UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

DISABILITY RIGHTS LOUISIANA, *Plaintiff,* v. NANCY LANDRY, in her official capacity as Secretary of State of the State of Louisiana, and ELIZABETH MURRILL, in her official capacity as Attorney General of the State of Louisiana, *Defendants.*	Civil Action No. 3:24-554-JWD-SDJ Judge John W. DeGravelles Magistrate Judge Scott D. Johnson

STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA REGARDING SECTION 208 OF THE VOTING RIGHTS ACT

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INTEREST OF THE UNITED STATES

The United States respectfully submits this Statement of Interest pursuant to 28 U.S.C. § 517, which authorizes the Attorney General "to attend to the interests of the United States in a suit pending in a court of the United States." Congress has vested the Attorney General with the authority to enforce Section 208 of the Voting Rights Act (VRA) on behalf of the United States. 52 U.S.C. §§ 10307(a), 10308(d). Accordingly, the United States has a substantial interest in ensuring the proper interpretation of Section 208.

The United States takes no position on any factual dispute before the Court or on any legal questions beyond those addressed in this brief.

INTRODUCTION

Section 208 provides that voters with disabilities or an inability 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. Accordingly, State laws that restrict a voter's choice of assistor beyond the two exceptions provided by federal law, or that impose additional limits on assistors, raise preemption concerns under the Supremacy Clause of the U.S. Constitution.

Plaintiff alleges that Louisiana Act No. 302 (formerly SB 155), Act No. 317 (formerly SB 218), Act No. 380 (formerly HB 476), Act No. 712 (formerly HB 581), and La. Stat. Ann. § 18:1306(E)(2)(a),[1] (hereinafter referred to as "Challenged Statutes") violate Section 208 by restricting who may help voters with disabilities in submitting their absentee ballots and ballot

[1] In addition to the four laws signed this year by Louisiana's governor, Plaintiff also challenges La. Stat. Ann. § 18:1306(E)(2)(a), which came into effect following the enactment in 2020 of Louisiana Act 210 (formerly SB 75). According to Plaintiff, the challenged language from that statute "did not have any teeth until Louisiana Act No. 302 (formerly SB 155) and Louisiana Act No. 712 (formerly HB 581) were recently passed." First Am. Compl. ¶ 4 n.1, ECF No. 39.

applications, and who may serve as a required witness for those absentee ballots and ballot applications. *See* First Am. Compl. ¶¶ 4-7.

Defendant Secretary of State Nancy Landry counters that Plaintiff has failed to state a claim under Section 208 because Plaintiff has not alleged that Defendants have imposed an "undue burden" on the right to receive assistance from a person of the voter's choice. Def. Landry's Mem. Supp. Mot. Dismiss First Am. Compl. ("Landry Mem.") 26, ECF No. 51-1. Defendant Landry's attempt to graft an atextual "undue burden" standard onto Section 208's plain text is misguided and should be rejected. Defendant Landry also argues that the Challenged Statutes are not preempted by Section 208 because a violation of the Challenged Statutes cannot invalidate an individual's vote. Landry Mem. 27. Here, too, Defendant Landry is mistaken. Section 208's plain text preempts any state law that restricts who may assist a protected voter beyond the statute's two enumerated exceptions (an employer or union representative), whether or not the restriction would invalidate a vote.[2]

Accordingly, the United States respectfully submits this brief to clarify the proper legal framework for addressing the claims raised in this case under Section 208.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff categorizes the Challenged Statutes into two groups. First, Plaintiff alleges that Act No. 380 (formerly HB 476) and Act No. 317 (formerly SB 218), together referred to by

[2] Defendant Attorney General Elizabeth Murrill incorrectly contends that Plaintiff's claims against her are barred by sovereign immunity. Def. Murrill's Mem. Supp. Mot. Dismiss First Am. Compl. ("Murrill Mem.") 2, ECF No. 46-1. Count I of Plaintiff's Amended Complaint ("VIOLATION OF THE VOTING RIGHTS ACT – DIRECT CLAIM"), First Am. Compl. ¶¶ 153-160, is not barred by sovereign immunity because the VRA, "which Congress passed pursuant to its Fifteenth Amendment enforcement power, validly abrogate[s] state sovereign immunity," *OCA-Greater Houston v. Texas*, 867 F.3d 604, 614 (5th Cir. 2017); *Robinson v. Ardoin*, 86 F.4th 574, 588 (5th Cir. 2023) ("[T]he Voting Rights Act abrogated the state sovereign immunity anchored in the Eleventh Amendment"). Sovereign immunity thus offers Defendant Murrill "no shield" with respect to Count I. *OCA-Greater Houston*, 867 F.3d at 614. The United States takes no position as to whether Count II of Plaintiff's Amended Complaint ("42 U.S.C. § 1983 – VIOLATION OF THE VOTING RIGHTS ACT"), First Am. Compl. ¶¶ 161-69, is barred by sovereign immunity.

Plaintiff as the "One Delivery Restriction," violate Section 208 by criminalizing voter assistance if the assistor delivers more than one voter's absentee ballot or ballot application and is not an immediate family member of the voter. First Am. Compl. ¶¶ 6, 43-45, 52-57. Second, Plaintiff claims that Act No. 712 (formerly HB 581) and Act No. 302 (formerly SB 155), along with La. Stat. Ann. § 18:1306(E)(2)(a), together referred to by Plaintiff as the "One Witness Restriction," violate Section 208 by criminalizing the act of serving as a witness on more than one voter's ballot or assisting with the certificate of more than one voter unless the voter is an immediate family member. *Id.* ¶¶ 7, 58-65.[3] According to Plaintiff, Act. No. 302 now provides criminal penalties for violating La. Stat. Ann. § 18:1306(E)(2)(a)'s prohibition against witnessing more than one ballot or offering assistance for the certificate of more than one ballot. *Id.* ¶ 61.

Plaintiff alleges that the Challenged Statutes violate Section 208 by prohibiting voters with disabilities or an inability to read or write from receiving assistance from someone they choose when completing, submitting, or mailing their absentee ballot application. Plaintiff also alleges that the Challenged Statutes threaten criminal liability for caretakers and healthcare professionals chosen to assist voters covered by Section 208. *Id.* ¶ 33.

STATUTORY BACKGROUND

Section 208 states 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. The VRA defines the terms "vote" and "voting" broadly to encompass "all action necessary to make a vote effective." *Id.* § 10310(c)(1). This includes,

[3] Under Louisiana law, each absentee ballot must be accompanied by a certificate signed by the voter and a witness. First Am. Compl. ¶ 59; *see also* La. Stat. Ann. § 18:1306(E)(2)(a).

but is not limited to, any "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." *Id.*

Section 208 was enacted in 1982 after Congress found that "[c]ertain discrete groups of citizens are unable to exercise their rights to vote without obtaining assistance in voting." S. Rep. No. 97-417, at 62 (1982) ("Senate Report"). Congress also found that not only were these voters "more susceptible than the ordinary voter to having their vote unduly influenced or manipulated," but also that some individuals with disabilities chose not to vote altogether rather than rely on someone whom they did not choose to assist them in voting. *Id*. To address these challenges, Congress decided that these voters "must be permitted to have the assistance of a person of their own choice," with the only exceptions being agents of the voter's employer or union. *Id.* at 62, 64. This solution was "the only way to assure meaningful voting assistance and to avoid possible intimidation or manipulation of the voter." *Id.* at 62.

ARGUMENT

"[S]tate law is naturally preempted to the extent of any conflict with a federal statute." *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000). Conflict preemption exists when "'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.'" *Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373, 377 (2015) (quoting *California v. ARC America Corp.*, 490 U.S. 93, 100-101 (1989)); *see also Carey v. Wisconsin Elections Comm'n*, 624 F. Supp. 3d 1020, 1032 (W.D. Wis. 2022) (citations omitted). Determining whether a state law is preempted by federal law is "a matter of judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects." *Crosby*, 530 U.S. at 373. Congressional purpose is "the ultimate touchstone in every pre-emption case," and "any

understanding of the scope of a pre-emption statute must rest primarily on a fair understanding of congressional purpose." *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485-86 (1996) (internal citations omitted).

Section 208's text is plain: voters with disabilities or those who cannot read or write are entitled to voting assistance by anyone the voter chooses, except an agent of the voter's employer or union. Defendant Landry's attempt to constrict Section 208's scope by importing "undue burden" and "vote denial" analyses must be rejected. Section 208's purpose is reflected in the statute's plain and unambiguous text. States may not rewrite that text to impose additional restrictions on voter assistance beyond Section 208's two enumerated exceptions.

I. The Court should reject Defendant Landry's attempt to inject an "undue burden" analysis into Section 208.

Defendant Landry argues that Plaintiff has failed to state a Section 208 claim because Plaintiff failed to allege that the Challenged Statutes impose an "undue burden" on a voter's right to receive assistance, "as required to state a claim for preemption by the Voting Rights Act." Landry Mem. 26. That atextual argument fails.

To determine whether a federal law preempts a state law, courts must first look to the text of the statute. *League of Women Voters of Ohio v. LaRose*, No. 1:23-CV-02414, 2024 WL 3495332, at *9 (N.D. Ohio July 22, 2024) (citing *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 98 (2003) ("Our precedents make clear that the starting point for our analysis is the statutory text."). If the statute's words are unambiguous, "the judicial inquiry is complete." *Desert Palace*, 539 U.S. at 98 (cleaned up) (quotation and citation omitted). The "one, cardinal canon before all others" in statutory interpretation is that Congress "says in a statute what it means and means in a statute what it says.'" *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). Importantly,

courts have a "duty to refrain from reading a phrase into [a] statute when Congress has left it out." *Keene Corp. v. United States*, 508 U.S. 200, 208 (1993).

Section 208's text is explicit. *See OCA-Greater Houston v. Texas*, 867 F.3d at 614. It guarantees certain voters the right to 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. No other exceptions are provided, and "nothing in the text of Section 208 allows states to impose additional limitations or exceptions not stated in the statute." *La Union Del Pueblo Entero v. Abbott (LUPE)*, No. 5:21–CV–0844–XR, 2024 WL 4488082, at *44 (W.D. Tex. Oct. 11, 2024); *id.* at *45 ("[N]othing in [Section 208] suggests that extra-textual exceptions can be imposed or implied."); *see also Med. Ctr. Pharm. v. Mukasey*, 536 F.3d 383, 395 (5th Cir. 2008) (quoting *United States v. Johnson*, 529 U.S. 53, 58 (2000) ("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.'")). Under Section 208, the permissible restrictions on a voter's choice of assistor are those that Congress provided. With the exceptions of the voter's employer or union representative, Congress passed Section 208 to allow voters to choose any assistor who is available and willing.

Because Section 208's purpose is clear from its text, "the judicial inquiry [into congressional purpose] is complete." *Desert Palace*, 539 U.S. at 98 (quotation and citation omitted). The preemption analysis is thus straightforward: under the Supremacy Clause of the U.S. Constitution, the Challenged Statutes are preempted if (i) compliance with both the Challenged Statutes and Section 208 is impossible, or (ii) if the Challenged Statutes stand as an obstacle to Section 208's purpose. *Oneok*, 575 U.S. at 377. Federal courts have repeatedly held that further state restrictions of a voter's choice of an assistor beyond the voter's employer or

union representative are preempted. *See, e.g.*, *OCA-Greater Houston*, 867 F.3d at 615; *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 235-36 (M.D.N.C. 2020); *Disability Rts. N.C. v. N.C. State Bd. of Elections (Disability Rts. N.C. I)*, 602 F. Supp. 3d 872, 877-78 (E.D.N.C. 2022).

However, in an attempt to circumvent Section 208's plain text, Defendant Landry argues that states may further limit and narrow the right to assistance set out in Section 208 as long as such limitations do not constitute an "undue burden" on the right to assistance. But such an "undue burden" test has no applicability in this federal preemption context. The Supreme Court has set the test for preemption, *see Oneok*, 575 U.S. at 377, and Defendant may not substitute a new test simply because the Challenged Statutes fail that required inquiry. Defendant Landry's attempt to evade this conclusion by noting her gloss of an isolated excerpt from the Senate Report accompanying the VRA, *see* Landry Mem. 26, is unavailing. What matters here is the text of Section 208 as enacted, which is incompatible with the Challenged Statutes. Courts cannot "resort to legislative history to cloud a statutory text that is clear." *Ratzlaf v. United States*, 510 U.S. 135, 147-48 (1994).[4]

Although a lone district court in August found Section 208's language to be ambiguous, *Alabama State Conf. of NAACP v. Marshall (Marshall)*, No. 2:24-CV-00420-RDP, 2024 WL

[4] To the extent that this Court nonetheless finds legislative history to be relevant, Defendant Landry mispresents the Senate Report, which reflects the same purpose set forth in Section 208's unambiguous text. Immediately after acknowledging that states may legislate in this area, the Senate Report states that "*at the least*, members of each group are entitled to assistance from a person of their own choice." Senate Report at 63 (emphasis added); *see also Disability Rts. N.C. I*, 602 F. Supp. 3d at 880 ("[G]iven the context of the legislative discussion around Section 208, it is unlikely that the Senate intended to permit state election procedures that directly restrict rights [to voter choice] guaranteed by the text of Section 208."). In this case, "Congress contemplated the vulnerability of disabled voters when it discussed providing unrestricted choice of assistants and provided two explicitly excluded groups. States are not permitted to limit the right to assistance further." *Disability Rts. N.C. v. N.C. State Bd. of Elections (Disability Rts. N.C. II)*, No. 5:21-CV-361-BO, 2022 WL 2678884, at *5 (E.D.N.C. July 11, 2022).

3893426, at *28 (N.D. Ala. Aug. 21, 2024), that very same court in September "easily conclude[d]" that the state laws at issue in that case (a "Submission Restriction," which criminalized returning a potential voter's absentee ballot application, and "Payment and Gift Provisions," which criminalized the exchange of anything of value between a voter and a third party for assistance related to a voter's absentee ballot application) were preempted by Section 208 and entered a preliminary injunction enjoining those statutes, *Marshall*, 2024 WL 4282082, at *2, *6 (N.D. Ala. Sept. 24, 2024). Further, the two cases that the August decision cited to posit that Section 208's text is unclear are dubious. First, *Ray v. Texas*, No. 2-06-CV-385-TJW, 2008 WL 3457021 (E.D. Tex. Aug. 7, 2008) was later abrogated by *OCA-Greater Houston*, 867 F.3d 604. Second, *Priorities USA v. Nessel*, 628 F. Supp. 3d 716 (E.D. Mich. 2022) flouts the settled canon that enumerated statutory exceptions are presumed to be exclusive and overlooks the importance of voter choice as Congress's chosen remedy. *Compare Nessel*, 628 F. Supp. 3d at 732-33 (relying on dictionary definition of "a" to interpret Section 208), *with Niz-Chavez v. Garland*, 593 U.S. 155, 162 (2021) (explaining that courts must look at the statutory context to determine the meaning of "a"); *see also LUPE*, 2024 WL 4488082, at *44 n.50 (reaching same conclusion to reject *Nessel*); U.S. Statement of Interest 6-7, *LaRose*, 2024 WL 3495332, ECF. No. 55.

For the reasons set forth more fully in the United States' Statement of Interest in *Marshall*, *see* U.S. Statement of Interest, *Marshall*, 2024 WL 3893426, ECF No. 51, the August *Marshall* order also cannot be reconciled with Section 208's text or Fifth Circuit precedent. *See United States v. Naranjo*, 259 F.3d 379, 382 (5th Cir. 2001) ("'Such a violation' . . . refers to . . . any violation"); *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.'") (collecting cases).

Other courts have also declined to read an undue burden inquiry into Section 208. *See LaRose*, 2024 WL 3495332, at *10 n.5 (declining to consider arguments regarding Section 208's legislative history "because the statute is clear and unambiguous…[and] there is nothing contained in the text of the statute that requires a court to consider undue burden") (cleaned up); *Arkansas United v. Thurston*, No. 5:20-CV-5193, 2020 WL 6472651, at *4 (W.D. Ark. Nov. 3, 2020) (declining to "import the undue-burden standard from First Amendment jurisprudence into a straightforward conflict preemption analysis" because "there is nothing in the statutory language to suggest that a state may burden, unduly or otherwise, the right articulated in § 208."); *accord Disability Rts. N.C. II*, 2022 WL 2678884, at *4.

This Court should likewise decline Defendant Landry's attempt to inject an undue burden standard into Section 208 that Congress neither wrote nor intended.

II. Section 208 preempts a state law that restricts voter assistance beyond the statute's enumerated exceptions, regardless of whether a vote has been invalidated.

Defendant Landry also posits that Section 208 does not preempt the Challenged Statutes because a violation of those laws does not invalidate an individual's vote. Landry Mem. 27. This argument erroneously grafts a vote-denial standard onto Section 208 that, again, lacks a textual basis. Again, Section 208 protects the right of a voter with disabilities to an assistor of his or her choice, subject only to the limitations supplied by Congress. To determine whether Section 208 preempts a state law, courts properly consider whether a state law "impermissibly narrows the right guaranteed by Section 208 of the VRA." *OCA-Greater Houston*, 867 F.3d at 615; *Disability Rts. N.C. II*, 2022 WL 2678884, at *5. Whether a vote has been nullified or denied is not relevant to this analysis.

Section 208 neither contains nor countenances such an absolute showing of harm. Under Defendant Landry's test, a voter could be denied all assistance, or forced to rely on a potentially coercive assistor whom they did not choose, without violating Section 208 so long as they managed to cast a ballot. But there is no basis for such an extreme construction of Section 208, one that would essentially nullify the right to assistance that Congress set out to protect.

Of course, Congress knew well how to create a vote-denial standard, and it did so in Sections 2 and 4 of the VRA. *See* Voting Rights Act of 1965 § 2, 52 U.S.C. § 10301(a) (barring any voting procedure that results in the denial of the right to vote on account of race or color); *id.* § 4, 52 U.S.C. § 10303(a)(1)(A) (banning the use of any "test or device" employed "for the purpose or with the effect of denying or abridging the right to vote on account of race or color" by certain covered states). "[W]hen Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Collins v. Yellen*, 594 U.S. 220, 248 (2021) (citation omitted); *accord VanDerStok v. Garland*, 86 F.4th 179, 189 (5th Cir. 2023), *cert. granted*, 144 S. Ct. 1390 (2024); *Alabama*, 778 F.3d at 933. Even further, Sections 2 and 4 of the VRA do not require complete disenfranchisement to establish a claim under these provisions. *See* 52 U.S.C. § 10301(b) (requiring assessment of whether minority voters have "less opportunity" to participate and elect representatives of choice); *accord Veasey v. Abbott*, 830 F.3d 216, 253 (5th Cir. 2016) (holding that Section 2 applies not only to "outright *denial*" but also "*abridgement* of the right to vote") (emphases in original); *cf.* 52 U.S.C. § 10303(a)(1)(A) (barring any "test or device" used to "deny *or abridge* the right to vote") (emphasis added) (cleaned up).

Regardless, had Congress intended to require a vote-denial standard for Section 208, it could have done so as it expressly did in Sections 2 and 4 of the VRA. *See Russello v. U.S.*, 464 U.S. 16, 23 (1983). But it did not. *Id.* (citation omitted) ("The short answer is that Congress did not write the statute that way."). The Court should reject Defendant Landry's attempt to rework Section 208's plain text.

CONCLUSION

The United States respectfully submits that the Defendants' motions to dismiss should be denied.

Dated: October 28, 2024

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CERTIFICATE OF SERVICE

I hereby certify that, on October 28, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to all counsel of record.

/s/ Katherine K. Green
KATHERINE K. GREEN

Dated: October 28, 2024