

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 WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF FOR PETITIONER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTRODUCTION 1

ARGUMENT 2

I. THIS CASE PRESENTS AN IMPORTANT
AND RECURRING QUESTION
WARRANTING REVIEW..... 2

II. THE DECISION BELOW IS WRONG ON
THE MERITS..... 4

 A. Section 208 Preempts Texas’s Prohibition
 on Assistance by Compensated Persons
 Chosen by Voters..... 4

 B. Generalized Anti-Fraud Interests Cannot
 Override Section 208’s Plain Text. 8

 C. No Presumption Against Preemption
 Applies. 10

III. RESPONDENTS’ VEHICLE OBJECTIONS
LACK MERIT..... 11

CONCLUSION..... 14

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Arizona v. United States</i> , 567 U.S. 387 (2012)	6, 11
<i>Barnhart v. Peabody Coal Co.</i> , 537 U.S. 149 (2003)	7, 8
<i>Chiaverini v. City of Napoleon</i> , 602 U.S. 556 (2024)	12
<i>Conn. Nat’l Bank v. Germain</i> , 503 U.S. 249 (1992)	7
<i>Felder v. Casey</i> , 487 U.S. 131 (1988)	6
<i>Fla. State Conf. of NAACP v. Browning</i> , 522 F.3d 1153 (11th Cir. 2008)	11
<i>Geier v. Am. Honda Motor Co., Inc.</i> , 529 U.S. 861 (2000)	6
<i>Katzenbach v. Morgan</i> , 384 U.S. 641 (1966)	10
<i>La Union del Pueblo Entero v. Abbott</i> , 167 F.4th 743 (5th Cir. 2026)	5
<i>Lopez v. Monterey Cnty.</i> , 525 U.S. 266 (1999)	10
<i>Miller v. Johnson</i> , 515 U.S. 900 (1995)	10
<i>Oneok, Inc. v. Learjet, Inc.</i> , 575 U.S. 373 (2015)	6

Other Authorities	Page(s)
S. Rep. No. 97-417 (1982)	8, 9, 12
Shim, Kyuwon, Michelle David & Susana Lorenzo-Giguere, <i>An Asian American Challenge to Restrictive Voting Laws: Enforcing Section 208 of the Voting Rights Act in Texas</i> , 26 CUNY L. Rev. F. 169 (2023)	3

Statutes, Rules, and Regulations	Page(s)
52 U.S.C. § 10508.....	1, 2, 4, 6, 8, 9, 10
S.B.1	1, 9
S.B.1, §6.06.....	2, 9
Sup. Ct. R. 10(c)	3
Tex. Elec. Code § 86.0105	4
Tex. Elec. Code. § 276.013	9
Voting Rights Act, § 208	1, 2, 3, 4, 7, 8, 9, 10, 11, 12

INTRODUCTION

Respondents do not dispute that Texas law prohibits compensated assistors from providing mail-ballot assistance, or that it criminalizes such assistance by paid staff of service organizations like Petitioners. The trial record further shows that State officials have taken the position that the ban extends even to volunteers who receive *de minimis* in-kind gifts such as a t-shirt or a bottle of water. Indeed, Respondents confirm the Texas statute’s broad sweep: it “prohibit[s] compensating any person for assisting a mail-in voter,” State Br.i, and “prevent[s] assistors from being compensated for their assistance,” GOP Br.1.¹

The Texas law conflicts with Section 208 of the Voting Rights Act, which guarantees that covered voters may receive assistance from “a person of the voter’s choice,” with only two enumerated exceptions. 52 U.S.C. § 10508. Respondents try to avoid that collision by characterizing Section 208 as regulating “persons” while the Texas law, they say, regulates “transactions.” State Br.1. But no amount of wordplay can paper over the direct conflict between S.B.1’s assistance ban and Section 208.

Under Section 208, states are not free to prohibit broad categories of otherwise eligible assistors, as Respondents wrongly suggest. *E.g.*, GOP Br.10, 17–18. Nor is Section 208 “silent” on whether compensated persons may serve as assistors. State Br.12. The federal statute expressly says that a

¹ The briefs of Respondents Paxton, Att’y Gen. of Texas, et al. and Harris County Republican Party, et al., in opposition are hereinafter noted as “State Br.” and “GOP Br.,” respectively.

disabled voter or voter with limited English proficiency (“LEP”) may choose “a person of the voter’s choice.” 52 U.S.C. § 10508. It expressly provides for only two exceptions—the voter’s employer and their union—where Congress believed that the risk of undue influence outweighed the need to give voters freedom to choose their assistor. *Id.* Other than these two exceptions, Section 208 is explicit that disabled or LEP voters are free to choose their assistor; that includes someone who is a compensated canvasser or social service provider.

The decision below strips Section 208 of its intended practical force for voters with disabilities and limited English proficiency. It conflicts with the plain language and prevailing understanding of Section 208 and invites states to impose sweeping restrictions on who may assist disabled and LEP voters. Certiorari should be granted.

ARGUMENT

I. THIS CASE PRESENTS AN IMPORTANT AND RECURRING QUESTION WARRANTING REVIEW.

There is no real dispute about what Section 6.06 of S.B.1 does. Respondents agree that the statute criminalizes compensated mail-ballot assistance. State Br.3; GOP Br.6. They likewise do not dispute that OCA-GH’s compensated staff and volunteers are among the individuals who covered voters choose and rely upon for assistance. State Br.13; GOP Br.9.

Respondents suggest that Section 6.06 merely regulates “compensation” rather than “assistance.” State Br.16; GOP Br.20. But that framing obscures how the Texas law operates. It is not a “compensation

ban.” As Respondents themselves acknowledge, “[w]hat the statute targets is a paid [assistant].” State Br.16; *see also* GOP Br.20. Respondents ultimately acknowledge that the Fifth Circuit’s rule “allow[ing] states to superintend voter assistance,” includes banning and criminalizing voter assistance by whole categories of willing and able persons whom blind, disabled, and LEP voters would otherwise choose to assist them. Pet.App.169a; *see also, e.g.*, GOP Br.17–18, 23–24.

That is the unavoidable conflict between Section 208 and the Texas law.

Respondents also agree that the question whether Section 208 preempts state law restrictions on voter assistance is a recurring issue in the lower courts. *E.g.*, State Br.6–8. They do not dispute that similar restrictions have generated litigation nationwide and that many courts have concluded that Section 208 preempts similar restrictions. The decision below splits with those other federal courts. *Id.*

Review is warranted because the Fifth Circuit panel majority adopted a consequential and flawed interpretation of a recurring and “important question of federal law” affecting fundamental rights. Sup. Ct. R. 10(c). Its decision substantially narrows Section 208’s protections for millions of Texas voters who rely on community organizations and outreach workers for assistance. *See, e.g.*, Kyuwon Shim, Michelle David & Susana Lorenzo-Giguere, *An Asian American Challenge to Restrictive Voting Laws: Enforcing Section 208 of the Voting Rights Act in Texas*, 26 CUNY L. Rev. F. 169, 171 (2023).

II. THE DECISION BELOW IS WRONG ON THE MERITS.

A. Section 208 Preempts Texas's Prohibition on Assistance by Compensated Persons Chosen by Voters.

Section 208 provides that “[a]ny voter” who requires assistance because of blindness, disability, or language barrier “may be given assistance by a person of the voter’s choice.” 52 U.S.C. § 10508. It expressly excludes two categories of assistors: the voter’s employer or union. *Id.* Congress thus gave disabled, blind, and LEP voters broad choices to maximize their ability to obtain ballot assistance.

Under Section 208, disabled or LEP voters may choose to “be given assistance” by anyone other than their employer or union. They may choose a staffer or volunteer from a trusted social service organization—for example, at a community event or at their door—regardless of whether that assistor is compensated. *Id.* They may choose an assistor who has received a t-shirt, bottle of water, or a pre-paid gas card for their participation. *Id.* Petitioners’ employees and volunteers regularly provide exactly this kind of assistance—which is permitted under federal law but criminalized under Texas law. Tex. Elec. Code § 86.0105.

In the face of this clear conflict between federal and state laws, Respondents argue that Texas law “does not prevent mail-in voters from choosing the assistors of their choice; it simply prevents them from compensating those assistors.” State Br.12; *see also id.* at 25. That framing is disingenuous. As Respondents know from the proceedings below, it is generally not

the voters who compensate Petitioners or their employees and volunteers.

Rather, as the record reflects, disabled or LEP voters sometimes choose assistors from social service or community organizations like Petitioner OCA-GH, whose paid staffers and nominally compensated volunteers offer mail-ballot assistance at routinely scheduled events in the community. *See* Pet.App.25a–27a, 157a–158a; Ct.App.ROA.40488–40491, 40494–40507, 40515, 40518–40519, 40533.² Voters do not control whether workers at such organizations are compensated. Organizations like OCA-GH—which provides English-language assistance in the Greater Houston area, Ct.App.ROA.40508–40509—must pay their staff and support their volunteers, including when their work involves providing mail-ballot assistance to those who need and request it. Yet Texas law prohibits disabled and LEP voters from choosing assistors from service organizations that serve their communities.

Respondents elsewhere argue that State law allows a voter to “choose any assistor . . . provided the

² Respondents suggest that volunteers who received bottled water or t-shirts may not be covered by the assistance prohibition, citing a different panel’s decision in a different appeal involving different claims. State Br.15–16 (citing *La Union del Pueblo Entero v. Abbott*, 167 F.4th 743, 757–58 (5th Cir. 2026)). But the factual findings here are to the contrary. State officials testified that small gratuities could trigger Texas’s criminal ban. Pet.App.25a; Ct.App.ROA.40488–40489, 40494–40495, 40515, 40518–40519, 40531. For example, the former Director of Elections for the Texas Secretary of State confirmed liability could attach for as little as a voter “buy[ing] a friend lunch” or an organization “offer[ing] a volunteer \$20.” Pet.App.73a; *see also* Ct.App.ROA.40705–40707.

assistant is not compensated.” State Br.13. That at least accurately states what Texas law provides, but it only highlights the conflict with federal law. Again: some voters choose to “be given assistance” by a paid staffer or volunteer from OCA-GH or similar groups who may receive in-kind compensation like snacks or a t-shirt. Federal law protects that choice. 52 U.S.C. § 10508. Texas law criminalizes it—and therefore interferes with Congress’s design.

Texas law is accordingly preempted. Respondents expound on various flavors of federal preemption doctrine, e.g., State Br.8–15; GOP Br.18–21, but the applicable framework here is clear: a state law is preempted where it creates an “actual conflict” with federal law’s objectives. *Geier v. Am. Honda Motor Co., Inc.*, 529 U.S. 861, 874–86 (2000); *accord Arizona v. United States*, 567 U.S. 387, 406 (2012); *see also, e.g., Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373, 377 (2015) (preemption where state law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress”); *Felder v. Casey*, 487 U.S. 131, 151 (1988) (preemption where state law “interferes with and frustrates the substantive right Congress created”).

This includes where state law forbids conduct or decisions that federal law protects. *See, e.g., Geier*, 529 U.S. at 881. Thus, in *Geier*, a state rule requiring cars to have driver’s side airbags was preempted because it conflicted with a federal rule that permitted some vehicles to operate without those airbags. *Id.* That is precisely analogous to this case: the Texas law requires voters to use uncompensated assistants, but federal law protects covered voters’ right to choose any assistant other than their employer or union—

including compensated assistants such as staffers and volunteers from social service organizations like OCA-GH.

Respondents cannot escape the conflict between the plain text of the state and federal laws at issue. *E.g.*, *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992). Regarding text, they claim that Section 208's use of the indefinite article in “a person of their choice” helps them, because Congress could have said “any person” instead.³ State Br.24–25; GOP Br.22. But the text's ordinary meaning, read as a whole, is clear: “a person of the voter's choice,” means *any* person of the voter's choice. *See* Pet.16 & n.5 (citing dictionaries and supporting authority).

The phrase “a person of their choice” is then expressly limited by only two specific exemptions—meaning no others apply. *See* Pet.17 & n.6 (citing recent cases applying *expressio unius* canon). Respondents are wrong to suggest that the statute permits additional, unspecified exclusions to be read into the text. *E.g.*, State Br.22 (citing *Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 168 (2003)); *see also* GOP Br.25–27. Congress expressly chose to deal with the potential for undue influence, intimidation, or impropriety by providing that voters may not choose their employer or union—and it did *not* exclude compensated persons, choosing instead to maximize the freedom of disabled and LEP voters to choose “a

³ State Respondents acknowledge that the panel majority did “not begin[] with a side-by-side textual comparison of Section 208 and Section 6.06,” as it should have. State Br.12. And neither Respondent defends the court of appeals' remarkable statement that “the district court *erred by relying on the text* of Section 208” in its preemption analysis. Pet.App.169a (emphasis added).

person whom the voter trusts.” S. Rep. No. 97-417, at 62 (1982). It is more than “fair to suppose that Congress considered” broader exemptions but rejected them. *Barnhart*, 537 U.S. at 168.

Respondents also retread their absurdity argument asserting that the straightforward preemption analysis here would leave states powerless to prevent a disabled voter from choosing an incarcerated person or “gun-toting assistor” to accompany them into the polls. State Br.18; GOP Br.22–25; *see also* Pet.App.168a. This (still) makes no sense. An assistor necessarily must be willing and able to “giv[e] assistance.” 52 U.S.C. § 10508. And Section 208 is no obstacle to state laws prohibiting guns in polling places. The supposedly “breathtaking” outcomes Respondents invoke fall flat: their examples involve assistors who are unqualified (e.g., minors, GOP Br.23), have negligible practical effect (e.g., candidates or election judges, *id.*; State Br.16–17), or both. In any event, whether other state laws (not at issue here) might also be preempted by Section 208 is irrelevant.

At bottom, Respondents’ reading of Section 208, like the panel majority’s, would give states broad control over who may provide assistance to disabled and LEP voters—a wholesale rewriting of the statute Congress wrote.

B. Generalized Anti-Fraud Interests Cannot Override Section 208’s Plain Text.

Respondents invoke the State’s interest in preventing fraud and undue influence. *E.g.*, State Br.13–14. Petitioners do not dispute that interest. But

nothing in the district court’s order impairs the State’s ability to enforce applicable anti-fraud laws, prohibitions on coercion or intimidation, or polling-place safety regulations. For example, Texas law already prohibits anyone from “knowingly or intentionally mak[ing] any effort to . . . caus[e] a ballot to not reflect the intent of the voter” under its “Election Fraud” statute. Tex. Elec. Code. § 276.013. Such prohibitions may be enforced against any person purporting to engage in voter assistance, notwithstanding Section 208.

Rather than serve these legitimate interests, S.B.1 criminalizes beneficial activity that Congress protected: assistance by the broad categories of persons voters choose. The district court found—based on the trial record, including testimony from State officials—that the ban criminalizes voter assistance “*even if there is no fraud in the assistance and the assistor marks the ballot consistent with the wishes of the voter.*” Pet.App.72a (emphasis in original); see Ct.App.ROA.42797–42798. Respondents never explain how Section 6.06 prevents fraud or undue influence not already regulated by Texas’s existing anti-fraud laws.

Congress considered the appropriate balance and chose to give voters with disabilities or limited English proficiency broad autonomy to select “a person of the voter’s choice” to assist them. 52 U.S.C. § 10508; *accord* S. Rep. No. 97-417, at 62 (1982). Texas is not free to revisit that choice. Nor is it free to enact a criminal prohibition that bars trusted community organizations from serving voters by providing assistance for elderly, disabled, and LEP Texans as they have for years.

C. No Presumption Against Preemption Applies.

Respondents also repeatedly invoke the general presumption against preemption. State Br.19–22; GOP Br.14–17. But they never explain how that principle applies in this case. Indeed, the Republican Party Respondents acknowledge that the presumption is essentially irrelevant here (and that other circuit courts have refused to apply it in voting-related cases, unlike the court of appeals below). GOP Br.12–13.

The Voting Rights Act “authorizes federal intrusion into sensitive areas of state and local policymaking” notwithstanding “substantial ‘federalism costs.’” *E.g., Lopez v. Monterey Cnty.*, 525 U.S. 266, 282 (1999) (quoting *Miller v. Johnson*, 515 U.S. 900, 926 (1995)). Respondents argue this congressional purpose is limited to the Section 5 preclearance process, State Br.20, but that is wrong. Through the VRA, including Section 208, Congress interposed federal standards for the election process, which preempt inconsistent state laws. *See generally, e.g., Katzenbach v. Morgan*, 384 U.S. 641 (1966) (New York English literacy requirement preempted by the VRA).

But even if a presumption applied here, it would be overcome. To maximize the ability of disabled and LEP voters to obtain needed ballot assistance, Congress provided that “[a]ny voter” who requires assistance due to disability or limited English proficiency “may be given assistance by a person of the voter’s choice,” subject only to two enumerated exceptions. 52 U.S.C. § 10508. Congress’s “clear and manifest purpose” to preempt a state law prohibiting

voters from choosing assistance from staffers and compensated volunteers from established community organizations is evident. *Arizona v. United States*, 567 U.S. 387, 400 (2012); *see also Fla. State Conf. of NAACP v. Browning*, 522 F.3d 1153, 1168 (11th Cir. 2008) (refusing to apply presumption against preemption to state voting laws). Texas’s categorical exclusion of compensated assistants directly conflicts with that command.

III. RESPONDENTS’ VEHICLE OBJECTIONS LACK MERIT.

Respondents alternatively contend that various threshold issues make review inappropriate. State Br.26–28; GOP Br.28–35. These all fail. The question presented was litigated below, directly passed upon by the court of appeals, and is outcome-determinative. This case is thus an excellent vehicle to resolve the recurring question of Section 208’s scope.

Respondents renew their argument that OCA-GH lacks standing. GOP Br.29–31. But the Fifth Circuit held that OCA-GH had standing, finding a “credible threat” of prosecution under the compensated-assistance provisions and proceeding to decide the Section 208 preemption question presented here. Pet.App.166a. Respondents’ disagreements with that standing analysis does not create a vehicle problem where the court below found standing and entered a merits judgment.

Respondents next argue there is no private right of action under Section 208. State Br.26–28; GOP Br.32–33. But the Fifth Circuit never addressed this issue. It exercised jurisdiction and resolved the merits question presented. The chance a respondent could

have prevailed on alternative grounds unaddressed below does not prevent this Court from reviewing worthy questions presented. *See, e.g., Chiaverini v. City of Napoleon*, 602 U.S. 556, 565 (2024) (granting certiorari; resolving question presented notwithstanding alternative ground the court below did not address).

Respondents then argue that Petitioner’s reading of Section 208 would raise questions about Congress’s authority under the Fourteenth Amendment. GOP Br.33–34. But Petitioners do not argue that Section 208 invalidates every conceivable state regulation touching voter assistance. The question presented is simply whether Section 208 preempts a categorical prohibition on assistance by willing and able people chosen by covered voters just because the assistor is compensated.

This Court can address the statutory question—whether Section 208 means what it says—without having to resolve the distant constitutional questions Respondents hypothesize. And in any case, Congress amply substantiated its finding that Section 208’s protections were required for disabled and LEP voters “[t]o limit the risks of discrimination against voters in these specified groups and avoid denial or infringement of their right to vote.” S. Rep. No. 97-417 at 62 (1982).

Finally, Respondents suggest this Court should wait for further percolation. GOP Br.34–35. But the Fifth Circuit’s decision squarely rejected Petitioners’ Section 208 preemption claim after final judgment and a full bench trial. The legal issue is cleanly presented, outcome-determinative, and exceptionally important to the administration of federal voting-

rights protections. Congress gave statutory protection to blind, disabled, and LEP voters who may need assistance in each election. Review is warranted now.

CONCLUSION

The petition for a writ of certiorari should be granted.

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