDA v. All. for Hippocratic Med.,
602 U.S. 367 (2024) 16, 30

Fla. Lime & Avocado Growers, Inc. v. Paul,
373 U.S. 132 (1963) 20

Fla. State Conf. of the NAACP v. Browning,
522 F.3d 1153 (11th Cir. 2008) 13

Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.,
528 U.S. 167 (2000) 30, 31

Hernandez v. Mesa,
589 U.S. 93 (2020) 32

Hughes v. Talen Energy Mktg., LLC,
578 U.S. 150 (2016) 19, 28

In re DSCC,
950 N.W.2d 280 (Minn. 2020) 5

Jones v. Rath Packing Co.,
430 U.S. 519 (1977) 16

La Unión Del Pueblo Entero v. Abbott,
167 F.4th 743 (5th Cir. 2026) 7, 8

La Unión Del Pueblo Entero v. Abbott,
119 F.4th 404 (5th Cir. 2024) 8

La Unión Del Pueblo Entero v. Abbott,
68 F.4th 228 (5th Cir. 2024) 8

La Unión Del Pueblo Entero v. Abbott,
29 F.4th 299 (5th Cir. 2022) 8

Maryland v. Louisiana,
451 U.S. 725 (1981) 15

Maslenjak v. United States,
582 U.S. 335 (2017) 34

McDonald v. Bd. of Election Comm'rs of Chi.,
394 U.S. 802 (1969) 35

McFadden v. United States,
576 U.S. 186 (2015) 22

Medtronic, Inc. v. Lohr,
518 U.S. 470 (1996) 15, 26

Mi Familia Vota v. Ogg,
105 F.4th 313 (5th Cir. 2024) 8

Murphy v. NCAA,
584 U.S. 453 (2018) 18

OCA-Greater Houston v. Esparza,
No. 1:21-cv-780 (W.D. Tex. Sep. 3, 2021) 31

ONEOK, Inc. v. Learjet, Inc.,
575 U.S. 373 (2015) 18

PLIVA, Inc. v. Mensing,
564 U.S. 604 (2011) 17

Presley v. Etowah Cnty. Comm'n,
502 U.S. 491 (1992) 17

Priorities USA v. Nessel,
628 F. Supp. 3d 716
(E.D. Mich. 2022) 5

Pulsifer v. United States,
601 U.S. 124 (2024) 22

Rivers v. Guerrero,
605 U.S. 443 (2025) 12, 30

Sessions v. Morales-Santana,
582 U.S. 47 (2017) 29, 30

Shelby County v. Holder,
570 U.S. 529 (2013) 3, 16, 27

Sosa v. Alvarez-Machain,
542 U.S. 692 (2004) 32

State ex rel. Ohio Democratic Party v. LaRose,
2024-Ohio-4953 (2024) 5

United States v. Bd. of Comm'rs,
435 U.S. 110 (1978) 33

United States v. Paxton,
148 F.4th 335 (5th Cir. 2025) 8

United States v. Paxton,
No. 23-50885 (5th Cir. Dec. 15, 2023) 8

Veasey v. Abbott,
830 F.3d 216 (5th Cir. 2016) 6

Whitman v. Am. Trucking Ass'ns, Inc.,
531 U.S. 457 (2001) 22

Wyeth v. Levine,
555 U.S. 555 (2009) 16, 17

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const. amend. XIV, § 1 33

Tex. Const. art. IV, § 14 31

52 U.S.C. § 10308 32

52 U.S.C. § 10508 ..... 4, 20, 29

Act of Aug. 31, 2021, 87th Leg., 2d C.S., ch. 1, 2021 Tex. Gen. Laws 3873 6

Cal. Elec. Code § 14282 23

Haw. Rev. Stat. § 11-139 5

La. Stat. Ann. § 18:564 23

N.C. Gen. Stat. § 163-166.8 5

S.B.1, § 10.04 ..... 7, 31

Tex. Elec. Code Art. 8.13 (1957) 5

Tex. Elec. Code § 1.0015 6

Tex. Elec. Code § 64.0322 6

Tex. Elec. Code § 64.034 6

Tex. Elec. Code § 86.0105 ..... 7, 20

Va. Code Ann. § 24.2-604.5 23

Voting Rights Act of 1965, 79 Stat. 437 3

OTHER AUTHORITIES

Appendix to Hearings on S. 1992 (Jan. 27, 28, Feb. 1, 2, 4, 11, 12, 25, and March 1, 1982) 3, 27

S. Rep. No. 97-417 (1982) 3, 4, 28

Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* (2012) 25

Stephen M. Shapiro et al., *Supreme Court Practice* § 4.3 (11th ed. 2019) 14

Sup. Ct. R. 10 14

R.A. Taggart & J.C. Henegan, *The Mississippi Election Code of 1986: An Overview*, 56 Miss. L.J. 535 (1986) 4

Tex. H.J., 87th Leg., 2d C.S. 319–20 (daily ed. Aug. 31, 2021) 33

Tex. S.J., 87th Leg., 2d C.S. 84 (daily ed. Aug. 11, 2021) 33

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.171a. 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 Fifth Circuit's analysis, claiming its opinion is in tension with a single Eleventh Circuit case that also did not find preemption. That is no ground for review: "[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 then argues for preemption without even addressing the relevant legal standards. Under the correct preemption analysis, Petitioner's position is meritless.

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.19a 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 are swearing 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 assistors 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. OCA-Greater Houston (OCA), Petitioner here, sued to enjoin S.B.1 on September 3, 2021. OCA brought a host of claims challenging several of S.B.1's provisions, including under the First and Fourteenth Amendments and various provisions of the VRA and ADA. The District Court consolidated OCA'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.108a. To the court, Section 208 prioritizes voter preference above all else and forbids any State regulation that might "discourage[] assistance." Pet.App.120a. The court thus invalidated S.B.1's oath requirement, its requirement that assistors disclose certain information on a form, and its ban on paid voter assistance for mail voting. Pet.App.143a–48a.

---

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.159a–65a. The court then turned to § 6.06, S.B.1's restrictions on compensating assistors. 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.166a.

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. LUPE.CA5.Br.1; *see also* OCA.CA5.Br.3 (joining LUPE brief). Thus, for example, states could not even "ban convicted felons from assisting voters." LUPE.CA5.Br.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.169a. 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.169a–70a.

The court began with Section 208's text, which "guarantee[s] eligible voters help from 'a person' of their choice." Pet.App.173a. 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.171a–72a (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.173a. And that narrower reading was bolstered by the absence of anything in Section 208's text 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.175a–77a. 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.177a–79a.

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 eligible 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 points this Court to a single case where the Eleventh Circuit chose not to apply a presumption against preemption when analyzing *different statutes*. *See* Pet.24 (citing *Fla. State Conf. of the NAACP v. Browning*, 522 F.3d 1153, 1168 (11th Cir. 2008)). But this purported 1–1 "split" is no basis for this Court's review because the case involved a different context and, just like the Fifth Circuit, the Eleventh Circuit found no preemption.

And even if the Eleventh Circuit does not apply a presumption against preemption in one context and the Fifth Circuit does in another, 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 analyze issues 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 Section 208's preemptive effect.

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. Petitioner's purported 1–1 split is illusory.

With no relevant circuit split on its Question Presented, Petitioner instead offers a one-sentence argument that there is a 1–1 circuit split between the Fifth Circuit and the Eleventh Circuit. *See* Pet.24. This is not the sort of "entrenched" circuit split that calls for this Court's review. *Rivers v. Guerrero*, 605 U.S. 443, 449 (2025). And even if the Eleventh Circuit chose not to apply a presumption against preemption in *Florida NAACP v. Browning*, it did so in a different context and still reached the same outcome regardless.

In *Browning*, the Eleventh Circuit considered whether a Florida statute was preempted by the Help America Vote Act (HAVA) or the Civil Rights Act. 522 F.3d at 1167. Though plaintiffs in the case had also brought a preemption claim under § 2 of the VRA (*not* Section 208), the district court had dismissed the VRA claim, and plaintiffs did not appeal that ruling. *Id.* at 1159. So the Eleventh Circuit had no opportunity to consider the preemptive reach of the VRA, much less Section 208 in particular.

In its analysis of preemption under HAVA and the Civil Rights Act, the Eleventh Circuit declined to apply a presumption against preemption. *Id.* at 1167–68. But that analytical move made no difference because, just like the Fifth Circuit in this case, the Eleventh Circuit found no preemption. *Id.* at 1167. So the presence or absence of a presumption was not dispositive, just like in the Fifth Circuit below, where the panel's similar holding also did not rest on any presumption. Pet.App.173a (first finding no preemption and then noting, "moreover," that this result was bolstered by presumption against preemption).

Whatever variation might be found in the analytical paths taken by the Fifth and Eleventh Circuits in these two cases, they reached the same result. There is no split here for this Court to address.

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

Unable to show a relevant circuit split on its Question Presented, Petitioner says only that the Fifth Circuit approaches preemption differently from the Eleventh Circuit. That claimed split is illusory, as Respondents have explained. But even if the Fifth

Circuit's analytical framework is different from the Eleventh Circuit, that *still* is not 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 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.* § 4.3 n.21, not requests to clarify whether a particular presumption might apply in cases that have reached the same result, *see* Pet.24. "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. 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.170a (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 because it "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 elec-

tions, including State and local elections, which are undoubtedly a traditional field of State regulation. *Shelby Cnty.*, 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.170a, and Petitioner nowhere disagrees. 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 attempts to extricate itself from this heightened presumption by pointing to VRA cases that did not involve Section 208. Pet.24; *see also* Pet.15. The argument appears to be that because *some* provisions of the VRA have preemptive effect, Congress intended *all* provisions of the VRA to preempt State law, including Section 208. But Petitioner cites no case for the notion that a finding of preemption in one provision of an act turns off the presumption against preemption for unrelated provisions, and this Court has applied the presumption against preemption in the context of statutes it has elsewhere found preemptive. *Compare, e.g.*, *Buckman Co. v. Plaintiffs' Legal Comm.*, 531 U.S. 341, 348 (2001) (State law "fraud-on-the-FDA" claims impliedly preempted by FDCA), *with Wyeth v. Levine*, 555 U.S. 555, 574–75 (2009) (presumption indicated FDCA and associated regulations did not preempt State failure-to-warn claims). And though this Court has found preemption in some VRA cases, it has also refused to find State law preempted in other instanc-

es. *See Presley v. Etowah Cnty. Comm'n*, 502 U.S. 491 (1992) (changes to distribution of power among officials not covered by VRA § 5).

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*, 555 U.S. at 573, and its "precedents 'establish that a high threshold must be met if a state law is to be preempted 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.

The Fifth Circuit did not begin its analysis with the presumption or find it controlling. *See* Pet.App.171a–73a. 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 assistors, but this choice is not unfettered, with States still permitted to "superintend voter assistance." Pet.App.173a.

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.

When it analyzed Petitioner's preemption claim, the Fifth Circuit was not writing on a blank slate. This Court's precedent establishes broad categories and clear analytical steps for determining whether federal law preempts a state statute. As the Fifth Circuit noted, the clearest form of preemption is "express preemption," where a federal statute contains a clause expressly stating Congress's intent to preempt state law. Pet.App.169a. Next is "field preemption," *id.*, where Congress has so thoroughly regulated a field of law that "'it has left no room for supplementary state legislation,'" *Murphy v. NCAA*, 584 U.S. 453, 479 (2018). Petitioner does not attempt to argue this case presents either of those types of preemption.

That leaves only "conflict preemption," which comes in two forms: "impossibility preemption" and "obstacle preemption." *See ONEOK, Inc. v. Learjet,*

Inc., 575 U.S. 373, 377 (2015). Under impossibility preemption, a state law stands unless "'compliance with both federal and state regulations is a physical impossibility.'" *Arizona v. United States*, 567 U.S. 387, 399 (2012). Obstacle preemption requires a finding that 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.169a.

Petitioner does not engage with any of this body of precedent. It never even mentions the relevant categories of preemption, much less identifies the type of conflict-preemption claim it is bringing. Nor does Petitioner claim it is physically impossible to comply with both S.B.1 and Section 208. Instead, it simply declares that S.B.1 is "in open and obvious conflict with Section 208" because "a central purpose of Section 208" is "[e]nsuring that state restrictions on voter assistance do not infringe the rights of blind, disabled, and limited-English-proficient voters" and S.B.1 affects the universe of possible assistors. Pet.19.

This is precisely the sort of "freewheeling inquiry" into speculative "tensions with federal objectives" that this Court's precedent forbids. The Fifth Circuit rightly found this was not an impossibility preemption case and that S.B.1 does not satisfy the requirements for obstacle preemption. Its preemption holding was correct.

1. This is not an impossibility-preemption case.

The Fifth Circuit found that Petitioner had presented only an obstacle-preemption challenge, and that S.B.1 did not implicate impossibility preemption. Pet.App.169a ("This case involves only conflict preemption and, specifically, the variant known as 'purposes and objectives' preemption."). Rightly so.

State law directly conflicts with federal law when "compliance with both … is a physical impossibility." *Fla. Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142–43 (1963). But 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, *id.* at 143, it does not 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 operative 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. There is nothing in the record indicating that compensated assistors are the only assistors available to eligible

voters. *See* CA5.ROA.40537 (OCA program director testifying she knew of no OCA members unable to find assistors under S.B.1). 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. Petitioner's Section 208 claim does not present an impossibility-preemption issue.

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

After finding no impossibility preemption, the Fifth Circuit turned to obstacle preemption, where it held that text, context, and legislative history all pointed against finding preemption here. That holding was correct.

a. As an initial matter, Petitioner's tendentious claim that the Fifth Circuit "rejected the statute's text as an analytical starting point altogether" and faulted the District Court for "'relying on the text of Section 208'" is baseless. Pet.14–15, 21; *see also id.* at 1–2, 13, 22–24. The court "*start[ed] with Section 208's text*" and sought to correctly "read[]" the operative "phrase—'a person of the voter's choice.'" Pet.App.171a, 173a n.18 (emphasis added). It also considered and rejected an argument that the *expressio unius* canon controlled the meaning of Section 208's text. Pet.App.175a–77a.

The panel did not endorse an "atextual approach." Pet.24. It started with text and simply disagreed with Petitioner.

b. Section 208's text does not support Petitioner. It 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.

c. 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; *see also* OCA.CA5.Br.3 (joining LUPE brief). So, for example, States "cannot impose … a restriction" "ban[ning] convicted felons from assisting voters." LUPE.CA5.Br.34. 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.171a (cleaned up). If Petitioner were right, any number of State laws would fall. *See id.* Pet.App.171a 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.173a. Nothing in the text's statement that eligible voters "may be given assistance by

---

[2] As the Fifth Circuit recognized, this concession "give[s] away the store." Pet.App.172a. 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.

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.* Petitioner is simply wrong when it claims that, aside from its maximalist reading that would "vaporize" numerous common-sense state laws, Pet.App.171a, "[n]o … alternative" interpretation of Section 208 exists, Pet.23 n.8. As the Fifth Circuit found, voters generally may use an assistor whom they have chosen, but States can still implement modest limitations to prevent undue influence and promote orderly elections.

Ironically, Petitioner claims that the Fifth Circuit's application of the absurdity canon "lacks any 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 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

---

[3] Perhaps to provide some limit to its interpretation, Petitioner invokes the concept of "willingness," saying that Section 208 is limited to assistors "willing and able to provide" assistance. Pet.17–18. It is difficult to see how that purported limitation is derived from Section 208's text—one can certainly be forced to "'make another the recipient of []something'" or "'help[] or assist[] someone'" against one's will. *Id.* Regardless, no one is arguing that States must forcibly compel individuals to provide

demand that "breathtakingly broad interpretation." Pet.App.171a (cleaned up).

An extreme State limitation on voter assistance might present a Section 208 issue—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. 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.173a.

d. Nor does the *expressio unius* canon help Petitioner. *See* Pet.16–17.

As the Fifth Circuit acknowledged, *expressio unius* is not an inexorable command. Pet.App.175a ("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*,

---

assistance. 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. The Fifth Circuit rightly found that Section 208's text does not compel that result.

600 U.S. 477, 512 (2023) (Barrett, J., concurring) ("Context also includes common sense.").

Here, context forecloses Petitioner's interpretation of Section 208. Like the restaurant owner who encounters dogs more often than giraffes, Congress likely singled out voters' employers and un-ions because they can easily exert improper influence and voters might frequently choose them (or be coerced into choosing them). *See* Pet.App.176a. 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.* 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.

In the face of that, Petitioner says, "Nothing in Section 208's text authorizes states to impose additional limits on voters' choice of assistors beyond the two enumerated exclusions." Pet.16. Such an approach to preemption turns the analysis on its head.

Regulation of elections is part of the "historic police powers" reserved to the States by the Tenth Amendment. Pet.App.170a; *see Shelby County*, 570 U.S. at 543 ("'[T]he Framers of the Constitution intended the States to keep for themselves, as provided in the Tenth Amendment, the power to regulate elections.'"). States do not need "authoriz[ation]" from Congress to regulate in this area. Pet.16.

e. Finally, the Fifth Circuit got Section 208's legislative history right.

Most importantly, "a committee report is not the law." Pet.App.177a. Recognizing this puts legislative history in its proper place—only the law as "passed by Congress and signed by the President" controls. *Id.* Contrary to Petitioner's argument, that this Court has used legislative history to interpret *other portions of the VRA* does not make it "authoritative as to Section 208." *Id.*; *see* Pet.18.

Moreover, "legislative history cannot overcome the presumption against preemption." Pet.App.177a. That presumption requires a "clear and manifest" intent to preempt. Scattered statements from a committee report do not fit the bill.

And, fatal for Petitioner's arguments here, "even if the Senate Report [for Section 208] were relevant, it would cut against preemption, not in favor of it." Pet.App.178a. 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. Most relevant 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 Petitioner's Question Presented. *Arizona v. City & County of San Francisco*, 596 U.S. 763, 766 (2022) (Roberts, J., concurring). This is not the vehicle for the questions presented here.

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.159a–65a. 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.165a–68a. This outcome appeared to rest on a theory of organizational standing. *See* Pet.App.166a (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.158a–59a,88a, 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.165a–67a,100a–02a.

This Court is not in a position to pass on Petitioner's associational standing in the first instance. *See Rivers*, 605 U.S. at 458 (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. Now is not the time to comb through the record and determine whether Petitioner has presented sufficient evidence to show its members have been injured by S.B.1. 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.[4] 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 did sign 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.

---

[4] Petitioner's claim that it sued "[a]fter S.B.1's enactment" is simply wrong. Pet.11; *see* Complaint, *OCA-Greater Houston v. Esparza*, No. 1:21-cv-780 (W.D. Tex. Sep. 3, 2021).

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; *see also* OCA.CA5.Br.3 (joining LUPE brief). 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 compensation 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.

May 20, 2026

Respectfully submitted,

John M. Gore
Counsel of Record
E. Stewart Crosland
David Wreesman
JONES DAY
51 Louisiana Ave., NW
Washington, DC 20001
(202) 879-3939
jmgore@jonesday.com

Counsel for Respondents Harris County Republican Party, Dallas County Republican Party, National Republican Senatorial Committee, National Republican Congressional Committee, Republican National Committee