

No. 25-

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

PETITION FOR A WRIT OF CERTIORARI

MICHAEL C. KEATS
REBECCA L. MARTIN
JASON S. KANTERMAN
FRIED, FRANK, HARRIS,
SHRIVER & JACOBSON LLP
One New York Plaza
New York, NY 10004

NINA PERALES
Counsel of Record
ANTONIO JOSEPH DELGRANDE
MEXICAN AMERICAN LEGAL DEFENSE
AND EDUCATIONAL FUND
110 Broadway, Suite 300
San Antonio, TX 78205
(210) 224-5476
nperales@maldef.org

*Counsel for La Unión del
Pueblo Entero*

120897



COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION 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, 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.

In 2021, Texas amended its election code to establish a felony for anyone who “compensates or offers to compensate another person for assisting voters” to vote by mail or who “solicits, receives, or accepts compensation for” assisting voters to vote by mail. Tex. Elec. Code Ann. § 86.0105.

Texas law now renders criminal what federal law expressly protects. Under Texas’s new law, a voter who is blind, disabled, or cannot read or write commits a felony if she offers money to a friend or neighbor in exchange for help filling out her mail ballot. Blind, disabled, and low literacy voters who are members of La Unión del Pueblo Entero (“LUPE”), a non-profit social services organization, can no longer choose to receive assistance completing their mail ballots from LUPE employees whom they know and trust and who are compensated for delivering assistance.

This petition presents the following question:

Whether Section 208 preempts a state law that prohibits eligible voters from compensating their chosen assisters or from choosing trusted assisters who are compensated.

PARTIES TO THE PROCEEDING

Petitioner La Unión del Pueblo Entero was an appellee in the court of appeals and a plaintiff in the district court.

Non-petitioners who were appellees in the court of appeals and plaintiffs in the district court include: Southwest Voter Registration Education Project, Mexican American Bar Association of Texas, Texas Hispanics Organized for Political Education, JOLT Action, William C. Velasquez Institute, FIEL Houston, Incorporated, Friendship-West Baptist Church, Texas Impact, James Lewin; OCA-Greater Houston, League of Women Voters of Texas; LULAC Texas, Texas Alliance for Retired Americans, Texas AFT, Voto Latino; Delta Sigma Theta Sorority, Mi Familia Vota, and The Arc of Texas.

Respondents Warren K. Paxton, in his official capacity as Attorney General of Texas, the State of Texas, Jane Nelson, in her official capacity as Texas Secretary of State, and Sean Teare, Harris County District Attorney, were appellants in the court of appeals and defendants in the district court. Although Gregory W. Abbott, in his official capacity as Governor of Texas, was listed as a defendant-appellant in the court of appeals action, the district court previously dismissed the claims against him for lack of standing and plaintiffs did not appeal.

Respondents Harris County Republican Party, Dallas County Republican Party, National Republican Senatorial Committee, National Republican Congressional Committee, and Republican National Committee were appellants in the court of appeals and defendant intervenors in the district court.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Petitioner La Unión del Pueblo Entero states that it has no parent corporation and no publicly held company owns 10% or more of its stock.

RELATED PROCEEDINGS

United States District Court (W.D. Tex.):

La Unión del Pueblo Entero v. Abbott, No. 5:21-cv-00844-XR (Oct. 11, 2024) (consolidated with *OCA-Greater Houston v. Esparza*, No. 1:21-cv-00780-XR; *Houston Justice v. Abbott*, 5:21-cv-00848-XR; *LULAC Texas v. Esparza*, No. 1:21-cv-00786-XR; *Mi Familia Vota v. Abbott*, 5:21-cv-00920-XR; and *United States v. Texas*, No. 5:21-cv-01085-XR)

United States Court of Appeals (5th Cir.):

La Unión del Pueblo Entero v. Abbott, No. 24-50826 (Aug. 29, 2025)

La Unión del Pueblo Entero v. Nelson, No. 22-50775 (Dec. 31, 2025)

United States v. Paxton, No. 23-50885 (Aug. 4, 2025)

Mi Familia Vota v. Ogg, No. 22-50732 (June 20, 2024)

La Unión del Pueblo Entero v. Abbott, No. 23-50201 (Feb. 16, 2024)

La Unión del Pueblo Entero v. Abbott, No. 22-50435 (May 17, 2023)

La Unión del Pueblo Entero v. Abbott, No. 21-51145 (Mar. 25, 2022)

La Unión del Pueblo Entero v. Abbott, No. 24-50783 (decision pending)

La Unión del Pueblo Entero v. Abbott, No. 25-50246 (decision pending)

TABLE OF CONTENTS

	<i>Page</i>
QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING	ii
CORPORATE DISCLOSURE STATEMENT	iii
RELATED PROCEEDINGS	iv
TABLE OF CONTENTS.....	v
TABLE OF APPENDICES	viii
TABLE OF CITED AUTHORITIES	ix
PETITION FOR WRIT OF CERTIORARI.....	1
OPINIONS BELOW.....	1
JURISDICTION.....	1
STATUTORY PROVISIONS INVOLVED.....	1
INTRODUCTION.....	2
STATEMENT OF THE CASE	5
A. Section 208 of the Voting Rights Act	5
B. Existing Framework for Vote by Mail in Texas ...	6

Table of Contents

	<i>Page</i>
C. Blind, Disabled and Low Literacy Voters Trust LUPE for Assistance.....	6
D. Texas Enacts S.B. 1, Restricting Voters’ Choice of Assister	7
E. Impact on Voter Assistance	8
F. Proceedings Below	9
REASONS FOR GRANTING THE WRIT	11
I. The Decision Below Is Incorrect.....	11
A. The Established Test for Conflict Preemption.....	12
B. The Fifth Circuit Did Not Examine Whether There Is “Actual Conflict” between Section 208 and Section 6.06	15
C. The Fifth Circuit Further Erred in Its Purposes and Objectives Analysis	18
D. The Fifth Circuit Erred in Assuming that There Is a Presumption against Preemption that Is Dispositive Here	24
II. The Question Presented Warrants This Court’s Review.....	25

Table of Contents

	<i>Page</i>
A. The Fifth Circuit’s Decision Creates a Circuit Conflict Concerning Preemption Analysis	25
B. This Case Raises Questions of Exceptional Importance Concerning the Right to Vote	30
CONCLUSION	31

TABLE OF APPENDICES

	<i>Page</i>
Appendix A — Opinion of the United States Court of Appeals for the Fifth Circuit, filed August 29, 2025.....	1a
Appendix B — Judgment of the United States Court of Appeals for the Fifth Circuit, filed August 29, 2025.....	61a
Appendix C — Findings of Fact and Conclusions of Law of the United States District Court for the Western District of Texas, San Antonio Division, filed October 11, 2024	65a
Appendix D — Relevant Statutory Provisions	223a
Appendix E — Excerpts of S.B. No. 1	232a

TABLE OF CITED AUTHORITIES

	<i>Page</i>
Cases	
<i>Andrus v. Glover Constr. Co.</i> , 446 U.S. 608 (1980).....	23
<i>Arizona v. Inter Tribal Council of Arizona, Inc.</i> , 570 U.S. 1 (2013).....	13, 14, 15, 17
<i>Arizona v. United States</i> , 567 U.S. 387 (2012).....	15, 22, 23, 26
<i>Buckman Co. v. Plaintiffs’ Legal Comm.</i> , 531 U.S. 341 (2001).....	15
<i>CSX Transp., Inc. v. Easterwood</i> , 507 U.S. 658 (1993).....	13
<i>California v. ARC Am. Corp.</i> , 490 U.S. 93 (1989).....	12
<i>Chamber of Com. of U.S. v. Bonta</i> , 62 F.4th 473 (9th Cir. 2023).....	27
<i>Chamber of Com. of U.S. v. Whiting</i> , 563 U.S. 582 (2011).....	18
<i>Churchill Downs Tech. Initiatives Co. v.</i> <i>Mich. Gaming Control Bd.</i> , 162 F.4th 631 (6th Cir. 2025).....	28

Cited Authorities

	<i>Page</i>
<i>Crosby v. Nat’l Foreign Trade Council</i> , 530 U.S. 363 (2000)	12, 13, 29
<i>English v. Gen. Elec. Co.</i> , 496 U.S. 72 (1990)	13
<i>Ex parte Siebold</i> , 100 U.S. 371 (1880)	13
<i>Felder v. Casey</i> , 487 U.S. 131 (1988)	24
<i>Fla. Lime & Avocado Growers, Inc. v. Paul</i> , 373 U.S. 132 (1963)	12, 17
<i>Gade v. Nat’l Solid Wastes Mgmt. Ass’n</i> , 505 U.S. 88 (1992)	20, 24
<i>Hillman v. Maretta</i> , 569 U.S. 483 (2013)	23
<i>Hines v. Davidowitz</i> , 312 U.S. 52 (1941)	12
<i>Horseman’s Benevolent & Protective Ass’n-Ohio Div., Inc. v. DeWine</i> , 666 F.3d 997 (6th Cir. 2012)	25, 26
<i>In re Universal Serv. Fund Tel. Billing Prac. Litig.</i> , 619 F.3d 1188 (10th Cir. 2010)	27

Cited Authorities

	<i>Page</i>
<i>Iowa Migrant Movement for Justice v. Bird</i> , 157 F.4th 904 (8th Cir. 2025).....	26
<i>Int’l Paper Co. v. Ouellette</i> , 479 U.S. 481 (1987).....	25
<i>Jennings v. Rodriguez</i> , 583 U.S. 281 (2018).....	23
<i>Kansas v. Garcia</i> , 589 U.S. 191 (2020).....	13
<i>Lopez v. Monterey Cnty.</i> , 525 U.S. 266 (1999).....	11, 24
<i>Martin v. United States</i> , 605 U.S. 395 (2025)	13
<i>Maryland v. Louisiana</i> , 451 U.S. 725 (1981)	14
<i>Mayor, Aldermen & Commonalty of N.Y. v. Miln</i> , 36 U.S. 102 (1837).....	24
<i>Medtronic, Inc. v. Lohr</i> , 518 U.S. 470 (1996)	20
<i>Merck Sharp & Dohme Corp. v. Albrecht</i> , 587 U.S. 299 (2019).....	13, 27

Cited Authorities

	<i>Page</i>
<i>Mi Familia Vota v. Fontes</i> , 129 F.4th 691 (9th Cir.), <i>reh'g denied</i> , 152 F.4th 1153 (9th Cir. 2025)	28
<i>Miller v. Johnson</i> , 515 U.S. 900 (1995)	24
<i>Motor Coach Emps. v. Lockridge</i> , 403 U.S. 274 (1971)	22
<i>Mut. Pharm. Co. v. Bartlett</i> , 570 U.S. 472 (2013)	14
<i>Odebrecht Const., Inc. v. Sec'y, Fla. Dep't of Transp.</i> , 715 F.3d 1268 (11th Cir. 2013)	27
<i>Oneok, Inc. v. Learjet, Inc.</i> , 575 U.S. 373 (2015)	12, 27
<i>PLIVA, Inc. v. Mensing</i> , 564 U.S. 604 (2011)	13, 25
<i>Shen v. Comm'r, Fla. Dep't of Agric. & Consumer Servs.</i> , 158 F.4th 1227 (11th Cir. 2025)	27
<i>Transource Pa., LLC v. DeFrank</i> , 156 F.4th 351 (3d Cir. 2025)	27

Cited Authorities

	<i>Page</i>
<i>United States v. Locke</i> , 529 U.S. 89 (2000).....	24
<i>Voter Reference Found., LLC v. Torrez</i> , 160 F.4th 1068 (10th Cir. 2025).....	27, 28
<i>Wesberry v. Sanders</i> , 376 U.S. 1 (1964).....	30
<i>Wyeth v. Levine</i> , 555 U.S. 555 (2009).....	4, 13

Constitutional Provisions

U.S. Const. art. VI	12
---------------------------	----

Statutes and Other Authorities

28 U.S.C. § 1254(1).....	1
28 U.S.C. § 1331	9
28 U.S.C. § 1343(a)(3)	9
28 U.S.C. § 1343(a)(4)	9
52 U.S.C. § 10508.....	1, 2, 5, 10, 16
Tex. Elec. Code Ann. §§ 82.001-.004.....	6
Tex. Elec. Code Ann. § 86.010(e) (West 2017)	6

Cited Authorities

	<i>Page</i>
Tex. Elec. Code Ann. § 86.0105	2
Tex. Elec. Code Ann. § 86.0105(a)	3, 7
Tex. Elec. Code Ann. § 86.0105(c)	3, 7
Tex. Elec. Code Ann. § 86.0105(f)	3, 8
Tex. Elec. Code Ann. § 276.013(a)(1) (West 2013)	6
Tex. Elec. Code Ann. § 276.013(a)(6) (West 2013)	6
S. Rep. No. 97-417 (1982), <i>as reprinted in</i> 1982 U.S.C.C.A.N. 177	5, 21, 22, 30

PETITION FOR WRIT OF CERTIORARI

Petitioner La Unión del Pueblo Entero respectfully petitions for writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The Fifth Circuit's opinion is reported at 151 F.4th 273. Pet.App. 1a-60a. The district court's findings of fact and conclusions of law are reported at 753 F. Supp. 3d 515. Pet.App. 65a-222a.

JURISDICTION

The Fifth Circuit entered judgment on August 29, 2025. Pet.App. 61a. The parties did not seek rehearing en banc. On November 14, 2025, Justice Samuel A. Alito, Jr. extended the time within which to file a petition for writ of certiorari to and including December 27, 2025, and on December 3, 2025 again extended such time to and including January 26, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

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, 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.

Section 6.06 of S.B. 1, 87th Leg., 2d Spec. Sess. (Tex. 2021), is codified at Texas Election Code § 86.0105 and provides, in relevant part:

(a) A person commits an offense if the person:

(1) compensates or offers to compensate another person for assisting voters as provided by Section 86.010; or

(2) solicits, receives, or accepts compensation for an activity described by Subdivision (1).

Section 6.06 of S.B. 1 is reproduced in full in the appendix to this petition. Pet.App. 232a-233a.

INTRODUCTION

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, 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.

La Unión del Pueblo Entero (“LUPE”) is a non-profit organization that assists its dues-paying members with various social services including income tax preparation and language translation. A significant number of LUPE’s members are elderly U.S. citizens who are former farmworkers with limited formal education. Because they know and trust LUPE staff, LUPE members who need assistance to vote because of blindness, disability, or an

inability to read or write bring their mail ballots to the LUPE offices and request assistance to vote. LUPE trains its employees to provide voter assistance confidentially, one-on-one and consistent with the law.

In 2021, Texas enacted Senate Bill 1 (“S.B. 1”), which, in Section 6.06, makes it a felony to compensate or offer to compensate another person for assisting voters to vote by mail, or to solicit, receive, or accept compensation for assisting voters to vote by mail. Tex. Elec. Code Ann. § 86.0105(a), (c); Pet.App. 232a-233a. The only exception is for assistance by an “attendant or caregiver previously known to the voter.” Tex. Elec. Code Ann. § 86.0105(f); Pet.App. 233a.

Under Section 6.06, voters with disabilities, who are elderly, or who cannot read or write face jail time for offering to buy a friend lunch as a token of appreciation or paying a neighbor \$20 for assistance with their mail ballots. Pet.App. 140a, 202a n.60. As a result of Section 6.06, LUPE staff can no longer provide assistance to the organization’s members who come to them for help completing their mail ballots, and instead turn the members away. Pet.App. 141a-142a.

LUPE and others filed suit. Following trial, the district court enjoined Section 6.06 as preempted by Section 208. The district court concluded that Section 6.06 was conflict preempted because the language of the two statutes conflicted and it was “an ‘impossibility’ for an eligible voter to choose an assistor who is permitted by Section 208 but disqualified by S.B. 1 because that assistor is compensated[.]” Pet.App. 199a-200a. The district court further concluded that Section 6.06’s compensated

assistance ban interferes with and frustrates the substantive right created by Section 208. Pet.App. 199a.

The Fifth Circuit reversed. In reaching its decision, the Fifth Circuit did not perform a textual analysis to determine whether the language of the two statutes conflicted, and did not ask whether it was impossible to comply with Section 208's guarantee of the choice of assister and Section 6.06's ban on compensated assistance. Pet.App. 22a ("This case involves only conflict preemption and, specifically, the variant known as 'purposes and objectives' preemption."). Relying exclusively on a "purposes and objectives" inquiry, the Fifth Circuit declared it "unlikely," "[d]oubtful," and "absurd[]" that Congress intended to displace state regulation of eligible voters' choice of assisters. Pet.App. 24a-25a. The Fifth Circuit reasoned that Congress intended for Section 208 to "allow[] states to superintend voter assistance" and that Section 208 permits states to add categories of prohibited assisters beyond those enumerated in the statute. Pet.App. 26a. The decision below creates a circuit conflict concerning conflict preemption analysis and impermissibly rests on a "freewheeling judicial inquiry into whether a state statute is in tension with federal objectives [as opposed to] an inquiry into whether the ordinary meanings of state and federal law conflict." *Wyeth v. Levine*, 555 U.S. 555, 588 (2009) (Thomas, J., concurring). The decision below also raises important questions regarding the right to vote.

The Court should grant certiorari and reverse the Fifth Circuit's misapplication of well-established conflict preemption standards in order to resolve the now-conflict among the circuits.

STATEMENT OF THE CASE

A. Section 208 of the Voting Rights Act

Congress enacted Section 208 in recognition of the fact that voters who are blind, disabled, or unable to read or write faced unique barriers when casting a ballot. In order to safeguard their right to vote, Congress decided to guarantee that voters who are blind, disabled, or unable to read or write could choose a person to assist them. Congress then placed four limitations on who could serve as an assister: the voter's employer or agent of that employer or officer or agent of the voter's union. 52 U.S.C. § 10508 ("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.").

In its report that accompanied the passage of Section 208, the Senate Judiciary Committee explained that "meaningful" assistance means permitting a voter to bring a "trust[ed]" person into the voting booth. S. Rep. 97-417, at 62-63 (1982), *as reprinted in* 1982 U.S.C.C.A.N. 177, 241. Noting that states might adopt different procedures to facilitate assistance to voters who are blind versus voters who are unable to read or write, the Senate Committee emphasized that "at the least, members of each group are entitled to assistance from a person of their own choice." S. Rep. 97-417, at 63.

B. Existing Framework for Vote by Mail in Texas

Eligibility to vote by mail in Texas is limited. A qualified voter in Texas is eligible to vote by mail if the voter is 65 years of age or older, disabled or confined for childbirth, absent from the county on Election Day, or in jail and still eligible to vote. Tex. Elec. Code Ann. §§ 82.001-.004.

Prior to Section 6.06's enactment, and continuing today, Texas regulated the manner in which mail ballot assistance is provided, including establishing safeguards to ensure that assisters marked the ballot in line with voters' wishes. For example, the Texas Election Code criminalizes "assisting a voter . . . who did not ask for assistance; voting a ballot differently than the voter wished or directed the assistant to vote the ballot; suggesting to the voter during the voting process how the voter should vote, or attempting to influence or coerce the voter receiving assistance." Pet. App. 143a. Texas requires mail ballot assisters to provide their names and residence addresses on the voter's official carrier envelope. Tex. Elec. Code Ann. § 86.010(e) (West 2017). Texas also criminalizes "influenc[ing] the independent exercise of the vote of another in the presence of the ballot or during the voting process[.]" Tex. Elec. Code Ann. § 276.013(a)(1), (6) (West 2013).

C. Blind, Disabled and Low Literacy Voters Trust LUPE for Assistance

LUPE is a non-partisan, membership organization headquartered in San Juan, Texas, with approximately 8,000 members. Pet.App. 94a. LUPE "is a social services hub for the community and provides income

tax services, language translation services and family-based immigration legal services,” and also focuses on “civic engagement and educating voters about their right to vote.” *Id.* LUPE’s members include individuals who use assistance to vote by mail, including elderly voters, voters with disabilities, and voters with limited English proficiency or low literacy. Pet.App. 95a.

Many of these same members ask LUPE staff for assistance with voting by mail. LUPE trains its employees to limit their assistance to the voter’s request, and to carry out the wishes of the voter. Pet.App. 95a-96a.

Before Section 6.06, LUPE employees regularly assisted members in completing their mail ballots one-on-one and provided that assistance at the LUPE offices. Pet.App. 141a.

D. Texas Enacts S.B. 1, Restricting Voters’ Choice of Assister

The Governor of Texas signed S.B. 1 into law on September 7, 2021. Pet.App. 4a. S.B. 1 modified numerous provisions of the Texas Election Code and, as relevant here, imposed new restrictions on the choice of voter assister in Section 6.06.

As amended by Section 6.06, the Texas Election Code now penalizes someone who “compensates or offers to compensate another person for assisting voters,” or who “solicits, receives, or accepts compensation for” doing so. Tex. Elec. Code Ann. § 86.0105(a); *see also* Pet.App. 6a. All violations of this section are now state jail felonies. Tex. Elec. Code Ann. § 86.0105(c); Pet.App. 233a. The law

includes one exception: a voter may choose an “attendant or caregiver previously known to the voter” to assist the voter while being compensated. Tex. Elec. Code Ann. § 86.0105(f); Pet.App. 233a.

An assister who receives compensation—or a voter who offers compensation—violates this provision even where there is no fraud in the assistance and the assister marks the ballot consistent with the voter’s wishes. *See* Pet.App. 139a-140a.

E. Impact on Voter Assistance

Because LUPE “relies primarily on paid staff members,” it has “provided [its] staff members and volunteers with ‘compensation’” and is therefore “regulated by Section 6.06 of S.B. 1.” Pet.App. 168a-169a & n.41. *See also* Pet.App. 18a-20a.

As a result of S.B. 1’s ban on compensated assistance, “LUPE has stopped assisting voters who request their help completing mail ballots,” because of fear of prosecution. Pet.App. 141a-142a. “Now, when a LUPE member comes to the LUPE office and requests help with their mail ballot, LUPE informs the member that LUPE cannot provide assistance and tells the voter that they should find help” elsewhere. Pet.App. 142a. Because of Section 6.06, LUPE will no longer “provide mail ballot assistance to LUPE members who are elderly and/or disabled or otherwise need assistance to vote by mail and choose LUPE staff as their assistors.” *Id.*

F. Proceedings Below

LUPE, along with other individual and organizational plaintiffs, filed suit and challenged S.B. 1 as unconstitutional and otherwise unlawful under federal voter-protection statutes. Pet.App. 68a. As relevant here, LUPE challenged Section 6.06 on the grounds that it is preempted by Section 208.¹ Pet.App. 93a-94a. LUPE sought injunctive relief against: Texas Secretary of State Jane Nelson; Texas Attorney General Ken Paxton; election officials and prosecutors of Dallas and El Paso County; and the Travis County District Attorney. *Id.*

The district court exercised jurisdiction in this case under 28 U.S.C. §§ 1331 and 1343(a)(3) and (4). Following a six-week bench trial in September and October 2023, the district court concluded that Section 6.06 was conflict preempted by Section 208. Comparing the text of the two statutes, the district court observed that Section 208’s text is “unambiguous.” Pet.App. 174a. The district court concluded that Section 6.06’s “prohibitions on compensated assistance . . . conflict with the text of Section 208 of the VRA because they facially restrict the class of people who are eligible to provide voting assistance beyond the categories of prohibited individuals identified in the text of the statute—the voter’s employer (or an agent of the employer) or union representative.” Pet.App. 198a-199a. As a result, “Section[] 6.06 . . . make[s] it an ‘impossibility’ for an eligible voter to choose an assistor who is permitted by Section 208 but disqualified by S.B. 1 because that assistor

1. In addition to Section 6.06, LUPE challenged sections 6.03, 6.04, 6.05, 6.07, and 7.04 under Section 208 of the Voting Rights Act. Pet.App. 93a. The Petition does not seek review of the Fifth Circuit’s rulings regarding those other provisions.

is compensated[.]” Pet.App. 199a-200a. The district court further concluded that Section 6.06 interferes with and frustrates the substantive right created by Section 208. *See* Pet.App. 199a. The district court permanently enjoined Section 6.06 and defendants appealed.

The Fifth Circuit reversed. A divided court concluded that Section 208 did not preempt Section 6.06. First, the Fifth Circuit declined to compare the plain meaning of Section 208 to Section 6.06 or to examine the statutes for direct textual conflict. Pet.App. 22a (“This case involves only conflict preemption and, specifically, the variant known as ‘purposes and objectives’ preemption.”). Turning immediately to a “purposes and objectives” analysis, the Fifth Circuit started with the view that the most “sensible” understanding of congressional purpose was to “allow[] states to superintend voter assistance.” Pet. App. 26a, 29a. The Fifth Circuit held that the district court erred in reading Section 208 to prohibit only four categories of assisters, because such a reading would “vaporize numerous state laws.” Pet.App. 24a. Finally, the Fifth Circuit declined to look for evidence of congressional purpose in either the text and structure of the Voting Rights Act or the legislative history of Section 208, characterizing the Senate Judiciary Committee Report on Section 208 as “musings.” Pet.App. 30a-33a & n.20.

In dissent, Judge James E. Graves, Jr. closely read and compared the language of Section 208 and Section 6.06 because “[t]he crux of this case is whether [Section 6.06] violates Section 208 because it directly regulates—and restricts—a qualified voter’s entitlement to ‘assistance by a person of [their] choice.’” Pet.App. 54a (Graves, J., dissenting) (quoting 52 U.S.C. § 10508). Judge Graves

concluded that Section 6.06 is conflict preempted by Section 208 because Section 6.06 “restrict[s] the class of eligible assistors beyond the categories prohibited by the statute: employers, union representatives, and their agents.” Pet.App. 57a. Judge Graves further concluded that Section 6.06 interferes with and frustrates the substantive right Congress created, *id.*, and that the conflict overcomes any presumption against preemption because the Voting Rights Act “authorizes federal intrusion into sensitive areas of state and local policy making.” Pet.App. 56a-57a (quoting *Lopez v. Monterey Cnty.*, 525 U.S. 266, 282 (1999)). Finally, Judge Graves noted that, under the majority’s reading, little remains of Section 208’s guarantees. Pet.App. 59a-60a.

REASONS FOR GRANTING THE WRIT

I. The Decision Below Is Incorrect

The Fifth Circuit abandoned the well-established standards for evaluating conflict preemption and declined to examine either direct conflict or whether it is possible for an eligible voter to choose an assister who is permitted by Section 208 but disqualified by Section 6.06 because that assister is compensated. The Fifth Circuit should have compared the federal and state statutes, and, because the statutory language conflicts and it is impossible to comply with both, concluded that Section 6.06 is conflict preempted.

The Fifth Circuit also should have concluded, when evaluating purposes and objectives preemption, that in light of the text and structure of the federal Voting Rights Act, and the legislative history of Section 208, Section

6.06 stands as an obstacle to the accomplishment and execution of Congress's full purposes and objectives and thus is conflict preempted.

A. The Established Test for Conflict Preemption

The Supremacy Clause provides:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Const. art. VI.

A state statute can be preempted by explicit language in a federal statute or can be implicitly preempted. *Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373, 376-77 (2015). Conflict preemption, which is a type of implied preemption, “exists where ‘compliance with both state and federal law is impossible,’ or where ‘the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.’ In either situation, federal law must prevail.” *Id.* at 377 (cleaned up) (quoting *California v. ARC Am. Corp.*, 490 U.S. 93, 100 (1989)). See also *Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 372-73 (2000) (first citing *Fla. Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-43 (1963), then quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)).

Accordingly, a key question in the conflict preemption analysis is whether the language of the two statutes is in conflict. *See Kansas v. Garcia*, 589 U.S. 191, 214 (2020) (Thomas, J., concurring) (“We must use the accepted methods of interpretation to ascertain whether the ordinary meaning of federal and state law ‘directly conflict.’”). This is because implied preemption, “like all preemption arguments, must be grounded ‘in the text and structure of the statute at issue.’” *Id.* at 208 (quoting *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 664 (1993)).

Courts examine whether there is an “actual conflict” between the state and federal statutes. *English v. Gen. Elec. Co.*, 496 U.S. 72, 90 (1990). The analysis requires a close look at the language of both statutes and involves a “straightforward textual question[.]” *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 9 (2013). Where there is a conflict in the statutory language, “the state law, ‘so far as the conflict extends, ceases to be operative.’” *Id.* (quoting *Ex parte Siebold*, 100 U.S. 371, 384 (1880)). This is because “[w]here state and federal law ‘directly conflict,’ state law must give way.” *PLIVA, Inc. v. Mensing*, 564 U.S. 604, 617-18 (2011) (quoting *Wyeth*, 555 U.S. at 583 (Thomas, J., concurring)); *see also Crosby*, 530 U.S. at 372 (“[S]tate law is naturally preempted to the extent of any conflict with a federal statute.”).

Thus, for example, a state statute is preempted where compliance with both statutes is impossible. *See, e.g., Martin v. United States*, 605 U.S. 395, 409 (2025) (“[W]hen a regulated party cannot comply with both federal and state directives, the Supremacy Clause tells us the state law must yield.”); *Merck Sharp & Dohme Corp. v. Albrecht*, 587 U.S. 299, 303 (2019) (explaining that federal preemption “takes

place when it is ‘impossible for a private party to comply with both state and federal requirements’”) (quoting *Mut. Pharm. Co. v. Bartlett*, 570 U.S. 472, 480 (2013)).

This can happen “[w]hen federal law forbids an action that state law requires[.]” *Mut. Pharm.*, 570 U.S. at 486. In *Mutual Pharmaceutical* the Court concluded that federal regulations prohibiting drug manufacturers from changing a generic drug’s label preempted state law requirements that drug makers increase warnings on the labels of certain drugs. *Id.* at 475 (“[S]tate law imposed a duty on Mutual not to comply with federal law. Under the Supremacy Clause, state laws that require a private party to violate federal law are pre-empted and, thus, are without effect.”) (internal quotation marks omitted).

The same is true in reverse. Where federal law permits an action and state law forbids that action, the state law is preempted. *See, e.g., Maryland v. Louisiana*, 451 U.S. 725, 748-749 (1981) (Louisiana statute that provided that certain processing costs be either borne by the pipeline or other owner without compensation was preempted by federal law that allowed natural gas owners to recover from their customers all legitimate costs associated with the production, processing, and transportation of natural gas).

In *Arizona v. Inter Tribal Council of Arizona, Inc.*, the Court compared the federal National Voter Registration Act (“NVRA”), which permits individuals to register to vote using a federal voter registration form, with an Arizona law that required local registrars to reject the federal form unless it was accompanied by documentary

proof of citizenship. 570 U.S. at 9. The Court held that the Arizona law was conflict preempted, concluding that “a state-imposed requirement of evidence of citizenship not required by the Federal Form is inconsistent with the NVRA’s mandate that States accept and use the Federal Form.” *Id.* at 15 (internal quotation marks omitted). The Court explained that the plain language of the NVRA “precludes Arizona from requiring a Federal Form applicant to submit information beyond that required by the form itself.” *Id.* at 20.

A state statute is also conflict preempted when it purports to serve the same purpose but uses conflicting means, for example by imposing stricter penalties than those provided for in federal statutes. *See, e.g., Arizona v. United States*, 567 U.S. 387, 403 (2012) (recognizing conflict between federal alien registration statute that allowed for a sentence of probation for an offense and stricter state statute that ruled out probation as a possible sentence); *Buckman Co. v. Plaintiffs’ Legal Comm.*, 531 U.S. 341, 347-348 (2001) (holding that plaintiffs’ state-law fraud-on-the-FDA claims are in conflict with federal law because federal law already gives the FDA broad authority to punish and deter fraud).

B. The Fifth Circuit Did Not Examine Whether There Is “Actual Conflict” between Section 208 and Section 6.06

Section 208’s language is straightforward. It grants “[a]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write” the right to “assistance by a person of the voter’s choice” subject to

four exceptions set out in the statute: the voter's employer or union officer, or either of their agents. 52 U.S.C. § 10508.

The language of Section 6.06, however, excludes an additional category of assisters—those who are compensated—and criminalizes any voter who offers compensation for assistance. Section 6.06 also criminalizes any assister who receives compensation, whether from a voter or other person, including an employer. Pet. App. 232a-233a (a person commits an offense if the person “compensates or offers to compensate another person for assisting voters” with their mail ballots or “solicits, receives, or accepts compensation” for mail ballot assistance). The only exception to the offense is if the assistance is provided by “an attendant or caregiver previously known to the voter.” Pet.App. 233a.

Comparing the plain language of the statutes, it is apparent that Section 6.06 makes it impossible for a voter who is otherwise eligible under Section 208 to choose an assister who receives compensation (whether the compensation comes from the voter or someone else). Such assisters include LUPE employees who are chosen by LUPE's members to help them vote. Section 6.06 also bars eligible voters from compensating other trusted individuals, including, for example, paying a neighbor \$20 or buying a friend lunch in exchange for assistance with the voter's mail ballot. Pet.App. 140a.

The district court properly compared the language of the two statutes and reached the same conclusion, observing that Section 6.06 “make[s] it an ‘impossibility’ for an eligible voter to choose an assister who is permitted by Section 208 but disqualified by S.B. 1 because that

assistor is compensated (or receives an economic benefit)[.]”²
 Pet.App. 199a-200a.

The Fifth Circuit did not examine whether there is “actual conflict” between the texts of Section 208 and Section 6.06, although the conflict is readily apparent. Instead, the Fifth Circuit declared that it would only examine whether Section 6.06 conflicted with congressional purposes and objectives. Pet.App. 22a (“This case involves only conflict preemption and, specifically, the variant known as ‘purposes and objectives’ preemption.”). The Fifth Circuit erred when it failed to conduct the required “straightforward textual” comparison that is essential to the conflict preemption analysis. *Inter Tribal*, 570 U.S. at 9. If it had, the Fifth Circuit would have concluded that Section 6.06 “ceases to be operative” to the extent that it more strictly limits the pool of assisters who can be chosen by eligible voters when compared to Section 208. *Id.* Following that conclusion, it would have been unnecessary for the Fifth Circuit to explore congressional purposes and objectives. *See Fla. Lime*, 373 U.S. 132, 142-43 (“A holding of federal exclusion of state law is inescapable

2. The district court further observed:

While meeting with a client about his tax return, a staff member for a community organization that provides free income tax services agrees to help translate the man’s mail-in ballot. The client fills out his own ballot, with accurate translation assistance from the staff member. Even though the ballot reflects the clients wishes, the staff member faces up to two years in prison, she and her employer may be fined up to \$10,000, and the client’s ballot may not be counted.

Pet.App. 71a (citations omitted).

and requires no inquiry into congressional design where compliance with both federal and state regulations is a physical impossibility[.]”).

C. The Fifth Circuit Further Erred in Its Purposes and Objectives Analysis

Eschewing the required test of “actual conflict,” the Fifth Circuit then conducted exactly the type of “freewheeling judicial inquiry” into purposes and objectives that the Court has warned against. *Chamber of Com. of U.S. v. Whiting*, 563 U.S. 582, 607 (2011).

This led the Fifth Circuit into a series of cascading errors, beginning with substituting its own idea of “common sense” to determine the purposes and objectives of Congress, unmoored from the plain language of Section 208, its legislative history, or the structure of the Voting Rights Act. Pet.App. 26a.

The Fifth Circuit began from the position that Congress did not express its purpose in the plain language of the statute. Instead, the Fifth Circuit declared that it is “unlikely” that Congress intended to displace state regulation of eligible voters’ choice of assisters. Pet.App. 24a-25a. The Fifth Circuit based its reasoning on the existence of limitations on voter assistance in states other than Texas, but did not explain how the existence of these laws reveals Congress’s purposes and objectives. Pet.App. 24a-25 & n.16.

The Fifth Circuit further declared it “[d]oubtful” and “absurd[.]” that the plain language of Section 208 expressed congressional purpose because a plain language

reading would force states to abandon generally applicable laws. Pet.App. 25a. But nothing in Section 208 suggests a congressional purpose to force states to procure the physical presence of assisters who are otherwise barred from entering the polling place by generally applicable Texas laws (*e.g.*, an individual who is electioneering, carrying a gun, or incarcerated).

Having rejected the plain meaning of Section 208 as a source of congressional purpose, the Fifth Circuit concluded that Congress intended to “allow[] states to superintend voter assistance” by imposing limitations on the choice of assisters beyond those enumerated in Section 208, as long as a voter can choose “a person.” Pet.App. 26a. In the Fifth Circuit’s view, “common sense” dictated that it “restrain[]” its understanding of congressional purpose to permit state laws that restrict who may serve as an assister. Pet.App. 26a & n.18 (rejecting the argument that the plain meaning of the statute reflects congressional intent because such a conclusion would “bulldoze” state laws that restrict voter assistance). Put another way, the Fifth Circuit rejected any view of congressional purpose that would displace state laws.

In reaching this conclusion, the Fifth Circuit rejected every traditional source for determining congressional intent and instead substituted its own idea of what was “sensible.” Pet.App. 29a. Contrary to the Fifth Circuit’s view of “common sense,” Pet.App. 26a, however, Section 208’s plain meaning, as well as the structure and purpose of the Voting Rights Act, demonstrate that Congress’s purpose in enacting Section 208 was to *prevent* states from dictating whom eligible voters may choose as their assisters as a means of ensuring access to the ballot for

voters who are blind, disabled, or cannot read or write. *See Medtronic, Inc. v. Lohr*, 518 U.S. 470, 486 (1996) (“Also relevant, however, is the ‘structure and purpose of the statute as a whole[.]’”) (quoting *Gade v. Nat’l Solid Wastes Mgmt. Ass’n*, 505 U.S. 88, 98 (1992)).

Because the plain language of Section 208 reveals a congressional purpose to afford eligible voters the right to choose their assisters (subject to the four enumerated exclusions), the inquiry can end there. However, even a cursory glance at the structure of the Voting Rights Act and the legislative history of Section 208 supports this conclusion and provides no basis for the Fifth Circuit to conclude otherwise.

For example, in the debate leading up to enactment of Section 208, Congress expressed concern about the continuing problems facing disabled and low literacy voters at the polls. The Senate Committee wrote in the report accompanying Section 208:

[M]embers of such groups run the risk that they will be discriminated against at the polls and that their right to vote in state and federal elections will not be protected. . . . Specifically, it is only natural that many such voters may feel apprehensive about casting a ballot in the presence of, or may be misled by, someone other than a person of their own choice. As a result, people requiring assistance in some jurisdictions are forced to choose between casting a ballot under the adverse circumstances of not being able to choose their

own assistance or forfeiting their right to vote. The committee is concerned that some people in this situation do in fact elect to forfeit their right to vote.

S. Rep. No. 97-417, at 62.

Congress carefully deliberated over which voters should have a right to assistance and who should not be allowed to serve as an assister. For example, the Senate Committee considered and rejected an amendment that would have deleted the phrase “inability to read or write” from Section 208. *Id.* at 4. The Committee adopted a late amendment prohibiting officials or agents of a voter’s union from serving as an assister. *Id.*

Congress also contemplated that states would retain the ability to regulate the *manner* in which voters received assistance:

By including the blind, disabled, and persons unable to read or write under this provision, the Committee does not require that each group of individuals be treated identically for purposes of voter assistance procedures. States, for example, might have reason to authorize different kinds of assistance for the blind as opposed to the illiterate. The Committee has simply concluded that, *at the least*, members of each group are entitled to assistance from a person of their own choice.

Id. at 62-63 (emphasis added).

The Senate Report confirms what the statutory text already makes clear. Congress recognized the states' right "to establish necessary election *procedures* . . . designed to protect the rights of voters," but confirmed its intention that any such voter assistance procedures "be established in a manner which encourages greater participation in the electoral process." *Id.* (emphasis added).

Thus, Congress intended Section 208 to increase voter participation and eliminate discrimination by providing voters with limited literacy or disabilities the choice of who would assist them in casting a ballot, subject to carefully crafted exceptions in the federal statute, and left room for states to regulate the *procedures*—but not who could assist.

Even if Texas shared Congress's purpose and intended for Section 6.06 to make it easier for voters to vote, further restricting who may serve as an assister creates a conflict in achieving that goal and Section 6.06 must yield. *See Arizona v. United States*, 567 U.S. at 406 ("Although § 5(C) attempts to achieve one of the same goals as federal law—the deterrence of unlawful employment—it involves a conflict in the method of enforcement. The Court has recognized that a '[c]onflict in technique can be fully as disruptive to the system Congress erected as conflict in overt policy.'") (quoting *Motor Coach Emps. v. Lockridge*, 403 U.S. 274, 287 (1971)).

In Section 208, Congress decided not to prohibit voter assistance by compensated individuals. Texas criminalized that same conduct, contradicting Congress's policy decision. *See, e.g., id.* at 405 (concluding state

law that criminalized unauthorized employment was preempted where “Congress made a deliberate choice not to impose criminal penalties on aliens who seek, or engage in, unauthorized employment”). In concluding that Section 6.06 served congressional purposes and objectives, the Fifth Circuit ignored the “careful balance” struck by Congress in Section 208. *Id.* at 406.

The Fifth Circuit further erred by ignoring the exclusions in Section 208 when it concluded that Congress intended for States to layer on additional excluded categories of assisters. Section 208’s “express exception . . . implies that there are no *other* circumstances under which” additional restrictions or limitations apply. *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018); *see also Hillman v. Maretta*, 569 U.S. 483, 496 (2013) (“[W]here Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent.”) (quoting *Andrus v. Glover Constr. Co.*, 446 U.S. 608, 616-17 (1980)).

Under the Fifth Circuit’s reasoning, Congress’s purpose was to allow states to exclude unlimited categories of individuals as assisters, with no limiting principle, and to strip voters of the protections plainly set out in Section 208. There is simply no basis for this conclusion in the statute’s text, the structure of the Voting Rights Act, or the legislative history of Section 208.

**D. The Fifth Circuit Erred in Assuming that
There Is a Presumption against Preemption
that Is Dispositive Here**

Even when a federal law regulates in an area of states' historic police powers, a presumption against preemption must give way when there is a history of significant federal presence. *United States v. Locke*, 529 U.S. 89, 108 (2000) (“[A]n ‘assumption’ of nonpre-emption is not triggered when the State regulates in an area where there has been a history of significant federal presence.”).

The Fifth Circuit failed to recognize that, although states have “historic police powers in administering elections,” Pet.App. 22a, in the Voting Rights Act Congress “authorizes federal intrusion into sensitive areas of state and local policy making,” and accordingly “imposes substantial ‘federalism costs.’” *Lopez*, 525 U.S. at 282 (quoting *Miller v. Johnson*, 515 U.S. 900, 926 (1995)). *See also* Pet.App. 56a-57a (Graves, J., dissenting).

Where, as here, the Voting Rights Act guarantees eligible voters their choice of assister, a state law such as Section 6.06 must yield. *See Gade*, 505 U.S. at 108 (holding that “any state law, however clearly within a State’s acknowledged power, which interferes with or is contrary to federal law, must yield”) (quoting *Felder v. Casey*, 487 U.S. 131, 138 (1988)). *See also Mayor, Aldermen & Commonalty of N.Y. v. Miln*, 36 U.S. 102, 143 (1837) (applying conflict preemption analysis even after concluding the state law in question was an exercise of the state’s police power).

Even if a presumption against preemption applied here, it was overcome. As a starting point, “it is not necessary for a federal statute to provide explicitly that particular state laws are pre-empted.” *Int’l Paper Co. v. Ouellette*, 479 U.S. 481, 491 (1987). The plain language of Section 208, by itself, expresses the “clear and manifest” intent of Congress to preempt state laws that further limit an eligible voter’s choice of who may serve as an assister. The Fifth Circuit erred in failing to accept Section 208’s plain meaning as demonstrating preemptive purpose. Pet.App. 26a.

II. The Question Presented Warrants This Court’s Review

A. The Fifth Circuit’s Decision Creates a Circuit Conflict Concerning Preemption Analysis

1. The Fifth Circuit’s decision creates a circuit conflict because it abandons the long-established conflict preemption analysis of the Court and other circuits. *See, e.g., PLIVA*, 564 U.S. at 617 (“Where state and federal law ‘directly conflict,’ state law must give way.”). Unlike the Fifth Circuit, which did not ask whether the state and federal statutes “directly conflict,” most other circuits examine the statutory text for conflict and impossibility before exploring the purposes and objectives of Congress.

For example, the Sixth Circuit looked first for direct conflict when it analyzed an Ohio law that allowed a host racing association to consent to interstate off-track betting in the absence of a written agreement with the horsemen’s group. *Horseman’s Benevolent & Protective Ass’n-Ohio Div., Inc. v. DeWine*, 666 F.3d 997, 1000 (6th Cir. 2012)

(“Federal law preempts state law if the two ‘directly conflict’—if adherence to the one precludes adherence to the other.”). The federal Interstate Horseracing Act required the host racing association to have a written agreement with the horsemen’s group to give that consent. *Id.* at 999. Comparing the language of the two statutes, the Sixth Circuit found a direct conflict because “the horsemen’s veto is an integral part of the [federal] Act, and the Ohio statute would negate the veto in certain circumstances[.]” *Id.* at 1000-01. Because the two laws “directly conflict[.]” the Sixth Circuit concluded that the Ohio law was preempted. *Id.* at 998, 1000-01.

Similarly, the Eighth Circuit performed a textual analysis for direct conflict when it affirmed the preliminary injunction of a state immigration statute in *Iowa Migrant Movement for Justice v. Bird*, 157 F.4th 904, 919 (8th Cir. 2025) (“[C]onflict preemption occurs . . . when ‘compliance with both federal and state regulations is a physical impossibility’” (quoting *Arizona v. United States*, 567 U.S. at 399)). Where the state law contained no exceptions for an offense of illegal reentry, and federal law contained exceptions, the Eighth Circuit concluded based on “the plain meaning of the statute” that plaintiffs were likely to prevail on their preemption claim. *Id.* at 921; *see also id.* at 926 (finding likely preemption for a second provision of state law based on its “plain meaning”). The Eighth Circuit moved on to a purposes and objectives analysis only after comparing the text of the state and federal statutes for direct conflict. *See id.* at 921.

The Third, Ninth, Tenth and Eleventh Circuits also recognize that conflict preemption occurs when the state and federal statutes directly conflict or where compliance

with both statutes is an impossibility. *See Transource Pa., LLC v. DeFrank*, 156 F.4th 351, 372 (3d Cir. 2025) (“Conflict preemption . . . ‘exists where compliance with both state and federal law is impossible, or where the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.’”) (cleaned up) (quoting *Oneok*, 575 U.S. at 377); *Chamber of Com. of U.S. v. Bonta*, 62 F.4th 473, 482 (9th Cir. 2023) (“Conflict preemption may occur . . . where it is ‘impossible for a private party to comply with both state and federal requirements[.]’”) (quoting *Merck Sharp*, 587 U.S. at 303); *Voter Reference Found., LLC v. Torrez*, 160 F.4th 1068, 1080 (10th Cir. 2025) (“[C]onflict preemption occurs ‘where it is impossible for a private party to comply with both state and federal requirements, or where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.’”) (quoting *In re Universal Serv. Fund Tel. Billing Prac. Litig.*, 619 F.3d 1188, 1196 (10th Cir. 2010)); *Shen v. Comm’r, Fla. Dep’t of Agric. & Consumer Servs.*, 158 F.4th 1227, 1262 (11th Cir. 2025) (“Conflict preemption generally ‘covers cases where compliance with both federal and state regulations is a physical impossibility.’”) (quoting *Odebrecht Const., Inc. v. Sec’y, Fla. Dep’t of Transp.*, 715 F.3d 1268, 1274 (11th Cir. 2013)).

2. The Fifth Circuit also created a circuit conflict by not basing its purposes and objectives analysis on the language, structure, or legislative history of the federal statute. Instead, the Fifth Circuit reverse-engineered congressional purpose from state laws, on the circular theory that Congress could not have had the purpose of preempting state law.

Other circuits examine the federal statute to conduct their purposes and objectives inquiry.

For example, the Tenth Circuit concluded, after examining the NVRA, that a New Mexico law restricting publication of voter information was conflict preempted because it stood as an obstacle to the purposes and objectives of Congress. *Voter Reference*, 160 F.4th at 1081-82 (“These two sections of the NVRA, and the NVRA as a whole, make evident Congress’s intent to support the transparency and circulation of voter data among the public to help detect and correct errors.”).

Similarly, the Sixth Circuit concluded, based on an examination of the federal Interstate Horseracing Act (“IHA”), that a Michigan law regulating horse-betting was preempted because it interfered with congressional objectives. *Churchill Downs Tech. Initiatives Co. v. Mich. Gaming Control Bd.*, 162 F.4th 631, 638 (6th Cir. 2025). The Sixth Circuit reasoned that the federal statute established the methods by which Congress intended to achieve its objectives, and a state law that added to federal requirements was conflict preempted because it “thwart[ed] the IHA’s methods for achieving its stated objectives.” *Id.* (“The [Michigan statute] tells regulated parties that the IHA’s two-state scheme isn’t enough. So it interferes with the IHA’s methods to reach the [congressional] objectives[.]”).

In other circuits, the language of the federal statute is the touchstone of the congressional purpose inquiry. *See, e.g., Mi Familia Vota v. Fontes*, 129 F.4th 691, 711 (9th Cir.), *reh’g denied*, 152 F.4th 1153 (9th Cir. 2025) (“Because the NVRA seeks to ‘enhance[] the participation of eligible

citizens as voters in [federal] elections,’ the requirement of [documentary proof of citizenship] to vote by mail is a ‘sufficient obstacle’ to the ‘accomplishment and execution of the [NVRA’s] full purposes’ and ‘must yield to the regulation of Congress’ within federal elections.”) (quoting *Crosby*, 530 U.S. at 373) (internal citation omitted) (third alteration added).

In contrast, the Fifth Circuit did not examine the text of Section 208 for congressional purposes and objectives, declaring instead that a plain reading of the statute would be “absurd” and “bizarre[.]” Pet.App. 29a. The Fifth Circuit did not look at Section 208’s legislative history for insight into the purposes of Congress, dismissing the Senate Report as “musings.” Pet.App. 32a n.20. The Fifth Circuit instead concluded that Congress’s purposes should be based on the Fifth Circuit’s idea of what is “sensible,” *i.e.*, that Congress should not “imply[] any judgment about other” categories of individuals that states might exclude as assisters in addition to those already enumerated in the statute. Pet.App. 29a.

As the dissent points out, this “conclusion blinds itself to the purpose of Section 208[.]” Pet.App. 60a (Graves, J., dissenting). The Fifth Circuit did not base its conclusion on the plain meaning, structure, or legislative history of Section 208; it merely substituted its own idea of “common sense.” Pet.App. 26a.

The Fifth Circuit’s decision disrupts the federal-state relationship. Even where the federal statute is plain on its face, and part of a long history of federal regulation of state laws to guarantee the right to vote, the Fifth Circuit’s decision creates a new preemption doctrine under

which the preemptive effect of a federal statute ends where state law begins. As a result, the Fifth Circuit's decision leaves no preemptive effect to Section 208.

B. This Case Raises Questions of Exceptional Importance Concerning the Right to Vote

The right to vote is preservative of all other rights. *See Wesberry v. Sanders*, 376 U.S. 1, 17 (1964) (“No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live.”). In order to protect that right, and to ensure access to the ballot for voters who are blind, disabled, or cannot read or write, Congress guaranteed eligible voters’ right to choose assistants they trust, subject to four limitations enumerated in the statute.

Congress enacted Section 208 out of a recognition that voters who are blind, disabled, or cannot read or write face unique barriers to accessing the ballot and, without the help of someone they trust, may end up not voting at all. *See* S. Rep. No. 97-417, at 62 (“[P]eople requiring assistance in some jurisdictions are forced to choose between casting a ballot under the adverse circumstances of not being able to choose their own assistance or forfeiting their right to vote. The committee is concerned that some people in this situation do in fact elect to forfeit their right to vote.”).

The Fifth Circuit’s decision impairs the right to vote. It significantly undermines eligible voters’ ability to receive the assistance they need to cast a ballot. Section 6.06 makes it a felony for an eligible voter to offer money to a friend or neighbor in exchange for assistance, and

bars voters like LUPE's members from seeking assistance from social service workers whom they know and trust.

This Court should intervene to ensure that voters who are elderly, disabled, or cannot read or write receive the protections guaranteed to them by Congress.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant the petition for writ of certiorari.

January 26, 2026

Respectfully submitted,

MICHAEL C. KEATS
REBECCA L. MARTIN
JASON S. KANTERMAN
FRIED, FRANK, HARRIS,
SHRIVER & JACOBSON LLP
One New York Plaza
New York, NY 10004

NINA PERALES
Counsel of Record
ANTONIO JOSEPH DELGRANDE
MEXICAN AMERICAN LEGAL DEFENSE
AND EDUCATIONAL FUND
110 Broadway, Suite 300
San Antonio, TX 78205
(210) 224-5476
nperales@maldef.org

*Counsel for La Unión del
Pueblo Entero*

APPENDIX

TABLE OF APPENDICES

	<i>Page</i>
Appendix A — Opinion of the United States Court of Appeals for the Fifth Circuit, filed August 29, 2025.....	1a
Appendix B — Judgment of the United States Court of Appeals for the Fifth Circuit, filed August 29, 2025.....	61a
Appendix C — Findings of Fact and Conclusions of Law of the United States District Court for the Western District of Texas, San Antonio Division, filed October 11, 2024	65a
Appendix D — Relevant Statutory Provisions	223a
Appendix E — Excerpts of S.B. No. 1	232a

**Appendix A — Opinion of the United States
Court of Appeals for the Fifth Circuit,
filed August 29, 2025**

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 24-50826

LA UNION DEL PUEBLO ENTERO; SOUTHWEST
VOTER REGISTRATION EDUCATION PROJECT;
MEXICAN AMERICAN BAR ASSOCIATION
OF TEXAS; TEXAS HISPANICS ORGANIZED
FOR POLITICAL EDUCATION; JOLT ACTION;
WILLIAM C. VELASQUEZ INSTITUTE; FIEL
HOUSTON, INCORPORATED; FRIENDSHIP-WEST
BAPTIST CHURCH; TEXAS IMPACT; JAMES
LEWIN; MI FAMILIA VOTA;

Plaintiffs-Appellees,

versus

GREGORY W. ABBOTT, IN HIS OFFICIAL
CAPACITY AS GOVERNOR OF TEXAS; 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; SEAN
TEARE, HARRIS COUNTY DISTRICT ATTORNEY,

Defendants-Appellants,

REPUBLICAN NATIONAL COMMITTEE,

Movant-Appellant,

2a

Appendix A

OCA-GREATER HOUSTON; LEAGUE OF WOMEN
VOTERS OF TEXAS,

Plaintiffs-Appellees,

versus

KEN PAXTON, TEXAS ATTORNEY GENERAL,

Defendant-Appellant,

LULAC TEXAS; TEXAS ALLIANCE FOR
RETIRED AMERICANS; TEXAS AFT;
VOTE LATINO,

Plaintiffs-Appellees,

versus

KEN PAXTON, IN HIS OFFICIAL CAPACITY
AS THE TEXAS ATTORNEY GENERAL,

Defendant-Appellant,

DELTA SIGMA THETA SORORITY,
INCORPORATED; THE ARC OF TEXAS,

Plaintiffs-Appellees,

versus

GREGORY WAYNE ABBOTT, IN HIS OFFICIAL
CAPACITY AS THE GOVERNOR OF TEXAS;
WARREN KENNETH PAXTON, JR., IN HIS
OFFICIAL CAPACITY AS THE ATTORNEY
GENERAL OF TEXAS,

Defendants-Appellants.

Appendix A

Appeal from the United States District Court
for the Western District of Texas
USDC Nos. 1:21-CV-780, 1:21-CV-786,
5:21-CV-844, 5:21-CV-848, 5:21-CV-920

Before SMITH, GRAVES, and DUNCAN, *Circuit Judges*.

STUART KYLE DUNCAN, *Circuit Judge*:

We consider challenges to various provisions of Texas’s Senate Bill 1 (“S.B. 1”) that regulate how persons may assist voters in casting ballots. Several voter-assistance organizations claimed those provisions are preempted by Section 208 of the Voting Rights Act, 52 U.S.C. § 10508 (“VRA Section 208” or “Section 208”). The district court agreed and permanently enjoined the challenged provisions.

We reverse.

Some of the challenged provisions (§§ 6.03, 6.05, and 6.07) require assistors to disclose information such as name, address, relationship to the voter, and whether they are compensated. Another (§ 6.04) amends the existing oath assistors must take. Contrary to the district court’s ruling, we conclude that none of the plaintiff organizations has standing to challenge these provisions. In particular, fears that their members will be prosecuted for violating them are speculative and so fail to show Article III injury.

Other challenged provisions (§§ 6.06 and 7.04) bar assistance from persons who are compensated or who

Appendix A

are paid ballot harvesters. The district court correctly ruled that two of the plaintiff organizations have standing to challenge these provisions because there is a credible threat that their members will be prosecuted for violating them. So, we address whether those provisions are preempted by VRA Section 208.

They are not. Nothing in Section 208 shows that Congress wanted to preempt state election laws like these. To be sure, the federal law is an important one—guaranteeing blind, disabled, and illiterate voters assistance from “a person of [their] choice,” with certain exceptions. Contrary to the district court’s ruling, though, this federal right does not vaporize all additional state voter assistance regulations. That would mean, for instance, that states could not bar voter assistance by minors, by prisoners, by persons carrying firearms, by electioneers, or by the candidates themselves. By enacting Section 208, Congress did not intend that bizarre result.

Accordingly, we reverse the district court’s judgment, vacate the permanent injunction, and remand for further proceedings consistent with this opinion.

I. BACKGROUND**A. Facts**

The Governor of Texas signed S.B. 1 into law on September 7, 2021. The provisions relevant to this case are §§ 6.03, 6.046.05, 6.06, 6.07, and 7.04. We summarize their content below.

Appendix A

Disclosure Provisions. Sections 6.03, 6.05, and 6.07 require someone assisting a voter to disclose certain information. Under § 6.03, the assistor must list on a prescribed form at the polling place his name, address, relationship to the voter, and whether he has received any compensation. Sections 6.05 and 6.07 concern mail-in ballots. Under § 6.05, the assistor must note “on the official carrier envelope” “the relationship of the [assistor]” and “whether the person received or accepted any form of compensation or other benefit from a candidate, campaign, or political committee in exchange for providing assistance.” Noncompliance is a felony. TEX. ELEC. CODE § 86.010(f), (g). Finally, § 6.07 requires the vote-by-mail official carrier envelope to include space for noting the assistor’s relationship to the voter.

Oath Provision. Section 6.04 amends the pre-existing assistor oath by adding the underlined text:

I swear (or affirm) under penalty of perjury that the voter I am assisting represented to me they are eligible to receive assistance; I will not suggest, by word, sign, or gesture, how the voter should vote.... I will prepare the voter’s ballot as the voter directs; I did not pressure or coerce the voter into choosing me to provide assistance; ~~and~~ I am not the voter’s employer, an agent of the voter’s employer, or an officer or agent of a labor union to which the voter belongs; I will not communicate information about how the voter has voted to another person; and I understand that if assistance is provided

Appendix A

to a voter who is not eligible for assistance, the voter's ballot may not be counted.

Compensation Provisions. Section 6.06 penalizes someone who “compensates or offers to compensate another person for assisting voters,” or who “solicits, receives, or accepts compensation for” doing so. *See* TEX. ELEC. CODE § 86.0105. Section 7.04 penalizes someone who “[1] directly or through a third party, knowingly provides or offers to provide vote harvesting services in exchange for compensation or other benefit,” or [2] “directly or through a third party, knowingly provides or offers to provide compensation or other benefit to another person in exchange for vote harvesting services.” *See id.* § 276.015(b), (c).¹

1. “Vote harvesting services’ means in-person interaction with one or more voters, in the physical presence of an official ballot or a ballot voted by mail, intended to deliver votes for a specific candidate or measure.” TEX. ELEC. CODE § 276.015(a)(2). And “[b]enefit’ means anything reasonably regarded as a gain or advantage, including a promise or offer of employment, a political favor, or an official act of discretion, whether to a person or another party whose welfare is of interest to the person.” *Id.* § 276.015(a)(1).

*Appendix A***B. Proceedings**

The plaintiffs are organizations² with members who require voting assistance as well as staff and volunteers who assist voters. They sued in federal district court claiming the challenged provisions are preempted by VRA Section 208. That section 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.

Named as defendants were the State of Texas; Texas Secretary of State and the Texas Attorney General (together, the “State officials”); the District Attorneys of Bexar County, Harris County, Travis County, Dallas County, Hidalgo County, and El Paso County (together,

2. They are: The Arc of Texas; Delta Sigma Theta Sorority; Mi Familia Vota; OCA-Greater Houston; The League of Women Voters of Texas (the “League”); REVUP-Texas; La Union Del Pueblo Entero (LUPE), Mexican American Bar Association of Texas (MABA), Friendship-West Baptist Church, the Southwest Voter Registration Education Project, Texas Impact, Texas Hispanics Organized for Political Education, Jolt Action, the William C. Velasquez Institute, FIEL Houston Inc., and James Lewin (together, the “LUPE Plaintiffs”); and League of United Latin American Citizens Texas (LULAC), Voto Latino, Texas Alliance for Retired Americans, and Texas AFT (together, the “LULAC Plaintiffs”).

Appendix A

the “DAs”); and local election officials in Bexar County, Dallas County, El Paso County, Harris County, Hidalgo County, and Travis County (together, the “election officials”).³

The district court found that at least one plaintiff organization had standing to challenge each provision.

On the merits, the court held that Section 208 preempted each of the challenged provisions. The court interpreted Section 208 and our decision in *OCA-Greater Hous. v. Texas*, 867 F.3d 604 (5th Cir. 2017) [*OCA*], to “unambiguous[ly]” mean that a State may not “impose additional limitations or exceptions not stated in” Section 208.

Applying that principle, the court reasoned that Section 208 preempts (1) the Disclosure Provisions because they require assistors to disclose “duplicative information,” distinguish between “normal” and abnormal assistance, and narrow the universe of willing assistors; (2) the Oath Provision because the added “penalty of perjury” language is “intimidating” and “scary” and has a chilling effect on assistors; and (3) the Compensation Provisions because they “facially restrict the class of

3. Various Republican Committees were allowed to intervene as defendants, after a panel of our court reversed the district court’s order initially denying their intervention. *See La Union del Pueblo Entero v. Abbott*, 29 F.4th 299, 309 (5th Cir. 2022). Those intervenors are the Harris County Republican Party, the Dallas County Republican Party, the Republican National Committee, the National Republican Senatorial Committee, and the National Republican Congressional Committee (together, “Intervenors”).

Appendix A

people who are eligible to provide voting assistance beyond the categories of prohibited individuals identified in the text of the statute.”

Accordingly, the court permanently enjoined the State officials and the DAs from enforcing §§ 6.03, 6.04, 6.05, 6.06, 6.07, and 7.04. The State officials, the Intervenors, and the Harris County DA timely appealed.

II. STANDARD OF REVIEW

We “review[] a permanent injunction for abuse of discretion.” *Crown Castle Fiber, L.L.C. v. City of Pasadena*, 76 F.4th 425, 432 (5th Cir. 2023). A court abuses its discretion by relying on an erroneous legal conclusion. *Id.* at 433. Standing and preemption are legal issues reviewed *de novo*. *See OCA*, 867 F.3d at 610.

* * *

On appeal, the State officials, the Intervenors, and the Harris County DA contend the district court erred both in concluding that any plaintiff organization had standing to challenge the pertinent provisions, and also in holding that Section 208 preempted each provision.⁴

We begin with standing (*infra* Part III) and conclude the district court erred as to the Disclosure and Oath Provisions. No plaintiff organization has standing to

4. Our precedent forecloses the State officials’ argument that sovereign immunity bars plaintiffs’ claims. *See OCA*, 867 F.3d at 614 (“The VRA . . . validly abrogated state sovereign immunity.”).

Appendix A

challenge those. The court was correct, though, that two organizations have standing to challenge the Compensation Provisions. Accordingly, we then consider whether those provisions are preempted by VRA Section 208 and conclude they are not (*infra* Part IV).

III. STANDING

To have standing, “[t]he plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338, 136 S. Ct. 1540, 194 L. Ed. 2d 635 (2016). An injury in fact is “an invasion of a legally protected interest which is (a) concrete and particularized; and (b) actual or imminent, not conjectural or hypothetical.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992) (cleaned up).

An organization “may have standing either by showing it can sue on behalf of its members (‘associational’ standing) or sue in its own right (‘organizational’ standing).” *Texas State LULAC v. Elfant*, 52 F.4th 248, 253 (5th Cir. 2022). “‘Associational standing’ is derivative of the standing of the association’s members, requiring that [1] they have standing and [2] that the interests the association seeks to protect be germane to its purpose.” *OCA*, 867 F.3d at 610. Organizations suing on their own behalf “must satisfy the usual standards for injury in fact, causation, and redressability that apply to individuals.” *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 393-94, 144 S. Ct. 1540, 219 L. Ed. 2d 121 (2024).

Appendix A

We consider whether standing exists as to each challenged provision because “plaintiffs must establish standing for each and every provision they challenge.” *In re Gee*, 941 F.3d 153, 160 (5th Cir. 2019). “[O]nce we determine that at least one plaintiff has standing, we need not consider whether the remaining plaintiffs have standing to maintain the suit.” *McAllen Grace Brethren Church v. Salazar*, 764 F.3d 465, 471 (5th Cir. 2014).

A. Disclosure Provisions

The district court ruled some of the plaintiff organizations had standing to challenge the Disclosure Provisions (specifically, Delta Sigma Theta, LUPE, MABA, and FIEL). We consider whether that is so.

1.

Beginning with organizational standing, the district court concluded that certain plaintiff organizations (specifically, Delta Sigma Theta, LUPE, MABA, and FIEL) could challenge the Disclosure Provisions because they made it harder to recruit members due to fear of prosecution. We disagree.

The organizations identify no credible threat that any assistors will be prosecuted for violating the Disclosure Provisions. *See Elfant*, 52 F.4th at 257 (5th Cir. 2022) (“Plaintiffs . . . lack standing . . . because there is no credible threat they will be prosecuted.”). They offer no evidence that any assistor has violated them or is likely to do so. Nor do they cite any investigations or prosecutions

Appendix A

of assistors since the provisions were enacted. All they offer is the “fanciful notion” that an assistor might run afoul of the provisions and be prosecuted. *Ibid.* But that speculation, which “depends on a ‘highly attenuated chain of possibilities,’” *ibid.* (quoting *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 410, 133 S. Ct. 1138, 185 L. Ed. 2d 264 (2013)), fails to establish actual or imminent injury. *Cf. Inst. for Free Speech v. Johnson*, F.4th, 2025 U.S. App. LEXIS 18855, 2025 WL 2104354, at *5 (5th Cir. July 28, 2025) (explaining a plaintiff must show his “proposed conduct will run afoul of Texas law” to show pre-enforcement injury). Plaintiffs “cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending.” *Clapper*, 568 U.S. at 416.

For similar reasons, the alleged recruitment difficulties are not “fairly traceable to the challenged action of the defendant[s].” *Reule v. Jackson*, 114 F.4th 360, 367 (5th Cir. 2024) (cleaned up). They are traceable, rather, to baseless speculation about future prosecutions.⁵

5. To the extent the argument depends on the fears of non-member assistors, it likewise fails. “[W]here a causal relation between injury and challenged action depends upon the decision of an independent third party . . . standing . . . is ordinarily substantially more difficult to establish.” *California v. Texas*, 593 U.S. 659, 675, 141 S. Ct. 2104, 210 L. Ed. 2d 230 (2021) (cleaned up). To “thread the causation needle,” a plaintiff “must show that the third parties will likely react in predictable ways that in turn will likely injure the plaintiffs.” *All. for Hippocratic Med.*, 602 U.S. at 383 (internal quotation marks omitted). The organizations failed to show that the “predictable” reaction to the Disclosure Provisions is volunteers’ refusal to assist eligible voters.

Appendix A

The organizations respond that these provisions “chill” their activities. That argument also fails. “Chilling” is sometimes sufficient for standing in the First Amendment context, but plaintiffs assert no First Amendment claim. *See Pool v. City of Houston*, 978 F.3d 307, 311 (5th Cir. 2020) (“This special standing rule for First Amendment cases recognizes that people should not have to expose themselves to actual arrest or prosecution in order to challenge a law that infringes on speech” (cleaned up)). Even had they done so, though, “[t]he chilling effect must have an objective basis[.]” *Elfant*, 52 F.4th at 256 (citing *Laird v. Tatum*, 408 U.S. 1, 13-14, 92 S. Ct. 2318, 33 L. Ed. 2d 154 (1972)). Here, any chill is purely subjective and therefore inadequate to show injury. *See ibid.* (“[A]llegations of a subjective chill are not an adequate substitute.” (cleaned up)).

The organizations next argue they have standing because they must “expend resources” to educate their members about the provisions. They are again mistaken. “[D]ivert[ing] . . . resources in response to a defendants’ actions” does not establish standing. *All. for Hippocratic Med.*, 602 U.S. at 395.

Finally, the organizations argue they have standing because the provisions “directly regulate” them. We again disagree. Even if it could be said that the Disclosure Provisions “directly” regulate the organizations, that does not *ipso facto* establish injury. *See Tex. v. Equal Emp. Opportunity Comm’n*, 933 F.3d 433, 446 (5th Cir. 2019) (“Because it is the object of the Guidance *and* has suffered multiple injuries as a result, Texas has constitutional

Appendix A

standing” (emphasis added)). The organizations must still show an actual or imminent injury caused by that regulation and, as discussed, they fail to do so. *All. for Hippocratic Med.*, 602 U.S. at 382.

Accordingly, we conclude that no plaintiff organization has shown organizational standing to challenge the Disclosure Provisions.

2.

The organizations also argue on appeal that they have associational standing to challenge the Disclosure Provisions, an issue the district court did not address. They argue the provisions caused their members to vote without their preferred assistants because they feared exposing them to possible criminal liability. We disagree that this establishes associational standing, however.

The members’ alleged fears are not “fairly traceable to the challenged action of the defendant[s],” *Reule*, 114 F.4th at 367 (cleaned up), but instead to baseless speculation about future prosecutions. As with organizational standing, *see supra* III.A.1, such augury does not establish Article III standing. Plaintiffs “cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending.” *Clapper*, 568 U.S. at 416.

The organizations insist, however, that their members’ injury is the loss of their voting rights, not the fear of

Appendix A

prosecution. That does not help their case. Any such injury would be traceable, not to the challenged provisions, but to members' unfounded speculation that an assistor might be prosecuted under them. *Reule*, 114 F.4th at 367; *Elfant*, 52 F.4th at 257.

Finally, the organizations argue that the provisions harm their members by causing delays in voting. We again disagree. Waiting a few minutes while an assistor completes a simple form is not a cognizable injury because it merely involves the "usual burdens of voting." *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 198, 128 S. Ct. 1610, 170 L. Ed. 2d 574 (2008).⁶ Such inconvenience does not bear a "close relationship to a harm traditionally recognized as providing a basis for a lawsuit in American courts." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 424, 141 S. Ct. 2190, 210 L. Ed. 2d 568 (2021) (cleaned up).

Accordingly, we conclude that no plaintiff organization has shown associational standing to challenge the Disclosure Provisions.

In sum, no plaintiff organization has either associational or organizational standing to challenge the Disclosure Provisions. The district court erred by ruling otherwise.

6. The record says nothing about how long it takes to fill out the forms required by the Disclosure Provisions. But bear in mind that they require an assistor only to list his name, address, relationship to the voter, and whether he received compensation. The organizations vaguely assert only that voting lines are now "longer." That falls far short of establishing a cognizable Article III injury.

*Appendix A***B. Oath Provision**

The district court ruled some of the plaintiff organizations had standing to challenge the Oath Provision. Specifically, the court ruled that the Arc had associational standing and Delta Sigma Theta, LUPE, MABA, and FIEL had organizational standing to challenge the provision.

Recall that this provision added language to the existing oath to clarify, *inter alia*, that it is taken “under penalty of perjury” and that the voter represented to the assistor he was “eligible to receive assistance.” According to the court, the revised oath harmed the Arc’s members because their assistors were “uncomfortable” taking it out of “fear of . . . potential criminal liability.” And according to the court, the revised oath harmed Delta Sigma Theta, LUPE, MABA, and FIEL because they “have had difficulty recruiting members . . . due to the threat of criminal sanctions under . . . [the] Oath requirements.” For largely the same reasons as the Disclosure Provisions, however, this evidence fails to show Article III standing.

The record shows that any assistors’ fears of being prosecuted under the Oath Provision were based on pure speculation. No evidence showed that assistors were planning to violate the revised oath (or were likely to do so) nor that anyone had been (or would likely be) prosecuted for violating it. Any argument that an assistor might be prosecuted under the provision depends on a “fanciful” and “highly attenuated chain of possibilities” inadequate to support standing. *Elfant*, 52 F.4th at 257 (quoting *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 410, 133 S. Ct. 1138, 185 L. Ed. 2d 264 (2013)). Federal courts cannot

Appendix A

adjudicate hypotheticals. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423, 141 S. Ct. 2190, 210 L. Ed. 2d 568 (2021).⁷

The argument for harm here is puzzling given that the Oath Provision merely confirmed what the law already was. The existing oath was *already* taken under penalty of perjury and it was *already* an offense to knowingly assist voters ineligible for assistance.⁸ We cannot fathom how the Oath Provision harmed plaintiffs’ members by making the existing consequences of violating the law more explicit. In any event, being afraid of falsely swearing an oath does not bear a “close relationship to a harm traditionally recognized as providing a basis for a lawsuit in American courts.” *TransUnion*, 594 U.S. at 424 (cleaned up).

Accordingly, we conclude that no plaintiff organization has standing to challenge the Oath Provision. The district court erred by ruling otherwise.⁹

7. To the extent the argument depends on the fears of any non-member assistors, it fails for the same reason as does the argument for organizational standing respecting the Disclosure Provisions. *See All. for Hippocratic Med.*, 602 U.S. at 383.

8. *See* TEX. ELEC. CODE § 64.034 (2020) (requiring assistors to swear an oath that they “will not suggest, by word, sign, or gesture, how the voter should vote”); TEX. ELEC. CODE § 64.036 (2020) (making it an offense to “knowingly . . . provide[] assistance to a voter who has not requested assistance”); TEX. PENAL CODE § 37.02 (2020) (defining perjury as making a false statement under oath “with intent to deceive and with knowledge of the statement’s meaning”).

9. To the extent that the organizations rely on a diversion-of-resources theory to challenge the Oath Provision, we reject that argument for the same reason as we did with respect to the Disclosure Provisions.

*Appendix A***C. Compensation Provisions**

The district court ruled some of the plaintiff organizations had standing to challenge the Compensation Provisions, §§ 6.06 and 7.04 (specifically, OCA, LUPE, the League, and MABA as to § 6.06 and the LULAC and LUPE Plaintiffs as to § 7.04). We agree with respect to some of those organizations.

1.

Start with § 6.06. Recall that this provision criminalizes persons who compensate or receive compensation for assisting a disabled by-mail voter. TEX. ELEC. CODE § 86.0105. The district court found that OCA, LUPE, the League, and MABA “have provided their staff members and volunteers with ‘compensation’ . . . for assisting voters, including mail voters.” Accordingly, the court concluded that § 6.06 exposes those members to criminal liability, causing them injury. The court also found that plaintiffs’ injuries are traceable to the State officials and the DAS and that enjoining them would redress the injuries.¹⁰

We agree OCA and LUPE have standing.¹¹ At trial, OCA established that the provision bars conduct the

10. The State officials do not contest standing as to § 6.06, but the Harris County DA does. We agree with the district court that plaintiffs’ § 6.06 injuries are not traceable to the local election officials.

11. We disagree as to MABA and the League, however. There is no credible threat they will be prosecuted for violating § 6.06 because they offer their volunteers coffee, tea, or water in exchange for assisting voters. These provisions do not plausibly count as “compensation” under § 6.06.

Appendix A

organization engages in—namely, compensating staffers for assisting voters. And OCA asserts it would “absolutely” continue doing this “but for the statute’s proscription of such conduct.” State witnesses also testified that § 6.06 applies to services provided by LUPE. Accordingly, OCA and LUPE suffered injury because they have “an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by [§ 6.06], and there exists a credible threat of prosecution thereunder.” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159, 134 S. Ct. 2334, 189 L. Ed. 2d 246 (2014) (quoting *Babbitt v. Farm Workers*, 442 U.S. 289, 298, 99 S. Ct. 2301, 60 L. Ed. 2d 895 (1979)).¹²

The Harris County DA argues these members suffer no injury because there is no credible threat it will prosecute them for violating § 6.06. We disagree. OCA and LUPE established they have engaged in (and will continue to engage in) conduct prohibited by § 6.06. The Harris County DA has not disavowed prosecutions under § 6.06 for that behavior, so a credible threat of prosecution exists.

The DA does not contest traceability and redressability, but in any event they are easily met. “[T]he district attorney . . . is charged with prosecuting individuals who violate criminal laws” in Harris County, *Nat’l Press*

12. The Harris County DA argues *SBA List* is inapt because OCA and LUPE’s claims are not “affected with a constitutional interest.” We disagree. Their conduct arguably implicates the right to vote. Regardless, though, plaintiffs need not “violate a criminal provision and risk prosecution to challenge it.” *In re Gee*, 941 F.3d at 161 n.3.

Appendix A

Photographers Ass’n v. McCraw, 90 F.4th 770, 785 (5th Cir. 2024), and so the threat of prosecution would be redressed by enjoining the DA. *See All. for Hippocratic Med.*, 602 U.S. at 381 (“If a defendant’s action causes an injury, enjoining the action . . . will typically redress that injury.”).

2.

Moving on to § 7.04, recall that it penalizes giving, offering, or receiving “compensation or other benefit” for vote harvesting, defined as in-person interaction in the presence of a ballot meant to deliver votes for a candidate or measure. The district court found that the LUPE and LULAC Plaintiffs’ activities expose them to liability under § 7.04, causing them injury traceable to the defendants that would be redressed by an injunction.

We agree. At trial, the LUPE and LULAC Plaintiffs established that the provision bars conduct they have engaged in and will continue to engage in—namely, advocating for candidates and ballot measures through compensated, in-person interactions with voters in the presence of ballots. And the district court found that § 7.04 caused them to stop doing that.

The State officials and the Harris County DA argue these fears about prosecution are speculative. Not so. Not only did the LUPE and LULAC Plaintiffs show their ongoing and future activities fall within § 7.04, but a state witness testified that he would be concerned those activities constitute voter fraud. That distinguishes these

Appendix A

plaintiffs' concrete fears of prosecution under § 7.04 from the speculative fears of prosecution under the Oath and Disclosure Provisions. *See SBA List*, 573 U.S. at 159.¹³

Accordingly, we conclude the LUPE and LULAC Plaintiffs have standing to challenge § 7.04.

IV. PREEMPTION

We now consider whether VRA Section 208 preempts S.B. 1's Compensation Provisions. The district court held those provisions were preempted because they impose "additional limitations or exceptions" on assistants beyond those permitted by Section 208. On appeal, Appellants (the State officials and Intervenor) contend this was error.¹⁴ After setting out the analytical guardrails, we address their arguments.

A.

Preemption flows from the Supremacy Clause. *See* U.S. CONST. art. VI, cl. 2; *see also Kansas v. Garcia*, 589 U.S. 191, 202, 140 S. Ct. 791, 206 L. Ed. 2d 146 (2020). "State law is preempted when (1) a federal statute expressly preempts state law ("express preemption"); (2)

13. Just as with § 6.06, traceability and redressability are easily met and no defendant argues otherwise.

14. The State officials and the Intervenor make similar arguments with respect to preemption, so we treat them together unless context requires otherwise. We refer to those parties in this part collectively as "Appellants."

Appendix A

federal legislation pervasively occupies a regulatory field (“field preemption”); or (3) a federal statute conflicts with state law (“conflict preemption”).” *Deanda v. Becerra*, 96 F.4th 750, 760-61 (5th Cir. 2024) (citing *Arizona v. United States*, 567 U.S. 387, 398-400, 132 S. Ct. 2492, 183 L. Ed. 2d 351 (2012)).

This case involves only conflict preemption and, specifically, the variant known as “purposes and objectives” preemption. See *Kansas*, 589 U.S. at 213-14 (Thomas, J., concurring). Under this theory, a state law is preempted if it “stands as an obstacle” to fulfilling a federal law’s “full purposes and objectives.” See *Deanda*, 96 F.4th at 761 (citing *Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 873, 120 S. Ct. 1913, 146 L. Ed. 2d 914 (2000)). This kind of preemption claim must clear a “high threshold.” *Barrosse v. Huntington Ingalls, Inc.*, 70 F.4th 315, 320 (5th Cir. 2023) (quoting *Chamber of Com. v. Whiting*, 563 U.S. 582, 607, 131 S. Ct. 1968, 179 L. Ed. 2d 1031 (2011)). “Courts may not conduct ‘a freewheeling judicial inquiry into whether a state statute is in tension with federal objectives [because] such an endeavor would undercut the principle that it is Congress rather than the courts that pre-empts state law.’” *Ibid.* (quoting *Whiting*, 563 U.S. at 607).

Moreover, a presumption *against* preemption applies in this case. That is for two related reasons. First, S.B. 1 represents the exercise of Texas’s historic police powers in administering elections. See *Deanda*, 96 F.4th at 761 (presumption against preemption applies to “the historic police powers of the States”) (quoting *Altria Grp., Inc.*

Appendix A

v. Good, 555 U.S. 70, 77, 129 S. Ct. 538, 172 L. Ed. 2d 398 (2008)); *see also, e.g., Storer v. Brown*, 415 U.S. 724, 730, 94 S. Ct. 1274, 39 L. Ed. 2d 714 (1974) (discussing state authority over its electoral processes); *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 451, 128 S. Ct. 1184, 170 L. Ed. 2d 151 (2008) (same); *Vote.Org v. Callanen*, 89 F.4th 459, 481 (5th Cir. 2023) (same). Second, preemption here would alter the federal-state balance of power. *See GenBioPro, Inc. v. Raynes*, 144 F.4th 258, 271 (4th Cir. 2025) (“When reading statutes, we assume Congress normally preserves the constitutional balance between the National Government and the States.”) (quoting *Bond v. United States*, 572 U.S. 844, 862, 134 S. Ct. 2077, 189 L. Ed. 2d 1 (2014)) (internal quotation marks removed).

Accordingly, we will find preemption of the Compensation Provisions only if Section 208 expresses Congress’s “clear and manifest purpose” to do so. *Deanda*, 96 F.4th at 761 (quoting *Altria Grp.*, 555 U.S. at 77); *see also Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485, 116 S. Ct. 2240, 135 L. Ed. 2d 700 (1996) (federal law preempts historic state powers only if “that was the clear and manifest purpose of Congress”); *Crystal Clear Special Util. Dist. v. Jackson*, 142 F.4th 351, 364 (5th Cir. 2025) (same).¹⁵

15. The presumption against preemption does not apply where Congress legislates pursuant to its authority under the Elections Clause to regulate elections of federal Representatives and Senators. *Repub. Nat’l Comm. v. Wetzel*, 120 F.4th 200, 206 (5th Cir. 2024) (citing *Arizona v. Inter-Tribal Council of Ariz.*, 570 U.S. 1, 14, 133 S. Ct. 2247, 186 L. Ed. 2d 239 (2013)); *see* U.S. CONST. art. I, § 4, cl. 1.

Appendix A

With that background in mind, we turn to whether VRA Section 208 preempts S.B. 1's Compensation Provisions.

B.

We start with Section 208's text. A blind, disabled, or illiterate voter "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 (emphasis added). The district court read this text to preempt the Compensation Provisions, which bar assistance from persons who are compensated (§ 6.06) or who are paid ballot harvesters (§ 7.04). These laws are preempted, the court held, because they "facially restrict the class of people who are eligible to provide voting assistance beyond the categories of prohibited individuals identified in the text of [Section 208]."

Appellants contend this is a "breathtaking[ly]" broad reading of Section 208 that would vaporize numerous state laws. We agree. Consider any number of examples.

States bar voter assistance by minors, by candidates, by candidates' relatives, by election judges, and by poll watchers.¹⁶ Each of these laws "facially restricts" who can

No one argues that VRA Section 208 was enacted under the Elections Clause, however—presumably because the provision applies to state and federal elections.

16. *See, e.g.*, HAW. REV. STAT. ANN. § 11-139 (prohibiting candidate from assisting); M.C.L.S. § 168.751 (prohibiting minors

Appendix A

assist voters. Is each preempted by Section 208? Unlikely. Or consider Texas’s ban on firearms at polling places. TEX. PENAL CODE § 46.03(a). Despite this, does Section 208 entitle a disabled voter to help from someone carrying a Glock? That would be surprising. Or consider Texas’s ban on “electioneering” (*i.e.*, advocacy) near polls. TEX. ELEC. CODE § 61.003(a), (b)(1). Does Section 208 entitle a blind voter to help from someone holding a candidate’s sign? Doubtful. Or, to pile absurdity on absurdity, what if an illiterate voter’s “choice” of assistor is in prison? Does Section 208 require a furlough?

Sensing this problem, the district court tried to temper its absolutist reading of Section 208. In a footnote, the court proclaimed it “self-evident” that assistors must be “actually *capable*” of helping voters (this would take care of prisoners) and that assistors “remain subject to generally applicable laws” (this would take care of Glock-toting assistors). But those concessions give away the store. By the district court’s own reasoning, “a person of the voter’s choice” cannot be read literally to negate any state law that restricts the universe of assistors. So, if a state may bar assistance from a candidate, a poll watcher, a minor, an electioneer, or someone carrying a gun, why can’t it also bar assistance from a paid ballot harvester?¹⁷

from assisting); 25 P.S. § 3058(b) (prohibiting judge of election from assisting); O.C.G.A. § 21-2-409(b) (prohibiting candidate or candidate’s relatives from assisting); MISS. CODE ANN. § 23-15-549 (prohibiting the candidate and poll watchers from assisting voters).

17. To answer such questions, the district court posited a distinction between “generally applicable laws” (which are evidently not preempted by Section 208) and laws that “regulate voter

Appendix A

At bottom, nothing compels us to read “a person of the voter’s choice” in a maximalist way that erases swaths of state election laws. Context and common sense counsel a more restrained reading—one guaranteeing eligible voters help from “a person”¹⁸ of their choice, while allowing states to superintend voter assistance. Recall, moreover, that we are reading the phrase, not in the abstract, but in the context of a preemption claim that faces steep odds. As a “purposes and objectives” claim, it must surmount a “high threshold.” *Barrosse*, 70 F.4th at 320. As a claim involving core state authority, it must demonstrate Congress’s “clear and manifest” intent to preempt. *See Deanda*, 96 F.4th at 761. Section 208 comes nowhere close to meeting those standards.

So, the district court erred by relying on the text of Section 208 to find preemption of the Compensation Provisions.

assistance specifically” (which are). We see no difference, though. If Section 208 does not preempt a state law providing that “No firearms are allowed in a polling place,” then it also does not preempt a state law providing that “Persons carrying a firearm cannot assist voters in a polling place.” The latter restricts assistors in precisely the same way as the former.

18. The parties dispute whether the article “a” here means “any” or “one” or “some.” That abstruse grammatical debate misses the point. We are not reading a single article but an entire phrase—“a person of the voter’s choice.” Neither that text nor its context requires a maximalist reading that would bulldoze numerous state election laws.

*Appendix A***C.**

To support its reading of Section 208, the district court also relied on our decision in *OCA*, 867 F.3d 604. As Appellants point out, however, *OCA* did not decide the question before us.

In *OCA*, Mallika Das, a Texas voter with limited English, wanted her son to interpret her ballot at the polling place. But Texas law required an “interpreter” to be registered in the voter’s county, *see* TEX. ELEC. CODE § 61.033, and Das’s son was not. Das was unable to complete her ballot alone, and she then sued under § 1983, claiming the Texas law violated her right to assistance in VRA Section 208. *See OCA*, 867 F.3d at 607-09.

The parties’ dispute concerned “how broadly to read the term ‘to vote’ in Section 208 of the VRA.” *Id.* at 614. Texas guaranteed voters “assistance” only with marking the ballot but not outside the ballot box. *Id.* at 608, 614; *see* TEX. ELEC. CODE § 64.0321. As we explained, though, the VRA guarantees “assistance to vote” both *before* and *after* entering the ballot box. *OCA*, 867 F.3d at 615; *see* 52 U.S.C. § 10310(c)(1) (defining “vote”). We held that Texas violated Section 208 by defining the scope of assistance more narrowly than the federal statute, thus depriving Das of her Section 208 right. *See OCA*, 867 F.3d at 615 (holding Texas “cannot restrict this federally guaranteed right by enacting a statute tracking its language, then defining terms more restrictively than as federally defined”).

As this description shows, *OCA* did not address the meaning of the term “a person of the voter’s choice” in

Appendix A

Section 208. The decision turned entirely on the definition of the term “vote” in the VRA, which Texas law had narrowed. *See id.* at 614 (“The unambiguous language of the VRA[’s definition of ‘vote’] resolves the parties’ disagreement.”). So, *OCA* does not speak to the issues before us in this case, and the district court erred in concluding otherwise.¹⁹

D.

The district court also relied on the *expressio unius*, or negative-implication, canon. Because Section 208 “explicitly enumerates” two groups barred from assisting voters (a voter’s employer or union), the court reasoned that “additional exceptions are not to be implied.” Appellants argue the court misapplied the canon. We agree.

“*Expressio unius* teaches that ‘[t]he expression of one thing implies the exclusion of others.’” *United States v. Vargas*, 74 F.4th 673, 686 (5th Cir. 2023) (en banc) (quoting

19. The district court quoted *OCA*’s statement that the “combined effect” of Section 208 and Texas law was to afford voters “the right to select any assistor of their choice, subject only to the restrictions expressed in Section 208 of the VRA itself” *OCA*, 867 F.3d at 608. But this overreads the decision. *OCA* was merely summarizing the background law in an introductory section; it was not interpreting the language of Section 208. And elsewhere the opinion quoted Section 208’s actual text. *See id.* at 607. Moreover, as discussed *supra*, the preemption question here does not turn on the nuances of the article “a” in Section 208, but instead on whether the phrase, in context, clearly announced Congress’s intent to preempt swaths of state election law. We conclude that maximalist reading of the phrase is not demanded either by its text or its context.

Appendix A

SCALIA & GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 107 (2012)). The canon does not apply to every statutory list, though. “The context must justify . . . the inference that items not mentioned were excluded by deliberate choice.” *Ibid.* (quoting *Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 168, 123 S. Ct. 748, 154 L. Ed. 2d 653 (2003)). So, here one would ask whether, by barring two groups from being assistors, Congress intended that *no* other group could be barred. *See ibid.* (to apply the canon, one first asks “[w]hether the statutory text communicates exclusivity”) (quoting *Marx v. Gen. Rev. Corp.*, 568 U.S. 371, 381, 133 S. Ct. 1166, 185 L. Ed. 2d 242 (2013)).

As we have already explained, this would be a bizarre way to read Section 208. Yes, Congress specified that a voter cannot be assisted by his employer or union. From that, though, why should we infer that Congress wanted no *other* group excluded? That would mean a state could not prohibit voter assistance by candidates, candidates’ relatives, electioneers, minors, or prisoners. Absurd. The far more sensible inference from Section 208 is that Congress specified two groups who, it feared, might influence vulnerable voters—without implying any judgment about other circumstances that might bear on voter assistance.

Beyond that, there is another problem with the district court’s rationale. “[T]he premise for applying *expressio unius*,” we have explained, is the presence of “an associated group or series, justifying the inference that items not mentioned were excluded by deliberate choice.” *Vargas*, 74 F.4th at 687 (quoting *Barnhart*, 537 U.S. at

Appendix A

168) (cleaned up). That is, the canon does not apply where the omitted item is “conceptually different from the listed [items].” *Id.* at 686 (citation omitted). That is the case here.

The Section 208 exclusions and those in S.B. 1’s Compensation Provisions are “conceptually different.” While Section 208 categorically bars two classes based on their relationship to the voter (employers and unions), the Compensation Provisions bar people based on whether they are compensated or paid ballot harvesters. The two sets of prohibitions are not “an associated group or series,” *id.* at 687, such that including one implies excluding the other. This is common sense. The fact that Congress did not want voters to be assisted by their employers or unions says nothing about whether Congress wanted voters to be assisted by ballot harvesters. “That removes the premise for applying *expressio unius*.” *Ibid.*

For either reason, the district court erred by relying on the *expressio unius* canon to find preemption.

E.

Finally, the district court’s ruling also relied on quotes from the Senate Judiciary Committee Report on Section 208. *See* S. REP. NO. 97-417 (1982). Appellants argue this material does not support preemption. We again agree.

To begin with, a committee report is not the law. *See Matter of DeBerry*, 945 F.3d 943, 949 (5th Cir. 2019) (“We are reluctant to rely on legislative history for the simple reason that it’s not law.”). The report was not passed by

Appendix A

Congress and signed by the President. U.S. CONST. art. I, § 7, cl. 2; *see I.N.S. v. Chadha*, 462 U.S. 919, 945-46, 103 S. Ct. 2764, 77 L. Ed. 2d 317 (1983) (discussing bicameralism and presentment). Yes, the Supreme Court drew on this particular Senate Report to interpret another section of the VRA, *see Thornburg v. Gingles*, 478 U.S. 30, 43-46, 106 S. Ct. 2752, 92 L. Ed. 2d 25 (1986), but the Court has never deemed it authoritative as to Section 208.

In any event, legislative history cannot overcome the presumption against preemption. *Deanda*, 96 F.4th at 765. After all, a proponent of preemption must show Congress's "clear and manifest" intent to preempt an exercise of core state authority. In such circumstances, resort to legislative history is effectively an admission of defeat. "[It] is a flashing red sign that no 'clear and manifest' intent to preempt is shown" in the actual law. *Ibid.* (citations omitted).

But even if the Senate Report were relevant, it would cut against preemption, not in favor of it. Some of the snippets cited by the district court merely restate what the statute says, and so are of no help. *See* S. REP. NO. 97-417, at 2 (under "new subsection 208 . . . voters who are blind, disabled, or illiterate are entitled to have assistance in a polling booth from a person of their own choosing, with two exceptions"). Others, however, expressly recognize that a state's "legitimate right . . . to establish necessary election procedures" must be preserved, provided they are "designed to protect the rights of voters." *Id.* at 61. Furthermore, the report envisions that Section 208 would have, at most, a modest preemptive effect. *See ibid.*

Appendix A

(predicting preemption “only to the extent” state laws “unduly burden the right recognized in [Section 208]”). So, even if probative (which it is not), the Report does not remotely support the district court’s maximalist view of Section 208’s preemptive effect.²⁰

Recall, moreover, that this is a “purposes and objectives” claim. As to such claims, courts have been told to avoid “freewheeling judicial inquir[ies] into whether a state statute is in tension with federal objectives.” *See Kansas*, 589 U.S. at 202; *Chamber of Com. v. Whiting*, 563 U.S. 582, 607, 131 S. Ct. 1968, 179 L. Ed. 2d 1031 (2011); *see also Virginia Uranium, Inc. v. Warren*, 587 U.S. 761, 767, 139 S. Ct. 1894, 204 L. Ed. 2d 377 (2019) (lead op. of GORSUCH, J.) (“Invoking some brooding federal interest or appealing to a judicial policy preference should never be enough to win preemption of a state law[.]”). That should counsel against finding preemption by stitching together scraps of legislative history. If Congress’s “purposes and objectives” are to displace state law, those purposes and objectives must be gleaned from the text of a federal law enacted through the procedures demanded by the Constitution. *See Virginia Uranium*, 587 U.S. at 767

20. The district court seemed to believe that the Senate Report could somehow set the standard for measuring Section 208’s preemptive effect—namely, that Section 208 would preempt any state voter assistance regulations that do not “encourage greater participation in the voting process.” Not so. The preemptive effect of federal law flows from the Supremacy Clause and Supreme Court decisions applying it, not from musings in a committee report. So, a report cannot dilute the legal standard that Section 208 preempts state law only if its text shows Congress’s “clear and manifest” intent to do so.

Appendix A

(lead op. of GORSUCH, J.) (“[T]he supremacy of the laws is attached to those only, which are made in pursuance of the constitution[.]”) (quoting 3 J. STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 1831 p. 694 (1st ed. 1833)).

The district court erred by drawing on the Senate Report to support preemption of the Compensation Provisions.

* * *

In sum, we conclude that the district court erred in ruling that VRA Section 208 preempts the Compensation Provisions in S.B. 1.

IV. CONCLUSION

We REVERSE the district court’s judgment, VACATE the permanent injunction of §§ 6.03, 6.04, 6.05, 6.06, 6.07, and 7.04, and REMAND for further proceedings consistent with this opinion.

Appendix A

JAMES E. GRAVES, JR., *Circuit Judge*, dissenting:

Because S.B. 1's Compensation Provisions are a violation of the Voting Rights Act and because the plaintiffs have standing to challenge S.B. 1's Oath Provision and Disclosure Provisions, I respectfully dissent.

I.

A. S.B. 1 & the Challenged Provisions

In September 2021, Texas enacted the Election Protection and Integrity Act, an omnibus election law colloquially referred to as "S.B. 1." The Act amended procedures pertaining to early voting, voting by mail, voter assistance, and other election practices. The instant appeal concerns three categories of amendments to the Texas Election Code, described below.

1. Oath Provision (§ 6.04)

Texas election law has generally required that any person who assists a voter in completing a ballot swear an oath of assistance. S.B. 1 revised the text of the oath, and proscribed that a violation of the oath constituted a state jail felony punishable by (1) up to two years in prison, (2) up to a \$10,000 fine, and/or (3) rejection of the voter's ballot.

S.B. 1's revisions are reflected below:

I swear (or affirm) under penalty of perjury
that the voter I am assisting represented to

Appendix A

me they are eligible to receive assistance; I will not suggest, by word, sign, or gesture, how the voter should vote; I will confine my assistance to reading the ballot to the voter, directing the voter to read the ballot, marking the voter's ballot, or directing the voter to mark the ballot ~~answering the voter's questions, to stating propositions on the ballot, and to naming candidates, and if listed, their political parties;~~ I will prepare the voter's ballot as the voter directs; I did not pressure or coerce the voter into choosing me to provide assistance; ~~and~~ I am not the voter's employer, an agent of the voter's employer, or an officer or agent of a labor union to which the voter belongs; I will not communicate information about how the voter has voted to another person; and I understand that if assistance is provided to a voter who is not eligible for assistance, the voter's ballot may not be counted.

TEX. ELEC. CODE § 64.034.

2. Disclosure Provisions (§§ 6.03, 6.05, 6.07)

Texas election laws have also required that individuals assisting voters also provide identifying information. Prior to S.B. 1, assistors were required to provide their name and residential address (and for mail-in voting assistors, a verifying signature). S.B. 1 added two additional disclosures: (1) the assistor's relationship to the voter, and (2) any compensation received by the assistor from

Appendix A

a candidate, campaign, or political action committee. *See* TEX. ELEC. CODE §§ 64.0322(a) (in-person assistance); 86.010(e) (mail-in ballot assistance); 86.013(b) (ballot dropping assistance).

3. Compensation Provisions (§§ 6.06, 7.04)

Section 6.06 of S.B. 1 established a felony for those who compensate, offer to compensate, solicit, or accept compensation for assisting voters with their mail-in ballots. TEX. ELEC. CODE § 86.0105(a), (c). The provision does not apply to an assistor who is either an “attendant” or “caregiver” that is “previously known to the voter.” *Id.* § 86.0105(f). All three of these terms are undefined by the exception.¹

Section 7.04 created three felonies criminalizing Texas’ notion of “vote harvesting.” The statute defines the term as any “in-person interaction with one or more voters, in the physical presence of an official ballot or a ballot voted by mail, intended to deliver votes for a specific candidate or measure.” TEX. ELEC. CODE § 276.015(a)(2). S.B. 1 criminalizes (1) offering or providing vote harvesting services in exchange for compensation or benefit, (2) offering or providing compensation in exchange for vote harvesting services, or (3) collecting or possessing a mail-in ballot in connection with vote-harvesting services. *Id.* § 276.015(b), (c), (d).

1. During the bench trial, a Texas election official conceded that “previously known” could refer to an assistor who met the voter roughly fifteen minutes before the voting actually occurred.

*Appendix A***B. The Plaintiffs²**

In the weeks preceding and following S.B. 1's enactment, dozens of plaintiffs sued to enjoin its implementation. The instant appeal features four groups of those plaintiffs whose claims proceeded to a bench trial.

1. HAUL-MFV

The first group, “HAUL-MFV,” is comprised of two nonprofit organizations: Delta Sigma Theta Sorority, Inc. (“DST”) and the Arc of Texas (“the Arc”). They challenge the Oath and Disclosure Provisions.

DST is a national nonpartisan organization of Black, college-educated women that focuses on empowering the Black community through social action. Relevant to S.B. 1, Texas-based DST chapters visit nursing homes and senior facilities to assist with mail-in ballots, and provide volunteers to assist with in-person voting.

The Arc is a nonprofit that focuses on advocacy for Texans afflicted with intellectual and developmental disabilities. The organization views voting as “the backbone” of its work because it is critical to the self-determination of its members.

2. There are three categories of defendants: the Texas Attorney General, who is the State's chief law enforcement officer and tasked with enforcing the Texas Election Code's criminal provisions; the Texas Secretary of State, who is the State's chief elections officer and tasked with facilitating state-level elections; and various District Attorneys, who are tasked with enforcing the criminal provisions of S.B. 1.

*Appendix A***2. OCA Plaintiffs**

The “OCA Plaintiffs” encompasses two organizations that challenge the mail-in ballot Compensation Provision: OCA - Greater Houston (“OCA-GH”), and the League of Women Voters of Texas (the “League”). OCA-GH advances the wellbeing of Asian American and Pacific Islander persons in the greater Houston area. Relevant to S.B. 1, OCA-GH organizes election-related activities that require volunteer and staff assistance. These activities include town halls and meet-and-greet events, door-knocking (canvassing) efforts, and mail-ballot assistance.

The League is a nonpartisan organization that focuses on empowering voters and defending democracy. Some of its members volunteer by providing voting assistance, while others receive assistance while completing their ballots. The League provides complimentary tea, coffee, and water to its volunteers.

3. LUPE Plaintiffs

The “LUPE Plaintiffs” consist of three organizations: La Union Del Pueblo Entero (“LUPE”), the Mexican American Bar Association (“MABA”), and Familias Inmigrantes y Estudiantes en la Lucha³ (“FIEL”). They challenge the Oath and Disclosure Provisions, as well as the in-person Compensation Provision. LUPE is a Texas-based nonprofit organization that focuses on assisting low-income “colonia” residents—those who live in substandard conditions along the U.S.-Mexico border.

3. Spanish for “Immigrant Families and Students in the Fight.”

Appendix A

Relevant to S.B. 1, LUPE organizes staff members, temporary paid canvassers, and volunteers, to engage in-person with voters. The organization also hosts town hall events, and has members who either assist others with, or require assistance for, mail-in or in-person voting. MABA is a volunteer-based membership organization of Latino lawyers across Texas. The organization's attorneys provide pro bono services by performing voter outreach (i.e., tabling events) and assistance to in-person and mail-in voters. FIEL is a civil rights organization that focuses on civic engagement and voter outreach in immigrant communities. Its eight staff members and volunteers assist disabled members with in-person voting.

4. LULAC

Lastly, the League of United Latin American Citizens ("LULAC") challenges the in-person vote harvesting Compensation Provision (§ 7.04). LULAC is a civil rights organization that focuses on protecting the civil rights and wellbeing of Latino persons. Relevant to S.B. 1, LULAC has members and volunteers that participate in voter registration, voter assistance, and get-out-the-vote efforts.

III. Injury for Standing Purposes

The majority concludes, in omnibus fashion, that none of the plaintiffs have a sufficient injury⁴ to challenge the

4. As the majority confirms, there is at least one proper defendant that satisfies the traceability and redressability prongs for the Compensation Provisions. *Ante* at 15 n.10, 18 n.13. As to the

Appendix A

Oath Provision and the Disclosure Provisions.⁵ *Ante* at 8-14. For the reasons detailed below, I disagree with this sweeping pronouncement.

Recall that under the familiar three-pronged requirement, “[t]he plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant[s], and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338, 136 S. Ct. 1540, 194 L. Ed. 2d 635 (2016) (citation omitted). Here, all of the plaintiffs seek injunctive or declaratory relief, meaning that to “satisfy the redressability requirement,” they must demonstrate “a continuing injury or threatened future injury” from the challenged statute. *Stringer v. Whitley*, 942 F.3d 715, 720 (5th Cir. 2019) (citation omitted).

Oath and Disclosure Provisions, the Secretary of State is a proper defendant that satisfies both requirements because she would have to “correct the form should the judiciary invalidate” the challenged provision. *Texas Democratic Party v. Abbott*, 978 F.3d 168, 178 (5th Cir. 2020).

5. I agree with the majority’s conclusion, *ante* at 15-18, that at least some of the plaintiff organizations have standing to challenge the Compensation Provisions. But I disagree with its conclusion that MABA and the League have “no credible threat” of prosecution for “offer[ing] their volunteers coffee, tea, or water in exchange for assisting voters.” *Id.* at 16 n.11. While the majority decrees, without any analysis, that complimentary refreshments “do not plausibly count as ‘compensation’ under § 6.06,” *id.*, we are to “assume that the plaintiff’s interpretation of a challenged statute is correct before examining whether the alleged harms . . . are cognizable.” *Texas v. Yellen*, 105 F.4th 755, 764 (5th Cir. 2024).

Appendix A

And because the plaintiffs are organizations, they “can establish an injury-in-fact through either of two theories”: associational standing or organizational standing. *OCA-Greater Houston v. Texas*, 867 F.3d 604, 610 (5th Cir. 2017). Associational standing is derivative of the group’s members: at least one member must have standing, and the interests that the organization seeks to protect must be germane to its purpose. *Id.* (citing *Tex. Democratic Party v. Benkiser*, 459 F.3d 582, 587 (5th Cir. 2006)). Organizational standing, meanwhile, assesses injury through “the same standing test that applies to individuals”—the three-pronged injury-in-fact, traceability, and redressability inquiry. *Id.* (citing *Ass’n of Cmty. Organizations for Reform Now v. Fowler*, 178 F.3d 350, 356 (5th Cir. 1999)).

Because standing is assessed on a claim-by-claim basis, I will analyze each organization’s injury in the context of each challenged provision. *Cf. Consumers’ Research v. Consumer Product Safety Commission*, 91 F.4th 342, 349 (5th Cir. 2024) (“[P]laintiffs must demonstrate standing for each claim that they press.”). That said, it is “well settled” that if “at least one plaintiff has standing” to pursue a particular claim, “we need not consider whether the remaining plaintiffs have standing to maintain” the claim. *McAllen Grace Brethren Church v. Salazar*, 764 F.3d 465, 471 (5th Cir. 2014).

A. Oath Provision (§ 6.04)

Five plaintiffs—the Arc, DST, LUPE, MABA, and FIEL—challenge S.B. 1’s revisions to the Oath Provision.

Appendix A

Only the Arc challenges § 6.04 on its own; the others challenge the combination of the Oath and the Disclosure Provisions. I thus begin by analyzing the Arc's injuries, before addressing the other four organizations' standing in conjunction with the Disclosure Provisions.

Associational standing has three elements: "(1) the association's members would independently meet the Article III standing requirements; (2) the interests the association seeks to protect are germane to the purpose of the organization; and (3) neither the claim asserted nor the relief requested requires participation of individual members." *Texas Democratic Party*, 459 F.3d at 587.

The latter two elements are satisfied here: the Arc's mission is to "promote, protect, and advocate for the human rights and self-determination of Texans with intellectual and developmental disabilities," and claims for injunctive relief under the VRA are not exclusive to natural persons. The Arc's associational standing thus turns on whether it can "identify at least one member that has suffered or will suffer harm." *Nat'l Infusion Ctr. Ass'n v. Becerra*, 116 F.4th 488, 497 (5th Cir. 2024) (citation omitted).

At least three Arc members, through their bench trial testimony, have evidenced a sufficient injury: Jodi Lydia Nunez Landry, Amy Litzinger, and Nancy Crowther. Each of these members voted in a 2022 Texas election, but none was able to receive assistance from their preferred assistor:

Appendix A

- Nunez Landry suffers from muscular dystrophy and requires assistance for everyday activities. She prefers to vote in person with her partner, who she “can trust” and holds “a certain amount of privacy” with. Ever since S.B. 1’s enactment, Nunez Landry has refused to ask her partner for voting assistance because she did not “want to put him in jeopardy” of potential consequences.
- Litzinger suffers from quadriplegic cerebral palsy, which limits her muscle strength and stability, and dysautonomia, which adversely affects involuntary bodily functions. She requires mobility devices and personal assistants, who assist when her muscle strength wanes. Litzinger prefers to vote in person because her varying muscular strength produces inconsistent signatures, which significantly contributes to ballot rejection. After S.B. 1’s enactment, “all of” Litzinger’s assistants expressed that they were “uncomfortable taking the oath” and declined to provide ballot assistance.
- Crowther has a progressive neuromuscular disease and requires a personal assistant to perform daily activities. She stopped requesting that her assistants accompany her to vote because she “would be mortified . . . if [the assistants] were to get in trouble just for helping” her.

Appendix A

The majority passes over this testimony and declares that any “fears of being prosecuted under the Oath Provision were based on pure speculation.” *Ante* at 13. According to the majority, “[a]ny argument that an assistor might be prosecuted under the provision depends on a ‘fanciful’ and ‘highly attenuated chain of possibilities’ inadequate to support standing.” *Id.* (quoting *Texas State LULAC v. Elfant*, 52 F.4th 248, 257 (5th Cir. 2022)). I part ways for four connected reasons.

To start, the majority overlooks the vagaries that S.B. 1 injects into the Oath Provision. For one, the provision requires assistors to certify, in present time, compliance with a prospective event of indefinite duration (that they will not “communicate information about how the voter has voted to another person”). Another portion, which requires an assistor to certify that they “did not coerce or pressure” a voter, necessitates insight into or confirmation of another person’s state of mind. Later in this opinion, I further detail the vagueness concerns that attend these provisions. *See post* at 40-42. But bluntly stated, some of S.B. 1’s additions sow substantial ambiguity into the Oath itself—causing confusion among assistors as to what they are certifying to, and deterring them from serving those less fortunate.

Second, the majority incorrectly cabins the Arc members’ concern as merely a “fear[] of being prosecuted.” *Ante* at 13. Each member raised concerns related to a burdensome investigation and related ordeals. Nunez Landry, for example, worried of “jeopardy” to her partner, while Crowther spoke of possible “trouble” that her assistants could encounter.

Appendix A

Third, the hypothetical “chain of possibilities” between assistance and investigation or prosecution—a chain link that the majority fails to proffer—is not attenuated at all. Consider this straightforward reading:

1. an individual assists the voter and swears the revised Oath;
2. someone is suspicious and reports the assistor to the authorities;
3. the Secretary of State’s office investigates and contemplates referring the matter to a local prosecutor.

Fourth, the majority errs in concluding that fears of prosecution over the Oath Provision are “based on pure speculation” because no assistors represented that they “were planning to violate the revised oath (or were likely to do so).” *Ante* at 13. But nothing in the Supreme “Court’s decisions requires a plaintiff who wishes to challenge the constitutionality of a law to confess that he will in fact violate that law.” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 163, 134 S. Ct. 2334, 189 L. Ed. 2d 246 (2014). Moreover, Texas has not disclaimed prosecution: it “has not argued to this [c]ourt that plaintiffs will not be prosecuted if they do what they say they wish to do.” *Holder v. Humanitarian L. Project*, 561 U.S. 1, 16, 130 S. Ct. 2705, 177 L. Ed. 2d 355 (2010). And S.B. 1 has only been in effect since 2022. *See Consumer Data Indus. Ass’n v. Tex. through Paxton*, No. 21-51038, 2023 U.S. App. LEXIS 19007, 2023 WL 4744918, at *5 (5th Cir. July 25, 2023) (per curiam) (finding a credible threat of enforcement

Appendix A

in part because the statute was “enacted *less than five years ago*”). Most importantly, the majority overlooks the district court’s finding that the Attorney General has already been pursuing allegations of “assistance fraud (purportedly targeted by [all the] challenged provisions).”

At bottom, the question at the standing phase is whether the Arc’s members have demonstrated a non-speculative threat of future injury from S.B. 1. In my view, they have, and the Arc has associational standing to challenge the Oath Provision.

B. Disclosure Provisions

Four organizations—DST and the LUPE Plaintiffs (LUPE, MABA, and FIEL)—challenge the combination of the Oath and Disclosure Provisions. The district court found that each group possessed organizational standing because they “have had difficulty recruiting members to provide voting assistance services due to the threat of criminal sanctions under S.B. 1 . . . and some members have stopped providing assistance altogether.” The majority, for a multitude of reasons, *ante* at 9-13, concludes that no organization has a cognizable injury. I again part ways with my colleagues.

1. Delta Sigma Theta

Delta Sigma Theta advances three theories of organizational standing: the disclosures (1) “impair DST’s ability to provide in-person and mail-ballot assistance” by chilling “would-be volunteers [who] are wary about risking

Appendix A

criminal liability,” (2) “directly regulate DST’s assistance to voters” by requiring volunteers to make specific disclosures and oaths, and (3) force the organization “to dedicate resources to respond to the Assistance Restrictions.” The organization’s most straightforward path to standing comes through the final theory: resource diversion. During the bench trial, DST’s Social Action State Coordinator, Sharon Watkins Jones, testified that as a result of S.B. 1, the DST Houston chapter was forced to increase its budget for “voter registration drives and mobilization efforts” to ensure “added training and enhanced education.” She also noted that before S.B. 1’s enactment, DST was able to focus “100 percent” of its time on voter registration and mobilization, but “[a]fter S.B. 1, probably 50 percent of that time” was now directed toward education efforts.

This is an injury inflicted through the diversion of resources. Consider the numbers that Jones provided: prior to S.B. 1, DST’s Houston chapter dedicated about “100 percent” of volunteer hours and budget toward voter registration and mobilization. After S.B. 1, the chapter had to increase its funding for the same functions—and divert half of that budget toward education efforts. That differential, especially when multiplied by the number of DST chapters across Texas, is “more than [the] identifiable trifle” needed to allege an injury. *Fowler*, 178 F.3d at 358 (quotation omitted); *see also OCA-Greater Houston*, 867 F.3d at 612 (finding sufficient injury for an organization that “calibrated its outreach efforts to spend extra time and money educating its members about [updated] Texas provisions,” even though that “injury was not large”).

Appendix A

The majority dismisses these concerns by asserting that “[d]iverting . . . resources in response to a defendants’ actions’ does not establish standing.” *Ante* at 11 (quoting *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367, 395, 144 S. Ct. 1540, 219 L. Ed. 2d 121 (2024)). But *Alliance* featured a wholly distinguishable resource diversion claim. The medical associations in that case argued that they were injured because they had to expend resources to draft petitions and engage in advocacy against the FDA’s mifepristone regulations. *Alliance*, 602 U.S. at 394. The Supreme Court rejected that theory, explaining that an organization “cannot spend its way into standing” by diverting resources to express disagreement with a government’s actions. *Id.* The *Alliance* associations’ self-inflicted injury is far different from the injury that DST and other organizations have suffered from S.B. 1’s implementation.

Instead, DST’s injury more closely resembles that suffered by the organization in *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 102 S. Ct. 1114, 71 L. Ed. 2d 214 (1982). *Havens* featured a housing counseling organization (“HOME”) that alleged that a landlord’s racial steering practices interfered with its counseling services. 455 U.S. at 379. The Court held that HOME’s core functions were “perceptibly impaired,” and that impairment constituted a cognizable injury. *Id.* And *Alliance* reaffirmed *Havens*, explaining that organizations have standing when a defendant’s actions “directly affect[] and interfere[] with [their] core business activities.” 602 U.S. at 395.

This court also applied *Havens* in *OCA-Greater Houston*: we held that a nonprofit organization had

Appendix A

standing to challenge a Texas law that limited the pool of assistors for voters that had limited English proficiency. 867 F.3d at 612-14. There, the organization asserted, and we recognized, an injury associated with “additional time and effort spent explaining the Texas provisions at issue to limited English proficient voters.” *Id.* at 610. The same is true here: DST’s mission is to empower the communities it serves through social action. S.B. 1 indisputably interferes with that mission, and has forced DST to expend additional time and effort and marshal financial resources to continue its activities. This is a sufficient injury for organizational standing purposes.

2. LUPE

The district court concluded that LUPE had standing to challenge the Disclosure Provisions because it struggled to recruit volunteers in the face of S.B. 1’s threatened criminal sanctions. LUPE’s executive director, Tonia Chavez Camacho, testified that the amendments “frightened” staff and volunteers and led some to “cho[ose] to no longer” volunteer for fear of making mistakes and resultant investigation. Camacho also explained that the amendments forced its paid staff to turn away members who requested voting assistance: “how are we going to be helping voters when now we could be criminalized for doing so?” Staffing shortages, and the denial of services to individuals that LUPE used to support, fully constitute perceptible impairments on the organization’s offerings.

The majority casts aside these staffing losses and declares that there is “no credible threat that any assistors will be prosecuted for violating the Disclosure Provisions.”

Appendix A

Ante at 9. It, without any explanation, overrides Camacho’s testimony in favor of Texas’ assertion that any fear is self-inflicted and dependent “on a ‘highly attenuated chain of possibilities.’” *Id.* (quoting *Elfant*, 52 F.4th at 257). But at least with respect to LUPE’s assisting staff members, the likelihood of investigation or prosecution is substantial because they (1) are compensated and (2) likely have no familial or caregiver relationship to a voter in need of assistance. Any assistance provided by those staff members would violate the Compensation Provisions; the Disclosure Provisions would identify violating assistants. And as for the organization’s loss of volunteers, I disagree that the fears of volunteers constitute “baseless speculation about future prosecutions” for the same reasons discussed in the analysis on the Arc’s standing. *Ante* at 10.

3. MABA

The majority’s omnibus rejection of standing also applies to MABA. Before the district court, MABA’s President, Jana Ortega, testified that the organization was “finding it harder and harder to find members that are willing to educate voters, to reach out to voters, [and] to be more involved in our Get Out the Vote efforts.” She specified that when she put out a call for volunteers, “it’s crickets.” Ortega additionally noted that MABA’s members spoke of fears that “anything [] they do or may say to be interpreted as pressuring a voter.” As for the impact on MABA’s activities, Ortega disclosed that the organization was “trying to stay the same course and maintain the same level of activities, but, again, it is harder and harder to find volunteers.”

Appendix A

The majority’s conclusion—that MABA’s loss of volunteers is not an injury—is particularly striking because Ortega’s comments outline the issues with the “pressure” addition to the Oath Provision. The term effectively requires the assistor—under penalty of perjury—to ascertain the effect of her words and actions on the state of mind of another person. That may be possible in some cases—a voter may easily volunteer that they did not feel pressured or coerced. But it is also foreseeable that in other cases, the revised oath amounts to a requirement that an assistor possess substantial confidence in her ability to read the state of mind of the voter she is assisting.

Relatedly, the “pressure or coerce” language fails to provide an assistor with a standard of conduct to which she is certifying compliance. In *Coates v. City of Cincinnati*, for example, the Supreme Court invalidated an ordinance that outlawed conduct that was “annoying to persons passing by” because “[c]onduct that annoys some people does not annoy others.” 402 U.S. 611, 614, 91 S. Ct. 1686, 29 L. Ed. 2d 214 (1971). More recently, the Eleventh Circuit struck, on vagueness grounds, a Florida statute that prohibited “engaging in any activity with the intent to influence or effect of influencing a voter.” *League of Women Voters of Fla. Inc. v. Fla. Sec’y of State*, 66 F.4th 905, 944 (11th Cir. 2023). Our sister circuit reasoned that even if the statute defined what “influence” was, that fact did not “bestow the ability to predict which actions will influence a voter.” *Id.* at 947. And it noted that “[i]f the best—or perhaps only—way to determine what activity has the ‘effect of influencing’ a voter is to ask the voter, then the question of what activity

Appendix A

has that effect is a ‘wholly subjective judgment[] without statutory definition[], narrowing context, or settled legal meaning[].’” *Id.* (quotation omitted).

Especially in the context of criminal statutes, “[u]ncertain meanings inevitably lead citizens to ‘steer far wider of the unlawful zone’ than if the boundaries of the forbidden areas were clearly marked.” *Grayned v. City of Rockford*, 408 U.S. 104, 109, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972) (citation omitted). Testimony elicited during the bench trial confirmed S.B. 1’s chilling effect: in addition to the “crickets” that Ortega received in response to volunteer requests, a county elections administrator testified that the “pressure” certification was “vague enough where . . . [assistors] might be concerned that they are going to violate the oath if they signed it.” The majority’s cursory dismissal of these fears as “puzzling” and insufficient for standing purposes, flies in the face of not only this evidence, but also, vagueness principles. *Ante* at 14.

4. FIEL

Lastly, the majority concludes that FIEL lacks a sufficient injury. During the bench trial, the organization’s Executive Director, Cesar Espinosa, testified that as a result of the Oath and Disclosure Provisions, the organization experienced “a significant number in drop-offs for people volunteering to help out with” in-person voter assistance tasks. He quantified that the loss in volunteers was about 75%: “teams of [twenty-four] dwindled down like ... teams of six.” Espinosa testified that

Appendix A

FIEL’s “ability to achieve [its] mission” was so hindered that it did not anticipate organizing any in-person voter assistance efforts because of “dwindling numbers of people who are willing to volunteer.” For the reasons discussed above, FIEL’s loss in volunteers—to the point where it cannot feasibly continue to organize in-person voter assistance efforts—is a sufficient injury for standing purposes.

Though the district court did not discuss associational standing, FIEL raises the argument as an alternative path. Espinosa testified that FIEL has “members who are disabled and require assistance when voting,” and specifically identified Tonya Rodriguez as a member who voted “in person” with an assistant prior to S.B. 1’s enactment. According to Espinosa, “after S.B. 1[, Rodriguez] voted in person [] without an assister.” For reasons similar to those discussed in relation to the Arc’s affected members, FIEL has demonstrated associational standing to press claims against the Oath and Disclosure Provisions.

V. Merits

Turning to the merits of S.B. 1, the majority concludes that the Compensation Provisions are not preempted by Section 208 of the Voting Rights Act. I disagree.

A. Section 208 and Preemption Framework

In 1965, Congress enacted the Voting Rights Act (the “VRA”) to forbid states from enacting laws that abridged

Appendix A

the right to vote on the basis of race. *Shelby Cty., Ala. v. Holder*, 570 U.S. 529, 537, 133 S. Ct. 2612, 186 L. Ed. 2d 651 (2013). Nearly twenty years after the Act’s passage, Congress expanded its coverage to protect the right to vote among blind, disabled, and illiterate persons. Section 208 of the VRA reads:

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. The crux of this case is whether S.B. 1 violates Section 208 because it directly regulates—and restricts—a qualified voter’s entitlement to “assistance by a person of [their] choice.” *Id.* It does.

First, from a definitional perspective, “choice” means “selection” or “power of choosing.” *Choice*, MERRIAM WEBSTER (online ed., 2025). Section 208 provides the voter, not the state, with the autonomy to make that choice. A state that directly limits the pool of assistors from which the qualified voter selects, infringes on the choice that voter is entitled to make.⁶

6. The RNC and Intervenors cast Section 208’s text as an opportunity, not an obligation. It specifically points to the inconclusive articles that the statute is framed in: a voter “may be given assistance by a person of the voter’s choice.” 52 U.S.C. § 10508 (emphases added). That invokes one of the definitions of “may”—“used to indicate possibility or probability.” *May*, Merriam

Appendix A

Second, the statute already speaks to two restrictions placed on the voter’s choice. A voter cannot select (i) their employer, or an agent of that employer, or (ii) an officer or agent of their union. “Where Congress creates specific exceptions to a broadly applicable provision, the ‘proper inference . . . is that Congress considered the issue of exceptions and, in the end, limited the statute to the ones set forth.’” *Med. Ctr. Pharm. v. Mukasey*, 536 F.3d 383, 395 (5th Cir. 2008) (original ellipsis, quoting *United States v. Johnson*, 529 U.S. 53, 58, 120 S. Ct. 1114, 146 L. Ed. 2d 39 (2000)). Put differently, “when Congress provided the two exceptions” to one of its statutes, “it created all the keys that would fit. It did not additionally create a skeleton key that could fit when convenient.” *Parada v. Garland*, 48 F.4th 374, 377 (5th Cir. 2022) (per curiam). The majority’s opinion undermines this basic canon of statutory interpretation.

Third, Congress’s intent in passing Section 208 is worth considering. The Senate Judiciary Committee’s Report confirms that Congress wanted eligible voters to gain assistance from a person of their own choosing, with two exceptions only. *See generally* S. REP. NO. 97-417 (1982). The Report also speaks in mandatory terms: eligible voters “must be permitted to have the assistance of a person *of their own choice* . . . to assure meaningful

Webster (online ed., 2025) (first definition; i.e., “We may or may not go to the park today.”). But the better definition, and the one that gives full meaning to the complete sentence and the right it protects, is the second definition of “may”—“have permission to” or “be free to.” *May*, Merriam Webster (online ed., 2025) (second definition, i.e., “you may go now”).

Appendix A

voting assistance and to avoid possible intimidation or manipulation of the voter. To do otherwise would deny these voters the same opportunity to vote enjoyed by all citizens.” *Id.* at *62 (emphasis added). And while the majority discards the Report’s persuasiveness, arguing that no court has “deemed it authoritative as to Section 208,” *ante* at 25, the Supreme Court has “repeatedly recognized that the authoritative source for legislative intent” of the 1982 VRA amendments, including Section 208, “lies in the Committee Reports on the bill.” *Thornburg v. Gingles*, 478 U.S. 30, 43 n.7, 106 S. Ct. 2752, 92 L. Ed. 2d 25 (1986).

The majority instead posits that “a presumption *against* preemption applies in this case” for two converging reasons: (1) S.B. 1 concerns a state’s “historic police powers in administering elections,” and (2) “preemption here would alter the federal-state balance of power.” *Ante* at 18. It summarizes that preemption can exist “only if Section 208 expresses Congress’s ‘clear and manifest purpose’ to do so.” *Id.* (quoting *Deanda v. Becerra*, 96 F.4th 750, 761 (5th Cir. 2024)).

But that bar is satisfied here: Congress did intend for the VRA to displace state laws, and the Supreme Court has spoken repeatedly to that intent. The VRA “authorizes federal intrusion into sensitive areas of state and local policy making,” and accordingly “imposes substantial ‘federalism costs.’” *Lopez v. Monterey Cnty.*, 525 U.S. 266, 282, 119 S. Ct. 693, 142 L. Ed. 2d 728 (1999) (second citation quoting *Miller v. Johnson*, 515 U.S., at 926). “[P]rinciples of federalism that might otherwise be an obstacle to congressional authority are necessarily

Appendix A

overridden by the power to enforce the Civil War Amendments,” including the Fifteenth Amendment—the constitutional provision from which the VRA derives its constitutionality. *City of Rome v. United States*, 446 U.S. 156, 179, 100 S. Ct. 1548, 64 L. Ed. 2d 119 (1980). Simply put, the VRA’s “purpose was to create a guaranteed right to the voting process that could not be narrowed or limited by state legislation.” *Disability Rts. N. Carolina v. N. Carolina State Bd. of Elections*, No. 5:21-CV-361-BO, 2022 U.S. Dist. LEXIS 121307, 2022 WL 2678884, at *4 (E.D.N.C. July 11, 2022). The majority’s contrary approach ignores the robust legislative history and historical significance surrounding the VRA.

B. The Compensation Provisions

Turning to the provisions themselves, §§ 6.06 and 7.04 prohibit compensation in exchange for assistance with mail-in ballots (§ 6.06) and in-person interactions in the presence of a ballot (§ 7.04). These provisions are preempted by Section 208 because they restrict the class of eligible assistors beyond the categories prohibited by the statute: employers, union representatives, and their agents. Said otherwise, the Compensation Provisions are not only extratextual, but also “interfere[] with and frustrate[] the substantive right Congress created” under Section 208 of the VRA. *Felder v. Casey*, 487 U.S. 131, 151, 108 S. Ct. 2302, 101 L. Ed. 2d 123 (1988).

To rescue the Compensation Provisions, the majority resorts to Texas’ rejoinder: the absurdity canon. *Ante* at 19-21. But “interpretations of a statute which would produce absurd results are to be avoided if alternative

Appendix A

interpretations consistent with the legislative purpose are available.” *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575, 102 S. Ct. 3245, 73 L. Ed. 2d 973 (1982) (citing cases). Moreover, wielding the canon as a cudgel “so nearly approaches the boundary between the exercise of the judicial power and that of the legislative power as to call rather for great caution and circumspection in order to avoid usurpation of the latter.” *Crooks v. Harrelson*, 282 U.S. 55, 60, 51 S. Ct. 49, 75 L. Ed. 156, 1931-1 C.B. 469 (1930) (citation omitted). Traditionally, the remedy for “mischievous, absurd, or otherwise objectionable” statutory outcomes “lies with the lawmaking authority, and not with the courts.” *Id.*

The canon’s utility for S.B. 1 is further diminished when considering the majority’s hypotheticals—which it concedes are “absurdity on absurdity.” *Ante* at 20. The majority first identifies state laws that prevent election workers and candidates from serving as assistors. *Id.* (citing laws from four states). But those examples comport with Section 208’s legislative history: as our caselaw demonstrates, prior to 1982, some states only allowed voters to receive assistance from poll officials. *Gilmore v. Greene Cnty. Democratic Party Exec. Comm.*, 435 F.2d 487, 489 (5th Cir. 1970). The Senate Report explains that Congress adopted a different approach—allowing voters to select their own assistors—because “having assistance provided by election officials . . . infringes upon [a voter’s] right to a secret ballot and can discourage many from voting for fear of intimidation or lack of privacy.” S. REP. NO. 97-417 at *62 n.207. It is telling that Texas, the Intervenors, and the majority cannot offer any authority,

Appendix A

textual or legislative, in support of the Compensation Provisions. Candidly, it does not exist.

The majority also suggests that if S.B. 1 was preempted by Section 208, Texas would be powerless to stop a voter from selecting an assistor (1) “carrying a Glock,” (2) “holding a candidate’s sign,” or (3) “in prison.” *Ante* at 20. Yet existing restrictions—legal or practical—already prevent such individuals from entering polling places. *See, e.g.*, TEX. PENAL CODE § 46.03(a) (barring firearms at polling places); TEX. ELEC. CODE § 61.003(a), (b)(1) (banning electioneering inside and in close proximity to a voting site); *Arkansas United v. Thurston*, 626 F. Supp. 3d 1064, 1087 (W.D. Ark. 2022), *rev’d on alternative grounds*, No. 22-2918, 146 F.4th 673, 2025 WL 2103706 (8th Cir. July 28, 2025) (“And an incarcerated person would not be able [to] assist at the polling place for reasons that are completely unrelated to [a state’s] elections laws.”). The majority responds to this obvious distinction with flippant sophistry: it “see[s] no difference” because “the latter restricts assistors in precisely the same way as the former.” *Ante* at 21 n.17. But the distinction is commonsense: the firearm, electioneering, and prisoner hypotheticals concern general restrictions that prevent an individual from entering a polling place and rendering assistance in the first place. S.B. 1, on the other hand, directly regulates the pool of eligible assistors by tacking on an assistor-exclusive requirement that those individuals must work without compensation.

One final point is worth noting: for all that the majority says about how S.B. 1 is permissible, it says little about

Appendix A

what remains of Section 208. At best, it frames Section 208 as a “guarantee[]” for eligible voters to receive “help from a person of their choice, while also allowing states to superintend voter assistance.” *Ante* at 21 (cleaned up). But that nebulous statement offers little clarity for voters who need assistance in casting their ballot. The majority’s limiting principle is, effectively, “I know it when I see it.” *Jacobellis v. Ohio*, 378 U.S. 184, 197, 84 S. Ct. 1676, 12 L. Ed. 2d 793 (1964) (Stewart, J., concurring). That conclusion blinds itself to the purpose of Section 208: ensuring that those less fortunate have access to the assister of their choice when they elect to engage in our democratic tradition.

* * *

I respectfully dissent.

61a

**Appendix B — Judgment of the United States
Court of Appeals for the Fifth Circuit,
filed August 29, 2025**

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 24-50826

LA UNION DEL PUEBLO ENTERO; SOUTHWEST
VOTER REGISTRATION EDUCATION PROJECT;
MEXICAN AMERICAN BAR ASSOCIATION
OF TEXAS; TEXAS HISPANICS ORGANIZED
FOR POLITICAL EDUCATION; JOLT ACTION;
WILLIAM C. VELASQUEZ INSTITUTE; FIEL
HOUSTON, INCORPORATED; FRIENDSHIP-WEST
BAPTIST CHURCH; TEXAS IMPACT; JAMES
LEWIN; MI FAMILIA VOTA;

Plaintiffs—Appellees,

versus

GREGORY W. ABBOTT, IN HIS OFFICIAL
CAPACITY AS GOVERNOR OF TEXAS; 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; SEAN
TEARE, HARRIS COUNTY DISTRICT ATTORNEY,

Defendants—Appellants,

62a

Appendix B

REPUBLICAN NATIONAL COMMITTEE

Movant—Appellant,

OCA-GREATER HOUSTON;
LEAGUE OF WOMEN VOTERS OF TEXAS,

Plaintiffs-Appellees,

versus

KEN PAXTON, TEXAS ATTORNEY GENERAL,

Defendant—Appellant,

LULAC TEXAS; TEXAS ALLIANCE
FOR RETIRED AMERICANS;
TEXAS AFT; VOTE LATINO,

Plaintiffs—Appellees,

versus

KEN PAXTON, IN HIS OFFICIAL CAPACITY
AS THE TEXAS ATTORNEY GENERAL,

Defendant—Appellant,

63a

Appendix B

DELTA SIGMA THETA SORORITY,
INCORPORATED; THE ARC OF TEXAS,

Plaintiffs-Appellees,

versus

GREGORY WAYNE ABBOTT, IN HIS OFFICIAL
CAPACITY AS THE GOVERNOR OF TEXAS;
WARREN KENNETH PAXTON, JR., IN HIS
OFFICIAL CAPACITY AS THE ATTORNEY
GENERAL OF TEXAS,

Defendants-Appellants.

Appeals from the United States District Court
for the Western District of Texas
USDC Nos. 1:21-CV-780, 1:21-CV-786,
5:21-CV-844, 5:21-CV-848, 5:21-CV-920

JUDGMENT

Before SMITH, GRAVES, and DUNCAN, *Circuit Judges.*

This cause was considered on the record on appeal
and was argued by counsel.

IT IS ORDERED and ADJUDGED that the judgment
of the District Court is REVERSED, the permanent
injunction of §§ 6.03, 6.04, 6.05, 6.06, 6.07, and 7.04 is
VACATED, and the cause is REMANDED to the District
Court for further proceedings in accordance with the
opinion of this Court.

Appendix B

IT IS FURTHER ORDERED that Appellees pay to Appellants the costs on appeal to be taxed by the Clerk of this Court.

The judgment or mandate of this court shall issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. See FED. R. APP. P. 41(b). The court may shorten or extend the time by order. See 5TH CIR. R. 41 I.O.P.

**Appendix C — Findings of Fact and Conclusions
of Law of the United States District Court for the
Western District of Texas, San Antonio Division,
filed October 11, 2024**

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS,
SAN ANTONIO DIVISION

5:21-CV-0844-XR [Consolidated Cases]

LA UNIÓN DEL PUEBLO ENTERO, *et al.*,

Plaintiffs,

v.

GREGORY W. ABBOTT, *et al.*,

Defendants.

Filed October 11, 2024

**FINDINGS OF FACT AND CONCLUSIONS
OF LAW (CLAIMS UNDER SECTION 208
OF THE VOTING RIGHTS ACT)**

[TABLES INTENTIONALLY OMITTED]

INTRODUCTION

On September 7, 2021, Texas Governor Greg Abbott signed into law the Election Protection and Integrity Act of 2021, an omnibus election law commonly referred to as “S.B. 1.” *See* Election Integrity Protection Act of 2021, S.B. 1, 87th Leg., 2d Spec. Sess. (2021).

Premised on the state legislature’s authority to make all laws necessary to detect and punish fraud under article

Appendix C

VI, section 4 of the Texas Constitution, S.B. 1 modified various provisions of the Texas Election Code, imposing, among other things, new restrictions on voter assistance and in-person canvassing activities. *See, e.g.*, S.B. 1 §§ 6.01, 6.03-6.07, 7.04 (JEX-1 at 50-56, 59-60).

Several private plaintiffs filed lawsuits, challenging certain provisions of S.B. 1 as unconstitutional and otherwise unlawful under federal voter-protection statutes. For judicial economy, these were consolidated under the above-captioned case, which was first filed.¹

Four Plaintiffs groups—the HAUL Plaintiffs,² the OCA Plaintiffs,³ the LUPE Plaintiffs,⁴ and the LULAC

1. *See* ECF No. 31 (consolidating *OCA-Greater Houston v. Esparza*, No. 1:21-cv-780 (W.D. Tex. 2021); *Houston Area Urban League v. Abbott*, No. 5:21-cv-848 (W.D. Tex. 2021); *LULAC Texas v. Esparza*, No. 1:21-cv-786 (W.D. Tex. 2021) and *Mi Familia Vota v. Abbott*, No. 5:21-cv-920 (W.D. Tex. 2021) under the lead case.

2. For the purposes of the HAUL Plaintiffs’ Section 208 claims, this group includes The Arc of Texas, Delta Sigma Theta Sorority, Inc., and Mi Familia Vota. ECF No. 199 (HAUL Compl.) ¶¶ 287–94 (Count V).

3. For the purposes of the OCA Plaintiffs’ Section 208 claims, this group includes OCA-Greater Houston, The League of Women Voters of Texas, and REVUP-Texas. *See* ECF No. 200 (OCA Compl.) ¶¶ 176–81 (Count IV); Text Order dated Apr. 14, 2022 (granting Texas Organizing Project’s withdrawal from the case); ECF No. 551 (granting Workers Defense Action Fund’s withdrawal from the case and dismissing its claims with prejudice).

4. This group includes La Unión del Pueblo Entero, Friendship-West Baptist Church, the Southwest Voter Registration

Appendix C

Plaintiffs⁵—collectively challenge S.B. 1 §§ 6.01, 6.03-6.07, and 7.04 (the “Assistance Provisions”) as preempted by Section 208 of the Voting Rights Act (“VRA”), 52 U.S.C. § 10508, which guarantees qualified voters the right to vote with an assistor of their choice.

Plaintiffs allege that S.B. 1’s new disclosure requirements (§§ 6.01, 6.03, 6.05, 6.07), modifications to the oath of assistance (§ 6.04), ban on compensated assistance (§ 6.06) and in-person canvassing restriction (§ 7.04) subvert the protections of Section 208 by narrowing the class of eligible assistors, requiring voters to take additional steps as a prerequisite to receiving assistance, and deterring voters from requesting—and assistors from providing—assistance in the voting process. Following a six-week bench trial, the Court largely agrees.

After careful consideration, the Court issues the following findings of fact and conclusions of law pursuant to FED. R. CIV. P. 52(a) bearing on Plaintiffs’ Section 208 claims.

Education Project, Texas Impact, the Mexican American Bar Association of Texas, Texas Hispanics Organized for Political Education, Jolt Action, the William C. Velasquez Institute, FIEL Houston Inc., and James Lewin. ECF No. 208 (LUPE Compl.) ¶¶ 266–71 (Count V).

5. For the purposes of the LULAC Plaintiffs’ Section 208 challenges, this group includes LULAC Texas, Voto Latino, Texas Alliance for Retired Americans, and Texas AFT. *See* ECF No. 207 (LULAC. Compl.) ¶¶ 287–94 (Count IV).

*Appendix C***PROCEDURAL HISTORY**

Plaintiffs filed their original complaints in August and September 2021, seeking to enjoin the State of Texas and the Secretary of State and Attorney General of the State of Texas (together, the “State Defendants”) and local election officials from enforcing many provisions of S.B. 1, including provisions that, like most of the Assistance Provisions, impose criminal liability.

In December 2021, the Texas Court of Criminal Appeals held in *State v. Stephens* that the Election Code’s delegation of unilateral prosecutorial authority to the Attorney General to prosecute election crimes violated the separation-of-powers clause of the Texas Constitution. 663 S.W.3d 45 (Tex. Crim. App. 2021). The court explained that the Texas Constitution assigns to county and district attorneys, members of the judicial branch, the “specific duty” to represent the state in criminal prosecutions. *Id.* at 52. The Attorney General, as part of the state’s executive branch, has no similar, independent power under the Texas Constitution. Thus, the Attorney General can prosecute election crimes only with the consent of local prosecutors through a deputization order. *Id.* at 47.

Following *Stephens*, Plaintiffs amended their complaints to join local district attorneys from several Texas counties as Defendants.⁶ The State Defendants moved to dismiss these complaints in their entirety, including Plaintiffs’ Section 208 challenges. The Court

6. Plaintiffs filed their Second Amended Complaints, the operative pleadings, in January 2022. *See* ECF Nos. 199, 200, 207, 208.

Appendix C

denied the motions as to those challenges in August 2022, concluding that the VRA waived sovereign immunity and created a private right of action to enforce Section 208, and that Plaintiffs had adequately alleged standing to assert their Section 208 claims.⁷

In May 2023, the State Defendants joined in a motion for summary judgment filed by a group of Republican committees (the “Intervenor-Defendants”),⁸ arguing that: (1) state-law restrictions and requirements on assistors “of

7. See *La Union del Pueblo Entero v. Abbott*, 614 F. Supp. 3d 509 [LULAC], 618 F. Supp. 3d 388 [OCA], 618 F. Supp. 3d 449 [HAUL], 618 F. Supp. 3d 504 [LUPE], (W.D. Tex. 2022). The Court dismissed the HAUL Plaintiffs’ claims against the Governor, however, concluding that their injuries were not fairly traceable to him.

8. The Intervenor-Defendants include the Harris County Republican Party, the Dallas County Republican Party, the Republican National Committee, the National Republican Senatorial Committee, and the National Republican Congressional Committee. The Court initially denied their motion to intervene for failing to identify a legally protectable interest at stake in this litigation or show that the State Defendants’ representation of any such interest would be inadequate. See ECF No. 122 at 2–7. The Fifth Circuit reversed, concluding that the Committees’ interest in S.B. 1’s provisions concerning party-appointed poll watchers—an interest raised for the first time on appeal—warranted intervention. *La Union del Pueblo Entero v. Abbott*, 29 F.4th 299, 306 (5th Cir. 2022). Accordingly, the Committees were allowed to intervene. It is not clear to the Court that their interest in the provisions applicable to partisan poll watchers establishes a commensurate interest in voter assistance regulations. Nonetheless, because the State Defendants joined the arguments in the Committees’ motion for summary judgment, see ECF No. 610, the Court considers the Intervenor-Defendants’ motion and briefing.

Appendix C

the voter’s choice” do not violate Section 208 and therefore cannot be preempted; and (2) Section 208 permits state-law restrictions on who may serve as an assistor beyond the limitations provided in federal law. *See* ECF No. 608 at 27–30. The District Attorney of Harris County, Kim Ogg, also moved for summary judgment, asserting that Plaintiffs lacked standing. *See* ECF No. 614. The Court carried the motions with the case and addresses their arguments herein to the extent that they were not disposed in the Court’s orders disposing of the State Defendant’s motions to dismiss.

The Court held a bench trial from September 11, 2023, to October 20, 2023. In all, the parties presented about 80 witnesses (both live and by deposition testimony), nearly 1,000 exhibits, and producing over 5,000 pages of trial transcripts. The Court heard testimony from voters, Plaintiffs’ organizational representatives and volunteers, former and current state and local officials, and expert witnesses.

The parties submitted proposed findings of fact and conclusions of law in January 2024,⁹ and presented closing arguments on February 13, 2024.

9. *See, e.g.*, ECF Nos. 850, 852 (Plaintiffs, jointly); ECF No. 855 (LUPE); ECF No. 856 (HAUL); ECF No. 843-1 (Dallas County DA); ECF No. 845 (Harris County DA); ECF Nos. 861, 862 (State Defendants and Intervenor-Defendants). The parties also submitted supplemental briefing on the Supreme Court’s recent decision in *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 144 S. Ct. 1540, 219 L. Ed. 2d 121 (2024). *See* ECF Nos. 1138, 1140, 1142–45.

Appendix C

FINDINGS OF FACT

1. Under S.B. 1, Texas law recognizes the following interactions as crimes under the Texas Election Code (the “Election Code” or “TEC”):

- a. A man helps his blind wife of 20 years cast her ballot at the polls without first securing a representation from her that she is “eligible for assistance.” Even if he completes her ballot according to her exact instructions, he faces up to two years in prison and a fine of up to \$10,000. *See* TEC § 276.018(b); TEX. PENAL CODE § 12.35; Tr. at 3991:1–5.
- b. While meeting with a client about his tax return, a staff member for a community organization that provides free income tax services agrees to help translate the man’s mail-in ballot. The client fills out his own ballot, with accurate translation assistance from the staff member. Even though the ballot reflects the clients wishes, the staff member faces up to two years in prison, she and her employer may be fined up to \$10,000, and the client’s ballot may not be counted. *See* TEC §§ 86.0105(a), (c); TEX. PENAL CODE § 12.35; TEC § 86.010(d); Tr. at 3996:8–3997:5.
- c. An elderly woman with arthritis answers her door to find a college student from her

Appendix C

alma mater canvassing for a ballot measure that would create an endowment for their school. Mentioning her arthritis, the woman asks the student for help completing her mail ballot and offers the student an iced tea and cookies as a token of her appreciation. The student agrees and completes the ballot according to the voter's instructions. The voter and the student each face up to 10 years in prison and fines of up to \$10,000. *See* TEC §§ 276.015(a)–(c), (f); TEX. PENAL CODE § 12.34; Tr. at 1904:1–1906:5, 3995:11–24.

2. Plaintiffs assert that, by criminalizing these routine interactions and imposing additional requirements on voters and their assistants, various provisions of S.B. 1 have frustrated qualified voters' rights under federal law to voting assistance from a person of their choice.

3. Section 208 of the Voting Rights Act 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.

4. Section 208 creates a federally guaranteed right of an assistant of the voter's choice when "voting," which

Appendix C

includes “all action necessary to make a vote effective in any primary, special, or general election, including, but not limited to, registration . . . or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast[.]” 52 U.S.C. § 10310(c)(1).

5. Congress enacted Section 208 “[t]o limit the risks of discrimination” against voters with who require assistance and “avoid denial or infringement of the[ir] right to vote.” S. Rep. No. 97-417 at 62 (May 25, 1982). As the Senate Report explains:

Clearly, the manner of providing assistance has a significant effect on the free exercise of the right to vote by such people who need assistance. Specifically, it is only natural that many such voters may feel apprehensive about casting a ballot in the presence of, or may be misled by, someone other than a person of their own choice. As a result, people requiring assistance in some jurisdictions are forced to choose between casting a ballot under the adverse circumstances of not being able to choose their own assistance or forfeiting their right to vote. The Committee is concerned that some people in this situation do in fact elect to forfeit their right to vote. Others may have their actual preference overborne by the influence of those assisting them or be misled into voting for someone other than the candidate of their choice.” The Committee has concluded that

Appendix C

the only kind of assistance that will make fully ‘meaningful’ the vote of the blind, disabled, or those who are unable to read or write, is to permit them to bring into the voting booth a person whom the voter trusts and who cannot intimidate him.

Id. at 472.

THE CHALLENGED PROVISIONS**Section 6.01 – Transportation Disclosures (Curbside Voting)**

6. Texas provides curbside voting for voters who are “physically unable to enter the polling place without personal assistance or likelihood of injuring the voter’s health,” allowing them to vote from the convenience and safety of a vehicle during early voting or on Election Day. TEC § 64.009(a); *see* Tr. at 4355:22–4356:2.

7. Section 6.01 of S.B. 1 modified Texas’s curbside voting procedures by requiring a person who “simultaneously” provides seven or more voters with transportation to a polling place for curbside voting to complete and sign a form—prescribed by the Secretary of State and provided by an election officer—reporting her name, address, and whether she is only providing transportation or also serving as an assistant to the voters. TEC §§ 64.009(e), (f), (h).¹⁰

10. The driver need not provide the disclosures if the person is related to each voter within the second degree by affinity or the

Appendix C

8. Section 6.01 further provides that “a poll watcher is entitled to observe any activity conducted under this section,” other than the preparation of a voter’s ballot with an assistor of the voter’s choice. TEC § 64.009(e). Poll watchers are thus entitled to observe drivers as they fill out the form prescribed by the Secretary of State.

9. Completed forms must be delivered to the Secretary of State as soon as practicable. TEC § 64.009(g). The Secretary must make the form available to the Attorney General for inspection upon request. *Id.*

Section 6.04 – Amendments to Oath of Assistance

10. Section 6.04 of S.B. 1 amends the oath that a person assisting a voter is required to swear (the “Oath of Assistance” or “Oath”) by adding the underlined and bolded language:

I swear (or affirm) **under penalty of perjury** that **the voter I am assisting represented to me they are eligible to receive assistance;** I will not suggest, by word, sign, or gesture, how the voter should vote; ~~[I will confine my assistance to~~ **reading the ballot to the voter, directing the voter to read the ballot, marking the voter’s ballot, or directing the voter to mark the ballot;**¹¹ ~~answering the voter’s questions,~~

third degree by consanguinity under TEX. GOV’T CODE § 573.023. TEC § 64.009(f-1).

11. The requirement that a person who assists a voter must confine assistance to reading the ballot, marking the ballot,

Appendix C

~~to stating propositions on the ballot, and to naming candidates and, if listed, their political parties;~~ I will prepare the voter's ballot as the voter directs; **I did not pressure or coerce the voter into choosing me to provide assistance;** [and] I am not the voter's employer, an agent of the voter's employer, or an officer or agent of a labor union to which the voter belongs; **I will not communicate information about how the voter has voted to another person;** and I understand that if assistance is provided to a voter who is not eligible for assistance, the voter's ballot may not be counted.

TEC § 64.034. An offense under this subsection is a state jail felony, punishable by up to two years in prison and a fine of up to \$10,000 and will result in the rejection of the voter's ballot. TEC § 276.018(a)(2)–(b); TEX. PENAL CODE §§ 12.35(a), (b).

and directing the voter to do the same was enjoined in *OCA of Greater Houston v. Texas*, No. 1:15-CV-679-RP, 2022 U.S. Dist. LEXIS 100262, 2022 WL 2019295, at *4 (W.D. Tex. June 6, 2022).¹¹ Accordingly, this Court held that “all claims in this consolidated action challenging the portions of section 6.04 that the district court recently enjoined . . . are moot.” *LUPE v. Abbott*, 614 F. Supp. 3d 509, 513 n.3 (W.D. Tex. 2022).

The United States brought a Section 208 claim in this consolidated action challenging the oath language enjoined in *OCA-Greater Houston v. Paxton (OCA-Greater Hous. II)*, No. 1:15-CV-679-RP, 2022 U.S. Dist. LEXIS 100262, 2022 WL 2019295, (W.D. Tex. June 6, 2022), which was rendered moot by the injunction. *See LUPE v. Abbott*, 614 F. Supp. 3d at 513 n.3.

Appendix C

11. An assistor must take the Oath of Assistance (and complete the disclosure form) for each voter she assists. Election officials, on the other hand, are not required to take the Oath or complete the disclosure form. *See* TEC § 64.034. When a voter receives assistance from an election official, however, Texas law permits poll watchers to be present at the voting station, and the watchers are entitled to examine the ballot before it is deposited in the ballot box. TEC § 33.057(a).

12. The Oath of Assistance must be printed on BBM carrier envelopes and signed by the assistor. TEC § 86.013(e); *see* LUPE-009 (form BBM carrier envelope prescribed by the Secretary of State).

13. Providing mail ballot assistance without signing the Oath is a state jail felony unless the assistor is a close relative of the voter or is physically living with the voter when the assistance is provided. *See* TEC § 86.010(h)(1).

Sections 6.03, 6.05, 6.07 – Assistor Disclosures

14. Before S.B. 1, the Election Code provided that, if assistance was provided by a person of the voter's choice at a polling place, an election officer must enter the person's name and address on the poll list beside the voter's name. *See* TEC § 64.032(d). A person providing mail-ballot assistance was required to provide his or her signature, printed name, and a residential address. *See* TEC § 86.010(e); JEX-1 at 53.

Appendix C

15. Sections 6.03, 6.05 and 6.07 of S.B. 1 added provisions imposing new disclosure and documentation requirements on persons who provide voter assistance.

16. Section 6.03 provides: “A person, other than an election officer, who assists a voter in accordance with this chapter is required to complete a form stating: (1) the name and address of the person assisting the voter; (2) the relationship to the voter of the person assisting the voter; and (3) whether the person assisting the voter received or accepted any form of compensation or other benefit from a candidate, campaign, or political committee.” TEC § 64.0322(a).

17. The Secretary of State must prescribe the Assistor Disclosure form. TEC § 64.0322(b). As prescribed by the Secretary, the form also contains the “Oath of Assistance,” discussed below. *See* LUPE-189 (“Oath of Assistance Form”).

18. Section 6.05 amended the Election Code to require a person who assists a mail-in voter to disclose their relationship with the voter and any compensation from a candidate, campaign, or political committee on the assisted-voter’s BBM carrier envelope. TEC § 86.010(e). The Election Code already required assistors to provide their names and addresses on the carrier envelope. *See id.*; JEX-1 at 53.

19. Section 6.07 amends the disclosures on the BBM carrier envelopes that must be completed by anyone providing ballot-dropping assistance to add a space

Appendix C

indicating the assistor's relationship to the voter (along with the person's name and address, which were already required). TEC § 86.013(b).

20. As prescribed by the Secretary of State, the form BBM carrier envelope does not distinguish between assistance in completing the ballot and ballot-dropping assistance. *See* LUPE-009 ("If you are assisting a voter by depositing the Carrier Envelope in the mail or with a common or contract carrier, you must complete the assistant section below.").

21. Providing BBM assistance without completing the Assistor Disclosures is a state jail felony, punishable by up to two years' confinement and a fine of up to \$10,000 and may result in the rejection of the voter's ballot. TEC § 86.010(g); TEX. PENAL CODE §§ 12.35(a), (b). The criminal consequences are inapplicable, however, to mail-ballot assistance provided by a close relative of the voter or a person who was physically living with the voter when the assistance was provided. *See* TEC § 86.010(h)(2).

22. Although the Assistor Disclosures required under §§ 6.03 and 6.05 are technically distinct from the required Oath of Assistance set forth in § 6.04, the requirements are, as a practical matter, indistinguishable to assistors. As the images below demonstrate, on both the "Oath of Assistance" form and the form mail ballot carrier envelope prescribed by the Secretary, the space for the assistor's signature (subscribing to the Oath) appears in the same section as the disclosure requirements—directly under the printed Oath language.

Appendix C

Oath of Assistance

7-58 Prescribed by Secretary of State Sections 64.0322, 64.034, Texas Election Code 1/2022 OATH OF ASSISTANCE	Type of Election	Polling Location
	Date of Election	Authority Conducting Election
<p>Oath of Person Assisting Voter: “I swear (or affirm) under penalty of perjury that the voter I am assisting represented to me they are eligible to receive assistance; I will not suggest, by word, sign, or gesture, how the voter should vote; I will confine my assistance to reading the ballot to the voter; directing the voter to read the ballot, marking the voter’s ballot, or directing the voter to mark the ballot; I will prepare the voter’s ballot as the voter directs; I did not pressure or coerce the voter into choosing me to provide assistance; I am not the voter’s employer; an agent of the voter’s employer; or an officer or agent of a labor union to which the voter belongs; I will not communicate information about how the voter has voted to another person; and I understand that if assistance is provided to a voter who is not eligible for assistance, the voter’s ballot may not be counted.” Juramento de la Persona Asistiendo al Votante: “Yo juro (o afirmo) bajo pena de perjurio que el votante al que estoy asistiendo me representó que es elegible para recibir asistencia; no sugeriré, con palabra, señal, o gesto, como debe votar el votante; limitaré mi asistencia a leer la boleta al votante, dirigiendo al votante a que lea la boleta, marcando la boleta del votante o dirigiendo al votante a que marque la boleta; prepararé la boleta del votante según lo indique el votante; no presioné ni coaccioné al votante para que me eligiera como asistente; no soy el empleador del votante, un agente del empleador del votante, o un oficial o agente de un sindicato al cual el votante pertenece; no comunicaré información sobre cómo el votante ha votado a otra persona; y entiendo que si se proporciona asistencia a un votante que no es elegible para recibir asistencia, la boleta del votante podría no ser contada.”</p>		

Appendix C

	Signature of Assistant (<i>Firma del Asistente</i>)	Printed Name of Assistant (<i>Nombre del Asistente en Letra de Molde</i>)	Address of Assistant (<i>Dirección del Asistente</i>)	Relationship of Assistant to Voter (<i>Relación del Asistente al Votante</i>)	Did you receive or accept any form of compensation or other benefit from a candidate, campaign, or political committee? (<i>Recibió o aceptó cualquier forma de compensación u otro beneficio de un candidato, campaña o comité político?</i>)	Yes	No
1						Yes	No
2						Yes	No
3						Yes	No

*Appendix C**Form Mail Ballot Carrier Envelope*

Oath of Person Assisting Vote: “I swear (or affirm) under penalty of perjury that the voter I am assisting represented to me they are eligible to receive assistance; I will not suggest, by word, sign, or gesture, how the voter should vote; I will prepare the voter’s ballot as the voter directs; I did not pressure or coerce the voter into choosing me to provide assistance; I am not the voter’s employer, an agent of the voter’s employer, or an officer or agent of a labor union to which the voter belongs; I will not communicate information about how the voter has voted to another person; and I understand that if assistance is provided to a voter who is not eligible for assistance, the voter’s ballot may not be counted.” **Juramento de la Persona Asistiendo al Votante:** “Yo juro (o afirmo) bajo pena de perjurio que el votante al que estoy asistiendo me representó que es elegible para recibir asistencia; no sugeriré, con palabra, señal, o gesto, como debe votar el votante; prepararé la boleta del votante según lo indique el votante; no presioné ni coaccioné al votante para que me eligiera como asistente; no soy el empleador del votante, un agente del empleador del votante, o un oficial o agente de un sindicato al cual el votante pertenece; no comunicaré información sobre cómo el votante ha votado a otra persona; y entiendo que si se proporciona asistencia a un votante que no es elegible para recibir asistencia, la boleta del votante podría no ser contada.”

If you are an assistant, provide information below:
(Si usted es un asistente proporcione la siguiente información):

Did you receive compensation or other benefit from a candidate, campaign or political committee in exchange for providing assistance? Circle one: Yes No

¿Recibió compensación u otro beneficio de un candidato, campaña o comité político a cambio de brindar asistencia?
Marque con un Círculo: Sí No

Printed Name (Nombre en letra de molde) Signature (Firma)

Relationship to Voter (Relación al votante) Street Address (Domicilio residencial)

Appendix C

23. Moreover, the provisions impose identical consequences for non-compliance. Knowingly providing assistance without completing the Oath (evidenced by the assistor’s signature) or the relevant disclosure fields on mail-in ballots (1) is a state jail felony and (2) may result in the rejection of the voter’s ballot. *See* TEC §§ 86.010 (d), (f)–(g).

Section 6.06 – Ban on Compensated Mail-Ballot Assistance

24. Section 6.06 of S.B. 1 makes it a state jail felony, for a person who is not an attendant or caregiver previously known to the voter, to compensate or offer to compensate another person—or to solicit, receive, or accept compensation—for assisting voters with their mail-in ballots. TEC §§ 86.0105(a), (c).

25. For purposes of this section, “compensation” means “anything reasonably regarded as an economic gain or advantage, including accepting or offering to accept employment for a fee, accepting or offering to accept a fee, entering into a fee contract, or accepting or agreeing to accept money or anything of value.” *Id.*; *see also* TEX. PENAL CODE § 38.01(3).

26. The prohibition on compensation does not apply if the person assisting the voter is an “attendant” or “caregiver” previously known to the voter. Tr. at 1906:23–1907:2. S.B. 1, however, does not define “attendant” or “caregiver,” Tr. at 1907:3–6, nor has the Secretary published any guidance or training on how to interpret

Appendix C

either term. Tr. at 1907:7–12, 1908:17–24. Further, the Secretary of State’s Office does not define the phrase “previously known to the voter,” nor has it published any guidance or training on how the phrase should be interpreted. Tr. at 1909:3–13. At trial, former Director of the Elections Division in the Secretary of State’s Office Keith Ingram testified that it does not matter how long the voter has actually known the attendant or caregiver before providing voter assistance; it could be “15 years” or “15 minutes.” Tr. at 1909:14–22.

Section 7.04 – Canvassing Restriction

27. Section 7.04 of S.B. 1 creates three new, third-degree felonies under the Election Code, each imposing up to ten years in prison and a fine of up to \$10,000 on anyone who gives, offers, or receives some “compensation or other benefit” for “vote harvesting services.”¹² TEC § 276.015(f); TEX. PENAL CODE § 12.34.

12. While Section 7.04 of S.B. 1 sets out a ban on “vote harvesting,” *see* TEC § 276.015, Plaintiffs generally refer to the provision as a “ban on in-person canvassing” or “voter interaction ban.” *See, e.g.*, ECF No. 848 ¶ 97; ECF No. 849 ¶ 296. In the Court’s view, all three characterizations are misleading in multiple respects. Regardless of how the term is defined in the Election Code, the scope of Section 7.04’s proscriptions reach conduct well beyond any common understanding of “vote harvesting.” On the other hand, the provision does not ban canvassers from interacting with voters altogether—it prohibits *compensated* interactions in the *presence of a mail ballot*. To describe Section 7.04’s proscription more accurately and impartially, the Court refers to the challenged provisions as the “Canvassing Restriction” throughout this order.

Appendix C

28. “Vote harvesting services” include any “in-person interaction with one or more voters, in the physical presence of an official ballot or a ballot voted by mail, intended to deliver votes for a specific candidate or measure.” TEC § 276.015(a)(2).

29. A “benefit” is “anything reasonably regarded as a gain or advantage, including a promise or offer of employment, a political favor, or an official act of discretion, whether to a person or another party whose welfare is of interest to the person.” TEC § 276.015(a)(1).

30. Using these definitions, Section 7.04 creates three third-degree felonies:

(b) A person commits an offense if the person, directly or through a third party, knowingly provides or offers to provide vote harvesting services in exchange for compensation or other benefit.

(c) A person commits an offense if the person, directly or through a third party, knowingly provides or offers to provide compensation or other benefit to another person in exchange for vote harvesting services.

Section 7.04 also added Election Code provisions addressing the solicitation of applications to vote by mail (TEC § 276.016), the distribution of early voting ballots and balloting materials (TEC § 276.017), and unauthorized alterations to election procedures (TEC § 276.019). For the purposes of this order, however, “Section 7.04” refers only to the Canvassing Restriction, codified at TEC § 276.015.

Appendix C

(d) A person commits an offense if the person knowingly collects or possesses a mail ballot or official carrier envelope in connection with vote harvesting services.

TEC §§ 276.015(b)–(d).

31. There are a number of exceptions. The Canvassing Restriction “does not apply” to:

- (1) an activity not performed in exchange for compensation or a benefit;
- (2) interactions that do not occur in the presence of the ballot or during the voting process;
- (3) interactions that do not directly involve an official ballot or ballot by mail;
- (4) interactions that are not conducted in-person with a voter; or
- (5) activity that is not designed to deliver votes for or against a specific candidate or measure.

TEC § 276.015(e).

*Appendix C***THE PARTIES****The Plaintiffs**

32. Plaintiffs are membership-driven, non-partisan civil rights and social advocacy groups in Texas with members who require voting assistance due to a disability, blindness, or an inability to read or write the language in which ballot is written. Their staff and volunteers have regularly assisted voters with disabilities and/or voters with limited English proficiency (“LEP”), including mail voters, cast their ballots.

33. Plaintiffs conduct in-person voter outreach and engagement activities, including voting assistance and transportation to the polls. Despite the diversity of their respective missions in the state—e.g., encouraging civic participation, empowering voters with disabilities, improving infrastructure in the colonias—the Plaintiff organizations rely on in-person voter advocacy to advance their causes. These voter engagement efforts include neighborhood door-knocking campaigns, voter registration drives, candidate forums, town hall meetings, tabling at community events, and exit-polling. During some outreach events, voters have taken out their mail ballots while speaking with organizers to ask questions about their ballots or request voting assistance.

34. Plaintiffs’ volunteers often receive refreshments, t-shirts, pens, gas cards, and other tokens of appreciation for their canvassing and assistance efforts.

35. Plaintiffs’ organizational representatives testified at trial that the Challenged Provisions have frustrated

Appendix C

their voter engagement and turnout efforts by chilling their members' willingness to provide voter assistance due to fear of criminal liability. Moreover, some of Plaintiffs' members with disabilities who typically vote with assistance decided to forgo assistance altogether to avoid subjecting their preferred assistants to criminal sanctions.

36. Collectively, Plaintiffs seek declaratory and injunctive relief and ask the Court to enjoin the Attorney General ("AG"), and Secretary of State ("Secretary" or "SOS") of Texas, and several local election officials and prosecutors from enforcing the Challenged Provisions.

The HAUL-MFV Plaintiffs

37. Together, the HAUL-MFV Plaintiffs challenge the Transportation Disclosure (S.B. 1 § 6.01), the Amended Oath (§ 6.04), and the Assistor Disclosures (§§ 6.03, 6.05, 6.07), seeking injunctive relief against the Secretary, the AG, and the local election officials and the DAs of Bexar County and Harris County. *See* ECF No. 199 ¶ 323.

The Arc of Texas

38. The Arc of Texas (the "Arc") is a non-profit organization founded in 1953 by parents of children with intellectual and developmental disabilities ("IDD") to advocate for their children to have access to education, employment, community supports, and other areas of community life. Tr. at 3492:18–25, 3493:1–5. The Arc

Appendix C

has 7,000 individual members across the state.¹³ Tr. at 3495:20–25, 3496:4–24.

39. The Arc’s mission is to “promote, protect, and advocate for the human rights and self-determination of Texans with intellectual and developmental disabilities.” Tr. at 3490:23–25, 3493:7–9. In pursuit of that mission, The Arc engages in legislative advocacy and grassroots advocacy to help empower people with IDD advance public policy and. Tr. at 3493:10–21; 3494:5–10. Voting is “the backbone” of The Arc’s work because it is critical to members’ self-determination and voting rights advocacy has been a priority since The Arc’s founding. Tr. at 3499:23–3500:12, 3499:23–3500:12.

40. As discussed in greater detail herein, several members of the Arc with disabilities have been unable to vote with their assistor of choice due to the burdens imposed by S.B. 1’s Assistor Disclosure requirement and amended Oath of Assistance, including Jodi Lydia Nunez Landry. Tr. at 3229:15.

13. Although individual members previously paid membership dues, The Arc stopped charging fees after concluding that they were a barrier for people with IDD being able to join the organization. Tr. at 3497:17–25, 3498:1–3 (noting that people with IDD often “live in poverty and don’t have extra money to pay membership dues.”). Thus, members can join The Arc of Texas in several other ways, including by subscribing to their Disability Dispatch email, making a donation, serving on the board, or serving on a committee. Tr. at 3495:22–25, 3496:1–3, 3497:10–16.

*Appendix C***Delta Sigma Theta Sorority, Inc.**

41. Plaintiff Delta Sigma Theta Sorority, Inc. (“DST” or the “Sorority”) is a national, nonprofit, nonpartisan organization of Black, college-educated women, focused on serving the Black community through social action. Tr. at 2081:1–20. DST has 75 Chapters in Texas, including chapters in Bexar, Harris, and Travis Counties, and 21,450 members registered to vote in Texas. Tr. at 2083:13–25.

42. The Sorority organizes its social action under what it calls its “Five Point Programmatic Thrust”: educational development, economic development, international awareness and involvement, physical and mental health, and political awareness and involvement. Tr. at 2081:7–13.

43. In support of this mission, DST has participated in voting rights efforts since its founding in 1913. Tr. at 2082:23–2083:8. The organization’s civic engagement programs include voter registration drives, voter education, candidate forums, and voter assistance and transportation programs. Tr. at 2086:21–2087:15.

44. DST Chapters in Texas provide voter assistance to residents of nursing homes and senior care facilities who need help filling out applications for ballots by mail (“ABBM”), address changes, and ballots by mail (“BBM”) and voting in-person. Tr. at 2088:1–18, 2199:9–19.

45. Before S.B. 1, DST members regularly provided transportation to the polls by participating in Souls to the Polls, a caravanning initiative that partners with churches to drive voters to their voting location. Tr. at 2088:8–15.

Appendix C

46. Members of DST include individuals that have disabilities and depend on assistance to cast their vote. Tr. at 2110:3–11.

The OCA Plaintiffs

47. Together, the OCA Plaintiffs challenge the Ban on Compensated Assistance (S.B. 1 § 6.06), seeking injunctive relief against the Secretary, the AG, the County Clerks of Harris and Travis Counties, and the DAs of Harris and Bexar Counties. *See* ECF No. 200 ¶ 181.¹⁴

OCA-Greater Houston

48. Plaintiff OCA-Greater Houston (“OCA”) is a membership-driven organization dedicated to advancing the social, political, and economic well-being of Americans of Asian and Pacific Island descent (“AAPIs”), largely in Harris, Brazoria, and Fort Bend counties. Tr. at 1684:8–12, 1685:1–3, 1686:16–17, 1688:10–14.

49. The organization’s mission comprises four main goals: (1) advocate for social justice, equal opportunity, and fair treatment; (2) promote civic participation, education, and leadership; (3) advance coalition and community building; and (4) foster cultural heritage. Tr. at 1689:6–13.

50. To further this mission, OCA engages in numerous election-related activities carried out by

14. OCA-Greater Houston, REV UP Texas, and the League of Women Voters Texas voluntarily withdrew their Section 208 challenges to S.B. 1 § 6.04. *See* ECF No. 753 at 5 nn.4–5

Appendix C

volunteers and paid staff, all of whom are OCA members. Tr. at 1687:22–1688:6, 1693:21–25. Before S.B. 1 was enacted, OCA regularly hosted election events, including in-person candidate forums (Tr. at 1694:21–1696:8), “AAPI meet-and-greets” with AAPI political candidates (Tr. at 1699:24–1702:2), and voting machine demonstrations (Tr. at 1706:12–1707:3). Attendees often brought their mail-in ballots to these events and received assistance, including language assistance, from OCA volunteers and staff. Tr. at 1696:9–1697:8, 1697:22–1699:7, 1700:1–1702:2, 1706:12–1707:3.

51. OCA has also engaged in canvassing efforts through volunteers and staff, who knocked on voters’ doors to provide information about voting. Tr. at 1702:3–17. As they were door-knocking, some bilingual OCA canvassers assisted voters who requested language assistance with their mail-in ballots. Tr. at 1703:17–20. OCA staff and volunteers have provided mail-ballot assistance while conducting exit-polling at polling locations, where voters also requested (and received) assistance with their mail-ballots from OCA. Tr. at 1706:4–11, 1723:6–13.

52. OCA’s voting-related activities are carried out by volunteers and paid staff. Tr. at 1687:22–1688:6, 1693:21–25. OCA provides its members and volunteers with benefits like food and beverages at in-person events where they provide voting assistance to LEP voters. Tr. at 1694:4–20, 1697:22–25.

*Appendix C***The League of Women Voters of Texas**

53. The League of Women Voters of Texas (“LWV” or the “League”) is a non-partisan organization founded in San Antonio in 1919 with over 3,000 dues-paying members, including members in Harris and Travis Counties. Tr. at 1580:1–4, 1585:18–22, 1586:7–19, 1587:19–21,

54. The League’s mission is to empower voters and defend democracy. Tr. at 1580:1–4. The League actively works to register eligible citizens to vote, ensure that voters’ ballots count, help voters obtain mail-in ballots, vote by mail, and obtain voter assistance when needed. Tr. at 1580:1–8, 1581:9–18, 1589:12–15, 1589:25–1590:3.

55. The League has members who use assistants when they vote by mail, and members who assist others with their vote by mail ballots. Tr. at 1578:3–8, 1589:12–1590:3. League members assist mail-in voters who are family, friends, in nursing homes, in assisted living centers, or in homes where voters with disabilities live. Tr. at 1590:16–25. Members of the League “offer[] tea, or coffee, or water,” to assistors that help them and other voters vote by mail. Tr. at 1591:1–1592:5, 1590:4–12.

The LUPE Plaintiffs

56. Together, the LUPE Plaintiffs challenge the Oath of Assistance S.B. 1 (S.B. 1 § 6.04), Assistor Disclosures (§§ 6.03, 6.05, 6.07), the Ban on Compensated Assistance (§ 6.06), and the Canvassing Restriction (§ 7.04) seeking injunctive relief against the Secretary, the AG, and the

Appendix C

election officials and prosecutors of Dallas and El Paso Counties and the Travis County District Attorney. *See* ECF No. 208 ¶ 267.

La Union Del Pueblo Entero

57. La Union Del Pueblo Entero (“LUPE”) is a non-partisan, membership organization headquartered in San Juan, Texas, with members primarily in Hidalgo, Cameron, Willacy, and Starr Counties, Texas. Tr. at 58:13–16.

58. LUPE organizes its approximately 8,000 members and other colonia residents on issues that affect low-income neighborhoods, including drainage, lighting, paved roads, safety, emergency services, trash pickup, among others. Tr. at 88:8–24. In addition to civic engagement organizing, LUPE is a social services hub for the community and provides income tax services, language translation services and family-based immigration legal services. Tr. at 61:3–17

59. In recent years, LUPE’s primary organizing focus has been civic engagement and educating voters about their right to vote. Tr. at 60:10–61:2. LUPE relies on paid staff members, temporary paid canvassers, and volunteers to engage with voters in-person. Tr. at 88:1–7. LUPE members speak to voters on issues promoted by LUPE, including urging voters to support certain non-partisan ballot measures. Tr. at 88:1–24.

60. LUPE organizers advocate for ballot measures in a variety of settings, including when meeting with

Appendix C

community members in neighborhoods, at LUPE events, at union halls, and in the LUPE offices. Tr. at 89:7–18. While canvassing neighborhoods in support of ballot measures, LUPE organizers have been invited into voters’ homes and asked for assistance with voters’ mail-in ballots. Tr. at 71:1–72:15, 75:11–75:17, 119:20–120:18. LUPE members also often bring mail ballots to meetings at LUPE offices and union halls. Tr. at 90:4–24.

61. LUPE’s membership includes individuals who use assistance to vote by mail and in-person, including elderly and/or disabled voters and voters with limited English proficiency (“LEP”) or low-literate. Tr. at 63:19–64:6, 65:7–65:13, 75:18–77:4, 77:17–78:2, 84:4–84:25, 85:1–85:4, 87:3–87:21, 97:11–97:17, 119:20–120:18, 116:22–117:7, 3676:11–25. Some of these members are not literate in English or Spanish. Tr. at 64:7–65:6.

62. Members of LUPE include voters who are disabled and vote with assistance in person and by mail. Tr. at 63:19–64:6, 65:7–65:13, 96:15–97:17, 75:18–77:4, 77:17–78:2, 84:4–84:25, 85:1–85:4, 119:20–120:18, 116:22–117:7, 87:3–87:21, 3676:11–25.

63. LUPE staff members and volunteers have been asked for assistance with voting by mail and in-person at the polls elderly and disabled voter and have provided such assistance. *See* Tr. at 145:16–20, 145:25–146:4, 150:9–13, 150:19–151:2, 157:14–158:9; LUPE-284, Maria Gomez Dep. at 41:24–42:24, 11:15–12:10, 15:17–20, 29:9–12. 40:24–42:2. LUPE trains its organizers to provide voter assistance consistent with the law, to limit assistance to what is

Appendix C

requested by the voter, and to carry out the wishes of the voter. Tr. at 78:3–78:15.

64. LUPE often provides its volunteers with t-shirts or gas cards, particularly because there is little public transportation in the Rio Grande Valley. Tr. at 122:3–19.

Mexican American Bar Association of Texas

65. The Mexican American Bar Association of Texas (“MABA”) is a volunteer-based professional membership association of Latino lawyers across Texas with approximately 500 members. Tr. at 2533:20–23, 2535:9–10.

66. Although MABA is non-partisan, it routinely encourages voters to support a candidate or measure. Tr. at 2535:19, 2542:6–8.

67. MABA encourages its attorneys to provide pro bono services and support voter engagement in their local communities. Tr. at 2533:24–2534:4, 2535:11–2536:5. MABA engages in voter outreach and education by tabling at local community events, such as candidate forums. Tr. at 2535:21–2536:5. MABA members also provide voter assistance. *See, e.g.*, Tr. at 2539:3–4. Members are concerned that they are committing a crime if they accept meals, gas cards, swag or other forms of compensation while performing these activities. Tr. at 2542:6–20.

Familias Inmigrantes Estudiantes Luchar

68. Familias Inmigrantes Estudiantes Luchar (“FIEL”), translated to English means “Immigrant

Appendix C

Families and Students in the Fight.” Tr. at 2430:12–19. FIEL is an immigrant-led civil rights organization with approximately 16,000 members in the Greater Houston area. Tr. at 2431:21–25. FIEL employs eight paid staffers. Tr. at 2433:18–22. FIEL’s mission is to organize and empower people, and to make sure that people know their rights and that they exercise their rights in the community. Tr. at 2434:21–2435:1. FIEL focuses on work related to access to higher education, community organizing, and civic engagement, including voter outreach. Tr. at 2435:2–14.

69. Before S.B. 1 was enacted, FIEL furthered its mission of voter outreach and civic engagement by assisting its members in voting at the polls. Tr. at 2438:9–11, 2444:24–2445:3. FIEL typically partnered with another organization to take people to vote and provide translation and other assistance at the polls. Tr. at 2438:12–16.

The LULAC Plaintiffs

70. The LULAC Plaintiffs challenge the Canvassing Restriction (S.B. 1 § 7.04), seeking relief against the AG, the Secretary, election officials and district attorneys in Bexar, Travis, Hidalgo, Dallas and El Paso Counties. ECF No. 207.

League of United Latin American Citizens

71. The League of United Latin American Citizens (“LULAC”) is a national Latino civil rights organization

Appendix C

founded in 1929 in Corpus Christi, Texas. Tr. at 1632:9–11. The group has about 4,000 to 5,000 dues-paying members within Texas, as well roughly 80,000 to 90,000 “eMembers” in the state. There are 30 to 40 LULAC councils in Texas, including in Dallas, San Antonio, Houston, and El Paso. Tr. at 1634:6–20, 1637:3–7.

72. LULAC’s mission is “to improve the lives of Latino families throughout the United States” and “to protect their civil rights in all aspects.” Tr. at 1633:10–18. Promoting the right to vote is “crucial” to LULAC’s mission because when Latinos are “allowed to vote, they are able to choose candidates of their choice” who “will stand and work on issues that are important to them.” Tr. at 1645:4–15.

73. LULAC has volunteers that engage in voter registration and GOTV efforts every year. Tr. at 1645:23–1646:5. These efforts often focus on community members who face greater challenges when voting, including elderly Latinos and those who do not speak or write English. Tr. at 1649:7–24. Accordingly, LULAC has historically run a voter assistance program for seniors, including many who are not literate or have physical disabilities. Tr. at 1654:20–1655:5.

74. LULAC’s members and volunteers who participate in these GOTV and voter assistance efforts often receive food and drink, gas credit, or other tokens of appreciation for their efforts. Tr. at 1655:19–1656:10, 1656:11–18.

*Appendix C***Defendants¹⁵**

75. Collectively, Plaintiffs have sued the State of Texas, the Attorney General and Secretary of State of the State of Texas, and the chief election officials and district attorneys of several counties in Texas, including Harris County, Bexar County, Travis County, Dallas County, Hidalgo County, and El Paso County, all in their official capacities.

The State Defendants**The State of Texas**

76. The State of Texas became the 28th state in the union in 1845.

Texas Attorney General

77. Defendant Ken Paxton is the Attorney General of the State of Texas. His office, the Office of the Attorney General of Texas (“OAG”), is an executive department or agency of the State of Texas. ECF No. 753 ¶ 40.

78. The AG has statutory duties for certain aspects of S.B. 1’s enforcement scheme, including Sections 6.04, 6.05, 6.06 & 7.04. *Stephens* did not alter the authority of the AG to investigate allegations of election-related crimes,

15. Over the course of these proceedings, several Defendants sued in their official capacities were substituted by their successors in office pursuant to Federal Rule of Civil Procedure 25(d).

Appendix C

and, in some cases, the OAG considers its investigative duties to be “statutorily required” or “mandatory” for election-related allegations. Tr. at 4041:18–4042:25; *see, e.g.*, TEC § 273.001 (providing that the AG “shall investigate” allegations of election crimes in elections covering more than one county). The AG may also “direct the county or district attorney . . . to *conduct* or *assist* the attorney general in conducting the investigation.” *See* TEC § 273.002(1) (emphasis added); *see also id.* § 273.001 (district attorneys must investigate alleged violations referred to them).

79. The AG has demonstrated a willingness to enforce, and has actually enforced, the Election Code, including S.B. 1. Tr. at 3909:8–17, 3913:9–3914:16. He publicly maintains that one of his key priorities is to investigate and prosecute allegations of voter fraud. *See, e.g.*, OCA-384, OCA-385, OCA-386.

80. The OAG continues to operate the Criminal Prosecutions Division unit that prosecutes election-related allegations, known as the Election Integrity Division. Tr. at 3903:23–3905:4, 3905:11–15, 4039:14–19. As of March 17, 2023, the OAG had identified investigations of a possible violations of the Assistor Disclosure requirement for mail ballots (S.B. 1 § 6.03) and the Canvassing Restriction (S.B. 1 § 7.04).¹⁶ *See* LULAC-86 at 6.

16. There may very well be additional investigations that the DA failed to produce during discovery. Throughout this litigation, the OAG has, invoking the investigative privilege, withheld documents discussing “actual or alleged illegal voting, election fraud, or other criminal conduct in connection with” voting and

Appendix C

81. Before *Stephens*, the OAG regularly prosecuted election crimes, including alleged unlawful-assistance and vote-harvesting schemes, in counties across Texas. See OCA-377 (showing 401 counts—not cases—of election crimes prosecuted by the OAG, alone or in conjunction with local prosecutors, between 2005 and 2022).

82. Even after *Stephens*, Jonathan White, former Chief of the OAG Election Integrity Division, testified that the “vote harvesting” schemes (purportedly targeted by the Canvassing Restriction) and “assistance fraud” (purportedly targeted by the all the challenged provisions) remain among the three most common elections-related allegations that the OAG pursues. Tr. at 3915:3–8. For the November 2022 elections, the OAG established a 2022 General Election Integrity Team and publicly stated it was “prepared to take action against unlawful conduct where appropriate,” highlighting offenses related to voter assistance and “vote harvesting.” OCA-383.

83. Although the AG may no longer unilaterally prosecute allegations of election-related crimes, *Stephens*, 663 S.W.3d at 51–55, the OAG enforces criminal election offenses through other mechanisms. After OAG investigations conclude, the OAG refers cases to local

voter assistance. See ECF No. 992-3; ECF No. 992-16; *In Re U.S. Dep’t of Homeland Sec.*, 459 F.3d 565, 568–69, n.2 (5th Cir. 2006) (the investigative privilege, also known as the “law enforcement privilege,” protects government documents relating to an ongoing criminal investigation from release).

Appendix C

prosecuting attorneys¹⁷ and often seeks opportunities to partner with DAs to prosecute such allegations through deputization by a DA or appointment *pro tem* by a district judge or the DA. Tr. at 3908:21–3909:17, 3909:1–12; 4043:21–4045:21; 4051:2–10.

84. The OAG has specifically identified previous prosecutions in which it participated, including prosecutions for unlawful voting assistance and “vote harvesting” and prosecutions conducted by or with the assistance of local DAs in the following counties: Nolan County, Limestone County, Hidalgo County, Harris County, Navarro County, Brewster County, Gregg County, and Starr County. *See* OCA-377.

85. Finally, the AG is tasked to enforce S.B. 1 against election officials who are subject to civil prosecution for Election Code violations. S.B. 1 § 8.01 (TEC §§ 31.128, .129, .130); *see* Tr. at 772:2–6. He is authorized under S.B. 1 § 8.01 (TEC § 31.129(b)) to assess civil penalties against local officials who violate the law by failing to enforce certain provisions of S.B. 1, including provisions that Plaintiffs challenge.

17. For example, after the prosecution of Hervis Rogers was dismissed in Montgomery County, the OAG referred the case to the Harris County DA, who brought charges against Mr. Rogers before a grand jury. Tr. at 4058:17–4059:24, 4062:7–12. The same procedure was used in the prosecution of Ignacio González Beltrán, whose case was dismissed in Montgomery County and referred by the OAG to Harris County, where it was presented to a grand jury. Tr. at 4063:3–4064:6.

*Appendix C***Texas Secretary of State**

86. Plaintiffs seek to enjoin Defendant Jane Nelson, the Secretary of State (the “Secretary”) of the State of Texas, from enforcing the Challenged Provisions.

87. The Secretary is the Chief Election Officer of Texas. TEC § 31.001(a). In that capacity, the Secretary is charged with “broad duties to oversee administration of Texas’s election laws.” *Ostrewich v. Tatum*, 72 F.4th 94, 100 (5th Cir. 2023) (quoting *Richardson v. Flores*, 28 F.4th 649, 654 (5th Cir. 2022)).

88. It is the Secretary’s duty to obtain and maintain uniformity in the interpretation, application, and operation of the election code and election laws outside the election code. TEC § 31.003; Tr. at 1827:6–12.

89. These responsibilities include “prescribing official forms” for elections. Tr. at 1834:2–12; TEC §§ 31.001(a)–(b), 31.003. The Secretary, for example, is responsible for the design and content of the Assistor Disclosure form and BBM carrier envelopes. *See* Tr. at 1843:4–7; TEC §§ 64.0322(b), 86.013(d); LUPE-009; LUPE-189.

90. The Secretary routinely issues guidance, directives, orders, instructions, and handbooks to county registrars of all 254 Texas counties, as well as to district attorneys, political candidates, and voters, on various election procedures, including changes implemented in S.B. 1. Tr. at 119:24–120:6, 125:4–21, 128:14–20, 129:3–14, 143:15–18, 159:9–160:11, 1831:7–14, 1875:5–10, 1875:18–25.

Appendix C

91. The Secretary also collaborates with the OAG to enforce election laws in accordance with her mandatory duties under the Election Code. Tr. at 3913:9–19, 4054:16–4055:8.

92. Under the Election Code, the Secretary must evaluate information she “receiv[es] or discover[s]” about potential election crimes and, if she “determines that there is probable cause to suspect that criminal conduct occurred, the [S]ecretary *shall* promptly refer the information to the attorney general” and provide all pertinent documents and information in his possession to the AG. TEC § 31.006 (emphasis added).

93. In this capacity, the Secretary serves as “a gathering point for election complaints from individuals and election officials.” Tr. at 3913:12–19. The Secretary logs each complaint received. Tr. at 4326:23–4327:2. Sometimes, the Secretary will also ask the complainant for additional information. Tr. at 1876:24–1879:21. Ultimately, the Secretary must determine whether the information in her possession satisfies the probable cause standard. Tr. at 1881:1–9. “If it’s a close call, [the Secretary of State’s Office] refer[s] it anyways, because it’s better to err on the side of making sure that crimes are prosecuted.” Tr. at 1877:14–21.

94. The Secretary has received allegations related to mail ballot “vote harvesting,” which she has referred to the OAG both before and after the passage of S.B. 1. Tr. at 1914:1–6.

*Appendix C***County Defendants**

95. Plaintiffs have named various local election officials and prosecutors as Defendants in their official capacities for their roles in implementing and enforcing the Challenged Provisions.

County Election Officials

96. Plaintiffs have sued local election administrators in several counties in Texas (the “EAs” or “County Clerks,” as applicable) in their official capacity to enjoin them from enforcing the Challenged Provisions.

97. The HAUL Plaintiffs seek injunctive relief against the Bexar County EA and the Harris County Clerk.¹⁸ *See* ECF No. 199. The OCA Plaintiffs seek injunctive relief against the County Clerks of Harris County and Travis County. *See* ECF No. 200. The LUPE Plaintiffs seek injunctive relief against the EAs of Dallas County and El Paso County. *See* ECF No. 208. The LULAC Plaintiffs seek injunctive relief against the Bexar County EA, the Harris County Clerk, the Travis County Clerk, the Hidalgo County EA, and the Dallas County EA. *See* ECF No. 207.

98. Local election officials administer Texas elections. They are responsible for administering the Oath of

18. The Harris County EA’s office was abolished on September 1, 2023, pursuant to 88th Leg. R.S. Senate Bill 1750 (amending TEC § 31.050). ECF No. 753 ¶ 44 & n.12.

Appendix C

Assistance at polling places, TEC § 64.034, and for collecting and reviewing required disclosures at the polls and on the carrier envelopes of mail-in ballots, *id.* § 64.034. They also receive and review mail carrier and ballot envelopes to voters, *id.* § 86.002, receive and process marked ballots, *id.* §§ 86.006, 86.007(b), 86.011, verify voter signatures, *id.* § 87.027(i), and count the results, *id.* § 87.061.

County District Attorneys

99. Plaintiffs seek to enjoin the District Attorneys of several counties in Texas (the “DAs” or “County DAs”) from enforcing S.B. 1 §§ 6.04–6.06 and 7.04.

100. The HAUL Plaintiffs seek injunctive relief against the DAs of Bexar County, Harris County, and Travis County. *See* ECF No. 199. The OCA Plaintiffs seek injunctive relief against the Harris County DA and the Travis County DA. *See* ECF No. 200. The LUPE Plaintiffs seek injunctive relief against the DAs of Travis County, Dallas County and the 34th Judicial District, which includes El Paso, Culberson, and Hudspeth Counties. *See* ECF No. 208. The LULAC Plaintiffs name the DAs of Travis, Dallas, and Hidalgo Counties as Defendants. *See* ECF No. 207.

101. County district attorneys are tasked with enforcement of the State’s criminal laws and represent the State of Texas in all criminal cases in their district, unless conflicts arise. Tex. Const. art. 5, § 21; TEX. CODE CRIM. P. ART. 2.01; *see* TEX. GOV’T CODE § 43.180(b). Thus, by virtue

Appendix C

of their positions, DAs are charged with investigating and prosecuting violations of the Election Code, including those among the Challenged Provisions. *See Stephens*, 663 S.W.3d at 55. Indeed, all prosecutions under the Election Code require the consent or authorization of the applicable DA. *See id.* (concluding that the Attorney General “can prosecute [crimes under the Election Code] with the permission of the local prosecutor but cannot initiate prosecution unilaterally.”).

102. The DAs for Travis, Dallas, and Hidalgo Counties each executed stipulations stating that he or she had *not* (1) adopted a policy refusing to prosecute crimes under S.B. 1, (2) instructed law enforcement to refuse to arrest individuals suspected of criminal conduct under S.B. 1, or (3) permitted an assistant DA to take either of the foregoing actions. *See* ECF No. 753-6 (Travis) ¶¶ 3–6; ECF No. 753-7 (Dallas) ¶¶ 3–4; ECF No. 753-13 (Hidalgo) ¶¶ 3–6.

103. The Bexar County DA likewise signed a stipulation stating that his office has not disavowed any intent to investigate or prosecute crimes under S.B. 1. ECF No. 753-5 ¶¶ 2–6.

104. The DA of the 34th Judicial District agreed not to enforce the provisions challenged by the LUPE Plaintiffs during the pendency of this action but stipulated that he has the authority to enforce crimes under the Election Code, would be free to do so at any time, and intends to fulfill his duty to enforce election crimes, subject to his prosecutorial discretion. ECF No. 753-8 ¶¶ 5–7.

Appendix C

105. The Harris County DA's Office ("HCDAO") has previously prosecuted alleged violations under the Election Code and/or related to elections, including under provisions that were amended by S.B. 1.¹⁹ The Harris County DA has jointly prosecuted at least two election-related cases alongside the OAG in the past.²⁰

106. A newly enacted law House Bill 17 ("H.B. 17") curbs DAs' authority to adopt a policy against enforcing crimes under the Election Code. H.B. 17, which went into effect on September 1, 2023, provides that DAs may be removed from office if they adopt any policy that "prohibits or materially limits the enforcement of any criminal offense." H.B. 17 § 1 (adding TEX. LOC. GOV'T CODE § 813(B)).

19. For example, in 2022, after the prosecution of Hervis Rogers was dismissed in Montgomery County, OAG referred the case to HCDAO, who presented charges against Rogers to a grand jury. Tr. at 4058:17–4059:24, 4062:7–12. In addition, HCDAO presented another charge to a grand jury regarding an alleged Election Code violation by Mr. González Beltrán after the case was similarly dismissed in Montgomery County. Tr. at 4063:3–4064:6.

20. OCA-377 at 17 (noting certain cases that were "[p]rosecuted by or with assistance of local district/county attorney," including Harris County); *id.* at 14 (identifying joint prosecution of Anthony Rodriguez with Harris County in 2019); OCA-225 at 4 (Harris DA interrogatories identifying prosecution of Anthony Rodriguez under a provision amended or enacted by S.B. 1); OCA-377 at 6 (identifying joint prosecution of Avery Ayers with Harris County in 2015). The Harris DA further acknowledged prosecuting two other election-related violations in 2020 under provisions enacted or amended by S.B. 1. OCA-225 at 4 (identifying prosecutions of Richard Bonton and Natasha Demming).

*Appendix C***IMPACT OF THE CHALLENGED PROVISIONS**

107. At trial, the Court heard testimony (live and by deposition designation) from numerous voters who qualify for voting assistance, individuals who have served as assistants in the past, and election officials describing the impact that the Challenged Provisions have impaired voters' ability to vote with their chosen assistors of their choice.

Transportation Disclosure (§ 6.01)

108. Before S.B. 1, DST members regularly provided transportation to the polls by participating in Souls to the Polls, a caravanning initiative that partners with churches to drive voters to their voting location. Tr. at 2088:8–15.

109. DST members who provide transportation assistance members are concerned about who may gain access to the personal information disclosed on the forms required under Section 6.01 and potential harassment by poll watchers, who are permitted to observe drivers subject to Section 6.01 as they complete the Transportation Disclosure form during curbside voting. Tr. at 2108:7–2109:3 (“Our members or even community members who provide transportation are afraid to fill out those forms. They don’t know what’s going to happen to the information that they put on those forms.”).

110. It is unclear whether drivers who refuse to complete the disclosure form will face any consequences. Unlike the provisions of S.B. 1 requiring individuals

Appendix C

providing voting assistance to make similar disclosures on mail ballot carrier envelopes (TEC § 86.010(g).) and take the Oath of Assistance (TEC § 64.034), Section 6.01 does not, to the Court's knowledge, state that non-compliance is punishable as a state jail felony or will result in the rejection of a voter's ballot. Section 6.01 merely explains that SOS must maintain records of the drivers' disclosures and produce them to the AG upon request. TEC § 64.009(g). Instead, enforcement of Section 6.01 appears to be left to election officers, who would, presumably not permit the curbside voters to cast their ballots until the driver had completed the disclosure form.

111. The Austin Alumnae Chapter of DST stopped providing transportation assistance to elderly, disabled individuals because of Section 6.01's transportation assistance disclosure requirement and the attendant criminal penalties assistors maybe subjected to under S.B. 1. Tr. at 2147:12–2148:3. The Austin Alumnae and Bay Area-Houston Chapters have been unable “to recruit members who are brave enough to assist with senior voters [with transportation to the polls] because of the fear[] of criminal penalties.” Tr. at 2198:2–6. Members of the Fort Worth Chapter of DST had routinely provided transportation assistance to elderly voters at the Friendship Senior Center in Fort Worth, Texas. However, none of the members were willing to assist because of the burdens on assistance placed on Section 6.01 Tr. at 2197:3–17, 2198:20–24.

*Appendix C***Assistor Disclosures (§§ 6.03, 6.05, 6.07) and Oath of Assistance (§ 6.04)**

112. The Assistor Disclosures and Oath requirements deter voters from requesting, and assistors from providing, assistance in the voting process. As a result, some voters who need assistance have forgone assistance altogether and struggled to complete their ballots. Those who engaged with election officials sacrificed their privacy while voting but still did not receive the assistance they needed.

113. The Court heard trial and deposition testimony from several Texas voters who, due to their physical disabilities, require assistance in nearly every facet of their daily lives, including Jodi Nunez Landry, Laura Halvorson, Amy Litzinger, and Nancy Crowther. All four witnesses are members of the Arc.

114. Although Ms. Nunez Landry, Ms. Halvorson, Ms. Litzinger, and Ms. Crowther are eligible for assistance under Texas and federal law, none of them received voting assistance from their assistors of choice in the 2022 primary or general election because of the burdens—including the threat of criminal liability—that S.B. 1's disclosure and oath requirements impose on assistors.

115. These voters were not worried that their chosen assistors would influence their vote. Ms. Halvorson testified that she has never felt that one of her attendants was trying to influence her choices or would manipulate the way her ballot was marked. Tr. at 3318:3–11. Similarly,

Appendix C

Ms. Litzinger explained that her personal care attendant is not able to manipulate how she votes because she is always present when they are assisting her with marking the ballot and ensures that she can see her ballot and verify what the attendant marks. *See, e.g.*, Tr. at 3296:20–3297:8.

116. Instead, voters’ primary concern was exposing their caregiver to criminal liability under S.B. 1 and losing the critical assistance they provide outside the voting process. Ms. Nunez Landry testified that her “worst fear is ending up in a nursing facility due to her inability to find care attendants.” Tr. at 3234:7–23 (has had difficulty finding personal care attendants due to shortage of home health care workers, who generally receive low wages without benefits and can earn more money working less physically demanding jobs); *see also* Tr. at 3331:2–18 (Halvorson) (finding replacement caregivers is “hard enough” without criminal penalties being added to the mix of what they are being asked to do).

117. Voters with disabilities also fear being disenfranchised due to the mistaken perception by election workers and poll watchers that voters receiving assistance are being improperly coerced or influenced. As Ms. Halvorson explained, “especially if they don’t have an understanding of disability,” people may believe that “we’re not able to make decisions for ourselves or we don’t have the intellectual capacity to do so. . . . I [worry] that other people would perceive that my caregivers were influencing my vote, if they just see from across the room someone pressing buttons for me.” Tr. at 3324:15–3325:5, 3331:2–18.

*Appendix C***Voters have been deterred from requesting assistance.****Jodi Nunez Landry**

118. Jodi Nunez Landry is a registered voter of Harris County, Texas and votes with assistance. Tr. at 3236:11–17; Tr. at 3234:1–6. Ms. Nunez Landry has a rare, untreatable, and progressive form of muscular dystrophy. Tr. at 3233:7–14. She uses a power wheelchair to navigate and requires assistance with most activities of daily living, including bathing, dressing, cooking, and cleaning. Tr. at 3233:2–14, 3235:10–3236:2

119. Ms. Nunez Landry prefers to vote in person. Tr. at 3236:24–3237:14. She prefers to have her partner assist her with voting because she “can trust him and there’s a certain amount of privacy there[.]” Tr. at 3243:5–25. Because her partner already understands the contours of her disability, she does not need to give him a lengthy explanation of the assistance she needs. Tr. at 3234:2–6, 3236:24–3237:14.

120. Ms. Nunez Landry has not asked her partner for voting assistance since S.B. 1 was enacted because she did not “want to put him in jeopardy” or draw attention to herself or have people assume that she was “being coerced” in light of S.B. 1’s voter assistance provisions. Tr. at 3246:23–3247:6. She explained:

I would have liked to have had my partner assist me but I knew under SB 1 that we were going to

Appendix C

have to go through all sorts of difficulties to do that, and . . . I didn't want to put him through that. I'm really afraid of losing assistance and not having anyone, and also I don't want to draw more attention to myself.

Tr. at 3256:15–3257:4; *see also id.* at 3260:2–18 (stating that she was “too afraid to ask his assistance,” noting that S.B. 1 has a “chilling effect” on voters who need assistance “makes it very burdensome and frightening for many of us to risk losing attendants or risk putting them in some type of legal jeopardy”).

121. In the November 2022 election, Ms. Nunez Landry could not access the remote that would allow her to vote independently at her voting station and, once she had it, found that it was not functioning properly. Tr. at 3244:25–3245:14. When the poll worker she asked for help did not understand the problem, he brought other unknown individuals to Ms. Nunez Landry's booth. Tr. at 3245:18–3246:10. Although they failed to help her, all three strangers watched as Ms. Nunez Landry made her selections.

122. Discussing the loss of her privacy, Ms. Nunez Landry testified that it “made me really nervous” and “they all voted with me, much to my chagrin and frustration.” Tr. at 3246:7–8. Had she been able to receive assistance from her partner, “he could have touched the screen and it would have all been rather effortless.” Tr. at 3246:16–17. When she finally finished voting, she “was very, very angry.” Tr. at 3246:21–22.

*Appendix C***Laura Halvorson**

123. Laura Halvorson is a registered voter in Bexar County. Tr. at 3315:25. Ms. Halvorson has chronic muscular respiratory failure and muscular dystrophy, a progressive condition that has worsened since her diagnosis. Tr. at 3311:14–22. Presently, Ms. Halvorson relies on a breathing machine and a power wheelchair. Tr. at 3312:2–3.

124. Ms. Halvorson requires “total care” for everyday life, including assistance with transferring, bathing, dressing, eating, and meal preparation. Tr. at 3312:9–12. To accomplish these daily tasks, Ms. Halvorson employs several personal care attendants. Tr. at 3312:15–17.

125. In the March 2022 primary, Ms. Halvorson opted to vote by mail. Tr. at 3318:23–24. Her assistant, however, did not feel comfortable taking the Oath of Assistance and declined to assist Ms. Halvorson. Tr. at 3319:7–16. As a green card holder, her personal care attendant was not comfortable taking an oath under penalty of perjury that could risk her green card status. This was the first time a personal care attendant ever declined to assist Ms. Halvorson in voting. Tr. at 3319:14–16. Without her assistant, Ms. Halvorson struggled to complete the mail in ballot. Tr. at 3319:17–20. Her muscle weakness inhibited her ability to write legibly, Tr. at 3320:4–18, forcing her to fill out her ballot in ten- or fifteen- minute intervals over the course of two full days. Tr. at 3320:19–22.

126. In the November 2022 general election, Ms. Halvorson voted in-person. Tr. at 3322:5–10. She again

Appendix C

voted without assistance to avoid exposing her assistants to potential liability. Tr. at 3322:11–18, 3323:10–24. Ms. Halvorson believes S.B. 1’s Oath is intimidating, ambiguous, and that her caregivers may be accused of influencing her vote by simply helping her cast it. Tr. at 3324:11–3325:5. When Ms. Halvorson arrived to vote, her remote control had a glitch that essentially inverted the controls. Tr. at 14–17. She struggled to highlight voting machine choices, and when was able to do so, could not deduce what the candidate’s party affiliation was. Tr. at 3327:13–23. Ms. Halvorson testified that, when she sought help from poll workers, they snidely told her to push the buttons. Tr. at 3328:6–11. After nearly 45 minutes at the poll booth, Ms. Halvorson weakly delivered it into the counting machine. Tr. at 3329:1–8; 3330:1–3.

Amy Litzinger

127. Amy Litzinger is a registered voter in Travis County. Tr. at 3281:14–17. Ms. Litzinger has spastic quadriplegic cerebral palsy, which impairs her stability and ambulation and limits her muscle strength. Tr. at 3275:19–24. Additionally, Ms. Litzinger has dysautonomia, which affects involuntary functions, such as her digestion, breathing, and heart rate and temperature regulation. Tr. at 3276:2–6.

128. Due to these conditions, Ms. Litzinger uses a power wheelchair and other mobility devices. Tr. at 3276:8–10. Because her muscle strength fluctuates, Ms. Litzinger cannot always operate these devices, Tr. at 3276:18–22, and often requires the assistance with her

Appendix C

daily activities. Tr. at 3279:11–15. Ms. Litzinger requires assistance to get in and out of bed, to the shower, and to use the restroom. Tr. at 3279:16–25. She cannot lift or raise anything heavier than two pounds—which inhibits her ability to write and open doors. Tr. at 3277:16–3278:6. Ms. Litzinger owns a mobility van, which her assistants use to drive her around the city. Tr. at 3277:10–14. They must also secure Ms. Litzinger into her power wheelchair using a “chest clip” and “strap” and secure her power wheelchair in the van. Tr. at 3277:4–9.

129. Although she is eligible to vote by mail, Ms. Litzinger prefers to vote in person because she anticipates that her disability will produce conflicting handwriting samples on a mail ballot—her own handwriting fluctuates with her strength, and she sometimes relies on assistants to complete her ballot. Tr. at 3282:14–21.

130. Ms. Litzinger prefers to have her personal care attendant assist with voting. Since she has limited dexterity, the poll worker would have to interact with intimate parts of her body, which could be unsafe or uncomfortable for both individuals. Tr. at 3286:11–3287:4. She also relies on her personal care attendant to get to the polling site. Her attendant drives her van, loads and unloads Ms. Litzinger from the van, ensures there are no barriers to enter the voting space, requests curbside voting, handles her ID, and places the completed ballot in the machine. Tr. at 3284:13–3285:23. Ms. Litzinger also relies on an attendant when voting by mail, as she did in 2020. Ms. Litzinger needs someone to open the envelope, fill it out, and tape it down so she can sign it. Tr. at 3287:20–3288:5.

Appendix C

131. All of Ms. Litzinger’s attendants have expressed to her that they are uncomfortable taking the Oath of Assistance, and accordingly, none of them have provided voting assistance since S.B. 1 was enacted. Tr. at 3293:17–21.

132. During the May 2022 primary, when Ms. Litzinger approached the ballot machine to vote in person, she realized her chest clip was still fastened. Tr. at 3289:23–3290:2. She was uncertain if the assistant could release the clip or if that would be considered impermissible voting assistance. Tr. at 3290:2–5. Thus, Ms. Litzinger voted with the chest clip fastened and remembered it was “quite painful.” Tr. at 3290:13–17. Due to the discomfort, she struggled to complete the five-page ballot. Tr. at 3290:15–17.

133. In the November 2022 general election, Ms. Litzinger spoke at length with her attendant about the Oath. Ultimately, to avoid exposing the attendant to criminal liability under the Oath, especially concerning Ms. Litzinger’s “eligibility” for assistance, they decided that the attendant would provide Ms. Litzinger with transportation assistance but would not help her inside the polling place. Tr. at 3291:4–3292:5. Thus, Ms. Litzinger held her own notes and was ultimately unable to review them while she voted because she dropped them and could not pick them up. Tr. at 3292:6–9. Despite Ms. Litzinger’s decision to vote without assistance, poll workers attempted to have the attendant sign the Oath simply because she was in the room with Ms. Litzinger. Tr. at 3292:9–17. During the entire time Ms. Litzinger was voting, three people

Appendix C

debated whether she needed assistance and ultimately watched her vote. Tr. at 3293:1–13. She described the process as nerve-wracking and noted that “for something that was designed to keep my ballot private, I didn’t think . . . it was very private because everyone [was] watching me vote and debating whether [I was] self-sufficient or not.” Tr. at 3292:21–3293:4–7.

Nancy Crowther

134. Nancy Crowther, a registered voter in Travis County, is a member of The Arc. HAUL-413, Crowther Dep. at 16:22–25, 17:4–5, 30:5–12. Ms. Crowther has a progressive neuromuscular disease and requires a personal care attendant to complete major life activities. She cannot sit up by herself, so her attendant helps her get dressed, use the bathroom, transfer in and out of her wheelchair, and use her CPAP machine for her sleep apnea. Ms. Crowther also uses her attendant to complete household tasks and personal hygiene. Her attendant is with her for most of her daily activities. *Id.* at 23:25–24:8, 18:3–9, 30:5–12.

135. Ms. Crowther did not take her attendant with her to vote in May 2022 because of her fears that the Oath could jeopardize her relationship with her attendant: “I would be mortified . . . if they were to get in trouble just for helping me.” *Id.* at 52:11–53:4, 54:7–14. Ms. Crowther explained that, even though she will need more and more help over time as her disability progresses, she does not want to expose her attendants to “danger” that “they aren’t paid for” by asking for their assistance under the conditions imposed by S.B. 1.

*Appendix C***The Oath of Assistance (§ 6.04) deters voting assistance.**

136. The Oath of Assistance under Section 6.04 of S.B. 1, as enjoined by Judge Pitman, provides:

I swear (or affirm) **under penalty of perjury** that **the voter I am assisting represented to me they are eligible to receive assistance;** I will not suggest, by word, sign, or gesture, how the voter should vote; **I did not pressure or coerce the voter into choosing me to provide assistance;** [and] I am not the voter's employer, an agent of the voter's employer, or an officer or agent of a labor union to which the voter belongs; **I will not communicate information about how the voter has voted to another person; and I understand that if assistance is provided to a voter who is not eligible for assistance, the voter's ballot may not be counted.**

TEC § 64.034.

137. Aside from the amended language that has not already been enjoined, Plaintiffs challenge the chilling effect on voting assistance created by the Oath's "penalty of perjury" language, the requirement that the voter represent his or her eligibility for assistance and assistor statements concerning eligibility and "pressure or coerc[ion]."

*Appendix C****The “penalty of perjury” language deters assistance.***

138. At trial, voters,²¹ assistors,²² and election officials²³ alike characterized the “penalty of perjury” language in the amended Oath as “intimidating,” “scary,” and “threatening.” Several witnesses who assisted voters in elections prior to S.B. 1’s enactment testified that they are no longer willing to serve as assistors due to the threat of criminal sanctions under the Oath.²⁴

139. Witnesses also pointed out that the “penalty of perjury” language can interact with other language in the Oath to prohibit assistors from providing the assistance a voter requires. For example, an assistor must swear “under the penalty of perjury,” that they “will not suggest, by word, sign, or gesture, how the voter should vote.” Although this language appeared in the Oath before S.B. 1, the “penalty of perjury” language poses barriers to assistance to voters with intellectual disabilities and certain cognitive and physical impairments who need to be reminded of their selections, discussed in a previous

21. *See, e.g.*, Tr. at 3324:10–14 (Halvorson).

22. *See, e.g.*, Tr. at 147:10–148:8 (Rocha); Tr. at 3208:9–17; Tr. at 3217:12–3218:1 (Miller); Tr. at 2439:24–2440:10 (Espinosa); Tr. at 2540:21–23 (Ortega).

23. *See, e.g.*, Tr. at 175:6–176:8 (Wise); Tr. at 1312:25–1314:9 (Longoria)

24. *See, e.g.*, Tr. at 2443:20–2444:14 (Espinosa); Tr. at 2539:12–19 (Ortega).

Appendix C

conversation with their chosen assistor. *See, e.g.*, Tr. at 3491:9–20 (explaining that “cuing” is a common method of assistant voters with IDD); *see also* Tr. at 3740:19–23; LUPE-002 ¶ 40, Table 1 (stating that approximately 1,082,500, or one-third of voting-eligible Texans with disabilities, have a “cognitive impairment,” defined as difficulty remembering, concentrating, or making decisions).

140. Before voting curbside, Toby Cole, a disability rights attorney and Harris County voter with quadriplegia, goes through a sample ballot with his assistant, who helps him research candidates and mark the sample ballot. During the voting process, Mr. Cole asks his assistant to reference the sample ballot to remind him of his previous selections:

I don't remember things the way I did when
I was younger. I need someone to help me . . .
I rely on my assistants to help me remind me
of things. . . . And so I specifically request the
people that help me, that they help remind me
of what I've told them I want to do and how I
want to vote.

Tr. at 702:10–703:19, 706:19–707:20. Thus, read together with the “penalty of perjury” language, Mr. Cole understands this portion of the Oath to mean that he must either change how he votes or require his assistor to commit perjury. Tr. at 710:20–711:11. Mr. Cole is not the only attorney concerned about the “perjury” language. MABA members find this language alarming because they

Appendix C

do not want to subject themselves to the consequences of being accused of perjury—and potentially be disbarred—for providing voter assistance. Tr. at 2538:8–14.

141. with disabilities testified that they believed the “penalty of perjury” language will deter some people from voting altogether:

I talk to a lot of people after they get disabled . . . as you make things harder, you just start cutting things out . . . it’s too hard to find someone to feed me, or it’s embarrassing, so I don’t want to go to dinner. It’s too hard to get on an airplane to go travel, so I just don’t do that. And so every time you put even one little road bump or one little barrier in front, it just makes it that much harder, and so you don’t do it . . . I look at the oath and it says “I swear under the penalty of perjury.” . . . That’s a big deal. That’s a scary deal. [A]m I going to have somebody that may get deported or thrown in jail come help me? No, I’m just not going to vote. I’m just not going to exercise that right.

Tr. at 714:6–18, 715:1–14. Ms. Halvorson stated that many of her friends with disabilities are worried about their caregivers facing these issues with the penalty of perjury and “[s]ome of them may not be going out and voting like they used to, due to it.” Tr. at 3332:11–18.

142. Finally, there is some uncertainty about the type of “assistance” that triggers the Oath requirement

Appendix C

in the first place. Ms. Litzinger did not ask her attendant to unfasten her chest clip while she was voting out of concern that it would trigger the Oath requirement. Tr. at 3290:2–5. Mr. Ingram testified that whether an attendant who wheels a voter who uses a wheelchair to the poll booth (but does not actually help her cast the ballot) must take the Oath is “a very gray area and kind of depends on the presiding judge.” Tr. at 4420:18–4422:6. Mr. Ingram suggested that a voter faced with such a situation could ask the presiding judge for a reasonable accommodation (by permitting her attendant to move her to the poll booth without taking the Oath).²⁵ Alternatively, Mr. Ingram suggested that the attendant could “just take the Oath of Assistance, and whether you help the voter or not, you’re in the polling place legally at that point.” Tr. at 4420:18–4422:6. But, of course, this response just begs the question. Voters and attendants want to know what kind of assistance can be provided, if any, *without* triggering the Oath requirement.

143. Voter Eligibility for Assistance. Voters and assistors testified that these portions of the Oath

25. Of course, there is no guarantee that a presiding judge would in fact grant such an accommodation. *Cf.* TEC § 276.019 (“public official or election official may not create, alter, modify, waive, or suspend any election standard, practice, or procedure mandated by law or rule in a manner not expressly authorized by” the Election Code); TEC § 1.002 (recognizing qualified individuals’ right to “*request*[] a reasonable accommodation or modification to any election standard, practice, or procedure mandated by law,” but not their right to receive any such accommodations) (emphasis added).

Appendix C

addressing the voter's eligibility to receive assistance were troubling, in numerous respects.

144. To begin, although the Oath requires the voter to affirm his eligibility for assistance, it does not define who is “eligible” to receive voting assistance or explain who determines eligibility. *See* TEC § 64.034. As a result, both voters and assistors expressed confused about the eligibility requirements.²⁶ Tr. at 3251:16–3252:11 (Nunez Landry); Tr. at 3561:2–3562:17, 3575:1–10 (Cranston); Tr. at 149–25 (Rocha).

145. Mr. White testified that the new language in the Oath probably requires the assistant to obtain a representation of eligibility from the voter. Tr. at 3991:1–5.

146. Voters expressed discomfort with the requirement to represent their eligibility to their assistors or explain the basis for their eligibility. As several voters with disabilities pointed out, the requirement that the voter

26. Adding to the confusion, the Secretary of State's “VOTER INFORMATION” poster, which must be posted in every polling place and voting station, provides an incorrect and overly-narrow definition of eligibility for voter assistance:

a. You have: (6) The right to assistance while casting your ballot if you cannot write, see the ballot, understand the language in which it is written, or cannot speak English, or communicate only with sign language, and want assistance in communicating with election officials.

LUPE-265, <https://perma.cc/LKS6-HGJH>; TEC § 62.011.

Appendix C

affirmatively represents his or her eligibility amounts to an *additional* eligibility requirement. Ms. Nunez Landry testified that, while her partner served as her assistor before S.B. 1, she had never specifically told him that she was eligible to receive assistance. Tr. at 3252:17–3253:2. She felt that it would be “very undemocratic” if her vote did not count because she failed to represent her eligibility and that she “would feel disenfranchised” and like a “a second-class citizen.” Tr. at 3252:17–3253:2. Mr. Cole stated that the provision is “offensive” because it requires him to share private health information with his assistor to receive the assistance he needs to vote—something he is not required to do in any other aspect of his life in order to receive the assistance he needs. Tr. at 695:6–7.

147. While the Oath does not explicitly require voters to explain the basis for their eligibility, in practice, assistors who want to ensure that a voter’s ballot will be counted must also confirm that the voter is eligible to receive assistance, because, as the Oath cautions, the voter’s ballot may not be counted if he or she is ineligible. TEC § 64.034.

148. Critically, because it does not contain a scienter requirement, the Oath appears as it is written to hinge on *actual* eligibility, regardless of the assistor’s *or* voter’s beliefs about the voter’s eligibility. In other words, the provision of assistance itself, even if it is given in accordance with the voter’s wishes, may result in the rejection of the voter’s ballot. Thus, from an assistor’s perspective, to avoid disenfranchising the very voters he hopes to assist, he must confirm that voters who have

Appendix C

asked for his help are eligible for assistance and cannot reasonably rely on the voter's representation of their own eligibility.

149. How assistors are supposed to confirm a voter's actual eligibility without asking the voter to disclose private health information is not at all clear. *See, e.g.*, Tr. at 147:1–9 (LUPE staff member is uncertain whether a voter who asks for help because he cannot see too well has sufficiently represented his eligibility); Tr. at 2543:21–16 (MABA members are concerned because they cannot guarantee that they have the knowledge to attest to someone's disability). Mr. White testified that “anyone who takes this oath is determining what that means to them,” Tr. at 3989:10–16, but acknowledged that “it would certainly be the interpretation of the D.A. in that county where [the potential] offense took place” that would determine whether an assistor would be prosecuted, Tr. at 4105:13–21.

150. Assistors and witnesses with disabilities also testified that the statements regarding eligibility in the Oath were likely to subject voters receiving assistance to greater scrutiny in the polls, especially those with disabilities that are not readily perceptible. For example, Jennifer Miller, whose daughter, Danielle, requires voting assistance due to dysgraphia, worried that because Danielle's disability is not always visible, her daughter's vote might not be counted based on someone else's perception that she was ineligible for assistance. Tr. at 3215:16–3216:8. Even voters with *visible* disabilities attempting to vote *without* assistance have been subject

Appendix C

to undue scrutiny, such as Ms. Litzinger, have had their privacy invaded while voting due to election officials' questions about her need for assistance. *See* Tr. at 3293:1–13; *see also* Tr. at 3245:18–3246:10 (Nunez Landry).

151. Pressure or coercion. Voters and assistors expressed concerns about the Oath provision requiring assistors to swear that they “did not pressure or coerce the voter into choosing me to provide assistance” due to confusion about the meaning of “pressure” under such circumstances. *See* Tr. at 2540:11–16 (MABA organizational representative stating that, as an attorney, she would like to see a definition or context for the words “pressure” and “coerce”).

152. For example, assistors worry that encouraging voters to seek assistance if they need it or calling them to ask about their plans to vote could be construed as “pressuring” a voter to choose them as assistors. Tr. at 2540:11 (MABA).

153. Witnesses also explained that the practical reality of relationships between caregivers and their clients means that many voters may have few potential assistors to choose from. For example, Ms. Nunez Landry asked:

What does pressure or coerce mean in this context? And I think especially if people . . . are under penalty of perjury they may be afraid, and for so many of us who don't have options on who is going to help us, is that coercion? Is

Appendix C

that pressure? I just think there is going to be so much confusion that my fear is that people will be too afraid to help us.

Tr. at 3249:21–3250:2.

154. Ms. Miller, whose daughter requires voting assistance, worried that parents could face prison time based on simple logistical matters: if a voter prefers that her father assist her, for example, but it is more convenient for her mother to take her to the polls, has the mother “pressured” the voter into choosing the mother by relaying this information to her daughter? Tr.at 3206:11–3207:4; *see also* Tr. at 3207:20–25, 3214:13–3215:9.

155. Cameron County Election Administrator Remi Garza testified that he believed the “I did not pressure” language in the Oath could make people hesitant to provide assistance based on the fear that they could be understood to be pressuring the voter to take their assistance: “The wording is vague enough where . . . they might be concerned that they are going to violate the oath if they signed it.” Tr. at 733:21–734:7

156. Communication to others about how the voter has voted. Plaintiffs did not meaningfully challenge the language in the Oath barring assistors from “communicat[ing] information about how the voter has voted to another person,” either at trial or in any of their posttrial briefing. The Court thus considers any challenge to this language to have been waived. Additionally, it is difficult to see how this language could possibly frustrate

Appendix C

Section 208, which was enacted in large part to protect voters' privacy.²⁷

The Assistor Disclosure requirements (§§ 6.03, 6.05, and 6.07) deter voting assistance.

157. Sections 6.03 and 6.05 of S.B. 1 require a voter assistor to record and swear to their relationship to the voter and indicate whether the assistor received or accepted any form of compensation or benefit from a candidate campaign or a political action committee. Section 6.03 creates a new form with this requirement for assistors in the polling place and Section 6.05 adds this requirement to the mail ballot carrier envelope. TEC § 86.010(e).

158. Section 6.07 revises the mail ballot carrier envelope to require a person who deposits the carrier envelope in the mail to indicate that person's relationship to the voter. *Id.* at 55. Even before S.B. 1, the mail ballot carrier envelope required assistors to disclose their name and address. *See* TEC § 86.010(e); JEX-1 at 53.

159. Assistors and county election officials testified that the form requirement, coupled with the Oath of Assistance, created delays during in-person voting. Tr. at 81:15–25 (Chavez Camacho); Tr. at 383:14–18 (Scarpello); Tr. at 732:8–733:17 (Garza); Tr. at 1057:12–24 (Callanen);

27. Still, the Court observes that it is unclear whether this proscription applies to the substance of the voter's ballot or the *manner* in which the ballot was cast.

Appendix C

Tr. at 2316:16–20 (Ramon). Ms. Rocha, a LUPE employee, testified that, on two occasions when agreed to assist voters at the polls under S.B. 1, she left the voter to stand in a separate line for assistors and, by the time she had completed the disclosures, the voter was being assisted by other people. Tr. at 150:6–18, 151:3–14, 152:6–153:3, 153:4–17, 150:9–12, 150:14–151:2, 157:14–158:9. Extended wait times at the polls are especially burdensome on voters with physical disabilities, and waiting in line is the most common difficulty that voters with disabilities face. *See* Tr. at 3756:1–19; LUPE-002, Table 10.

160. In addition to the potential delays caused by the Oath of Assistance Form at the polls, potential assistors who, like many of Plaintiffs’ staff and volunteers, do not have preexisting relationships with voters they help vote by mail or at the polls have a well-founded concern about providing the information required by Sections 6.03 and 6.05.

161. Even absent evidence of fraud or coercion, the consequences for both the voter and the assistor for failing to disclose their relationship on a mail ballot are severe: the voter’s ballot may not count, and the assistor faces up to two years in prison and a fine of up to \$10,000. *See* TEC § 86.010(g). These criminal sanctions, however, are inapplicable to mail-ballot assistance provided by a close relative of the voter or someone who lives with the voter. *See* TEC § 86.010(h)(2).

162. Jonathan White, the State’s top voter fraud prosecutor, testified that, in his view, “normal assistance”

Appendix C

is a voter being assisted by family members or caregivers. Tr. at 3987:15–23. With respect to Section 6.03, Mr. White testified that having information about assistors’ relationships to voters can help distinguish between workers with no relationship to the voter versus the folks who are assisted by family members or caregivers, which he considers more legitimate assistance. Tr. at 3987:1–14. Still, the OAG’s tracker of election crime prosecutions resolved does not identify a single case of voter assistance fraud relating to assistance provided in the polling place. Tr. at 4034:16–20; OCA-377 at 1–12.

163. Despite Mr. White’s impression that voter assistance provided by members of trusted community organizations (rather than, e.g., family members or caregivers) is somehow suspect, in 2020, approximately one-fifth of voters with disabilities received voting assistance from non-family members. LUPE-002 ¶ 102. This is unsurprising, as Texans with disabilities are more likely to live alone, less likely to be married, and more likely to be separated, divorced, or widowed. Tr. at 3747:20–25; LUPE-002, Table 4. And, irrespective of Mr. White’s perception that “caregivers” are “normal” assistants, a caregiver who provides BBM assistance is still subject to criminal sanctions for failing to disclose his relationship to the voter, unless the caregiver is *also* a close relative of the voter or lives with the voter. *See* TEC § 86.010(h)(2).

164. Sections 6.05 has deterred DST members from helping mail-in voters because these provisions threaten assistors with criminal liability for failing to satisfy these

Appendix C

disclosure requirements or violating the Oath, which appears in the same section of the ballot envelope. Tr. at 2202:9–14. DST chapters have had difficulty recruiting members who are willing to place themselves at risk to provide in-person voter assistance at the polls. Tr. at 2199:16–2200:3, 2202:9–14, 2203:10–15.

165. Out of fear of prosecution pursuant under Sections 6.04 and 6.05 of S.B. 1, LUPE staff and volunteers turn away voters who ask for their assistance, and instead encourages them to ask a family member or a friend for assistance. Tr. at 82:6–12, 111:10–111:20, 118:16–119:4. Cris Rocha, a LUPE employee, is only willing to assist voters at the polls if she is the last person the voter can use as an assistor. Tr. at 145:21–24; 48:22–149:3, 156:12–18. Maria Gomez, a LUPE volunteer who has provided voting assistance for over 25 years, is no longer willing to provide assistance due to the threat of criminal sanctions under S.B. 1. LUPE-284, Gomez Dep. at 13:19–14:15, 32:2–8, 17:2–13, 33:7–35:9, 40:24–42:2.

166. FIEL no longer conducts voter caravans because its members feel uneasy about running afoul of requirements put in place by S.B. 1, including the Oath and the Oath of Assistance Form (which includes the required Assistor Disclosures). Tr. at 2450:3–20. Without these caravans to the polls, FIEL is unable to engage as many voters as possible and help them actively participate in the voting process. Tr. at 2451:1–5.

167. FIEL has also struggled to recruit volunteers to provide in-person voter assistance at the polls since

Appendix C

the enactment of S.B. 1 due to FIEL members' concerns about the Oath and the Assistor Disclosure requirements. Tr. at 2444:10–14, 2444:24–2445:7, 2451:19–25, 2452:1–11. Indeed, while before S.B. 1 about 100 FIEL members volunteered to assist voters at the polls, in 2022, there were at most 20 members who did so. Tr. at 2470:22–25. Cesar Espinosa, the founding executive director of FIEL, no longer provides voter assistance due to his concerns about the Oath's "penalty of perjury" language and the Assistor Disclosure requirements. Tr. at 2430:3–4, 2439:6–23, 2444:24–2445:7; *see also* Tr. at 2445:4–22 (Espinosa) (describing FIEL member Debany Gonzales, who was a very active voter assistant at the polls, but is no longer willing to assist voters due to amended language of the Oath of Assistance); Tr. at 2445:23–2446:22, 2447:6–13 (Espinosa) (describing Tonya Rodriguez, naturalized citizen with LEP, who sought, but did not receive, translation assistance from a FIEL member at the polls and struggled to cast her ballot in person).

168. Mr. Espinosa is particularly concerned about the Assistor Disclosures because when he volunteers at the polls, he often provides translation assistance to voters with whom he has no direct relationship. Tr. at 2443:24–2443:3. Asked about his concerns, Mr. Espinosa stated:

[T]he number one question that . . . pops into my head is why is this table even necessary? Or what is my information that I provided here going to be used for? How is it going to be stored? Who is going to be able to handle

Appendix C

it or see it? Who is going to be able to see my signature?

Tr. at 2442:6–2443:9

169. Consistent with Mr. Espinosa’s concerns about the Assistor Disclosure requirements, community stakeholders submitted letters to the Texas legislature, anticipating that S.B. 1’s additional paperwork and disclosure requirements were likely to have a “chilling effect” on voter assistance. *See* HAUL-216 (testimony regarding S.B. 1 before the Senate State Affairs Committee by Alex Cogan, Manager of Public Policy and Advocacy for The Arc, asserting that the new Assistor Disclosure requirements would “create a chilling effect that decreases the availability of support for Texas with disabilities to exercise their right to vote”).

Election officials are inadequate substitutes for private assistors

170. By deterring assistance by private assistors, the Assistant Disclosure and Oath requirements encourage voters to forgo assistance altogether or receive assistance from an election official. Election officials are imperfect substitutes for voters’ chosen assistors for at least two practical reasons.

171. First, election officials may be unable to provide the kind of assistance the voter requires. For example, an election official who does not speak the same language as a voter who needs assistance will be unable to translate

Appendix C

and mark the voter's ballot. Similarly, a voter with cognitive or memory impairments will be unable to receive "cuing" assistance from election officials who are unfamiliar with how the voter intends to vote. Finally, it may be unsafe or uncomfortable for voters with physical disabilities to receive assistance from an election official who is unfamiliar with the contours of their disabilities and needs. For example, Ms. Litzinger explained that it takes over two months to train a personal care attendant to safely transfer her out of her wheelchair due to her balance issues. Tr. at 3281:1–17.

172. Second, voters who receive assistance from election officials are forced to sacrifice the privacy of their ballot. Their selections must be disclosed not only to the county elections official(s) providing the assistance but to any poll watchers observing the activity. TEC § 33.057(a).

173. Thus, S.B. 1's Oath and Assistor Disclosure requirements leave many voters in need of assistance with a choice between three dignitary harms—voting without any assistance, losing their privacy while voting, or foregoing the voting process altogether. *See* Tr. at 707:25–708:14 (Cole) (describing the loss of his privacy when an official prevented his assistant from helping him vote as a violation).

174. This is precisely the choice that the right to assistance under Section 208 was intended to avoid: "As a result, people requiring assistance in some jurisdictions are forced to choose between casting a ballot under the adverse circumstances of not being able to choose their

Appendix C

own assistance or forfeiting their right to vote. The Committee is concerned that some people in this situation do in fact elect to forfeit their rights to vote.” S. Rep. No. 97-417 at 472.

175. Dr. Douglas Kruse, Plaintiffs’ expert witness on S.B. 1’s impact on voters with disabilities, explained that adding additional requirements to the assistance process for both voters and assistors increases the likelihood that voters with disabilities will be disenfranchised:

It doesn’t sound like a big deal . . . but it’s an extra hurdle. It’s an extra thing to do. Combined with all the other barriers that people with disabilities face, it’s an extra thing to—simply to remember, but there’s also an extra issue that both the assister and the person with the disability may be uncertain about. It’s an extra hurdle. It kind of exacerbates the other issues that—in combination with all the other hurdles that people with disabilities face, that they—that may make it more difficult to exercise the right to vote.

Tr. at 3776:19–3777:8; LUPE-002 ¶ 101 (“[I]t is highly likely that many Texans with disabilities will find it difficult or impossible to obtain the assistance they require given the restrictions imposed by section 6.04 . . . and will cause some Texans with disabilities to be disenfranchised[.]”).

176. Trial testimony by voters reified these predictions about the impact that additional barriers to voting can have on voters with disabilities

Appendix C

177. Ms. Crowther explained that S.B. 1 has hampered her ability to receive assistance in voting because it puts her attendants in a position of “danger” that “they aren’t paid for” and she would not want to put them in a situation that has legal ramifications even though she will need more and more help over time as her disability progresses. HAUL-413, Crowther Dep. at 80:8–81:8. As Ms. Crowther summarized:

That something as meaningful as voting is to me, that I need assistance with . . . has now a bump . . . in the process, to where now it’s become more threatening to bring an attendant in . . . why would I want to bring . . . my attendant, into that role and have them get all freaked out about, You mean to tell me if I help you do something that is not on this form . . . I could get in trouble? And it’s just not worth it when your life is dependent on your attendant or your caregiver or your spouse or anything. It’s just not worth it.

Id. at 98:6–22.

178. Mr. Cole testified that each provision of S.B. 1 that makes voting marginally harder for disabled people makes it less likely that they will vote:

Well, it just makes it hard. You know, the thing that we have, and I talk to a lot of people after they get disabled, is as you make things harder, you just start cutting things out. You know,

Appendix C

it's too hard to find someone to feed me, or it's embarrassing, so I don't want to go to dinner. It's too hard to get on an airplane to go travel, so I just don't do that. And so every time you put even one little road bump or one little barrier in front, it just makes it that much harder, and so you don't do it.

Tr. at 714:17–715:15.

Ban on Compensated Assistance (§ 6.06)

179. Section 6.06 of S.B. 1 prevents voters from choosing Plaintiffs' staff members and volunteers to assist them with their mail ballots because they receive "compensation" for their assistance efforts. It creates a state jail felony for offering, soliciting or receiving compensation for assisting mail ballot voters, unless the compensated assistor is an "attendant or caregiver previously known to the voter." TEC § 86.0105.

180. At trial, Jonathan White testified that offering or accepting compensation for mail ballot assistance is a state jail felony, with a sentence of up to two years, *even if there is no fraud in the assistance and the assistor marks the ballot consistent with the wishes of the voter*. Tr. at 3996:8–3997:5. He confirmed that Section 6.06 "criminalizes compensation for assistance" as opposed to criminalizing fraud in assistance. Tr. at 3995:25–3996:7. Formerly, the Election Code prohibited payment for performance-based work, i.e. paying someone to assist mail voters on a quota basis. Tr. at 3991:18–3992:15. S.B.

Appendix C

1 extended the offense, making it a crime to provide, receive or ask for compensation to assist a mail ballot voter regardless of whether the assistance is on a per capita basis. Tr. at 3992:3–7, 12–19.

181. Mr. White confirmed that Section 6.06 “appear[s] to apply to [the] scenario” in which a paid canvasser for a nonprofit Get Out the Vote organization engages with voters and provides mail ballot assistance at the voter’s request. Tr. At 3993:22–3995:10. He testified that if his office encountered a GOTV group that paid its organizers to provide mail ballot assistance as a public service while canvassing, he would be concerned that this activity is used as a subterfuge for voter fraud, and “we’d be looking for the fraud at the bottom of things.” Tr. at 3995:11–24. Again, however, a conviction under TEC § 86.0105 requires no evidence of fraud or coercion.

182. Indeed, these provisions potentially expose *voters* to liability for providing tokens of appreciation to assistors who help them complete their mail ballots. Keith Ingram confirmed that a voter who offered a volunteer \$20—or offered to buy a friend lunch—to help him complete his mail-ballot could be liable under Section 6.06. Tr. at 1904:1–1906:5.

183. This is not a fanciful hypothetical. Grace Chimene, testifying on behalf of the League, was especially worried that volunteer activities’ during door-to-door canvassing could expose *voters* to criminal liability: “It’s not just my concern for the League members, but it’s also a concern if just a voter that were helping provides compensation,

Appendix C

or the place that they live provides compensation of some type that they may be committing a crime.” Tr. at 1592:1–5. Members of the League “offer[] tea, or coffee, or water,” to assistors that help them and other voters vote by mail. Tr. at 1591:1–1592:5, 1590:4–12. To avoid jeopardizing voters and volunteers, institutions like assisted care centers that historically welcomed the League as assistors now discourage the League from sending people to assist residents. Tr. at 1593:9–22. Texans— including League members—residing in these facilities who relied on the League for years are no longer able to obtain assistance voting from the individuals of their choice.

184. As a result of S.B. 1’s prohibition on compensated mail-ballot assistance, voters may no longer choose Plaintiffs’ staff members and volunteers who accept “anything of value” to assist them with their mail ballots. TEC § 86.0105; TEX. PENAL CODE § 38.01(3).

185. Before S.B. 1, LUPE staff would assist members to complete their mail ballots one-on-one and provide assistance, either at the LUPE offices, in house meetings, or at LUPE’s union hall events. Some members would call LUPE and ask LUPE to go to their home to help them fill out their ballot by mail and LUPE would provide that assistance in the members’ homes. Tr. at 87:3–21, 3676:11–25.

186. LUPE has stopped assisting voters who request their help completing mail ballots. Tr. at 119:20–120:18. As LUPE’s executive director Tania Chavez testified, LUPE has stopped assisting members with their mail ballots

Appendix C

because “[it] will mean that our staff could be jailed, that I could be put in prison, that any volunteer that receives any kind of compensation could be then prosecuted, and so we have refrained from doing so.” Tr. at 82:20–84:3.

187. Now, when a LUPE member comes to the LUPE office and requests help with their mail ballot, LUPE informs the member that LUPE cannot provide assistance and tells the voter that they should find help with their family or friends. Tr. at 86:9–86:13, 86:14–87:2, 87:3–87:21. LUPE staff will not provide mail ballot assistance to LUPE members who are elderly and/or disabled or otherwise need assistance to vote by mail and choose LUPE staff as their assistors. Tr. at 86:9–86:13, 86:14–87:2, 87:3–87:21.

188. LUPE is not alone in its decision to stop providing mail ballot assistance. OCA no longer offers voters assistance. Tr. at 1722:3–16. The League has stopped providing voting assistance at some retirement homes and assisted care centers out of the fear the voters—including League members—will “compensate” their assistors with refreshments. Tr. at 1620:7–1621:1. MABA members are no longer willing to provide voting assistance because members fear that they might inadvertently commit a crime, potentially costing them their law licenses. Tr. at 2543:14–2544:23. LULAC volunteers “scaled . . . down” their GOTV efforts and decided not to conduct voter outreach with seniors, many of whom require voting assistance, for “fear that they could be subject to prosecution if they help seniors vote by mail.” Tr. at 1655:10–18.

*Appendix C***The Canvassing Restriction (§ 7.04)**

189. The Canvassing Restriction applies to anyone who knowingly gives or receives some “compensation or other benefit” for an “in-person interaction with one or more voters, in the physical presence of an official ballot or a ballot voted by mail, intended to deliver votes for a specific candidate or measure.” TEC § 276.015(a)(2).

190. Section 7.04 interferes with community organizers’ ability to assist voters with their mail-ballots because its prohibition on “in-person interactions” in the “presence of a mail ballot” does not include an exception for mail-ballot assistance. *See* Tr. at 758:8–19, 758:22–759:12 (Cameron County EA Remi Garza); Tr. at 841:15–842:9, 844:13–25 (DeBeauvoir); Tr. at 496:2–8 (Scarpello).

191. Mr. White testified that if his office encountered a GOTV group that paid its organizers to provide mail ballot assistance as a public service while canvassing, he would be concerned that this activity is a subterfuge for voter fraud. Tr. at 3995:11–24. He acknowledged, however, that prior to S.B. 1, the Election Code already criminalized: assisting a voter who is not eligible for assistance or did not ask for assistance; voting a ballot differently than the voter wished or directed the assistant to vote the ballot; suggesting to the voter during the voting process how the voter should vote, or attempting to influence or coerce the voter receiving assistance. Tr. at 3923:21–3924:14, 3925:4–6.

192. Finally, like Section 6.06, the Canvassing Restriction can be read to impose criminal liability on

Appendix C

the very voters it purports to protect. For example, a like-minded voter who asks for voting assistance from a GOTV volunteer and invites him inside for an iced tea would arguably violate Section 7.04. *See* TEC § 276.015 (making it a crime to offer a benefit for the canvasser’s “services”).

193. Trial testimony establishes that there is widespread confusion about the meaning of the Canvassing Restriction. Even local election administrators (“EAs”) are unsure about how to interpret Section 7.04. *See, e.g.*, Tr. at 496:5–8 (Dallas County EA Michael Scarpello) (“I don’t know what ballot harvesting means,” “it could be interpreted a lot of different ways based on the definition . . . put into the law.”).

194. Witnesses were particularly uncertain about how to interpret the terms “compensation” and “physical presence”—neither of which is defined in the statute—and how Section 7.04 impacts organizers’ ability to provide voting assistance. Despite this confusion, state officials have not offered any definitive answers about the scope of the Canvassing Restriction. The Secretary of State has not provided any guidance. Tr. at 1914:7–14, 1924:7–18. Nor has the OAG. Tr. at 1924:24–1925:3.

195. In response to Section 7.04, many Plaintiffs groups stopped hosting in-person events where voters had frequently brought their mail ballots for voting assistance and stopped providing assistance to voters.²⁸

28. Tr. at 1718:20–24, 1721:2–10, 1721:3–1722:22 (OCA has stopped hosting in-person events where members have historically brought mail-in ballots and received voting assistance, including

*Appendix C***CONCLUSIONS OF LAW****SUBJECT MATTER JURISDICTION**

Before addressing the merits of Plaintiffs’ challenges under Section 208, the Court must first consider its subject matter jurisdiction over Plaintiffs’ claims. Subject matter jurisdiction is a federal court’s statutory or constitutional power to adjudicate a case. *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 89, 118 S. Ct. 1003, 140 L. Ed. 2d 210 (1998).

As the Court has previously explained, Section 208 of the VRA permits private enforcement by both individual voters who need assistance and private organizations representing their interests. *See, e.g., La Unión Del Pueblo Entero v. Abbott*, 618 F. Supp. 3d 388, 426 (W.D. Tex. 2022) (citing *OCA-Greater Houston v. Texas* (OCA-

candidate forums, and no long offers voters assistance or rides to the polls); Tr. at 1593:9–22, 1620:7–1621:1 (The League has been discouraged from providing assistance to voters at assisted living facilities and determined that it “would turn away members with their mail-in ballots from candidate forums”); Tr. at 82:20–84:3 (LUPE has stopped assisting members with their mail ballots because “[it] will mean that our staff could be jailed, that I could be put in prison, that any volunteer that receives any kind of compensation could be then prosecuted, and so we have refrained from doing so.”); Tr. at 2543:14–2544:23 (MABA members are no longer willing to provide voting assistance because members fear that they might inadvertently commit a crime, potentially costing them their law licenses).

Appendix C

Greater Hous. I), 867 F.3d 604, 609–614 (5th Cir. 2017)).²⁹ Because this civil action arises under federal law, the Court has federal question jurisdiction under 28 U.S.C. § 1331.

Sovereign immunity does not limit the Court’s subject matter jurisdiction over this action. Section 208 claims are enforceable against state officials because, in enacting the VRA, Congress validly abrogated state sovereign immunity. *See id.* at 433 (citing *OCA-Greater Hous. I*, 867 F.3d at 614).

Finally, the Court considers Plaintiffs’ standing to assert their Section 208 challenges because standing “is a component of subject matter jurisdiction.” *HSBC Bank USA, N.A. as Tr. for Merrill Lynch Mortg. Loan v. Crum*, 907 F.3d 199, 202 (5th Cir. 2018).

Standing**Legal Framework**

It is well settled that a plaintiff invoking a federal court’s jurisdiction must establish standing by satisfying three irreducible requirements. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992).

29. *See also Ark. United v. Thurston*, 517 F. Supp. 3d 777, 790, 798 (W.D. Ark. 2021); *New Ga. Project v. Raffensperger*, 484 F. Supp. 3d 1265, 1301 (N.D. Ga. 2020); *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 233–36 (M.D.N.C. 2020); *Fla. State Conf. of NAACP v. Lee*, 576 F. Supp. 3d 974, 988–90 (N.D. Fla. 2021).

Appendix C

“The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant[s], and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338, 136 S. Ct. 1540, 194 L. Ed. 2d 635 (2016).

The elements of standing are “not mere pleading requirements but rather an indispensable part of the plaintiff’s case.” *Lujan*, 504 U.S. at 561. Thus, “each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation.” *Id.* In a case that proceeds to trial, plaintiffs must establish all three elements by a preponderance of the evidence. *See TransUnion LLC v. Ramirez*, 594 U.S. 413, 431, 141 S. Ct. 2190, 210 L. Ed. 2d 568 (2021) (“[I]n a case like this that proceeds to trial, the specific facts set forth by the plaintiff to support standing ‘must be supported adequately by the evidence adduced at trial.’”). These requirements ensure that plaintiffs have “such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination.” *Massachusetts v. EPA*, 549 U.S. 497, 127 S. Ct. 1438, 167 L. Ed. 2d 248 (2007) (quoting *Baker v. Carr*, 369 U.S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962)) (quotation marks removed).

“[P]laintiffs seeking injunctive and declaratory relief can satisfy the redressability requirement only by demonstrating a continuing injury or threatened future injury” for the self-evident reason that “injunctive and

Appendix C

declaratory relief ‘cannot conceivably remedy any past wrong.’” *Stringer v. Whitley*, 942 F.3d 715, 720 (5th Cir. 2019) (quoting *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 108, 118 S. Ct. 1003, 140 L. Ed. 2d 210 (1998)).

To constitute an injury in fact, a threatened future injury must be (1) potentially suffered by the plaintiff, not someone else; (2) “concrete and particularized,” not abstract; and (3) “actual or imminent, not ‘conjectural’ or ‘hypothetical.’” *Id.* at 720–21 (citations omitted). The injury must be “imminent . . . to ensure that the alleged injury is not too speculative for Article III purposes.” *Id.* at 721 (quoting *Lujan*, 504 U.S. at 564 n.2). For a threatened future injury to satisfy the imminence requirement, there must be at least a “substantial risk” that the injury will occur. *Stringer*, 942 F.3d at 721 (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158, 134 S. Ct. 2334, 189 L. Ed. 2d 246 (2014)). Nonetheless, “[t]he injury alleged as an Article III injury-in-fact need not be substantial; it need not measure more than an identifiable trifle.” *OCA-Greater Hous. I*, 867 F.3d at 612) (quotations omitted). “This is because the injury in fact requirement under Article III is qualitative, not quantitative, in nature.” *Id.* (quotations omitted).

Juridical entities may establish standing under an associational or organizational theory of standing. *Id.* at 610.

“Associational standing is a three-part test: (1) the association’s members would independently meet the Article III standing requirements; (2) the interests the

Appendix C

association seeks to protect are germane to the purpose of the organization; and (3) neither the claim asserted, nor the relief requested requires participation of individual members.” *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181, 143 S. Ct. 2141, 2157, 216 L. Ed. 2d 857 (2023) (quoting *Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 343, 97 S. Ct. 2434, 53 L. Ed. 2d 383 (1977)). Participation of individual members is not required where, as here, the association seeks prospective and injunctive relief, rather than individualized damages. *Consumer Data Indus. Ass’n v. Tex.*, No. 21-51038, 2023 U.S. App. LEXIS 19007, 2023 WL 4744918, at *4 n.7 (5th Cir. July 25, 2023).

“By contrast, ‘organizational standing’ does not depend on the standing of the organization’s members. The organization can establish standing in its own name if it ‘meets the same standing test that applies to individuals.’” *OCA-Greater Hous. I*, 867 F.3d at 610 (citations omitted) (quoting *Ass’n of Cmty. Orgs. for Reform Now v. Fowler*, 178 F.3d 350, 356 (5th Cir. 1999)).

“When the suit is one challenging the legality of government action or inaction” and “the plaintiff is himself an object of the action (or forgone action) at issue[,] . . . there is ordinarily little question that the action or inaction has caused him injury, and that a judgment preventing or requiring the action will redress it.” *Lujan*, 504 U.S. at 561–62. An organization can establish a likely future injury if it intends “to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute.” *Babbitt v. United Farm Workers*

Appendix C

Nat'l Union, 442 U.S. 289, 298, 99 S. Ct. 2301, 60 L. Ed. 2d 895 (1979); see, e.g., *Veterans of Foreign Wars of U.S. v. Tex. Lottery Comm'n*, 760 F.3d 427, 439 (5th Cir. 2014) (charitable organizations had standing to challenge statute prohibiting their use of bingo proceeds for political advocacy as an unconstitutional burden on their political speech).³⁰

Finally, an unregulated organization can also demonstrate the requisite injury by showing that the challenged conduct or regulation has “perceptibly impaired” the organization’s “core business activities.” *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 395, 144 S. Ct. 1540, 219 L. Ed. 2d 121 (2024)) (citing *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379, 102 S. Ct. 1114, 71 L. Ed. 2d 214 (1982)). Such “business activities” need not be profit-driven. See *Havens*, 455 U.S. at 379 n.20 (“That the alleged injury results from the organization’s noneconomic interest in encouraging open housing does not [affect] the nature of the injury suffered, and accordingly does not deprive the organization of standing.”). “It has long been clear that economic injury is not the only kind of injury that can support a plaintiff’s standing.” *Arlington Heights v. Metropolitan Housing*

30. See also *S. Christian Leadership Conf. v. Sup. Ct. of State of La.*, 252 F.3d 781, 788 (5th Cir. 2001) (concluding that “at least some” of the plaintiffs—law students and faculty and community and student organizations—had standing to challenge a Louisiana Supreme Court rule restricting representation by student-practitioners because the operations of law-school clinics were “directly regulate[d]” and “[s]everal of the client organizations would be unable to obtain representation by the clinics”).

Appendix C

Corp., 429 U.S. 252, 263, 97 S. Ct. 555, 50 L. Ed. 2d 450 (1977). Still, a mission-driven organization must proffer evidence of interference with its core activities to ensure it has a personal stake in the outcome of case beyond its “abstract social interests.” *Havens*, 455 U.S. at 379.³¹

The effect on the organization’s activities need not be great. *OCA-Greater Hous. I*, 867 F.3d at 612; *see also Havens*, 455 U.S. at 379. In *Havens*, for example, the Supreme Court held that the organizational plaintiff, HOME, had standing to sue a real estate company, Havens, for providing false information to HOME’s black employees about apartment availability on four occasions. *Havens*, 455 U.S. at 368–69. “Critically, HOME not only was an issue-advocacy organization, but also operated a housing counseling service.” *All. for Hippocratic Med.*, 602 U.S. at 394. HOME asserted that these discriminatory racial steering practices “perceptibly impaired [its] ability to provide counseling and referral services for low-and moderate-income homeseekers.” *Havens*, 455 U.S. at 379.³² HOME alleged only that its counseling services

31. *Arlington Heights v. Metropolitan Housing Corp.*, 429 U.S. 252, 263, 97 S. Ct. 555, 50 L. Ed. 2d 450 (1977) (recognizing that non-profit’s interest in building a low-cost housing project arose “not from a desire for economic gain, but rather from an interest in making suitable low-cost housing available in areas where such housing is scarce” and concluding that “[t]he specific project [the plaintiff] intends to build, whether or not it will generate profits, provides that ‘essential dimension of specificity’ that informs judicial decisionmaking”).

32. In describing its injuries, HOME also alleged that it “had to devote significant resources to identify and counteract

Appendix C

had been “frustrated” by Havens’s conduct—not that HOME had been forced to stop providing the services altogether. *Cf. La. Fair Hous. Action Ctr. at, Inc. v. Azalea Garden Props., L.L.C.*, 82 F.4th 345, 35 (5th Cir. 2023) (“HOME could not place African American clients into housing at Havens’s complex when Havens was engaged in illegal racial steering.”). Still, the Court concluded that if Havens had impaired HOME’s ability to provide such services, “there can be no question that the organization has suffered injury in fact.” *Havens*, 455 U.S. at 379.

“When the plaintiff is an unregulated party, causation ‘ordinarily hinge[s] on the response of the regulated (or regulable) third party to the government action or inaction—and perhaps on the response of others as well.’” *All. for Hippocratic Med.*, 602 U.S. at 383 (quoting *Lujan*, 504 U.S. at 562). But plaintiffs generally cannot show

[Havens]’s racially discriminatory steering practices.” *Havens*, 455 U.S. at 379. As the Supreme Court recently confirmed, however, Havens does not stand for the expansive theory that “standing exists when an organization diverts its resources in response to a defendant’s actions.” *All. for Hippocratic Med.*, 602 U.S. at 395. “[A]n organization that has not suffered a concrete injury caused by a defendant’s action cannot spend its way into standing simply by expending money to gather information and advocate against the defendant’s action.” *Id.* at 394; *see also Azalea*, 82 F.4th at 355 (“We [] hold [that] ‘diverting’ resources from one core mission activity to another, i.e., prioritizing which ‘on-mission’ projects, out of many potential activities, an entity chooses to pursue, does not suffice—organizations daily must choose which activities to fund, staff, and prioritize. Nor do conclusory allegations that an organization’s diversion of resources ‘impaired or impeded’ some planned projects.”).

Appendix C

causation by “rely[ing] on speculation about the unfettered choices made by independent actors not before the court.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 415 n.5, 133 S. Ct. 1138, 185 L. Ed. 2d 264 (2013) (quotation marks omitted). “Therefore, to thread the causation needle in those circumstances, the plaintiff must show that the ‘third parties will likely react in predictable ways’ that in turn will likely injure the plaintiffs.” *All. for Hippocratic Med.*, 602 U.S. at 383 (quotation marks omitted) (citing *California v. Texas*, 593 U.S. 659, 675, 141 S. Ct. 2104, 210 L. Ed. 2d 230 (2021)). The “line of causation between the illegal conduct and injury”—the “links in the chain of causation,” *Allen v. Wright*, 468 U.S. 737, 759, 104 S. Ct. 3315, 82 L. Ed. 2d 556 (1984)—must not be too speculative or too attenuated, *Clapper*, 568 U.S. at 410–11.

The causation requirement is satisfied where it is sufficiently predictable how third parties would react to government action or cause downstream injury to plaintiffs. *All. for Hippocratic Med.*, 602 U.S. at 386. In *Department of Commerce v. New York*, for example, the Supreme Court recognized states’ standing to challenge the reinstatement of the citizenship question on the census because noncitizens would “likely react in predictable ways to the citizenship question”—i.e., by failing to respond to the census altogether—even if they do so unlawfully and despite the requirement that the Government keep individual answers confidential.” 588 U.S. 752, 767–68, 139 S. Ct. 2551, 204 L. Ed. 2d 978 (2019). The depression of the response rate among non-citizens would, in turn, cause them to be undercounted in the census results and injure states with disproportionate

Appendix C

numbers of non-citizens through, *e.g.*, the loss of federal funds, diminishment of political representation, and the degradation of census data. The Court concluded that the states’ “theory of standing thus [did] not rest on mere speculation about the decisions of third parties; it relie[d] instead on the predictable effect of Government action on the decisions of third parties.” *Id.* at 768.

The defendant’s conduct contributes to a plaintiff’s injuries, even if it is not the sole cause of those injuries. *Massachusetts v. E.P.A.*, 549 U.S. 497, 523, 127 S. Ct. 1438, 167 L. Ed. 2d 248 (2007). Similarly, the traceability requirement is not a proximate cause standard; it can be satisfied with a showing that the alleged injury was only indirectly caused by the defendant. *Bennett v. Spear*, 520 U.S. 154, 168, 117 S. Ct. 1154, 137 L. Ed. 2d 281 (1997).

An injury is redressable when it is “likely” as opposed to merely “speculative” that a decision in a plaintiff’s favor would grant the plaintiff relief. *OCA-Greater Hous. I*, 867 F.3d at 610. A plaintiff does not need to demonstrate that a favorable decision will “relieve [their] every injury.” *Larson v. Valente*, 456 U.S. 228, 243 n.15, 102 S. Ct. 1673, 72 L. Ed. 2d 33 (1982). They only need to show that a decision in their favor will “relieve a discrete injury to [them]self.” *Id.* Even “the ability ‘to effectuate a partial remedy’ satisfies the redressability requirement.” *Uzuegbunam v. Preczewski*, 592 U.S. 279, 141 S. Ct. 792, 209 L. Ed. 2d 94 (2021) (quoting *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 13, 113 S. Ct. 447, 121 L. Ed. 2d 313 (1992)); see also *Netsphere, Inc. v. Baron*, 703 F.3d 296, 314 (5th Cir. 2012) (explaining so long as “there

Appendix C

is some means by which [the court] can effectuate a partial remedy, [there] remains a live controversy” (citation omitted)). Plaintiffs seeking injunctive and declaratory relief can satisfy the redressability requirement by “demonstrat[ing] ‘continuing harm or a real and immediate threat of repeated injury in the future.’” *James v. Hegar*, 86 F.4th 1076, 1081 (5th Cir. 2023) (quoting *Soc’y of Separationists, Inc. v. Herman*, 959 F.2d 1283, 1285 (5th Cir. 1992)). A threatened future injury suffices for standing so long as “there is a substantial risk that the harm will occur.” *Nat’l Press Photographers Ass’n v. McCraw*, 90 F.4th 770, 782 (5th Cir. 2024) (quoting *Susan B. Anthony List*, 573 U.S. at 158).

When multiple plaintiffs seek the same injunctive relief, only one needs to establish standing. *Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 52 n.2, 126 S. Ct. 1297, 164 L. Ed. 2d 156 (2006). Here, the Court must identify at least one organization in each Plaintiff group with standing to seek injunctive against local election officials and DAs in their respective jurisdictions.

Analysis

At the outset, the Court observes that the State Defendants and Intervenor-Defendants appear to be confused about the basis for Plaintiffs’ standing, insisting that Section 208 does not afford Plaintiffs a “right” to provide voting assistance. *See, e.g.*, ECF No. 608 at 643.

To be clear, the “right” to provide assistance is not now, nor has it ever been, at issue in this case. Defendants

Appendix C

are correct, of course, that Section 208 did not create such a right—just as the FHA did not create a “right” to provide housing referrals.

Defendants’ confusion appears to stem from the fact that most Plaintiffs have two bases for standing under Section 208: associational standing (based on injuries to their members entitled to voting assistance) and organizational standing (based on impairment of the organizations’ ability to provide voting assistance). The concept is not difficult: some of Plaintiffs’ members *require* voting assistance, while others *provide* voting assistance. The former establish a basis for associational standing; the latter establish a basis for organizational standing.

As in *Havens*, the organizational injury here is a perceptible impairment of one of Plaintiffs’ core services—voter assistance—resulting from violations of a federal law—Section 208. And, to the extent that a rule directly regulates the Plaintiff organizations (rather than their individual assistors), Plaintiffs unquestionably have standing to challenge it. *See Lujan*, 504 U.S. at 561–62.

Sections 6.01 – Curbside Voting Transportation Disclosure

DST challenges Section 6.01’s requirement that a driver transporting seven or more voters to the polls for curbside voting complete a disclosure form stating her name, address, and whether she is serving as an assistor. Because Section 6.01 does not regulate DST directly, DST must demonstrate that “third parties will likely

Appendix C

react in predictable ways that in turn will likely injure the plaintiffs.” *All. for Hippocratic Med.*, 602 U.S. at 383.

DST asserts that Section 6.01 has deterred its members from providing transportation to the polls. ECF No. 856 ¶ 968 (citing Tr. at 2196:21–2197:7). While the Court agrees that DST has suffered a perceptible impairment to one of its core voter activities—transporting voters to the polls—DST has not shown that its injury is fairly traceable to Section 6.01, which applies only to curbside voting.

The State Defendants object that DST cannot establish standing because the obligation to provide the Transportation Disclosures bears no “close relationship” to “traditional[]” legal injuries. ECF No. 862 ¶ 62(k) (quoting *TransUnion*, 594 U.S. at 431). The Court disagrees. The Supreme Court has recognized the deterrent effect that disclosure requirements can have on associative activities. *See, e.g., Shelton v. Tucker*, 364 U.S. 479, 486, 81 S. Ct. 247, 5 L. Ed. 2d 231 (1960) (striking down law requiring teachers to disclose all of the organizations to which they had belonged in the past five years because “[e]ven if there were no disclosure to the general public, the pressure upon a teacher to avoid any ties which might displease those who control his professional destiny would be constant and heavy”); *Nat’l Ass’n for Advancement of Colored People v. State of Ala. ex rel. Patterson*, 357 U.S. 449, 462, 78 S. Ct. 1163, 2 L. Ed. 2d 1488 (1958); *see also Dep’t of Com. v. New York*, 588 U.S. at 767 (finding no clear error in district court’s conclusion that the reinstatement of a citizenship question on the census was likely to discourage non-citizens from responding to the census).

Appendix C

DST has not shown, however, that its members who drive voters to the polls have engaged or intend to engage in conduct that is “arguably proscribed” under Section 6.01 by transporting more than seven voters to polls for curbside voting. *Miss. State Democratic Party v. Barbour*, 529 F.3d 538, 545 (5th Cir. 2008) (“Without concrete plans or any objective evidence to demonstrate a ‘serious interest’ [to engage in proscribed conduct], [plaintiff] suffered no threat of *imminent injury*.”); *see also Whitmore v. Arkansas*, 495 U.S. 149, 155–56, 110 S. Ct. 1717, 109 L. Ed. 2d 135 (1990) (“A federal court is powerless to create its own jurisdiction by embellishing otherwise deficient allegations of standing.”).

Given Section 6.01’s limited application, it is not “sufficiently predictable” that DST members would respond to Section 6.01’s regulation of transportation for more than seven curbside voters by refusing to provide transportation to the polls altogether—even for voters casting their ballots inside the polling place. *All. for Hippocratic Med.*, 602 U.S. at 383. Thus, the Court concludes that DST has failed to thread the causation needle establishing a connection between Section 6.01 and the injury DST members have caused to DST’s organizational interests.

Accordingly, DST has not established standing to challenge Section 6.01’s Transportation Assistance disclosure requirement, and its claim must be dismissed without prejudice for a lack of subject matter jurisdiction.

*Appendix C***Sections 6.03, 6.04, 6.05 and 6.07 – Oath of Assistance and Assistor Disclosures**

Sections 6.03, 6.04, and 6.05 of S.B. 1 establish new procedures for voter assistors, specifically by requiring the assistor to disclose certain information—their name, address, relationship to the voter, and whether they are being compensated by a candidate, campaign, or political committee—on a form at the polling place (Section 6.03) or on the mail ballot carrier envelope (Section 6.05) and by requiring assistors to take a revised Oath (Section 6.04).

Section 6.04 of S.B. 1, amending the Oath of Assistance, is challenged by the HAUL Plaintiffs (including The Arc) and the LUPE Plaintiffs. Sections 6.03 and 6.05 are challenged by the HAUL and LUPE Plaintiffs. Section 6.07 is challenged only by the HAUL Plaintiffs.

The Arc has associational standing to challenge § 6.04.

As a result of the Oath of Assistance requirements set forth in S.B. 1 § 6.04, members of The Arc who qualify for assistance under Section 208 voted without the assistors of their choice, both in-person and by mail, in Harris County, Bexar County, and Travis County.³³

33. Ms. Halvorson, a registered voter in Bexar County and a member of The Arc, voted without assistance for the very first time in the March 2022 primary (by mail) because her personal care attendant was uncomfortable taking the Oath of Assistance printed on the mail carrier envelope. Tr. at 3318:25–3319:20. In the November 2022 general election, Ms. Halvorson voted in person, again voting

Appendix C

Ms. Nunez Landry, Ms. Halvorson, Ms. Litzinger, and Ms. Crowther have each suffered an injury in fact and each would have standing to sue in her own right. Even if voters requiring assistance successfully cast a ballot, their right under Section 208 is violated if they voted without an assister of their choice or forwent assistance altogether. *See* Consent Decree, *United States v. Hale County*, No. 5-05CV0043-C (N.D. Tex. Apr. 27, 2006) (requiring election administrators to provide language assistance to voters with limited English-language proficiency who had voted in an election in which the County failed to permit assistance to those voters); *Democracy N.C. v. N.C. State Bd. of Elections*, 590 F. Supp. 3d 850, 869 (M.D.N.C. 2022) (holding legally blind plaintiff who voted absentee

without assistance due to fear of exposing her personal attendant to potential criminal liability. Tr. at 3322:5–18, 3323:10–24.

Ms. Nunez Landry, a registered voter of Harris County and a member of The Arc, voted without her chosen assistant—her partner—in both the March 2022 primary and the November 2022 general election because she did not want to expose him to criminal liability. Tr. at 3236:11–17; Tr. at 3234:1–6, 3256:15–3257:4. She did not receive any assistance while voting in either election.

Amy Litzinger, a registered voter in Travis County and a member of The Arc. Tr. at 3281:14–17. Ms. Litzinger voted without assistance from her personal attendant in the March 2022 primary and November 2022 general election because she and her attendant were concerned about criminal liability under the Oath. Tr. at 3291:4–3292:5.

Ms. Crowther did not take her attendant with her to vote in May 2022 because of her fear that the Oath could jeopardize her relationship with her attendant. HAUL-413, Crowther Dep. at 52:11–53:4, 54:7–14.

Appendix C

with his wife's assistance had standing to challenge a law restricting assistance that would prevent him from seeking assistance from staff at nursing home). As long as the amended Oath of Assistance remains in effect, these voters will be unwilling to expose their attendants to criminal liability by asking for their assistance. Thus, there is a "substantial risk" that the injury will occur. *Stringer*, 942 F.3d at 721.

The members' interests in voting with the assistors of their choice are germane to the purposes of The Arc, which works to empower people with disabilities in the voting process.³⁴

Plaintiffs' injuries arising out of S.B. 1's amended Oath language are traceable to the Secretary because she has created forms implementing Section 6.04. *See* LUPE-009 (mail ballot carrier envelope) and LUPE-189 (Oath of Assistance form). The Oath regulates Ms. Nunez Landry, Ms. Halvorson, Ms. Litzinger, and Ms. Crowther directly by requiring them to represent their eligibility to potential assistors as a condition of their eligibility.

Plaintiffs' injuries from these provisions are fairly traceable to the local election officials who are responsible

34. The Arc's mission is to "promote, protect, and advocate for the human rights and self-determination of Texans with intellectual and developmental disabilities." *Id.* at 3490:23–25, 3493:7–9. Voting is "the backbone" of The Arc's work because it is critical to members' self-determination and voting rights advocacy has been a priority since The Arc's founding. *Tr.* at 3499:23–3500:12, 3499:23–3500:12.

Appendix C

for administering the Oath in polling places, TEC § 64.034, and printing, sending, receiving, and reviewing mail carrier and ballot envelopes, TEC §§ 86.002–.004, 86.008–.009, 86.011. Thus, their injuries are fairly traceable to the Bexar County EA, Harris County Clerk, and Travis County Clerk, because Plaintiffs’ members suffered their injuries while voting in those jurisdictions.

The Arc members’ injuries are also traceable to the DAs in those counties and the State Defendants based on the chilling effect that the credible threat of criminal enforcement of the Oath against their assistors have had on their willingness and ability to receive assistance from their chosen assistors. Although Ms. Nunez Landry, Ms. Halvorson, Ms. Litzinger, and Ms. Crowther are not themselves subject to criminal sanctions under § 6.04, given the practical realities of these voters’ relationships with their chosen assistors—including their physical dependence on their attendants for assistance outside of voting—their unwillingness to expose their assistors to criminal liability is “sufficiently predictable” to establish causation for standing purposes. *All. for Hippocratic Med.*, 602 U.S. at 386.

Similarly, their attendants’ unwillingness to provide in-person or mail-ballot assistance due to potential criminal liability under S.B. 1 is not speculative—attendants specifically cited the “penalty of perjury” and “eligibility” language in the Oath as their reasons for declining to provide assistance. Tr. at 3319:7–16 (Ms. Halvorson’s attendant told her that she was unwilling to take the Oath of assistance “under penalty of perjury”

Appendix C

due to her green card status); Tr. at 3291:4–3292:5 (Ms. Litzinger’s attendant was not comfortable assisting her due to fear of criminal liability under the Oath, especially with respect to the meaning of “eligibility” and “assistance”). Indeed, the chilling effect on assistors was *actually foreseen* by disability rights advocates who testified before the Texas legislature in opposition to S.B. 1. *See, e.g.*, HAUL-216.

Thus, The Arc’s “theory of standing thus does not rest on mere speculation about the decisions of third parties; it relies instead on the predictable [and actual] effect of Government action on the decisions of third parties.” *Dep’t of Com. v. New York*, 588 U.S. at 767 (recognizing that citizenship question on the census was likely to depress non-citizens’ response rate).

The State of Texas enforces election crimes, including violations of the Oath of Assistance through county and local prosecutors. *Stephens*, 663 S.W.3d at 52. The State has not disavowed enforcement. *KVUE, Inc. v. Moore*, 709 F. 2d 922, 930 (5th Cir. 1983) (holding that plaintiffs had standing to pursue a pre-enforcement challenge in part because “the state has not disavowed enforcement”), *aff’d sub nom. Texas v. KVUE-TV, Inc.*, 465 U.S. 1092, 104 S. Ct. 1580, 80 L. Ed. 2d 114 (1984). Individual County DAs *may not* disavow such enforcement under Texas law. *See* Tex. Loc. Gov’t Code § 87.011(3)(B) (prohibiting district attorneys from adopting an enforcement policy of refusing to prosecute a type or class of criminal offense).³⁵

35. Neither the Bexar County DA nor the Travis County DAs have disavowed enforcement of the challenged provisions. *See*

Appendix C

Plaintiffs’ organizational injuries are also traceable to the AG, who, even after *Stephens*, retains “broad investigatory powers” under the Election Code, State’s Br. at 49, *LUPE v. Scott*, No. 22-50775 (5th Cir. Dec. 9, 2022), ECF No. 62, and may “direct the county or district attorney . . . to *conduct* or *assist* the attorney general in conducting the investigation.” See TEC § 273.002(1) (emphasis added); *see also id.* § 273.001 (district attorneys must investigate alleged violations referred to them). On top of this investigatory power, “the Attorney General can prosecute with the permission of [a] local prosecutor,” *Stephens*, 663 S.W.3d at 55, and no County DA has disavowed a willingness to let the AG pursue cases within their counties.

An order declaring the challenged language in the amended Oath unlawful and enjoining its enforcement would remove the chilling effect on voter assistance that the provisions presently impose on these members of The Arc and their assistors. *See Ctr. for Individual Freedom v. Carmouche*, 449 F.3d 655, 661 (5th Cir. 2006) (finding “redressability prong[] of the standing inquiry . . . easily satisfied” where “[p]otential enforcement of the statute caused the [plaintiff’s] self-censorship, and the injury could be redressed by enjoining enforcement of the [statute]”); *McCraw*, 504 F. Supp. 3d at 582 (W.D. Tex. 2020), *aff’d*, 90 F.4th 770 (5th Cir. 2024) (similar).

ECF No. 753-5 (Bexar County) ¶¶ 2–6; ECF No. 753-6 (Travis County) ¶ 2. Coupled with TEX. LOC. GOV’T CODE § 87.011(3)(B), the Harris County DA’s history of accepting referrals for Election Code prosecutions from the AG following S.B. 1, *see supra* ¶ 98, is sufficient to establish a substantial threat of future injury to Plaintiffs’ members’ right to assistance under Section 208.

Appendix C

In short, with respect to their Section 208 challenge to S.B. 1 § 6.04, members of The Arc are “sufficiently adverse” to the State Defendants and the election officials and DAs of Bexar County, Harris County, and Travis County to present a case or controversy within this Court’s jurisdiction. *Babbitt*, 442 U.S. at 302.

**DST and the LUPE Plaintiffs have
organizational standing to challenge §§ 6.03-
6.05, 6.07**

DST, LUPE, MABA, and FIEL have had difficulty recruiting members to provide voting assistance services due to the threat of criminal sanctions under S.B. 1’s Assistor Disclosure and Oath requirements, and some members have stopped providing assistance altogether.³⁶

36. Tr. at 2203:10–15, 2202:9–14, 2110:12–2111:1, 2148:25–2149:10 (DST chapters have had difficulty recruiting members who are willing to risk criminal liability to provide assistance, by mail or in-person, under S.B. 1, and some chapters have ceased providing voting assistance altogether due to the threat of enforcement of the Assistor Disclosure and amended Oath requirements); Tr. at 80:2–82:12, 150:15 (LUPE’s staff and volunteers who assist voters are frightened by the new oath language, and as a result LUPE’s staff and volunteers have restricted their assistance to voters, encouraging voters to seek assistance from friends and family members before turning to LUPE); *see also* Tr. at 145:25–46:4 (LUPE employee Chris Rocha); LUPE-284 at 13:19–14:15; 32:2–8; 17:2–13 (LUPE volunteer Maria Gomez); Tr. at 2543:16–23 (MABA members are no longer willing to provide voter assistance due to fears about the Oath requirements); Tr. at 2470:22–25, 2430:3–4, 2439:6–23, 2444:24–2445:7 (FIEL has had difficulty recruiting volunteers to provide voter assistance at the polls and some members have stopped providing assistance).

Appendix C

The Assistor Disclosure requirements are burdensome to assistors and have also caused delays at polling places that have interfered with voting assistance.³⁷ Providing such assistance is a core part of their respective missions.³⁸

Plaintiffs’ organizational injuries are fairly traceable to S.B. 1 §§ 6.03-6.05. The chilling effect that the Assistor Disclosure and Oath requirements would have on individuals’ willingness to provide voting assistance—and the downstream effects on organizations’ ability to perform voter assistance services—was “sufficiently predictable” to establish causation for standing purposes. *All. for Hippocratic Med.*, 602 U.S. at 386; *see Shelton*, 364 U.S. at 486, *NAACP*, 357 U.S. at 462; *Dep’t of Com. v. New York*, 588 U.S. at 767. Indeed, the chilling effect on assistors was *actually foreseen* by disability rights advocates who testified before the Texas legislature in opposition to S.B. 1. *See, e.g.*, HAUL-216.

37. Tr. at 81:15–25 (Chavez Camacho); Tr. at 383:14–18 (Scarpello); Tr. at 732:8–733:17 (Garza); Tr. at 1057:12–24 (Callanen); Tr. at 2316:16–20 (Ramon).

38. Tr. at 2081:7–13, 2086:21–2087:15 (DST provides in-person and mail-ballot voter assistance in support of its “political awareness and involvement” mission); Tr. at 60:10–61:2 (LUPE provides voting assistance to support its mission of increasing civic engagement in the colonias); Tr. at 2533:24–2534:4, 2535:11–2536:5 (MABA provides voter assistance to support its mission to promote public service by its members and promote civic engagement); Tr. at 2438:9–11, 2444:24–2445:3 (FIEL furthered its mission of voter outreach and civic engagement by assisting its members in voting at the polls).

Appendix C

Here again, the organizations' injuries are traceable to the Secretary, who creates forms implementing the requirements, and to local election officials, who administer oaths, collect disclosures, and review mail ballots in the counties in which DST, LUPE, MABA, and FIEL operate.³⁹ Their organizational injuries are also fairly traceable to the State Defendants and the local DAs in those counties based on the chilling effect that the "credible threat" of criminal enforcement has on their willingness to provide BBM assistance.

Even before S.B. 1, the Election Code required election officials to note an assistor's name and address next to each voter they assisted in the poll list, TEC § 64.032(d) (1986), and required assistors to provide the same information and their signature on the outside of voters' mail-ballot carrier envelopes, TEC § 86.010(e), JEX-1 at 53. Accordingly, Plaintiffs cannot establish that any injuries arising from the mere *disclosure* of assistors' names and addresses—at the polls or on the mail ballot carrier envelopes—would be redressed by an order enjoining enforcement of Sections 6.03 and 6.05. Section 6.03 did not relieve election officials of their duty to separately record assistors' names and addresses in the poll list under TEC § 64.032(d). Indeed, the Secretary has issued several form poll lists that contain spaces

39. All Plaintiffs operate within the State of Texas and thus are subject to enforcement by the State Defendants. LUPE serves voters in Hidalgo County, Tr. at 58:13–16, and. FIEL serves voters in Harris County. MABA and DST have chapters throughout Texas, including Bexar, Harris, Dallas, and Travis Counties Tr. at 2533:21–23, 2536:17–20 (MABA); Tr. at 2083:13–25 (DST).

Appendix C

for recording assistors' names and addresses.⁴⁰ Being required to provide duplicative information on a separate form for each voter that an assister helps is undoubtedly burdensome.

An order declaring the challenged language in the amended Oath and the Assistor Disclosure requirements unlawful and enjoining their enforcement would remove the chilling effect on voter assistance that has impaired the organization's ability to provide assistance services to voters.

The Court concludes that DST, LUPE, MABA, and FIEL are "sufficiently adverse" to the State Defendants, the election officials and DAs of Bexar, Harris, Travis, and Dallas Counties and the 34th Judicial District to present a case or controversy within this Court's jurisdiction. *Babbitt*, 442 U.S. at 302.

Section 6.06 – Prohibition on Compensated Mail-Ballot Assistance

Section 6.06 is challenged by the OCA Plaintiffs and the LUPE Plaintiffs. OCA, the League, LUPE, and MABA are regulated by Section 6.06 of S.B. 1 because

40. *See, e.g.*, Tex. Sec'y of State, Form 7-57, <https://perma.cc/RAZ3-2G7K>; Tex. Sec'y of State, Form 7-59, <https://perma.cc/NN7T-PM9P>; Tex. Sec'y of State, Form 7-61, <https://perma.cc/G79M-NWKG>; *see also* Tex. Sec'y of State, Texas Requirements for Electronic Pollbook Forms at 2, <https://perma.cc/TH7A-2D79> (requiring poll book to entry for each voter to contain fields for assister's name and address).

Appendix C

they have provided their staff members and volunteers with “compensation,” as it is broadly defined under Tex. Penal Code § 38.01(3), for assisting voters, including mail voters.⁴¹ As a result, Plaintiffs have stopped assisting mail voters.⁴²

“When the suit is one challenging the legality of government action or inaction” and “the plaintiff is himself an object of the action (or forgone action) at issue[,] . . . there is ordinarily little question that the action or inaction has caused him injury, and that a judgment preventing or requiring the action will redress it.” *Lujan*, 504 U.S. at 561–62.

Again, because their conduct is being directly regulated by Section 6.06 and exposes the OCA Plaintiffs (and their members) to criminal liability, their organizational injuries—their inability to provide

41. See Tr. at 1694:21–1696:8, 1699:24–1702:2, 1706:12–1707:3 (OCA provided meals, beverages, snacks, academic credit, shirts, and other nominal gifts to volunteers, who provide assistance to mail voters during OCA events); Tr. at 1598:6–15 (League volunteers who assist members and other voters “often get little pens,” “stickers” “cookies” “doughnuts” and “pizza”); Tr. at 75:11–17, 124:14–127:13 (LUPE relies primarily on paid staff members); Tr. at 2539:3–4, 2542:6–20 (MABA are concerned that they are committing a crime if they accept meals, gas cards, swag or other forms of compensation while providing voting assistance).

42. Tr. at 1717:5–13, 1719:3–22, 1723:6–19, 1724:3–15, 1726:21–1727:6 (OCA); Tr. at 1620:7–1621:1 at (LWV); Tr. at 86:9–86:13, 86:14–87:2, 87:3–87:21 (LUPE); Tr. at 2542:17–20, 2543:16–23, 2544:14–16 (MABA).

Appendix C

mail-ballot assistance—is fairly traceable to the State Defendants and to the DAs in the jurisdictions in which Plaintiffs operate.⁴³

Both the OCA and LUPE Plaintiffs’ name local election officials as Defendants to their Section 208 challenges to the S.B. 1 § 6.06. *See* ECF No. 200 at 61; ECF No. 208 at 76. Plaintiffs have not identified, and the Court cannot locate, any reason to believe that their organizational injuries caused by the Section 6.06 are fairly traceable to (or redressable by) local election officials, who have no criminal enforcement authority under the Election Code. Accordingly, Plaintiffs lack standing to sue these local election officials in connection with their challenges to Section 6.06.

Section 7.04 – Canvassing Restriction

Section 7.04 is challenged by the LUPE Plaintiffs and the LULAC Plaintiffs. At trial, Plaintiffs established by a preponderance of the evidence that LUPE and LULAC and their staff and volunteers are presently and prospectively subject to Section 7.04.

43. All Plaintiffs operate within the State of Texas and thus are subject to enforcement by the State Defendants. OCA operates primarily in Harris County, Tr. at 1688:10–14, and the League operates chapters throughout the State of Texas, including in Travis County, Tr. at 1586:12–13. LUPE serves voters in Hidalgo County, Tr. at 58:13–16, and MABA operates throughout the State of Texas. Tr. at 2533:21–23.

Appendix C

Both organizations:

- (a) have supported ballot measures and/or candidates in the past and intend to do so in the future;⁴⁴
- (b) have advocated for their positions through in-person voter engagement efforts, such as neighborhood block-walking, tabling in public places, and hosting candidate forums, town hall meetings, and other events at their offices and in members' homes;⁴⁵
- (c) reasonably expect mail-in ballots to be present during such interactions with

44. Tr. at 89:2–18 (LUPE has supported ballot measures, including a drainage bond, the creation of a health care district in Hidalgo County, increased broadband access in South Texas); Tr. at 2542:6–8 (MABA routinely encourages support for candidates and ballot measures by tabling at local events, such as candidate forums); Tr. at 1632:25–1633:9 (LULAC does not endorse particular candidates but has taken positions on issues such as school and municipal bond measures, state constitutional amendments, and ballot propositions affecting taxes and public education).

45. Tr. at 71:1–72:15, 75:11–75:17, 90:4–24, 119:20–120:18 (LUPE members brought mail ballots to LUPE offices and meetings and took them out during interactions with door-to-door canvassers and asked for voting assistance); Tr. at 2535:21–2536:5 (MABA tables at local events, including candidate forums and provides voter assistance); Tr. at 1654:2–1657:19 (LULAC members provided voter assistance during their GOTV efforts with senior citizens).

Appendix C

voters, who often take out their ballots at election events or in conversations with door-to-door canvassers because they have questions about the ballot or needed voting assistance;⁴⁶ and

- (d) maintain staff and/or volunteers who receive some “benefit” in exchange for their in-person canvassing efforts.⁴⁷

Accordingly, the LUPE and LULAC Plaintiffs can no longer ask staff members to provide mail-ballot assistance as part of their jobs or treat volunteers who provide such assistance during in-person events.⁴⁸ Again, because their conduct is being directly regulated by the Canvassing Restriction and exposes Plaintiffs to criminal liability,

46. *See id.*

47. Tr. at 75:11–17 (LUPE relies primarily on paid staff members and temporary paid canvassers); Tr. at 2542:17–20, 2544:14–16 (MABA volunteers are concerned that accepting gas cards, meals, swag, or a bottle of water will expose them to criminal liability); Tr. at 1654:2–1657:19 (LULAC volunteers receive modest compensation in the form of raffle tickets, food, and gasoline money).

48. *See* Tr. at 120:19–120:25 (LUPE staff and volunteers to fear prosecution and to stop assisting voters when they are canvassing on a ballot measure); Tr. at 2543:16–23 (MABA members are no longer willing to provide voter assistance); Tr. at 1655:10–18 (LULAC volunteers “scaled . . . down” their GOTV efforts and decided not to conduct voter outreach with seniors, many of whom require voting assistance, for “fear that they could be subject to prosecution if they help seniors vote by mail”).

Appendix C

their organizational injury—their inability to provide mail-ballot assistance—is fairly traceable to the State Defendants and to the DAs in the jurisdictions in which Plaintiffs operate.⁴⁹

These injuries are also “likely to be redressed by a favorable judicial decision.” *Spokeo, Inc.*, 578 U.S. at 338. An order declaring that S.B. 1 § 7.04 is preempted by Section 208 and enjoining its enforcement by the State Defendants and County DAs would remove the restrictions and burdens on assistors that have frustrated Plaintiffs’ ability to provide voting assistance services and Texas voters’ right to vote with their chosen assistors under Section 208.

The LUPE and LULAC Plaintiffs’ position with respect to Section 7.04’s Canvassing Restriction is “sufficiently adverse” to the State Defendants and the County DAs to present a case or controversy within this Court’s jurisdiction. *Babbitt*, 442 U.S. at 302.

Both the LUPE and LULAC Plaintiffs’ name local election officials as Defendants to their Section 208 challenges to the Canvassing Restriction. *See* ECF No. 207 at 60; ECF No. 208 at 76. Plaintiffs have not identified, and the Court cannot locate, any reason to believe that their organizational injuries caused by the Canvassing

49. All Plaintiffs operate within the State of Texas and thus are subject to enforcement by the State Defendants. LUPE serves voters in Hidalgo County, Tr. at 58:13–16, and MABA and LULAC have chapters throughout the State of Texas, Tr. at 2533:21–23 (MABA); Tr. at 1634:6–20 (LULAC).

Appendix C

Restrictions are fairly traceable to local election officials, who have no criminal enforcement authority under the Election Code. Accordingly, Plaintiffs lack standing to sue these local election officials in connection with their challenges to Section 7.04.

SECTION 208 PREEMPTION**Legal Framework**

Section 208's text is "unambiguous." *OCA-Greater Hous. I*, 867 F.3d at 614. It provides that voters with disabilities and voters unable to read or write are entitled to voting assistance from "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.

The Supremacy Clause of the U.S. Constitution requires preemption of any state statute that, when enacted, makes compliance with both federal and state law impossible or "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" in enacting Section 208. *Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373, 377, 135 S. Ct. 1591, 191 L. Ed. 2d 511 (2015) (internal citations omitted).

Congress enacted Section 208 with the "clear purpose to allow [a] voter to decide who assists them" during the voting process. *Ark. United v. Thurston (Ark. United II)*, 626 F. Supp. 3d 1064, 1085 (W.D. Ark. 2022), *appeal docketed*, No. 22-2918 (8th Cir. Sept. 12, 2022). It found "this broad protection was necessary to prevent

Appendix C

discrimination against voters who require assistance because ‘many such voters may feel apprehensive about casting a ballot in the presence of, or may be misled by, someone other than a person of their own choice.’” *Id.* at 1085-86 (citing S. Rep. No. 97-417 at 62 (1982)). The Senate Report explained that Section 208 was necessary “to limit the risks of discrimination against voters in these specified groups and avoid denial *or infringement* of their right to vote.” *Id.* (emphasis added).

Section 208 provides covered voters with more than a bare right to assistance in the poll booth. Rather, it ensures that they will have access to any kind of assistance they need, at any step of the voting process, from a person of their choice other than their employer or a representative of their union. *See, e.g., OCA-Greater Hous. I*, 867 F.3d at 615 (explaining that assistance to vote “plainly contemplates more than the mechanical act of filling out the ballot sheet”). Section 208 thus preempts state laws that impermissibly constrain access to voting assistance in various ways. *See id.* at 614 (concluding that a limitation on assistance “beyond the ballot box”—even with “near-unfettered choice of assistance *inside the ballot box*”—“impermissibly narrows the right guaranteed by Section 208” (emphasis in original)); *see also OCA Greater Hous. v. Tex. (OCA-Greater Hous. II)*, No. 1:15-CV-679, 2022 U.S. Dist. LEXIS 100262, 2022 WL 2019295, at *3 (W.D. Tex. June 6, 2022) (modifying injunction to enjoin new state law “limiting the activities eligible for assistance to ‘marking or reading the ballot’” (citation omitted)).

Because a state law can interfere with a voter’s substantive rights under Section 208 by regulating

Appendix C

assistors just as readily as by regulating voters needing assistance, laws regulating assistors may stand as obstacles to accomplishing Congress’s objectives in enacting Section 208. Determining whether they in fact frustrate Congress’s purpose is “a matter of judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects.” *Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 373, 120 S. Ct. 2288, 147 L. Ed. 2d 352 (2000); *see also Fla. Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142–43, 83 S. Ct. 1210, 10 L. Ed. 2d 248 (1963); *Arizona v. United States*, 567 U.S. 387, 399, 132 S. Ct. 2492, 183 L. Ed. 2d 351 (2012); *Felder v. Casey*, 487 U.S. 131, 151, 108 S. Ct. 2302, 101 L. Ed. 2d 123 (1988) (state law preempted where it “interferes with and frustrates the substantive right Congress created”).

Consistent with Section 208’s text, context, and history, courts have found state laws regulating assistors to be preempted both because compliance with such laws makes full compliance with Section 208 impossible, *see Disability Rts. N.C. v. N.C. State Bd. of Elections (Disability Rts. N.C. II)*, No. 5:21-CV-361-BO, 2022 U.S. Dist. LEXIS 121307, 2022 WL 2678884, at *4–6 (E.D.N.C. July 11, 2022); *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 235 (M.D.N.C. 2020), and because such laws “pose[] an obstacle to Congress’s clear purpose to allow the voter to decide who assists them at the polls,” *Ark. United II*, 626 F. Supp. 3d at 1085; *see also, e.g., OCA-Greater Hous. I*, 867 F.3d at 614–15.

In support of their view that states are permitted to further restrict voters’ choice of assistor—beyond the

Appendix C

two groups excluded by the text of the statute—the State Defendants insist that Section 208 only guarantees “an” assistor of the voter’s choice, not “the” assistor of the voters’ choice. *See* ECF No. 862 ¶ 551 (citing *Priorities USA v. Nessel*, 487 F. Supp. 3d 599, 619 (E.D. Mich. 2020), *rev’d and remanded*, 860 F. App’x 419 (6th Cir. 2021)).⁵⁰ Thus, according to the State Defendants, “Section 208 recognizes that covered voters have the right to select a someone as an assistor, as opposed to having one chosen for them, but it does not guarantee them their first choice; nor does it foreclose Texas from enacting reasonable regulations on whom might assist voters and the procedural prerequisites assistors must follow.” *Id.* The Court is not persuaded by the State Defendants’ tortured grammatical analysis, which is unsupported by the plain text of Section 208, Congress’s legislative intent, or common sense.

50. The Court is neither bound nor persuaded by *Nessel*, which has also been rejected by other courts. *See, e.g., Ark. United I*, 2020 U.S. Dist. LEXIS 207145, 2020 WL 6472651, at *4 (“[T]he Court is unconvinced by the opinion in *Nessel*.”). *Nessel* flouts the settled canon that enumerated statutory exceptions are presumed to be exclusive, engages in an undue burden analysis unsupported by the statute and preemption law, and misreads the legislative history by overlooking the importance of voter choice as Congress’s chosen remedy. *Compare Nessel*, 487 F. Supp. 3d at 619 (relying solely on dictionary definition of “a” to interpret Section 208), with *Niz-Chavez v. Garland*, 593 U.S. 155, 141 S. Ct. 1474, 1481, 209 L. Ed. 2d 433 (2021) (explaining that courts must look at the statutory context to determine the meaning of “a”); *see also United States v. Alabama*, 778 F.3d 926, 933 (11th Cir. 2015) (“We have repeatedly found . . . that the context of a statute required us to read ‘a’ or ‘an’ to mean ‘any’ rather than ‘one.’”).

Appendix C

To begin, nothing in the text of Section 208 allows states to impose additional limitations or exceptions not stated in the statute. “[W]here Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent.” *Hillman v. Maretta*, 569 U.S. 483, 496, 133 S. Ct. 1943, 186 L. Ed. 2d 43 (2013) (quoting *Andrus v. Glover Constr. Co.*, 446 U.S. 608, 616–17, 100 S. Ct. 1905, 64 L. Ed. 2d 548 (1980)); see also *United States v. Rand*, 924 F.3d 140, 144 (5th Cir. 2019). As the Fifth Circuit analogized in another context:

[W]hen Congress provided the two exceptions to the . . . requirement, it created all the keys that would fit. It did not additionally create a skeleton key that could fit when convenient. To conclude otherwise “would turn this principle on its head, using the existence of two exceptions to authorize a third very specific exception.”

Parada v. Garland, 48 F.4th 374, 377 (5th Cir. 2022) (quoting *Quebrado Cantor v. Garland*, 17 F.4th 869, 874 (9th Cir. 2021)).

No other exceptions are provided, and nothing in the statute suggests that extra-textual exceptions can be imposed or implied. See *Ark. United v. Thurston* (Ark. *United I*), No. 5:20-CV-5193, 2020 U.S. Dist. LEXIS 207145, 2020 WL 6472651, at *4 (W.D. Ark. Nov. 3, 2020) (“[T]here is nothing in the statutory language to suggest that a state may burden, unduly or otherwise, the right [to choice] articulated in § 208.”). “The express exclusion of

Appendix C

only two groups is significant, because it implies that all other categories of assisters are permitted. If Congress intended to exclude more categories, or to allow states to exclude more categories, it could have said so.” *Disability Rts. N.C. v. N.C. State Bd. of Elections*, No. 5:21-CV-361-BO, 2022 U.S. Dist. LEXIS 121307, 2022 WL 2678884, at *4 (E.D.N.C. July 11, 2022) (“[O]ther than these two excluded groups, the plain language of Section 208 gives voters unrestricted choice over who may assist them with the voting process”).

The Senate Judiciary Committee’s Report—which is the “authoritative source for legislative intent” regarding the 1982 amendments to the Voting Rights Act, *Thornburg v. Gingles*, 478 U.S. 30, 43 n.7, 106 S. Ct. 2752, 92 L. Ed. 2d 25 (1986)—confirms Congress’s intent that covered voters must be allowed assistance “from a person of their own choosing, with two exceptions” only. S. Rep. No. 97-417 at 2; see also *Niz-Chavez v. Garland*, 593 U.S. 155, 141 S. Ct. 1474, 1481, 209 L. Ed. 2d 433 (2021) (explaining that courts must look at the statutory context to determine the meaning of “a”). Indeed, Congress viewed the guarantee of choice as so central to its remedial scheme that it noted Section 208’s employer exception should yield in certain circumstances where “the burden on the individual’s right to choose a trustworthy assistant would be too great to justify application of the bar on employer assistance.” Rep. No. 97-417 at 64.

The State Defendants’ reading also flatly contradicts Texas’s own interpretation of Section 208. The Election Code provides that, “on the voter’s request, the voter may

Appendix C

be assisted by *any* person selected by the voter other than the voter's employer, an agent of the voter's employer, or an officer or agent of a labor union to which the voter belongs." TEC § 64.032(c) (emphasis added). In *OCA-Greater Hous. I*, Texas argued that this provision "track[s] the plain language of Section 208," 867 F.3d at 615, and the Fifth Circuit approved of this reading, interpreting the state law assistor provisions as granting physically disabled voters "the right to select *any* assistor of their choice, subject only to the restrictions expressed in Section 208 of the VRA itself." *Id.* at 608. Texas and the Fifth Circuit have used "a" and "any" interchangeably when interpreting Section 208 without adopting the contrived distinction the State Defendants now propose. *Id.*; cf. *United States v. Naranjo*, 259 F.3d 379, 382 (5th Cir. 2001) ("Such a violation' . . . refers to . . . *any* violation. . .").

The facts of *OCA-Greater Hous. I* itself foreclose the State Defendants' interpretation. In that case, Mallika Das, a registered voter in Williamson County, brought her son to serve as an interpreter in the polling place. Her son was barred from assisting Ms. Das, however, under a Texas statute, TEC § 61.033, that limited the class of eligible interpreters in each county to individuals registered to vote in the same county. Because he was registered to vote in Travis County, Mr. Das's son was prohibited from serving as his mother's interpreter in Williamson County.

The Fifth Circuit affirmed the district court's conclusion that denying Ms. Das the right to select her son as an interpreter violated her right to vote with assistance

Appendix C

from the person of her choice under Section 208. The Fifth Circuit did *not* conclude, as the State Defendants propose here, that the interpreter provision was consistent with Section 208 because it still permitted Ms. Das to make a choice among the narrow class of translators eligible under state law. That is, even though Ms. Das could have chosen someone else—any voter registered in Williamson County who spoke her language—to serve as her translator, her right to assistance from “a” person of her choice under Section 208 was violated because the law precluded her from receiving assistance from “the” person she actually chose—her son.

The State Defendants insist that the Fifth Circuit’s decision in *OCA-Greater Hous. I* is inapposite because it hinged on the VRA’s capacious definition of “vote,” rather than regulating assistors themselves. ECF No. 862 ¶¶ 562–68. But the translator restriction violated Section 208 only because, under the VRA’s expansive definition of “voting,” narrowing the class of eligible *translators* necessarily narrowed the class of eligible *assistsors* beyond the two categories identified in the text of Section 208. In reaching this conclusion, the Fifth Circuit clarified that a “state cannot restrict [Section 208’s] federally guaranteed right by enacting a statute tracking its language, then defining terms more restrictively than as federally defined.” 867 F.3d at 615.

The indefinite “a” (as opposed to the definite “the”) is appropriate because the identity of the chosen assistor is (and cannot be not) known to the reader of the statute. Moreover, the indefinite article clarifies that Section 208’s

Appendix C

protections are enforceable against attempts by states and local governments (and their officials) to encroach on a voter's choice of assistor; it is not enforceable against putative assistors themselves. A right to assistance from "the" person of a voter's choice would imply that chosen assistors must provide the assistance requested of them. But Section 208 does not permit voters to conscript assistors who are unwilling or unable to help; it prohibits regulations that effectively narrow the universe of willing and eligible assistors from which a voter can choose.⁵¹

51. It is self-evident that the assistor must be actually capable of providing the assistance the voter needs in order to serve as an assistor. The State Defendants' and Intervenor-Defendants fanciful hypotheticals about the scope of voters' right to receive assistance are unavailing. For example, Intervenor-Defendants argue that Plaintiffs' reading would allow a voter to select an incarcerated person as an assistor. ECF No. 608 at 35. As the court in *Ark. United I* explained, "a common-sense reading of § 208 suggests that any assistor chosen by a voter must be willing and able to assist. If a chosen person declines to assist the voter or simply does not show up at the polling place, that person has not violated § 208." 626 F. Supp. 3d 1064, 1087 (W.D. Ark. 2022). "And an incarcerated person would not be able assist at the polling place for reasons that are completely unrelated to [Texas's] elections laws." *Id.*

At trial, counsel for the State Defendants similarly posited that Plaintiffs' reading of Section 208 would require election officials to admit assistors who refuse to provide assistance unless they can bring a firearm into the polling place. Not so. There is no question that assistors remain subject to generally applicable laws. At issue here, however, are laws that regulate voting assistors in their capacity as voting assistors (rather than as members of the general public). But regulations governing "voter assistance" must "be established in a manner which *encourages greater*

Appendix C

The State Defendants’ reading would eviscerate Section 208 by permitting states to give voters a “choice” between two assistors hand-picked by the state because voters could receive assistance from “a person” of their choice between the two possibilities. Section 208’s use of “a” to modify “person” does not obviate Section 208’s essential guarantee, and it is no evidence of an “intent by Congress to allow states to restrict a federally created right, for Congress does not ‘hide elephants in mouseholes.’” *Disability Rts. N.C. v. N.C. State Bd. of Elections (Disability Rts. N.C. I)*, 602 F. Supp. 3d 872, 878 (quoting *Whitman v. Am. Trucking Ass’n, Inc.*, 531 U.S. 457, 468, 121 S. Ct. 903, 149 L. Ed. 2d 1 (2001)).

In their motion for summary judgment, the Intervenor-Defendants suggest that S.B. 1’s restrictions on choice of assistor are “exactly the type of laws Congress sought to leave undisturbed when it enacted Section 208.” ECF No. 608 at 35. But the Senate Report refutes that. It directly addresses which contemporary state laws Section 208 intended to leave undisturbed: those in “many states [that] already provide for assistance by a person of the voter’s choice.” S. Rep. No. 97-417 at 63. Congress could have preserved other more restrictive state laws by adding more exceptions to the text of Section 208. It didn’t. Instead, the Senate Judiciary Committee was clear that guaranteeing voters their choice of assistor

participation in the electoral process.” S. Rep. No. 97-417 at 241. Because the provisions in S.B. 1 challenged in this case regulate voter assistance specifically, the question before the Court is whether those provisions “encourage greater participation in the electoral process.”

Appendix C

was “the most effective method of providing assistance while at the same time conforming to the pattern already in use in many states.” *Id.* at 64. States may not second guess that decision. And while the Senate Committee recognized the states’ rights “to establish necessary election procedures . . . designed to protect the rights of voters,” it also clearly stated the intention that any such voter assistance procedures “be established in a manner which *encourages greater participation* in the electoral process.” *Id.* at 241 (emphasis added); *see, e.g., id.* at 240 (“Specifically, it is only natural that many such voters may feel apprehensive about casting a ballot in the presence of, or may be misled by, someone other than a person of their own choice . . . The Committee is concerned that some people in this situation do in fact elect to forfeit their right to vote.”).

Finally, given the evidence adduced at trial, the State Defendants’ grammatical argument is purely academic: several voters who testified at trial have voted without assistance from their chosen assistors under S.B. 1 because of its burdensome requirements on both voters and assistors.

Analysis

Section 208 of the federal Voting Rights Act prohibits states from limiting voters’ right to assistance and preempts conflicting state laws. S.B. 1 §§ 6.03-6.07 and 7.04 are preempted, in whole or in part, by Section 208 of the VRA because:

Appendix C

- Section 6.04 requires voters to represent to their assistors that they are eligible for assistance as a condition of receiving assistance.
- Section 6.04 deters voter assistors by requiring them to swear, under penalty of perjury, to additional information, including that they did not pressure or coerce the voter into choosing them to assist, and that they obtained a representation of eligibility of assistance from the voter. Section 6.04 also deters voters from using their chosen assistors for fear of placing them at risk of criminal prosecution.
- Sections 6.03, 6.05 and 6.07 deter assistors by requiring them to complete an additional form with duplicative information and disclose their relationship to a voter as a prerequisite to providing voter assistance.
- Sections 6.06 and 7.04 deny mail voters the ability to choose assistors who are compensated or receive “anything reasonably regarded” as an economic gain or advantage.

Portions of the Oath of Assistance (§ 6.04) are preempted by Section 208

Section 6.04 of S.B. 1 amends the Oath by adding the underlined and bolded language:

Appendix C

I swear (or affirm) **under penalty of perjury** that **the voter I am assisting represented to me they are eligible to receive assistance;** I will not suggest, by word, sign, or gesture, how the voter should vote; I will prepare the voter's ballot as the voter directs; **I did not pressure or coerce the voter into choosing me to provide assistance;** I am not the voter's employer, an agent of the voter's employer, or an officer or agent of a labor union to which the voter belongs; **I will not communicate information about how the voter has voted to another person; and I understand that if assistance is provided to a voter who is not eligible for assistance, the voter's ballot may not be counted.**

TEC § 64.034.

The Oath of Assistance set forth in S.B. 1 § 6.04 restricts the right of assistance protected under Section 208 by conditioning voters' eligibility for assistance on their "represent[ation] to [their chosen assistor that] they are eligible to receive assistance.

This new restriction on the right to assistance and other provisions of the Oath have also deterred voters from requesting assistance and narrowed the universe of willing assistors, thereby "interfer[ing] with and frustrat[ing] the substantive right Congress created" under Section 208. *Felder*, 487 U.S. at 151. Accordingly, those portions of Section 6.04, described below, are preempted by Section 208 of the VRA.

*Appendix C****The “penalty of perjury” language is preempted by Section 208.***

The State Defendants assert that the “penalty of perjury” language in the Oath cannot frustrate Section 208 because the Oath has always been taken under penalty of perjury. *See* ECF No. 862 ¶ 455. It is true that, since 1974, it has been a Class A misdemeanor “make[] a false statement under oath” with “intent to deceive and with knowledge of the statement’s” meaning TEX. PENAL CODE § 37.02; *see also id.* § 12.21 (Class A misdemeanors can impose fines of up to \$4,000 and up to one year in confinement). S.B. 1, however, added a new provision increasing the penalties for perjury as to oaths under the Election Code, making it a state jail felony to “knowingly or intentionally make a false statement or swear to the truth of a false statement” in an oath with “the intent to deceive.” TEC § 276.018.

In any event, neither of the scienter requirements set forth in either perjury provision appear in the Oath itself, with confusing results. What does it mean, for example, for an assistor to “knowingly” make a false statement that he “understand[s] that if assistance is provided to a voter who is not eligible for assistance, the voter’s ballot may not be counted.” Suggesting that an assistor can be criminally liable for “knowingly” failing to understand a fact appears to be a contradiction in terms. The Oath could have said, “I am not knowingly assisting someone who is ineligible for assistance.” As written, however, the Oath requires assistors to confirm that voters are eligible to receive assistance to ensure that their assistance will be effective

Appendix C

(i.e., that the voter’s ballot will count). Similarly, voters with cognitive disabilities or memory impairments may need their assistors to remind them how they intended to vote or visually point out the voter’s preferred candidate on the ballot. Because of the assistance he requires when voting, Mr. Cole understands this portion of the Oath to mean that he must either change how he votes or require his assistor to commit perjury. Tr. at 710:20–711:11.

At trial, voters,⁵² assistors,⁵³ and election officials⁵⁴ alike characterized the “penalty of perjury” language in the amended Oath as “intimidating,” “scary,” and “threatening.” Without any reference to the scienter requirement of the Election Code’s perjury provision, there is nothing in the Oath to mitigate these concerns. Even attorneys involved in voting assistance are concerned about the reference to “perjury” in the Oath. MABA members find this language alarming because they do not want to subject themselves to the consequences of being accused of perjury—and potentially be disbarred—for providing voter assistance. Tr. at 2538:8–14; *see also* Tr. at 710:20–711:11 (Cole). As it is written, the “penalty of perjury” language has deterred assistors from providing qualified voters with assistance and deterred voters from requesting assistance they need to vote, thereby frustrating Section 208’s purpose.

52. *See, e.g.*, Tr. at 3324:10–14 (Halvorson).

53. *See, e.g.*, Tr. at 147:10–148:8 (Rocha); Tr. at 3208:9–17; Tr. at 3217:12–3218:1 (Miller); Tr. at 2439:24–2440:10 (Espinosa); Tr. at 2540:21–23 (Ortega).

54. *See, e.g.*, Tr. at 175:6–176:8 (Wise); Tr. at 1312:25–1314:9 (Longoria).

*Appendix C****The statements regarding voter eligibility are preempted by Section 208.***

Section 6.04 conditions a voter's eligibility for assistance on her willingness to make a representation about her eligibility—in effect adding a new requirement to her eligibility for assistance. That new requirement is preempted by Section 208, which affords voters the right to assistance from their chosen assistor regardless of their representations to the assistor about why they need assistance in the voting process. A voter's eligibility for assistance is determined by the conditions described in Section 208: blindness, disability, or inability to read or write. 52 U.S.C. § 10508. Imposing additional eligibility requirements on voters impermissibly narrows the class of voters Section 208 was intended to protect.

Moreover, the Election Code's fixation with voter eligibility for assistance undermines any assertion that Section 6.04 protects voters who need assistance. On its face, Section 6.04's eligibility language appears to protect only the inverse class of people—those who do *not* need assistance. In other words, Section 6.04 gestures at the possibility of fraudulent assistance targeting some ill-defined category of people who, for some reason *other than* blindness, disability, or the inability to read or write, are especially vulnerable to manipulation. But “protecting” voters who are *ineligible* for assistance does nothing to protect *eligible* voters. Assistance to an eligible voter is no less effective because the same assistance is provided to someone who does not need it. More importantly, Congress did not pass a law to protect voters who are *ineligible* for

Appendix C

assistance; it passed a law to protect those who need it. Texas cannot establish laws that protect the former at the expense of the latter.

Finally, it is not even clear to the Court that the Election Code even operates to “protect” ineligible voters from “coercion” because even ballots voted in accordance with a voter’s wishes may be voided if the voter received unauthorized assistance. *See* TEC § 64.037 (“If assistance is provided to a voter who is not eligible for assistance, the voter’s ballot may not be counted.”). This possibility—that an otherwise valid ballot might be tossed out based on a mistaken belief about a voter’s eligibility for assistance—discourages assistance. Assistors with any uncertainty about the meaning of “eligibility” or whether a particular individual is legally eligible will refrain from providing assistance.⁵⁵ *See, e.g.*, Tr. at 3291:4–3292:5 (Litzinger); Tr. at 147:1–9 (LUPE); Tr. at 2543:21–16 (MABA).

The Oath’s eligibility language is preempted because it “promise[s] to deter otherwise lawful assistors from

55. Upon the suggestion by counsel for the State Defendants that voters concerned about their eligibility for assistance should contact the SOS office regarding the requirements of the Oath, Ms. Nunez Landry responded: “So I guess all disabled people have to call the Secretary of State to find out precisely whether we’re eligible to vote [with assistance] and whether we’re pressured or coerced? They are going to be a very busy office I would think.” Tr. at 3265:21–3266:11. Impracticality aside, counsel’s proposal would not cure the Oath’s Section 208 problem because, much like the representation of eligibility, it would impose an additional eligibility requirement on voters who need assistance (i.e., that they confirm their eligibility with the SOS).

Appendix C

providing necessary aid to a vulnerable population.” *Disability Rts. of Miss. v. Fitch*, 684 F. Supp. 3d 517, 520 (S.D. Miss. 2023), *vacated as moot*, 2024 U.S. App. LEXIS 20941, 2024 WL 3843803 (5th Cir. Aug. 14, 2024) (enjoining state law criminalizing third-party mail ballot collection and regulating the “identity of allowable assistors” based on the ill-defined categories of exempt assistors and broad impact on the state’s voting population, coupled with the threat of criminal sanctions). *Id.* at 52.⁵⁶

***The statement regarding “pressure or coerc[ion]”
is preempted by Section 208.***

The Oath’s statement that the assistor did not “pressure or coerce” the voter into choosing the assistor to provide assistance suffers from the same defects as the eligibility statements. Specifically, the Oath does

56. The court highlighted the dearth of evidence justifying the restrictions on ballot-dropping assistance:

Defendants were unable to provide any data illustrating whether Mississippi has a widespread ballot harvesting problem. Seemingly, no fact-findings or committee-finding investigations or legislative committee inquiries have focused upon this perceived threat. This may explain why the definitional approach of the statute is so barren.

Plaintiffs, contrariwise, have provided this court with examples of how S.B. 2358, which subjects violators to criminal penalties, would deter eligible absentee voters[.]

Disability Rts. of Miss., 684 F. Supp. 3d at 521–22.

Appendix C

not define “pressure or coerce” or include a scienter element. Rather, by its text, the Oath requires an assistor to accurately judge the *actual* consequences of their conduct on another person’s state of mind, judged against two undefined terms. But this language fails to provide assistors with any notice about the standard of conduct to which they are swearing or affirming. *See Coates v. City of Cincinnati*, 402 U.S. 611, 612, 91 S. Ct. 1686, 29 L. Ed. 2d 214 (1971). In *Coates*, for example, the Supreme Court held that an ordinance prohibiting conduct that was “annoying to persons passing by” was unconstitutionally vague because “[c]onduct that annoys some people does not annoy others.” 402 U.S. at 614. The ordinance required “men of ordinary intelligence” to “guess at its meaning” because it specified “no standard of conduct . . . at all.” *Id.*

Similarly, the Eleventh Circuit recently struck down a statute prohibiting “activity with the . . . effect of influencing a voter” as unconstitutionally vague because, even if the meaning of “influence” was clear, because “[k]nowing what it means to influence a voter does not bestow the ability to predict which actions will influence a voter.” *League of Women Voters of Fla. Inc. v. Fla. Sec’y of State*, 66 F.4th 905, 947 (11th Cir. 2023). “How,” the court asked, “is an individual seeking to comply with the law to anticipate whether his or her actions will have the subjective effect of influencing a voter?” *Id.* “If the best—or perhaps only—way to determine what activity has the ‘effect of influencing’ a voter is to ask the voter, then the question of what activity has that effect is a ‘wholly subjective judgment[] without statutory definition[], narrowing context, or settled legal meaning[.]’” *Id.*

Appendix C

Of course, the constitutionality of the Oath’s “pressure or coerce” language is not before the Court; the question is whether the language frustrates Section 208 by deterring lawful voting assistance. But the vagueness analysis explains the chilling effect that the “pressure or coerce” statement has on assistance. *See* Tr. at 2540:11–16 (MABA) (assistors do not want to sign an oath swearing to conduct that appears without definition or context); Tr. at 3249:21–3250:2 (Nunez Landry) (worried that assistors will be too afraid to provide assistance due to confusion about the meaning of the terms); Tr. at 733:21–734:7 (Garza) (“The wording is vague enough where . . . they might be concerned that they are going to violate the oath if they signed it.”). It is unreasonable to expect assistors to swear an oath, under penalty of perjury, that requires them to guess at its meaning. *Grayned v. City of Rockford*, 408 U.S. 104, 109, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972) (“Uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked.”).

The Court concludes that the chilling effect of the Oath’s vague statement requiring assistors to swear that they did not “pressure or coerce” voters into choosing them as assistors frustrates Section 208’s purpose. The language is therefore preempted by Section 208.

The Assistor Disclosures (§§ 6.03, 6.05, 6.07) are preempted by Section 208

The requirements that assistors complete an additional form disclosing duplicative information at the

Appendix C

polls and disclose their relationships with the voters they assist have deterred voters from requesting assistance and narrowed the universe of willing assistors and thereby “interfer[ed] with and frustrat[ed] the substantive right Congress created” under Section 208. *Felder*, 487 U.S. at 151. Accordingly, S.B. 1 §§ 6.03 and 6.05 (as implemented by 6.07) are preempted by Section 208 of the VRA.

The Supreme Court has recognized the deterrent effect that disclosure requirements can have on associative activities. *See, e.g., Shelton*, 364 U.S. at 486, *NAACP*, 357 U.S. at 462; *Dep’t of Com. v. New York*, 588 U.S. at 767.⁵⁷ And, in this case, individuals who assist voters with whom they do not have a preexisting relationship—including staff members and volunteers for the Plaintiff organizations—have good reason to be concerned about the basis for the disclosure requirement.

The State Defendants insist that such disclosures “help enforce” Section 208 “by having assistors articulate their relationship to the voter, which lets county election officials flag violations of the law.” ECF No. 862 ¶ 605. But both trial testimony and the text of S.B. 1 § 6.05 indicate that the purpose of the “relationship disclosure” requirement is not to identify either of the categories of

57. It’s worth noting that the disclosure of an assistor’s address and relationship to the voter on the outside of the mail ballot carrier envelope risks public exposure of that information given (1) the potential delay between the time the mail ballot is completed and the time it is mailed or dropped off, and (2) the right to public inspection of the mail carrier envelopes after the election. TEC § 86.014(b).

Appendix C

prohibited assistors under Section 208. After all, the Oath of Assistance already requires in-person and mail-ballot assistors to swear or affirm that they do not belong to either of the proscribed classes. *See, e.g.*, TEC § 64.034 (“I am not the voter’s employer, an agent of the voter’s employer, or an officer or agent of a labor union to which the voter belongs[.]”).

Instead, the “Voter Relationship Disclosure” requirement appears to be designed to distinguish between assistors with no relationship to the voter and assistors who are family members and caregivers to the voter, who Mr. White characterized as providing “normal assistance.” *See also* TEC § 86.010(h)(2) (excusing close relatives from criminal penalties for failing to disclose their relationship to the voter).

But Section 208 is indifferent to Mr. White’s theories about “normal assistance.” Aside from the two relationships explicitly identified in the text, Section 208 leaves the choice of assistor entirely up to the voter. To be sure, some voters may prefer to vote with the assistance of a close family member or friend. Others might be more comfortable receiving help from a stranger who has been trained by a trusted community organization to provide high-quality voting assistance. Such an assistor may be more familiar with the voting process (and thus help the voter avoid common pitfalls) and, as a stranger serving multiple voters in an election period, may be less likely to remember or care how an individual voter casts his or her ballot. Neither Mr. White nor the State of Texas is permitted to second-guess the basis for the voter’s selection.

Appendix C

The “Voter Relationship Disclosure” discourages community organizations like the Plaintiffs from providing voter assistance services by implicitly requiring that they have an articulable relationship to the voters they assist *beyond* “assistor.” But nothing in the text of Section 208 suggests that Texas can adopt rules that discourage certain categories of assistors by, e.g., subjecting them to greater scrutiny, greater administrative burdens, and greater penalties for noncompliance than the state’s preferred assistors. Such laws “pose[] an obstacle to Congress’s clear purpose to allow the voter to decide who assists them at the polls,” *Ark. United II*, 626 F. Supp. 3d at 1085; *see also, e.g., OCA-Greater Hous. I*, 867 F.3d at 614-15; *see also Cummings v. Missouri*, 71 U.S. 277, 278, 18 L. Ed. 356 (1866) (“[W]hat cannot be done directly cannot be done indirectly.”).

Here, Texas seeks to supplant its belief that assistors should have a close, personal relationship with voters over Congress’s judgment that voters should be empowered to choose anyone other than their employer or union representative. Texas may not substitute its judgment for that of Congress, or for that matter, Texans who require voting assistance. *See Hughes v. Talen Energy Mktg., LLC*, 578 U.S. 150, 164, 136 S. Ct. 1288, 194 L. Ed. 2d 414 (2016) (explaining that “[s]tates may not seek to achieve ends, however legitimate, through . . . means that intrude” on federal power); *see also Ark. United II*, 626 F. Supp. 3d at 1086 (noting there is no “exception to the Supremacy Clause when a state has a compelling interest in enacting a statute that conflicts with federal law”).

Appendix C

While the Senate Committee recognized the states' rights "to establish necessary election procedures . . . designed to protect the rights of voters," it also clearly stated the intention that any such voter assistance procedures "be established in a manner which *encourages greater participation* in the electoral process." S. Rep. No. 97-417 at 63 at 241 (emphasis added). Thus, any regulations of the assistors must encourage—or at a minimum not discourage—people from providing voting assistance.

Congress's concern for voters cannot serve as the basis for gutting the very means Congress chose to address that issue. In fact, these differing paths to a common goal underscore that preemption is appropriate. *See Villas at Parkside Partners v. City of Farmers Branch*, 726 F.3d 524, 529 (5th Cir. 2013) ("As the Supreme Court has cautioned, . . . 'conflict is imminent' when 'two separate remedies are brought to bear on the same activity.'" (quoting *Crosby*, 530 U.S. at 380)); *see also United States v. Locke*, 529 U.S. 89, 115, 120 S. Ct. 1135, 146 L. Ed. 2d 69 (2000) ("[A] state law is not to be declared a help because it attempts to go farther than Congress has seen fit to go." (quoting *Charleston & W. Carolina Ry. Co. v. Varnville Furniture Co.*, 237 U.S. 597, 604, 35 S. Ct. 715, 59 L. Ed. 1137 (1915))).

The "Voter Relationship Disclosure" requirement set forth in S.B. 1 §§ 6.03–6.04 (and implemented by S.B. 1 § 6.07) and the requirement that in-person assistors complete a separate disclosure form under S.B. 1 § 6.03 is preempted by Section 208.

Appendix C

The State Defendants correctly observe that none of the Plaintiffs challenge the requirement that assistors disclose whether they “received or accepted any form of compensation or other benefit from a candidate, campaign, or political committee” under TEC § 64.0322(a) or § 86.010(e)(3). *See* ECF No. 862 at 216–17. Plaintiffs’ failure to challenge that disclosure requirement preserves the question on mail ballot carrier envelopes, but it does not save the separate disclosure form prescribed by the Secretary of State for in-person voting. *See* LUPE-189. For the compensation question to have any meaning, the assistor would still be required to provide duplicative information—his name (and probably address)—on the form for identification purposes. The answer to a single yes-or-no question cannot justify imposing an entirely new form on each chosen assistor. The Secretary and local election officials can comply with Section 6.03 by adding the answer to this question to the poll lists, alongside the assistor’s name and address. *See* TEC § 63.004 (permitting the Secretary to combine the poll list, the signature roster, or any other form used in connection with the acceptance of voters at polling places).

**Bans on Compensated Assistance (§§ 6.06 and 7.04)
are preempted by Section 208**

The prohibitions on compensated assistance set forth in S.B. 1 §§ 6.06 and 7.04 conflict with the text of Section 208 of the VRA because they facially restrict the class of people who are eligible to provide voting assistance beyond the categories of prohibited individuals identified in the

Appendix C

text of the statute—the voter’s employer (or an agent of the employer) or union representative.⁵⁸

In doing so, Sections 6.06 and 7.04 “interfere[] with and frustrate[] the substantive right Congress created” under Section 208. *Felder*, 487 U.S. at 151. S.B. 1 §§ 6.06 and 7.04 are thus preempted by Section 208 of the VRA. Sections 6.06 and 7.04 make it an “impossibility” for an eligible voter to choose an assistor who is permitted by

58. The State Defendants assert that assistance by paid canvassers falls outside the purview of Section 7.04 because it is not “designed to deliver votes for or against a specific candidate or measure.” ECF No. 862 ¶ 479 (citing TEC §276.05(e)); *see also* ECF No. 608 at 36. But any efforts designed to increase *turnout* among voters who are already likely to vote for the organization’s preferred candidate or measure are, arguably “designed to deliver votes for the candidate or measure.” Thus, training canvassers on how to provide non-coercive voting assistance to LEP and disabled voters upon request during candidate forums or block-walking would be arguably “designed to deliver votes for a specific candidate or measure” if the organization’s outreach efforts were directed toward like-minded voters.

The expansive reach of the term “interaction”—as opposed to “communication” or “speech” or “advocacy”—compels the same conclusion because it very clearly encompasses *both* core political speech *and* voting assistance. *See Interaction*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/interaction> (last visited Sept. 24, 2024) (defining “interaction” means “mutual or reciprocal action or influence”). Nothing in the text of the Canvassing Restrictions suggests that a voter who asks a canvasser for voting assistance while discussing a ballot measure begins a new, distinct “interaction” that is no longer imbued with the canvasser’s original intent.

Appendix C

Section 208 but disqualified by S.B. 1 because that assistor is compensated (or receives an economic benefit) either to provide mail ballot assistance or to advocate for a ballot measure. *Fla. Lime & Avocado Growers*, 373 U.S. at 142–43.

Section 6.06’s exception for family members and “attendant or caregiver previously known to the voter” does nothing to save the rule from preemption. Implicitly acknowledging that neither “caregiver” nor “previously known to the voter” are defined in the Election Code, the State Defendants have taken the position that “[t]he ban on compensation applies only in the narrow circumstance when an individual is paid specifically to assist the voter with their ballot.” ECF No. 862 ¶ 653 (citing *Tr.* at 1902:4–8). The “caregiver or attendant” exception to Section 6.06 suggests that just the opposite is true. By exempting paid caregivers and attendants “to ensure that Section 6.06 would not interfere with their duties,” as the State Defendants describe it, Section 6.06 impliedly *does* interfere with the duties of *other* professionals who might provide mail-ballot assistance in the ordinary course of their employment. It would prohibit a high school teacher, for example, from providing mail-ballot assistance to students with disabilities during a civics unit. It would likewise prevent a legal aid attorney from translating his client’s mail ballot, and an activities director at an assisted living facility from helping disabled voters cast their BBMs.

Moreover, the State Defendants’ position squarely conflicts with testimony by their own witnesses. For

Appendix C

example, the State Defendants insist that nothing in Sections 6.06 or 7.04 prevent “individuals with paid jobs, such as canvassing, from assisting the voter.” ECF No. 862 ¶ 653.⁵⁹ At trial, however, Mr. White confirmed that Section 6.06 “appear[s] to apply to [the] scenario” in which a paid canvasser for a nonprofit Get Out the Vote organization engages with voters and provides mail ballot assistance at the voter’s request. Tr. at 3993:22-3995:10. Similarly, while the State Defendants purportedly endorse Mr. Ingram’s position that reimbursement is not “compensation,” *see* ECF No. 862 ¶ 653 (citing Tr. at 1903:10-1904:2), Mr. White testified that he would need to perform *legal research* to determine what kinds of economic benefits would violate Section 6.06. Tr. at 3992:20-3993:21 (conceding that he would need to “review[] the case law” to determine whether a meal, bus fare, or a gift bag containing a t-shirt constitute prohibited compensation).

Even if S.B. 1 purports to share Section 208’s goal of preventing voter coercion, Congress decided that

59. The State Defendants themselves have taken inconsistent positions on the question of whether Section 7.04 reaches voter assistance activity. *Compare* ECF No. 862 ¶ 653 (arguing that nothing prevents paid canvassers from providing voter assistance) with *La Union del Pueblo Entero v. Abbott*, No. 22-50775, ECF No. 92 at 2 (5th Cir. Oct. 9, 2024) (suggesting that an injunction against criminal enforcement of the Canvassing Restriction would somehow impact selectively quoted instructions pertaining to the Assistor Disclosure requirements). If, as the State Defendants would have it, the Canvassing Restriction always permitted paid canvassers to provide mail-ballot assistance, enjoining criminal enforcement of the Canvassing Restriction should have no impact on how canvassers provide such assistance.

Appendix C

an assistor of choice, as opposed to an election official, would best ensure that the voter's intent is carried out when marking the ballot. *See* H.R. Rep. No. 227, 97th Cong., 1st Sess. 14 (1981) (discussing need to deter coercion of voters by election officials). Thus, S.B. 1's voter assistance provisions "involve[] a conflict in the method of enforcement. The Court has recognized that a '[c]onflict in technique can be fully as disruptive to the system Congress erected as conflict in overt policy.'" *Arizona v. United States*, 567 U.S. at 406 (quoting *Motor Coach Employees v. Lockridge*, 403 U.S. 274, 287, 91 S. Ct. 1909, 29 L. Ed. 2d 473 (1971)).⁶⁰

60. Even under the State Defendants' proposed balancing test, Sections 6.06 and 7.04 would fail. The Senate Report states that any voter protection laws must be implemented to "encourage participation in the electoral process." S. Rep. No. 97-417 at 63 at 241. The trial record shows that several, non-partisan community organizations have stopped providing mail-ballot assistance to voters because they compensate their staff members (with salaries) and volunteers (with nominal gifts). *See*, e.g., Tr. at 1722:3–16 (OCA); Tr. at 86:9–86:13, 86:14–87:2, 87:3–87:21, 86:9–86:13, 86:14–87:2, 87:3–87:21 (LUPE); Tr. at 2543:14–2544:23 (MABA). Worse, both Mr. White and Mr. Ingram acknowledged that, in addition to exposing their assistants to criminal liability under Sections 6.06 and 7.04, voters themselves could face jail time under either provision for offering to buy their assistor lunch as a token of appreciation. Tr. at 1904:1–1906:5. Members of the League have stopped providing assistance at assisted living facilities based on this very concern. Tr. at 1620:7–1621:1. Threatening volunteers who accept water bottles and the voters who offer them with years in prison and thousands of dollars in fines can hardly be said to "encourage participation in the electoral process."

The State Defendants insist that these provisions protect voters from incentive structures that increase the likelihood of

Appendix C

The text of Section 208 does not permit the restrictions on the class of eligible assistors imposed by Sections 6.06 and 7.04 of S.B. 1. Accordingly, those provisions are preempted.

PERMANENT INJUNCTION OF S.B. 1 §§ 6.03-6.07 AND 7.04**Legal Standard**

A party seeking a permanent injunction must prove: (1) that it has succeeded on the merits; (2) that a failure to grant the injunction will result in irreparable injury; (3) that said injury outweighs any damage that the injunction will cause the opposing party; and (4) that the injunction will not disserve the public interest. *Valentine v. Collier*, 993 F.3d 270, 280 (5th Cir. 2021). The Court addresses each factor in turn.

assisters applying pressure on the voter in pursuit of partisan or ideological ends. But nothing in the text of either Section 6.06 or 7.04 limits the application of criminal liability to those who receive or offer compensation to “apply pressure” for partisan or ideological ends. Nor is there any evidence that bottles of water, t-shirts, bus fare, or a person’s receipt of their normal salary constitute “an incentive structure that increases the likelihood” of such pressure. Indeed, the State Defendants failed to proffer a shred of evidence showing that S.B. 1’s assistance provisions actually protect voters from undue influence or encourage participation by voters who need assistance. Weighed against the effect of excluding these broad categories of non-partisan assistors and exposing voters and assistors alike to criminal liability, the burden that Sections 6.06 and 7.04 impose on voters’ right to vote with assistance from a person of their choice cannot be justified by the State Defendants’ vague gesture toward voter protection.

Appendix C

Further, in accordance with Federal Rule of Civil Procedure 65(d)(1), an order granting a permanent injunction must “(A) state the reasons why it issued; (B) state its terms specifically; and (C) describe in reasonable detail . . . the act or acts restrained or required.” *Scott v. Schedler*, 826 F.3d 207, 208 (5th Cir. 2016) (quoting FED. R. CIV. P. 65(d)(1)). According to the Fifth Circuit, this means the injunction must not be vague or overbroad. *Id.* “[A]n injunction is overly vague if it fails to satisfy the specificity requirements set out in Rule 65(d)(1), and it is overbroad if it is not ‘narrowly tailor[ed] . . . to remedy the specific action which gives rise to the order’ as determined by the substantive law at issue.” *Id.* (quoting *Doe v. Veneman*, 380 F.3d 807, 813 (5th Cir. 2004)).

Analysis

Plaintiffs have satisfied all four factors required for injunctive relief. *Valentine*, 993 F.3d at 280.

First, for the reasons set forth in this order, the Court concludes that the Sections 6.03–6.07 and 7.04 of S.B. 1. are preempted, at least in part, by Section 208. Plaintiffs have thus succeeded on the merits of their Section 208 claims challenging those provisions.

Second, the Court concludes that failure to grant the requested injunction will result in irreparable injury to Plaintiffs and their members by interfering with voters’ rights and ability to vote with help from their chosen assistants.

Appendix C

Plaintiffs have established that Sections 6.03, 6.04, 6.05, and 6.07 of S.B. 1 have deterred members from requesting—and their chosen assistors from providing—voting assistance guaranteed under Section 208 due to the credible *threat* of enforcement. *See also Babbitt*, 442 U.S. at 302 (“a plaintiff need not first expose himself to actual arrest or prosecution” to establish a cognizable harm). As a result, voters, including some of Plaintiffs’ members, have forgone assistance to which they are lawfully entitled and will continue to do so as long as those provisions remain in effect. “Courts routinely deem restrictions on fundamental voting rights irreparable injury.” *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) (collecting cases); *see also Purcell v. Gonzalez*, 549 U.S. 1, 7, 127 S. Ct. 5, 166 L. Ed. 2d 1 (2006) (recognizing the “strong interest in exercising the fundamental political right to vote”) (citing *Dunn v. Blumstein*, 405 U.S. 330, 336, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972)).

Finally, it is clear to the Court that the injunction would not disserve the public interest, and, to the contrary, will serve the public interest by protecting individuals’ right to vote with help from their chosen assistors under Section 208 and their fundamental right to vote. *See Dunn*, 405 U.S. at 336 (stating that protecting the right to vote is of particular public importance because it is “preservative of all rights.”) (citing *Reynolds v. Sims*, 377 U.S. 533, 562, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964)).

Even recognizing the importance of the fundamental right to vote, a court must weigh any protective action

Appendix C

against the potential for confusion and disruption of the election administration under the “*Purcell* principle.” See *Benisek v. Lamone*, 585 U.S. 155, 138 S. Ct. 1942, 1945, 201 L. Ed. 2d 398 (2018). The *Purcell* principle provides that, as a general rule, federal courts “should not alter state election laws in the period close to an election.” *Democratic Nat’l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 208 L. Ed. 2d 247 (2020) (Kavanaugh, J., concurring) (upholding Seventh Circuit’s stay of injunction entered six weeks before the general election). In *Purcell*, the Supreme Court reversed a lower court’s order enjoining the implementation of a proposition, passed by ballot initiative two years earlier, that required voters to present identification when they voted on election day. Reversing the lower court, the Court emphasized that the injunction was likely to cause judicially-created voter confusion in the face of an imminent election. *Purcell*, 549 U.S. at 2, 6.

The Supreme Court has recognized that “[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase.” *Purcell*, 549 U.S. at 4–5. The *Purcell* principle’s logic extends only to injunctions that affect the mechanics and procedures of the act of voting. See, e.g., *Republican Nat’l Comm. v. Democratic Nat’l Comm.* (“*RNC v. DNC*”), 589 U.S. 423, 140 S. Ct. 1205, 1207, 206 L. Ed. 2d 452 (2020) (extension of absentee ballot deadline); *Mi Familia Vota v. Abbott*, 834 F. App’x 860, 863 (5th Cir. 2020) (mask mandate exemption for voters); *Tex. Alliance for Retired Ams. v.*

Appendix C

Hughs, 976 F.3d 564, 566–67 (5th Cir. 2020) (new ballot type eliminating straight-ticket voting); *Democratic Nat’l Comm. v. Wis. State Leg.*, 141 S. Ct. at 31 (extension of absentee ballot deadline).

Even when *Purcell* applies, however, it does not constitute an absolute bar on all injunctive relief in the runup to an election. See *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring). Rather, it directs courts to consider whether: (1) “the underlying merits are entirely clearcut in favor of the plaintiff;” (2) “the plaintiff would suffer irreparable harm absent the injunction;” (3) the “plaintiff has [] unduly delayed bringing the complaint to court;” and (4) “the changes in question are at least feasible before the election without significant cost, confusion, or hardship.” *Id.*; see also *Robinson v. Ardoin*, 37 F.4th 208, 228 n.11 (5th Cir. 2022) (per curiam) (citing *Merrill* concurrence as authority on *Purcell*). The Court concludes that Plaintiffs have satisfied the first three elements with respect to all their successful Section 208 challenges. Thus, the Court must determine, with respect to each challenged provision, whether the conduct to be enjoined affects the mechanics of voting and, if so, the feasibility of implementing any injunctive relief before the November 2024 election.

Injunctive relief as to the Secretary’s forms and instructions implicates Purcell.

Plaintiffs have succeeded on the merits of their Section 208 challenges to two forms designed by the Secretary of State: the “Oath of Assistance Form” used to collect

Appendix C

Assistor Disclosures at the polls (LUPE-189) and the mail ballot carrier envelope (LUPE-009). Specifically, she will be required to withdraw the Oath of Assistance Form, remove the “Relationship to Voter” line from the mail-ballot carrier envelope, and revise the Oath printed on the mail ballot carrier envelope to reflect the language below:

I swear (or affirm) that I will not suggest, by word, sign, or gesture, how the voter should vote; I will prepare the voter’s ballot as the voter directs; I am not the voter’s employer, an agent of the voter’s employer, or an officer or agent of a labor union to which the voter belongs; I will not communicate information about how the voter has voted to another person.

The Secretary will also be required to revise any training and instructional materials for state and county election officials to remove language that reflects the substance of the Enjoined Oath Language or the Voter Relationship Disclosure requirements. Any injunctive relief against the Secretary as to Sections 6.03, 6.04, 6.05, and 6.07 of S.B. 1 will plainly implicate *Purcell* and it is not feasible for the Secretary to redesign any of these materials in the weeks before the November 2024 general election.

Accordingly, the Court will stay any injunction applicable to the Secretary’s forms until after the November 2024 general election.

*Appendix C****Injunctive relief as to election officials' conduct implicates Purcell.***

Injunctive relief as to election officials' administration of the Oath and Assistor Disclosure requirements for both in-person and mail-in voting clearly implicates *Purcell*.

The Court will not enjoin the County Election Officials from using either of the forms prescribed by the Secretary of State in administering the November 2024 general election for the same reasons set forth above.

Of course, it would be feasible, in terms of both cost and hardship, to enjoin officials from giving *effect* to certain portions of the forms by, e.g., permitting assistors to skip the "Relationship to Voter" line on the disclosure form at the polls or accepting mail ballots omitting that information. It would be similarly feasible to direct officials to administer the revised Oath orally at the polls. Nonetheless, due to the potential for voter confusion about the procedural discrepancies between in-person and mail-in voting, the Court will not enjoin officials from implementing the requirements of Sections 6.03, 6.04, and 6.05 of S.B. 1 until after the November 2024 general election.

Enjoining enforcement proceedings does not implicate the Purcell principle.

With respect to criminal enforcement of S.B. 1 §§ 6.04, 6.05, 6.06, and 7.04, injunctive relief against the

Appendix C

State Defendants and County DAs would not affect the procedures for voting by mail from a voter's perspective.

Enjoining enforcement proceedings premised on violations of the Enjoined Oath Language, for example, does not require any changes to the Oath as it is printed on the mail ballot carrier envelope or the Oath of Assistance Form or any of the inserts used in the mail voting process. *See, e.g.*, LUPE-009 at 2; LUPE-189 at 2; Tex. Sec'y of State, Form 6-29, <https://perma.cc/N5FYXSCL>; Tex. Sec'y of State, Form 6-26, <https://perma.cc/QGT9-UH9E>.

The first insert urges voters to report “attempts to pressure or intimidate” them to their local county elections office, local district attorney, or the Secretary of State. To state the obvious, an injunction against enforcement has no impact on the general public's ability to report activity—criminal or otherwise—to the officials responsible for collecting such reports. Enjoining criminal enforcement of the Enjoined Oath Language would not impair any official's ability to enforce provisions of the Election Code criminalizing efforts to “pressure or intimidate” a voter. For example, the Election Code already imposes criminal penalties against “effort[s] to influence the independent exercise of the vote of another in the presence of the ballot or during the voting process,” TEC § 276.013, or voting (or attempting to vote) a ballot belonging to another person, or attempting to mark another person's ballot without their consent or specific direction, TEC § 64.012. Similarly, it is already a crime for an assistor to “suggest[] by word, sign, or gesture how the voter should vote” while providing such assistance or to “prepare[] the voter's ballot in a way

Appendix C

other than the way the voter directs or without direction from the voter.” TEC § 64.036.

The second insert explains to voters that their assistor’s failure to sign the Oath and complete the Assistor Disclosures is a state jail felony unless the person is one of certain close relatives of the voter or physically living in the same dwelling. Tex. Sec’y of State, Form 6-26, <https://perma.cc/QGT9-UH9E>. Again, the Court is not directing any change to the inserts, the Oath, or the Assistor Disclosure requirements at this time. Instead, injunctive relief against enforcement of the provisions would simply prevent the Secretary from referring alleged violations of the Enjoined Oath Language or the Voter Relationship Disclosure requirement to the Attorney General, and prevent the Attorney General and the State of Texas (through its local prosecutors) from investigating and prosecuting such violations.

The Election Code itself acknowledges a distinction between its administrative procedures and their enforcement. For example, the Oath of Assistance, printed on the mail ballot carrier envelope and Oath of Assistance Form, does not reflect the scienter requirement set forth in the criminal enforcement provision. *Compare* LUPE-009, LUPE-189, and TEC § 64.034 with TEC § 276.018. Likewise, the Election Code—and the forms that implement it—requires *all* assistors to complete the Assistor Disclosures. *See* LUPE-009, LUPE-189, and TEC § 64.0322. The provision imposing criminal liability on *some* mail-ballot assistors—but not others—who knowingly fail to comply with the requirements is codified

Appendix C

under a separate provision, TEC § 86.010(h)(2), but neither the distinction between types of assistors nor the scienter requirement appears on the BBM carrier envelope. *See* LUPE-009.

Any objection to enjoining criminal enforcement of the Enjoined Oath Language or Voter Relationship Disclosure requirement, in effect, amounts to an objection to the limited relief that the injunction will afford. That is, both requirements will undoubtedly continue to have some chilling effect on voter assistance in the November 2024 election. To be sure, with respect to the November 2024 election, Plaintiffs' prospective injuries will not be fully relieved. But *Purcell* does not require courts to double-down on the unjust effects of unlawful election rules by continuing to permit criminal enforcement of those provisions. *See Longoria v. Paxton*, 585 F. Supp. 3d 907, 935 (W.D. Tex. 2022) (less than three weeks before primary, enjoining statute criminalizing solicitation of vote-by mail applications), *vacated and remanded on other grounds*, 2022 U.S. App. LEXIS 17084, 2022 WL 2208519 (5th Cir. 2022); *Chancey v. Ill. State Bd. of Elections*, 635 F. Supp. 3d 627, 629–30, 644 (N.D. Ill. 2022) (declining to apply *Purcell* less than a month before an election, reasoning that an injunction of the campaign finance law at issue “did not implicate the same concerns” as *Purcell*, as because “it is difficult to imagine . . . that if relief is granted, then voters will be confused about whether, how, where, when, or for whom they can vote”); *Coal. for Good Governance v. Kemp*, 558 F. Supp. 3d 1370, 1393 (N.D. Ga. 2021) (enjoining SB 202 provision imposing criminal penalties one month before election); *Towbin v. Antonacci*, 885 F. Supp. 2d 1274, 1295–96 (S.D. Fla. 2012) (similar).

Appendix C

The Court is not considering a preliminary injunction of a new election law intended to mitigate its administrative consequences before an upcoming election. At most, *Purcell* justifies a temporary stay of otherwise *permanent* injunctive relief, and, even then, only to the extent that an injunction materially impacts election administration. The effect of an injunction prohibiting criminal enforcement is limited to the criminal realm. Indeed, injunctions against criminal enforcement are, by their nature, removed in space and time from the mechanics and procedures of voting. Prosecutions simply do not occur at the polls (or, as the case may be, during block-walking and candidate forums); they require investigation, evidence, and due process.

In the same vein, the Attorney General and County District Attorneys may very well be pursuing investigations and prosecutions arising out of violations of these provisions that occurred in *previous* elections. Regardless of the upcoming election, those investigations and prosecutions constitute enforcement of state laws that are preempted by Section 208 of the VRA. How could an injunction of such enforcement activity possibly implicate *Purcell*? Indeed, considering the State Defendants' continued reliance on the investigative privilege in the course of this litigation, it is difficult to imagine that voters are so accustomed to the enforcement of these provisions that they would be confused by an injunction that—for the purposes of November 2024 election—changes nothing about how or when they cast their ballot, by mail or in person.

Appendix C

Because criminal investigations and prosecutions necessarily follow the offending conduct in time, the only prospective interest that the AG and DAs can plausibly allege would be impaired by injunctive relief is the deterrent effect of the provisions arising from the threat of enforcement. However, given that the chilling effect on voting assistance is the very feature that renders the challenged provisions infirm under Section 208, permitting the State Defendants and local prosecutors to continue to threaten criminal enforcement is unlikely to serve the public interest.

CONCLUSION

For the foregoing reasons, the Court concludes that Sections 6.06 and 7.04 of S.B. 1 and portions of Sections 6.03, 6.04, 6.05, and 6.07 of S.B. 1 are preempted by Section 208 of the VRA.

The motions for summary judgment filed by the Intervenor-Defendants (ECF No. 608) and the Harris County District Attorney (ECF No. 614) are **DENIED** as to Plaintiffs' Section 208 claims.

The HAUL Plaintiffs' Section 208 challenge to S.B. 1 § 6.01 is **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction.

Section 6.04 (TEC § 64.034) – The Oath of Assistance

With respect to the HAUL and LUPE Plaintiffs' Section 208 challenges to S.B. 1 § 6.04, codified at TEC § 64.034:

Appendix C

The Court **DECLARES** that the following statements in the Oath of Assistance, codified at TEC § 64.034, are preempted by Section 208 of the Voting Rights Act:

- “under penalty of perjury that the voter I am assisting represented to me they are eligible to receive assistance”;
- “I did not pressure or coerce the voter into choosing me to provide assistance; and”
- “I understand that if assistance is provided to a voter who is not eligible for assistance, the voter’s ballot may not be counted.”

Plaintiffs’ challenges to the Oath’s statement that “I will not communicate information about how the voter has voted to another person” are dismissed.

The Attorney General and Secretary of State of Texas, the District Attorneys of Bexar County, Harris County, Travis County, Dallas County, Hidalgo County, and the 34th Judicial District, and their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, are **PERMANENTLY ENJOINED** from implementing, enforcing, or giving any effect to the following language in the Oath of Assistance, codified at TEC § 64.034 (the “Enjoined Oath Language”):

- “under penalty of perjury that the voter I am assisting represented to me they are eligible to receive assistance”;

Appendix C

- “I did not pressure or coerce the voter into choosing me to provide assistance; and” and
- “I understand that if assistance is provided to a voter who is not eligible for assistance, the voter’s ballot may not be counted.”

Nothing in this order should be read to enjoin the Attorney General, the Secretary, or the County District Attorneys from enforcing the surviving portions of the Oath under TEC § 276.018(b).

Accordingly, the Attorney General may not investigate potential violations, refer potential violations to District Attorneys for investigation or prosecution, or prosecute any potential violation of the Enjoined Oath Language with the consent or at the request of any county or local prosecutor or appointment *pro tem* by a district judge. Likewise, all county and local prosecutors are permanently enjoined from deputizing the Attorney General, appointing him *pro tem*, or seeking his appointment *pro tem* from or by a district judge to prosecute alleged violations of the Enjoined Oath Language that occur within their jurisdictions.

In the interest of clarity, injunctions against enforcement extend to civil penalties and civil investigations and enforcement proceedings (e.g., writs of mandamus) against election officials pursuant to Section 8.01 of S.B. 1 (codified at TEC §§ 31.129, 31.130),

Appendix C

The Secretary of State is **PERMANENTLY ENJOINED** from implementing the Enjoined Oath Language. The Secretary shall revise any applicable forms and training and instructional materials for state and county election officials to remove language that reflects the substance of the Enjoined Oath Language. This injunction is **STAYED**, however, **until after the November 2024 general election**.

The Bexar County Elections Administrator, Harris County Clerk, Dallas County Elections Administrator, and El Paso County Elections Administrator are **PERMANENTLY ENJOINED** from implementing the Enjoined Oath Language. This injunction is **STAYED**, however, **until after the November 2024 general election**. Nothing in this order should be read, however, to prevent local election officials from providing reasonable accommodations to voters consistent with TEC § 1.022.

Sections 6.03, 6.05, 6.07 (TEC § 64.034) – Voter Relationship Disclosure

With respect to the LUPE and HAUL Plaintiffs' Section 208 challenges to S.B. 1 §§ 6.03, 6.05, and 6.07:

The Court **DECLARES** that the Oath of Assistance Form and Voter Relationship Disclosure requirement, codified at TEC §§ 64.0322(a)(2) and 86.010(e)(2) (and implemented by TEC §§ 64.0322(b) and 86.013(b)) are preempted by Section 208 of the Voting Rights Act.

Appendix C

The State Defendants and their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, are **PERMANENTLY ENJOINED** from implementing, enforcing, or giving any effect to TEC § 86.010(e)(2). All county and local prosecutors are agents of the State of Texas in prosecuting crimes under the Election Code. *Stephens*, 663 S.W.3d at 52.

Accordingly, the Attorney General may not investigate potential violations of TEC § 86.0105, refer potential violations of TEC § 86.010(e)(2) to county or local prosecutors for investigation or prosecution, or prosecute any potential violation of TEC § 86.010(e)(2) with the consent or at the request of any county or local prosecutor or appointment *pro tem* by a district judge. Likewise, all county and local prosecutors, as agents of the State of Texas, are permanently enjoined from deputizing the Attorney General, appointing him *pro tem*, or seeking his appointment *pro tem* from or by a district judge to prosecute alleged violations of TEC § 86.010(e)(2) that occur within their jurisdictions.

In the interest of clarity, injunctions against enforcement extend to civil penalties and civil investigations and enforcement proceedings (e.g., writs of mandamus) against election officials pursuant to Section 8.01 of S.B. 1 (codified at TEC §§ 31.129, 31.130).

The Secretary of State is **PERMANENTLY ENJOINED** from implementing the Voter Relationship Disclosure requirement. The Secretary shall revise all

Appendix C

applicable forms and training and instructional materials for state and county election officials to remove language that reflects the substance of the Voter Relationship Disclosure requirement. This injunction is **STAYED**, however, **until after the November 2024 general election**.

The Bexar County Elections Administrator, Harris County Clerk, Dallas County Elections Administrator, and El Paso County Elections Administrator are **PERMANENTLY ENJOINED** from using the Oath of Assistance Form (LUPE-189) or implementing the Voter Relationship Disclosure requirement. This injunction is **STAYED**, however, **until after the November 2024 general election**. Nothing in this order should be read, however, to prevent local election officials from providing reasonable accommodations to voters consistent with TEC § 1.022.

Section 6.06 (TEC § 86.0105) – Ban on Compensated Mail-Ballot Assistance

With respect to the OCA and LUPE Plaintiffs' Section 208 challenges to S.B. 1 § 6.06:

The Court **DECLARES** that the ban on compensated mail-ballot assistance, codified at TEC § 86.0105, is preempted by Section 208 of the Voting Rights Act.

The State Defendants, and their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, are **PERMANENTLY ENJOINED** from implementing, enforcing, or giving any

Appendix C

effect to TEC § 86.0105. All county and local prosecutors are agents of the State of Texas in prosecuting crimes under the Election Code. *Stephens*, 663 S.W.3d at 52.

Accordingly, the Attorney General may not investigate potential violations of TEC § 86.0105, refer potential violations of TEC § 86.0105 to county or local prosecutors for investigation or prosecution, or prosecute any potential violation of TEC § 86.0105 with the consent or at the request of any county or local prosecutor or appointment *pro tem* by a district judge. Likewise, all county and local prosecutors, as agents of the State of Texas, are permanently enjoined from deputizing the Attorney General, appointing him *pro tem*, or seeking his appointment *pro tem* from or by a district judge to prosecute alleged violations of TEC § 86.0105 that occur within their jurisdictions.

The OCA and LUPE Plaintiffs' Section 208 claims challenging S.B. 1 § 6.06 against the Harris County Clerk, Travis County Clerk, Dallas County Elections Administrator, and El Paso County Elections Administrator, as applicable, are **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction.

Section 7.04 (TEC § 276.015) – Canvassing Restriction

With respect to the LUPE and LULAC Plaintiffs' Section 208 challenges to S.B. 1 § 7.04:

The Court **DECLARES** that the Canvassing Restriction, codified at TEC § 276.015, is preempted by Section 208 of the Voting Rights Act.

Appendix C

The State Defendants and their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, are **PERMANENTLY ENJOINED** from implementing, enforcing, or giving any effect to TEC § 86.0105. All county and local prosecutors are agents of the State of Texas in prosecuting crimes under the Election Code. *Stephens*, 663 S.W.3d at 52.

Accordingly, the Attorney General may not investigate potential violations of TEC § 276.015, refer potential violations of TEC § 276.015 to county or local prosecutors for investigation or prosecution, or prosecute any potential violation of TEC § 276.015 with the consent or at the request of any county or local prosecutor or appointment *pro tem* by a district judge. Likewise, all county and local prosecutors, as agents of the State of Texas, are permanently enjoined from deputizing the Attorney General, appointing him *pro tem*, or seeking his appointment *pro tem* from or by a district judge to prosecute alleged violations of TEC § 276.015 that occur within their jurisdictions.

The LUPE and LULAC Plaintiffs' Section 208 claims challenging S.B. 1 § 7.04 against the Dallas County Elections Administrator, El Paso County Elections Administrator, Bexar County Elections Administrator, Travis County Clerk, Harris County Clerk, and Hidalgo County Elections Administrator, as applicable, are **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction.

222a

Appendix C

It is so **ORDERED**.

SIGNED this 11th day of October, 2024.

/s/ Xavier Rodriguez
XAVIER RODRIGUEZ
UNITED STATES
DISTRICT JUDGE

**Appendix D —
Relevant Statutory Provisions**

1. Section 208 of the Voting Rights Act, codified at 52 U.S.C. § 10508, 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.

Appendix D

2. Texas Election Code § 86.010 provides:

Sec. 86.010. UNLAWFULLY ASSISTING VOTER VOTING BALLOT BY MAIL. (a) A voter casting a ballot by mail who would be eligible under Section 64.031 to receive assistance at a polling place may select a person as provided by Section 64.032(c) to assist the voter in preparing the ballot.

(b) Assistance rendered under this section is limited to that authorized by this code at a polling place, except that a voter with a disability who is physically unable to deposit the ballot and carrier envelope in the mail may also select a person as provided by Section 64.032(c) to assist the voter by depositing a sealed carrier envelope in the mail.

(c) The person assisting the voter must sign a written oath prescribed by Section 64.034 that is part of the certificate on the official carrier envelope.

(d) If a voter is assisted in violation of this section, the voter's ballot may not be counted.

(e) A person who assists a voter to prepare a ballot to be voted by mail shall enter on the official carrier envelope of the voter:

(1) the person's signature, printed name, and residence address;

(2) the relationship of the person providing the assistance to the voter; and

Appendix D

(3) whether the person received or accepted any form of compensation or other benefit from a candidate, campaign, or political committee in exchange for providing assistance.

(f) A person who assists a voter commits an offense if the person knowingly fails to comply with Subsections (c) and (e).

(g) An offense under this section is a state jail felony.

(h) Subsection (f) does not apply:

(1) to a violation of Subsection (c), if the person is related to the voter within the second degree by affinity or the third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code, or was physically living in the same dwelling as the voter at the time of the event; or

(2) to a violation of Subsection (e), if the person is related to the voter within the second degree by affinity or the third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code.

(i) An offense under this section for a violation of Subsection (c) is increased to the next higher category of offense if it is shown on the trial of an offense under this section that:

(1) the defendant was previously convicted of an offense under this code;

226a

Appendix D

(2) the offense involved a voter 65 years of age or older; or

(3) the defendant committed another offense under this section in the same election.

(j) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

Appendix D

3. Texas Election Code § 86.0105 provides:

Sec. 86.0105. COMPENSATION FOR ASSISTING VOTERS PROHIBITED.

(a) A person commits an offense if the person:

(1) compensates or offers to compensate another person for assisting voters as provided by Section 86.010; or

(2) solicits, receives, or accepts compensation for an activity described by Subdivision (1).

(b) Repealed by Acts 2021, 87th Leg., 2nd C.S., Ch. 1 (S.B. 1), Sec. 10.01(2), eff. December 2, 2021.

(c) An offense under this section is a state jail felony.

(d) An officer, director, or other agent of an entity that commits an offense under this section is punishable for the offense.

(e) For purposes of this section, compensation means an economic benefit as defined by Section 38.01, Penal Code.

(f) This section does not apply if the person assisting a voter is an attendant or caregiver previously known to the voter.

Appendix D

4. Texas Penal Code § 38.01 provides:

Sec. 38.01. DEFINITIONS. In this chapter:

(1) “Custody” means:

(A) under arrest by a peace officer or under restraint by a public servant pursuant to an order of a court of this state or another state of the United States; or

(B) under restraint by an agent or employee of a facility that is operated by or under contract with the United States and that confines persons arrested for, charged with, or convicted of criminal offenses.

(2) “Escape” means unauthorized departure from custody or failure to return to custody following temporary leave for a specific purpose or limited period or leave that is part of an intermittent sentence, but does not include a violation of conditions of community supervision or parole other than conditions that impose a period of confinement in a secure correctional facility.

(3) “Economic benefit” means anything reasonably regarded as an economic gain or advantage, including accepting or offering to accept employment for a fee, accepting or offering to accept a fee, entering into a fee contract, or accepting or agreeing to accept money or anything of value.

(4) “Finance” means to provide funds or capital or to furnish with necessary funds.

Appendix D

(5) “Fugitive from justice” means a person for whom a valid arrest warrant has been issued.

(6) “Governmental function” includes any activity that a public servant is lawfully authorized to undertake on behalf of government.

(7) “Invest funds” means to commit money to earn a financial return.

(8) “Member of the family” means anyone related within the third degree of consanguinity or affinity, as determined under Chapter 573, Government Code.

(9) “Qualified nonprofit organization” means a nonprofit organization that meets the following conditions:

(A) the primary purposes of the organization do not include the rendition of legal services or education regarding legal services;

(B) the recommending, furnishing, paying for, or educating persons regarding legal services is incidental and reasonably related to the primary purposes of the organization;

(C) the organization does not derive a financial benefit from the rendition of legal services by a lawyer; and

(D) the person for whom the legal services are rendered, and not the organization, is recognized as the client of a lawyer.

Appendix D

(10) “Public media” means a telephone directory or legal directory, newspaper or other periodical, billboard or other sign, radio or television broadcast, recorded message the public may access by dialing a telephone number, or a written communication not prohibited by Section 38.12(d).

(11) “Solicit employment” means to communicate in person or by telephone with a prospective client or a member of the prospective client’s family concerning professional employment within the scope of a professional’s license, registration, or certification arising out of a particular occurrence or event, or series of occurrences or events, or concerning an existing problem of the prospective client within the scope of the professional’s license, registration, or certification, for the purpose of providing professional services to the prospective client, when neither the person receiving the communication nor anyone acting on that person’s behalf has requested the communication. The term does not include a communication initiated by a family member of the person receiving a communication, a communication by a professional who has a prior or existing professional-client relationship with the person receiving the communication, or communication by an attorney for a qualified nonprofit organization with the organization’s members for the purpose of educating the organization’s members to understand the law, to recognize legal problems, to make intelligent selection of legal counsel, or to use available legal services. The term does not include an advertisement by a professional through public media.

231a

Appendix D

(12) “Professional” means an attorney, chiropractor, physician, surgeon, private investigator, or any other person licensed, certified, or registered by a state agency that regulates a health care profession.

232a

**Appendix E —
Excerpts of S.B. No. 1**

S. B. No. 1

AN ACT

relating to election integrity and security, including by preventing fraud in the conduct of elections in this state; increasing criminal penalties; creating criminal offenses.

BE IT ENACTED BY THE LEGISLATURE OF
THE STATE OF TEXAS:

* * *

SECTION 6.06. Section 86.0105, Election Code, is amended by amending Subsections (a), (c), and (e) and adding Subsection (f) to read as follows:

(a) A person commits an offense if the person:

(1) ~~compensates or offers to compensate~~ another person for assisting voters as provided by Section 86.010[; as part of any performance based compensation scheme based on the number of voters assisted or in which another person is presented with a quota of voters to be assisted as provided by Section 86.010]; or

(2) solicits, receives, or ~~[engages in another practice that cause another person's compensation from or employment status with the person to be dependent on the number of voters assisted as provided by Section 86.010; or~~

233a

Appendix E

~~[(3)—with knowledge that accepting compensation for such activity is illegal,]~~ accepts compensation for an activity described by Subdivision (1) ~~[or (2)]~~.

(c) An offense under this section is a state jail felony ~~[if it is shown on the trial of an offense under this section that the defendant was previously convicted two or more times under this section]~~.

(e) For purposes of this section, compensation means an economic benefit as defined by Section 38.01, Penal Code ~~[any form of monetary payment, goods, services, benefits, or promises or offers of employment, or any other form of consideration offered to another person in exchange for assisting voters]~~.

(f) This section does not apply if the person assisting a voter is an attendant or caregiver previously known to the voter.

* * * *