

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ALABAMA STATE CONFERENCE OF THE NAACP, *et al.*,

Plaintiffs-Appellees

v.

ATTORNEY GENERAL, STATE OF ALABAMA,

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE
SUPPORTING APPELLEES AND URGING AFFIRMANCE

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**CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT**

In accordance with Eleventh Circuit Rules 26.1-1, 26.1-2, and 26.1-3, the United States as amicus curiae certifies that, in addition to those identified in the briefs the parties filed, the persons below may have an interest in the outcome of this case:

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The United States certifies that no publicly traded company or corporation has an interest in the outcome of this appeal.

s/ Brant S. Levine

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INTEREST OF THE UNITED STATES

This appeal is about whether Section 208 of the Voting Rights Act preempts an Alabama law that restricts who may complete, collect, and submit absentee ballot applications from persons with disabilities. The United States has a substantial interest in this question because the Attorney General has authority to enforce the Voting Rights Act on behalf of the United States. *See* 52 U.S.C. 10101(c), 10308(d), 10504; *see also* U.S. Dep't of Just., *Cases Raising Claims under Section 208 of the Voting Rights Act*, <https://perma.cc/VQ6R-846G> (updated July 11, 2024).

The United States also has a substantial interest in ensuring that courts properly and uniformly interpret Section 208's protections for voters with disabilities. To this end, the United States has filed statements of interest and amicus briefs addressing Section 208's scope and preemptive effect, including in the district court below. *See, e.g.*, Statement of Interest (Doc. 51), *Alabama State Conf. of the NAACP v. Attorney Gen., State of Alabama* (N.D. Ala. June 10, 2024); Statement of Interest, *League of Women Voters of Ohio v. LaRose*, No. 23-02414 (N.D. Ohio June 17, 2024); U.S. Amicus Br., *Arkansas United v. Thurston*, No.

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The United States files this amicus brief under Federal Rule of Appellate Procedure 29(a)(2).

STATEMENT OF THE ISSUE

The United States addresses only the following question:

Whether Section 208 of the Voting Rights Act preempts parts of a recently enacted Alabama law that restricts who may complete, collect, and submit absentee ballot applications from voters needing assistance because of blindness, disability, or inability to read or write.

STATEMENT OF THE CASE

A. Statutory Background

1. **Section 208 of the Voting Rights Act ensures that voters with disabilities may receive voting assistance by a person of their choice.**

Section 208 of the Voting Rights Act 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 Voting Rights Act defines the terms “vote” and “voting” to include “all action

necessary to make a vote effective.” 52 U.S.C. 10310(c)(1). This includes, 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.” *Ibid.*

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. 417, 97th Cong., 2d Sess. 62 (1982) (Senate Report). These citizens included those who have a disability, are blind, and who cannot read or write sufficiently well to understand election materials. *Ibid.* Congress also recognized that their need for assistance created two potential problems. First, some of these individuals chose not to vote at all rather than rely on someone whom they did not choose to help them vote. *Ibid.* Second, these voters were “more susceptible than the ordinary voter to having their vote unduly influenced or manipulated.” *Ibid.*

To address these challenges and limit the risks of discrimination, Congress determined that these individuals “must be permitted to have the assistance of a person of their own choice” in voting. Senate Report

62. At the same time, to protect these voters from being coerced or misled into voting for someone other than their candidate of choice, Congress prohibited assistance by a voter's employer or union officer. Senate Report 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. As to Section 208's effect on state election laws, "[s]tate provisions would be preempted only to the extent that they unduly burden the right recognized in [Section 208], with that determination being a practical one dependent upon the facts." *Id.* at 63.

2. Alabama creates new criminal offenses to protect its absentee-balloting process.

Alabama allows certain voters to vote absentee, including persons with "any physical illness or infirmity which prevents his or her attendance at the polls." Ala. Code § 17-11-3(a)(2) (2024). Early in 2024, Alabama enacted a new law, known as Senate Bill 1, revamping procedures for absentee ballot applications and creating three related criminal offenses:

- (1) **The Prefilling Restriction**, which prohibits distributing an absentee ballot application that is prefilled with any required information, Ala. Code § 17-11-4(b)(2) (2024);

- (2) **The Submission Restriction**, which generally prohibits an individual from submitting a completed absentee ballot application for someone else, Ala. Code § 17-11-4(c)(2) (2024); and
- (3) **The Payment/Gift Restriction**, which generally prohibits providing or receiving payments or gifts for collecting, completing, or delivering a person's absentee ballot application, Ala. Code § 17-11-4(d)(1)-(2) (2024).

2024 Ala. Laws Act 2024-33 (S.B. 1).

Along with creating these new criminal offenses, Alabama's law includes a separate provision identical to Section 208 of the Voting Rights Act. *See* Ala. Code § 17-11-4(e) (2024). This Voter Assistance Provision allows voters who require assistance because of blindness, disability, or inability to read or write to receive assistance by an individual of that voter's choice, except from agents of the voter's employer or union. *Ibid.* Nothing in this provision references the new criminal violations or discusses whether persons assisting voters with disabilities are immunized from criminal prosecution.

Other provisions of the new Alabama law, though, do provide explicit safe harbors to the new offenses. First, "[v]oters voting by absentee ballot through the [federal] Uniformed and Overseas Citizens Absentee Voting Act are not subject to" the Submission Restriction and

the Payment/Gift Restriction. Ala. Code § 17-11-4(f) (2024). Second, the Submission Restriction and Payment/Gift Restriction do not apply to would-be absentee voters during a declared state of emergency. *See id.* §§ 17-11-3(f), 17-11-4(c)(2), 17-11-4(d)(1) and (2). Third, the Submission Restriction does not apply to a voter who requires emergency medical treatment by a licensed physician within five days before an election. *See id.* § 17-11-4(c)(2).

B. Factual and Procedural Background

1. Alabama voters with disabilities depend on organizations to assist them with absentee voting.

In Alabama, several organizations, including the plaintiffs in this lawsuit, help voters with disabilities obtain, complete, and submit absentee ballot applications. More than 30% of all adults in Alabama have some form of disability, including many with mobility and vision impairments. Doc. 34-1, at 6-7 (citing data from the Centers for Disease Control). And nationwide, around one in five voters with a disability either needed assistance or had trouble with voting in 2022—three times the rate of voters without disabilities. *See* Elections Assistance Comm’n and Rutgers Univ., *Disability and Voting Accessibility in the*

2022 Elections 5 (July 2023), <https://perma.cc/C72V-XZLB> (finding that voters with disabilities are more likely to vote by mail).

Plaintiffs describe themselves as “civic engagement, faith-based, and disability rights organizations that promote broad civic participation by educating and assisting broad swaths of Alabamians with the absentee voting process.” Doc. 1, at 4. The Alabama NAACP, for example, assists senior citizens and persons with disabilities with filling out absentee ballot applications, and the organization also provides food and branded materials at educational events where they assist voters with absentee ballot applications. Doc. 1, at 10. Likewise, the Alabama Disabilities Advocacy Program employs a staff member whose primary responsibility is to promote voter education for persons with disabilities, including helping voters apply for absentee ballots by navigating the Secretary of State’s website, printing out the application, and filling it out with them. *Id.* at 19. But after Alabama’s new law was passed, these organizations limited or stopped this assistance because of the risk of criminal liability. *Id.* at 11, 14, 17, 19; Doc. 74-5, at 3-4.

To take just one example, life partners Luis Courie (83-years-old) and Terry McKee (76-years-old) both suffer from debilitating physical disabilities that render them homebound and require them to vote absentee. Doc. 74-1, at 1-3; Doc. 74-2, at 1-3. When applying for an absentee ballot, they previously sought help from their trusted neighbor of 25 years, who is a member of the League of Women Voters of Alabama. Doc. 74-1, at 2-3; Doc. 74-2, at 2-3. But after Alabama passed its new election law, this neighbor could not assist them because she risks criminal liability for doing so: the League of Women Voters has at times given her pens and t-shirts, which could qualify as a prohibited gift. Doc. 74-1, at 2-3; Doc. 74-2, at 2-3. This neighbor “is the only person . . . who *could* help . . . and who *wants* to help” them with their absentee ballot applications. Doc. 74-1, at 3; Doc. 74-2, at 3.

2. The district court enjoins enforcement of Alabama’s new law as applied to persons with disabilities covered by Section 208.

The plaintiff-organizations sued the Alabama Attorney General to enjoin enforcement of the new Alabama law, raising constitutional and statutory claims, including under Section 208 of the Voting Rights Act. Doc. 1. Alabama moved to dismiss plaintiffs’ complaint (Doc. 42), and

the district court dismissed all claims except the one under Section 208. Doc. 69. On the Section 208 claim, the district court first addressed Alabama’s argument that Section 208 does not preclude States from imposing restrictions on assistors to protect voters or to prevent fraud. *Id.* at 50. Finding that Section 208’s text is ambiguous on this point, the court “turn[ed] to the legislative history of Section 208.” *Id.* at 51. In the court’s view, this legislative history contains a clear statement of intent to preempt state laws, but only if they “*unduly burden*” the rights that Section 208 provides to voters. *Id.* at 52 (quoting Senate Report 63) (emphasis in district court order).

Applying this “undue burden” test, the district court held that Section 208 preempts two provisions of Alabama’s law: the Submission Restriction, which criminalizes returning someone else’s absentee ballot application; and the Payment/Gift Restriction, which criminalizes paying or providing a gift to people who help voters obtain, complete, or return their absentee ballot applications. Doc. 69, at 53-59. But the court held that the Prefilling Restriction, which criminalizes distributing a prefilled absentee ballot application, was not preempted

by Section 208 because it did not unduly burden a covered voter from obtaining assistance from another person. *Id.* at 53.

The district court also rejected Alabama’s argument that the Voter Assistance Provision, which mirrors Section 208, adequately accommodated voters with disabilities. Doc. 69, at 57. The court explained that nothing in the Voter Assistance Provision explicitly exempts voters with disabilities—or the people assisting them—from criminal liability under other parts of the law. *Ibid.* Instead, the court reasoned, the only exceptions involve absentee voting during a state of emergency and are not relevant here. *Ibid.*

In a separate order, the court preliminarily enjoined state officials from implementing or enforcing the Submission Restriction and the Payment/Gift Restriction, “but only as to blind, disabled, or illiterate voters, within the meaning of Section 208 of the Voting Rights Act, who request assistance from a person of that voter’s choice.” Doc. 76, at 13-14. Alabama now seeks review of that injunction before this Court, which previously declined to stay the injunction pending appeal because the Alabama Attorney General did not make “a strong showing that he

is likely to succeed on the merits,” and because the traditional stay factors all counseled against a stay. C.A. Order (Oct. 11, 2024).

SUMMARY OF THE ARGUMENT

Alabama’s new election law cannot be squared with the plain text of Section 208 of the Voting Rights Act. While Section 208 allows persons with disabilities to choose almost anyone to help them with voting, Alabama’s law does the opposite: it criminalizes broad swaths of assistance to voters with disabilities who need help with their absentee ballot applications.

The plain text of Section 208 determines the outcome here. Federal law unambiguously secures a right for voters with disabilities to receive voting assistance from anyone of their choice, with two exceptions and two exceptions only. Nothing in Section 208’s text authorizes States to create more exceptions or otherwise limit who can assist covered voters needing assistance. To hold otherwise simply because States claim an interest in combatting election fraud and protecting vulnerable voters would be to displace Congress’s considered judgment on this issue.

Finally, contrary to the federalism concerns that Alabama raises, Section 208's targeted relief still leaves open countless ways for States to regulate their elections and exercise their police powers. In fact, nothing in Section 208 prevents States from investigating and prosecuting fraudsters who pose as assistors to obtain or alter absentee ballot applications. This Court should thus uphold the district court's ruling that Section 208 preempts the Submission Restriction and Payment/Gift Restriction as to covered voters.

ARGUMENT

I. Section 208 entitles persons with disabilities to receive assistance from a person of their choice when returning their absentee ballot application.

To answer the preemption question here, it is important to first understand the rights Section 208 guarantees to persons with disabilities. Based solely on the text of Section 208 and its accompanying provisions in the Voting Rights Act, two conclusions are apparent: first, the law empowers persons with disabilities to choose the person they want to assist them with any aspect of voting, including an absentee ballot application; and second, the law excludes only two categories of assistors from that right.

A. Section 208’s rights include assistance with absentee ballot applications.

As the district court correctly recognized, “[t]here can be no genuine dispute that the voter assistance contemplated by Section 208 extends to applications for absentee ballots.” Doc. 69, at 50. Section 208’s text bestows an explicit right to any voter with a disability to choose an assistor to help them vote, and the law contains no carveout for particular methods of voting. 52 U.S.C. 10508. To the contrary, the Voting Rights Act defines “voting” to include “*all* action necessary to make a vote effective,” including “action required by law prerequisite to voting.” 52 U.S.C. 10310(c)(1) (emphasis added).

Alabama does not argue otherwise, and rightly so. A voter who is physically unable to return an absentee ballot application because of a disability faces the same barrier to making their vote “effective” as a voter who cannot physically obtain and cast their ballot because of a disability. Courts have uniformly agreed, relying on Section 208’s “unambiguous language” to conclude that its protections reach beyond the literal act of voting. *See, e.g., OCA-Greater Hous. v. Texas*, 867 F.3d 604, 614-615 (5th Cir. 2017) (holding that Section 208 preempted a

Texas law that prohibited voters from choosing an interpreter of their choice to communicate with elections officials).

Put simply, “the plain language of Section 208 gives voters unfettered choice over who may assist them with the voting process,” including returning their absentee ballot application. *Disability Rts. N.C. v. North Carolina State Bd. of Elections*, 602 F. Supp. 3d 872, 877 (E.D.N.C. 2022); *see also, e.g., La Unión Del Pueblo Entero v. Abbott*, __ F. Supp. 3d __, No. 5:21-CV-844, 2024 WL 4488082, at *43 (W.D. Tex. Oct. 11, 2024) (holding that Section 208 “ensures that [voters] 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”); *Carey v. Wisconsin Elections Comm’n*, 624 F. Supp. 3d 1020, 1032 (W.D. Wis. 2022) (holding that a “straightforward” application of Section 208 includes assistance with absentee balloting).

B. Section 208’s limited exceptions are exclusive.

Section 208’s right to assistance contains just two exceptions: an assistor cannot be (1) “the voter’s employer or agent of that employer,” or (2) “[an] officer or agent of the voter’s union.” 52 U.S.C. 10508.

“[W]hen Congress provides exceptions in a statute, it does not follow that courts have authority to create others.” *Jian Le Lin v. United States Att’y Gen.*, 681 F.3d 1236, 1240 (11th Cir. 2012) (brackets in original; citation omitted). Rather, “[t]he proper inference . . . is that Congress considered the issue of exceptions and, in the end, limited the statute to the ones set forth.” *United States v. Johnson*, 529 U.S. 53, 58 (2000). Those tenets dictate that Section 208’s exceptions are exclusive.

Alabama tries to avoid this straightforward rule of statutory construction by pointing out that Section 208 allows voters to choose “*a*” person of their choice to assist them, not “*any*” person of their choice. Ala. Br. 26-27. But this distinction is linguistically and legally meaningless. In fact, this Court has “repeatedly found in prior cases that an indefinite article was purposefully used as a synonym for the word ‘any,’ determining that the context of a statute required us to read ‘a’ or ‘an’ to mean ‘any.’” *United States v. Alabama*, 778 F.3d 926, 933 (11th Cir. 2015) (collecting cases (citations omitted)). So too here.

As another court recently recognized, “Section 208 does not merely grant disabled voters a right to make *a choice*,” it “grants [such] voters the right to assistance by a person of *the voter’s choice*.” *League of*

Women Voters of Ohio v. LaRose, __ F. Supp. 3d __, No. 1:23-CV-02414, 2024 WL 3495332, at *11 (N.D. Ohio July 22, 2024). This latter phrase—“of the voter’s choice”—would be meaningless under Alabama’s interpretation. That is why a “straightforward reading of the statute leads to the unremarkable conclusion that when Congress said a person *of the voter’s choice*, it meant the disabled voter could choose their own facilitator.” *Ibid.* (emphasis added; citation omitted).

To be sure, as Alabama points out (Br. 29), two district courts have held otherwise, finding that Section 208 “allows some wiggle room” for States to restrict who may assist voters. *Priorities USA v. Nessel*, 628 F. Supp. 3d 716, 733 (E.D. Mich. 2022); *see also Ray v. Texas*, No. 2-06-CV-385, 2008 WL 3457021, at *7 (E.D. Tex. Aug. 7, 2008) (“The language of Section 208 allows the voter to choose a person who will assist the voter, but it does not grant the voter the right to make that choice without limitation.”). But these outlier decisions conflict with Section 208’s plain meaning. After all, many voters covered by Section 208 will have “a” particular person in mind to assist them—perhaps with no other alternatives. Section 208 thus requires that the State honor that choice.

II. Section 208 preempts Alabama’s more restrictive law limiting who can assist persons with disabilities with their absentee ballot applications.

Because Section 208’s guarantees are clear, the preemption question is straightforward. As the Fifth Circuit recognized in another Section 208 case, “[i]t should go without saying 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.” *OCA-Greater Hous. v. Texas*, 867 F.3d 604, 615 (5th Cir. 2017). That is exactly what happened here: Alabama enacted a statute allowing persons with disabilities to receive assistance with returning their absentee ballot applications consistent with Section 208, but then the State narrowed those rights through the Submission Restriction and Payment/Gift Restriction.

In situations like this, the Supremacy Clause mandates that federal law prevails. *See Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373, 376-377 (2015) (citing U.S. Const. Art. VI, Cl. 2). And contrary to Alabama’s argument (Ala. Br. 20), compliance with federal and state law need not be “impossible” to trigger conflict preemption. It is enough that a state law “stands as an obstacle to the accomplishment and execution of the

full purposes and objectives of Congress.” *Graham v. R.J. Reynolds Tobacco Co.*, 857 F.3d 1169, 1186 (11th Cir. 2017) (quoting *Hillman v. Maretta*, 569 U.S. 483, 490 (2013)). That is the case here with both the Submission Restriction and the Payment/Gift Restriction.

A. The Submission Restriction prevents certain voters from exercising their rights under Section 208.

Section 208’s preemption of the Submission Restriction is straightforward. Section 208 allows a voter with a disability to receive assistance from another person to return an absentee ballot application, but Alabama law prohibits that assistance. As the district court correctly recognized, “[the] Submission Restriction criminalizes the act of returning *anyone* else’s absentee ballot application” with “no exception made for blind, disabled, or illiterate voters.” Doc. 69, at 53. Thus, for voters covered by Section 208 and the assistors who help them, compliance with both laws is indeed impossible.

Alabama effectively concedes that the Submission Restriction, standing alone, conflicts with Section 208. Ala. Br. 48-49. But Alabama nonetheless insists that a separate section in the law, the Voter Assistance Provision, should be read to authorize voters with disabilities “to receive submission assistance.” Ala. Br. 48-49 (citing

Ala. Code § 17-11-4(e)). Although this harmonizing construction has some appeal, plaintiffs are not willing to risk criminal liability based on what the Alabama Attorney General says in his brief. And for good reason: “an [Alabama] attorney general’s opinion is only advisory; it is not binding on [the Supreme Court of Alabama] and does not have the effect of law.” *Health Care Auth. for Baptist Health v. Central Ala. Radiation Oncology, LLC*, 292 So. 3d 623, 635 (Ala. 2019) (citation omitted).

In any event, the plain text of Alabama’s law does not support the Attorney General’s litigating position. First, the Submission Restriction’s text contains several specific exceptions (such as during a state of emergency or when a voter requires emergency medical treatment) but says nothing about the Voter Assistance Provision also immunizing violations. Ala. Code § 17-11-4(c)(2) (2024). Second, the Voter Assistance Provision itself is also silent about exempting assistors from criminal liability. *Id.* § 17-11-4(e). Finally, because the Submission Restriction bars individuals from *providing* assistance to others, while the Voter Assistance Provision permits voters to *receive* assistance, the latter provision is not naturally read to create an

exception to the former. At a minimum, this ambiguity—and the risk of criminal liability it creates—stands as an obstacle to Section 208 by deterring people from providing the voting assistance that Section 208 guarantees to those in need.

B. The Payment/Gift Restriction prevents certain voters from exercising their rights under Section 208.

The Payment/Gift Restriction similarly “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Graham*, 857 F.3d at 1186 (quoting *Hillman*, 569 U.S. at 490. As the district court highlighted, the record here includes declarations from several Alabama voters with disabilities who describe how the new law “deprives them of the assistors of their choice (their neighbor, mother, paid caregivers, or ADAP [the Alabama Disability Advocacy Program]) because the assistors have received gifts or payment for doing so, or because of general fear of criminal liability.” Doc. 76, at 9.

Unlike with the Submission Restriction, where Alabama argues that the Voter Assistance Provision should be read to offset any potential violations, here Alabama does not offer *any* exception to the Payment/Gift Restriction. This sweeping prohibition thus bans paying

salaries, providing food, or reimbursing gas money to anyone who assists a voter with a disability with an absentee ballot application. It even criminalizes providing minor trinkets of appreciation like pens or t-shirts to assistors. Not surprisingly, then, this law chills people from requesting or providing the assistance that Section 208 guarantees.

Doc. 76, at 9.

Even so, Alabama and the several States supporting it assert that laws like these serve States' compelling interest in preventing voter fraud. Ala. Br. 45-46; Mississippi, *et al.* Amicus Br. 5. But these legitimate interests are not without limits. As the Supreme Court has instructed, “[w]hen the words of a statute are unambiguous. . . [w]e will not alter the text in order to satisfy the policy preferences” of a party. *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 462 (2002). In other words, States may not seek to achieve legitimate ends through means that intrude on federal law. *See Hughes v. Talen Energy Mktg., LLC*, 578 U.S. 150, 164 (2016).

As this Court has recognized, “[c]onflict is imminent when two separate remedies are brought to bear on the same activity.” *Odebrecht Const., Inc. v. Secretary, Fla. Dep’t of Transp.*, 715 F.3d 1268, 1283

(11th Cir. 2013) (quoting *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 380 (2000)). So even if Alabama's law would prevent fraud against persons with disabilities, that would not change the outcome. Congress considered the potential coercive effects of assistors but included only two exceptions in the law. By expanding these exceptions, Alabama frustrates the delicate balance Congress achieved when it enacted Section 208.

To be sure, States can still have laws that safeguard absentee ballot applications and proactively combat election fraud. Here, for example, the district court concluded that the Prefilling Restriction, which criminalizes distributing a prefilled absentee ballot application, was not preempted by Section 208 because it did not prevent a covered voter from obtaining assistance from another person. Doc. 69, at 53. As the district court's fact-based analysis shows, there is no bright-line rule that Section 208 preempts all state election laws simply because they touch on voters' rights under Section 208. *See also Arkansas United v. Thurston*, 626 F. Supp. 3d 1064, 1085-1088 (W.D. Ark. 2022) (finding that Section 208 preempts only some parts of Arkansas election law

concerning voter assistance), *appeal pending*, No. 22-2918 (docketed Sept. 12, 2022).

At bottom, Section 208 does not materially alter any State’s ability to regulate elections and prosecute fraud. States, for example, can enact recordkeeping and ballot-security measures that further those interests. And States can investigate and prosecute individuals who impermissibly alter absentee ballot applications under the guise of “assisting.” But States cannot unconditionally ban all gifts and compensation for *legitimate* assistance to voters covered by Section 208. Here, for example, Alabama voters with disabilities cannot receive assistance from anyone whose job duties include providing such assistance, or even from volunteers who receive a pizza lunch for doing so. This categorical ban frustrates Section 208 and is thus preempted.

C. Section 208’s legislative history does not control the preemption analysis.

Although the district court correctly concluded that Section 208 preempts two provisions of Alabama’s new law, the court’s analysis was flawed in one key respect. The court, relying on the legislative history, held that a state law must “*unduly burden*” a voter’s right to their chosen assistance before it will be preempted. Doc. 69, at 52 (quoting S.

Rep. No. 417, 97th Cong., 2d Sess. 63 (1982) (Senate Report) (noting that state election laws would be preempted “to the extent that they unduly burden the right recognized in [Section 208], with that determination being a practical one dependent upon the facts”)).

As this Court has cautioned, to determine whether a statute is preempted, courts “do not typically resort to legislative history when a statute is relatively clear.” *Marrache v. Bacardi U.S.A., Inc.*, 17 F.4th 1084, 1096 (11th Cir. 2021) (internal quotation marks and citation omitted). The Supreme Court has likewise rejected the proposition that the preemption analysis can be driven by “unenacted legislative desires,” rather than “the text and structure of the statute at issue.” *Virginia Uranium, Inc. v. Warren*, 587 U.S. 761, 778 (2019) (citation omitted). As detailed above, the text and structure of Section 208 are clear: it provides for two—and only two—exceptions, with no additional authority granted to States to add more.

Although the legislative history does not control the preemption analysis, it does reaffirm that Section 208’s targeted focus preserves States’ role in regulating their own elections. Before Congress enacted Section 208, the Judiciary Committee recognized “the legitimate right of

any state to establish necessary election procedures.” Senate Report 63. So state laws would be preempted “only to the extent that they unduly burden the right recognized in this section, with that determination being a practical one dependent upon the facts.” *Ibid.* For example, “a procedure could not deny the assistance at some stages of the voting process during which assistance was needed.” *Ibid.*

This legislative context confirms that if voters with disabilities need assistance with their absentee ballot applications, then these individuals “must be permitted to have the assistance of a person of their own choice.” Senate Report 62. Alabama misreads this Senate Report by claiming that Congress left the door open to imposing further restrictions to protect voters. Ala. Br. 40-41. It did not: “the only way to assure meaningful voting assistance *and to avoid possible intimidation or manipulation of the voter,*” Congress determined, was to allow covered voters to “have the assistance of a person of their own choice.” Senate Report 62 (emphasis added).

As the Supreme Court has emphasized, “[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*, 569 U.S. at 496 (alteration in original; citation omitted). No contrary intent exists here. Quite the opposite—Congress knew that voters with disabilities faced higher risks of intimidation and undue influence, yet it granted States no leeway to impose additional restrictions.

In sum, Congress intended Section 208 “to create a guaranteed right to the voting process that could not be narrowed or limited by state legislation” addressing ballot harvesting. *Disability Rts. N.C. v. North Carolina State Bd. of Elections*, No. 5:21-CV-361, 2022 WL 2678884, at *4 (E.D.N.C. July 11, 2022). Laws that limit that right are “a direct affront to Section 208’s purpose and intended effect” and thus are preempted. *League of Women Voters of Ohio v. LaRose*, __ F. Supp. 3d __, No. 1:23-CV-02414, 2024 WL 3495332, at *15 (N.D. Ohio July 22, 2024).*

* Alabama suggests for the first time on appeal that interpreting Section 208 to preempt its law would raise serious questions about the constitutionality of Section 208 under the Fourteenth and Fifteenth Amendments. Ala. Br. 35-36. This Court should not reach the issue because Alabama forfeited it by not raising it in district court. See *Access Now, Inc. v. Southwest Airlines Co.*, 385 F.3d 1324, 1331 (11th Cir. 2004).

CONCLUSION

This Court should uphold the district court's conclusion that Section 208 of the Voting Rights Act preempts the Submission Restriction and Payment/Gift Restriction as applied to voters who need assistance because of blindness, disability, or inability to read or write.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify, pursuant to Federal Rule of Appellate Procedure 32(g):

1. This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 29(a)(5) because, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f), the brief contains 5059 words.

2. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5) and (6) because it was prepared in Century Schoolbook 14-point font using Microsoft Word for Microsoft 365.

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