No. 25-1017

In the Supreme Court of the United States

REPUBLICAN NATIONAL COMMITTEE,
Petitioner,

v.

MI FAMILIA VOTA, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF KANSAS, ALABAMA, AND 24 OTHER STATES AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTERESTS OF AMICI STATES

Amici curiae States of Kansas, Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia, and Wyoming have a vital interest in protecting the integrity of their elections. "Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government." *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (*per curiam*). The fraud of noncitizen voting strikes at the heart of our democracy, and there can be "no question about the legitimacy or importance of [a] State's interest in counting only the votes of eligible voters." *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 196 (2008) (plurality op.). While the Constitution leaves "no doubt" that States decide who is eligible to vote, *Carrington v. Rash*, 380 U.S. 89, 91 (1965), their eligibility rules have "little value" unless States also have "the power to enforce" them, *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 17 (2013).

This case presents yet another attack by activist groups on a State's efforts to enforce citizenship as a requirement to vote. In 2022, the Arizona Legislature passed H.B. 2492 and H.B. 2243 to help safeguard Arizona's elections. Adopting Plaintiffs' strained reading of the National Voter Registration Act (NVRA), the Ninth Circuit gutted these commonsense enactments. It held that the NVRA, which requires States to maintain clean voter rolls, actually preempts Arizona's measures to keep ineligible noncitizens off its voter rolls.

Compounding its errors, the Ninth Circuit held that a 2018 consent decree between an activist organization and certain Arizona executive officers prohibited the enforcement of H.B. 2492's requirement that state-form registrations lacking proof of citizenship be rejected, essentially making the statute void upon enactment. This reasoning undermined the Arizona Legislature's ability to perform its constitutional prerogative of enacting enforceable law. The Ninth Circuit's holding conflicts with basic principles of constitutional law and federalism and with caselaw cautioning about the dangers and limits of consent decrees.

Voting by noncitizens—whether lawfully present or not—is a real issue. States across the country have identified, and in many instances prosecuted, numerous noncitizens who have registered or tried to register.[1] Amicus State of Kansas has charged three

[1] Mich Dep't of Att'y Gen., *AG Nessel Announces Charges Against 5 Non-Citizens for Voting in 2024 Elections in Michigan* (Aug. 13, 2026), https://www.michigan.gov/ag/news/press-releases/2026/08/13/ag-nessel-announces-charges-against-5-non-citizens-for-voting-in-2024-elections-in-michigan; N.H. Dep't of Justice, *Press Release: Non-U.S. Citizen Arrested for Wrongful Voting in New Hampshire* (July 22, 2025), https://www.doj.nh.gov/news-and-media/non-us-citizen-arrested-wrongful-voting-new-hampshire; Dareh Gregorian & Jane C. Trimm, *6,600 Noncitizens Were Registered to Vote in N.J. Because of a 'Software Error,' Governor Says*, NBC NEWS (July 21, 2026), https://www.nbcnews.com/politics/2026-election/6600-noncitizens-registered-vote-nj-software-error-governor-says-rcna588524; Billal Rahman, *Thousands of Potential Noncitizens Found on Texas Voter Rolls*, Newsweek (Oct. 21, 2025), https://www.newsweek.com/thousands-of-potential-noncitizens-found-on-texas-voter-rolls-10911723; Ohio Sec'y of State, *Secretary LaRose Refers Evidence of Non-Citizen Voter Registrations to Ohio Attorney General for Potential Prosecution* (Aug. 21,

noncitizens with voting illegally (voting without being qualified) in recent months,[2] while federal prosecutors in Alabama have secured multiple convictions for voter fraud by noncitizens.[3] States must be able to exercise their prerogative to enact meaningful laws to address noncitizen voting and to promote election integrity. States are not required to wait until such crimes occur before acting. As this Court has observed, it "go[es] without saying that a State may take action to prevent election fraud without waiting for it to occur and be detected within its own borders." *Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 686 (2021). The Ninth Circuit's erroneous opinion expands the NVRA well beyond its plain text and threatens

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2024), https://www.ohiosos.gov/office/media-center/categories/press-releases/2024-08-21; Ga. Sec'y of State, *Citizenship Audit finds 1,634 Noncitizens Attempted to Register to Vote* (Mar. 28, 2022), https://sos.ga.gov/news/citizenship-audit-finds-1634-noncitizens-attempted-register-vote; Tennessee Sec'y of State, *Tennessee Secretary of State Tre Hargett Protecting the Vote in Tennessee: Uses Enhanced SAVE Program to Identify Ineligible Voters* (Oct. 27, 2025), https://sos.tn.gov/press-releases/tennessee-secretary-of-state-tre-hargett-protecting-the-vote-in-tennessee-uses.

[2] *See State v. Ceballos*, No. CM-2025-CR-000010 (Comanche Cnty., Kan., Dist. Ct.); *State v. Gomez*, No. RN-2025-CR-000838 (Reno Cnty., Kan., Dist. Ct.); *State v. Ramirez-Guerra*, SG-2025-CR-002459 (Sedgwick Cnty., Kan., Dist. Ct.); U.S. Dep't of Homeland Sec., *DHS Reveals New Records of Criminal Alien Who Voted Multiple Times in Kansas Elections* (Nov. 13, 2025), https://www.dhs.gov/news/2025/11/13/dhs-reveals-new-records-criminal-alien-who-voted-multiple-times-kansas-elections (discussing *State v. Ceballos*).

[3] *See, e.g.*, *United States v. Homero Ramos*, No. 7:26-CR-98 (N.D. Ala.); *United States v. Angelica Maria Francisco*, No. 3:24-CR-356 (N.D. Ala.).

Amici States' ability to define their political communities, police voter fraud, and legislate.

The States' interests in these issues extend beyond Arizona's law. In 2020, the Tenth Circuit held that Kansas's proof-of-citizenship requirement was preempted by the NVRA and unconstitutional under the Equal Protection Clause. *Fish v. Schwab*, 957 F.3d 1105, 1136-44 (10th Cir. 2020), *cert. denied sub nom. Schwab v. Fish*, 592 U.S. 1153 (2020). Since then, more States have adopted proof-of-citizenship requirements. *See, e.g.*, La. Stat. Ann. § 18:104(D)(2); Miss. Code. Ann. § 23-15-15; N.H. Rev. Stat. Ann. § 654:12; Wyo. Stat. Ann. § 22-3-102(a)(i). Likewise, States have been hamstrung by misinterpretations of the 90-day bar, preventing commonsense voter list maintenance for a significant and critical part of each election cycle. *See, e.g.*, *Ala. Coal. for Immigrant Justice v. Allen,* No. 2:24-cv-1254 (N.D. Ala. Oct. 16, 2024), DE90; *Va. Coal. for Immigrant Rights v. Beals*, No. 1:24-cv-1178 (E.D. Va. Oct. 25, 2024), DE112.

This Court should correct the Ninth Circuit's erroneous interpretations of the NVRA and at the same time recognize the States' constitutional authority to enforce their voter qualifications.

SUMMARY OF THE ARGUMENT

The Ninth Circuit gutted Arizona's commonsense measures to promote election security. Out of the several errors by that court, three issues in particular go to the heart of state sovereignty and governance.

First, the Ninth Circuit's reading of the NVRA to preempt Arizona's proof-of-citizenship requirement was wrong as a matter of statutory interpretation and violated basic principles of federalism.

Second, the Ninth Circuit permitted a consent decree to undermine the authority of the Arizona Legislature to legislate. A State must be able to exercise its constitutional prerogative to make law. The Ninth Circuit undercut this authority by placing a consent decree above the democratic process, silencing the voices of Arizona's representatives of the people.

Third, the Ninth Circuit held that Arizona could not remove identified noncitizens from its voter rolls within 90 days of any federal election. But the 90-day provision does not apply to such removals. If it did, it would be an unconstitutional burden on the power to determine voter qualifications.

ARGUMENT

Our constitutional structure leaves "no doubt" that the States establish the "qualifications for the exercise of the franchise." *Carrington v. Rash*, 380 U.S. 89, 91 (1965). The Constitution expressly gives States the authority to determine voter qualifications for all federal elections. *See* U.S. Const art. I, § 2, cl. 1 (elections for the U.S. House of Representatives); U.S. Const. art. III, cl. 1 (elections for president); U.S. Const. amend. XVII (Elections for the U.S. Senate). These provisions make clear that Congress, even through the NVRA, "cannot control . . . voting qualifications in federal elections." *Inter Tribal Council*, 570 U.S. at 16 (quoting *Oregon v. Mitchell*, 400 U.S. 112, 210 (1970) (Harlan, J., concurring in part and dissenting in part) (collecting cases)); *id.* at 29-33 (Thomas, J., dissenting) (canvassing historical support for States' "exclusive authority to set voter qualifications and to determine whether those qualifications are satisfied").

Arizona, like every other State, makes American citizenship a qualification to vote. Ariz. Const. art. VII, § 2. To enforce this qualification, Arizona enacted H.B. 2492, which requires state-form registrants to provide documentary proof of citizenship—a requirement that has been used in some form for decades. *See Purcell*, 549 U.S. at 2.

The right to enforce voter qualifications, including citizenship, implicates a core aspect of state sovereignty: "It is fundamental to the definition of our national political community that foreign citizens do not have a constitutional right to participate in, and thus may be excluded from, activities of democratic self-government." *Bluman v. Fed. Election Comm'n*, 800 F. Supp. 2d 281, 288 (D.D.C. 2011) (Kavanaugh, J.) (three-judge district court); *see also Cabell v. Chavez-Salido*, 454 U.S. 432, 439-40 (1982) ("Self-government . . . begins by defining the scope of the community of the governed and thus of the governors as well: Aliens are by definition those outside of this community."). Thus, States, as sovereigns, "may reserve participation in [their] democratic institutions for citizens of this country." *Bluman*, 800 F. Supp. 2d at 287 (quotations omitted). And States cannot be forced to trust registrants' mere assertions that they are United States citizens.

The Ninth Circuit's decision, which misinterpreted the NVRA and improperly relied on a consent decree to block Arizona's attempts to restrict voting by noncitizens, infringed on the States' constitutional role and should be reversed.

I. The Ninth Circuit's interpretation of the NVRA was wrong and violated basic principles of federalism.

The Ninth Circuit's distortion of the NVRA follows a similar misinterpretation by the Tenth Circuit in 2020. *Fish*, 957 F.3d at 1136-44. Indeed, the Tenth Circuit went even further and held that Kansas's proof-of-citizenship requirement violated the Equal Protection Clause. *Id.* at 1121-36. This Court should repudiate the reasoning of these lower courts to ensure that States may enforce their voter qualifications consistent with their authority under the Constitution.

As this Court explained in *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013), the NVRA provides the States with the "flexibility to design and use their own [voter] registration forms." *Id.* at 12; 52 U.S.C. § 20505(a)(2). "These state-developed forms may require information the Federal Form does not." *Inter Tribal Council*, 570 U.S. at 12. This Court even specifically noted Arizona's proof-of-citizenship requirement as an example of information required by a state form but not the federal form. *Id.*

Despite this, the Ninth Circuit held that Arizona could not require proof of citizenship as part of its state form because under the NVRA, a registration form "may require only such identifying information . . . as is necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process." 52 U.S.C. § 20508(b)(1); *see also* 52 U.S.C. § 20505(a)(2) (requiring that state forms must satisfy the criteria of § 20508(b)). The

Ninth Circuit wrongly concluded that proof of citizenship is not "necessary" because state-form applicants already check a box on the state form attesting that they are citizens. App.50a. The notion that it is never necessary to ask a would-be voter to document something is clearly absurd. Indeed, federal law expressly contemplates that it is necessary for a voter to document his asserted address. 52 U.S.C. § 21083(b)(2)(A). Why is it necessary to provide a document proving one's address, but not one's citizenship?

The Ninth Circuit's strained interpretation reads the NVRA too stringently. While in "the strictest sense of the term, something is 'necessary' only if it is essential," the term is commonly used "more loosely." *Ayestas v. Davis*, 584 U.S. 28, 44 (2018) (citing Webster's Third New International Dictionary 1510 (1993) and 10 Oxford English Dictionary 275-276 (2d ed. 1989)). For example, in *McCulloch v. Maryland*, 17 U.S. 316 (1819), this Court famously held that the Necessary and Proper Clause does not mean "absolutely necessary." *Id.* at 414-15. Similarly, a "necessary" business expense under the Internal Revenue Code, 26 U.S.C. § 162(a), may be an expense that is merely helpful and appropriate. *See Commissioner v. Tellier*, 383 U.S. 687, 689 (1966). And a "necessary" party under Rule 19 of the Federal Rules of Civil Procedure is one whose participation is helpful and important, though not strictly required. *See Alabama-Quassarte Tribal Town v. United States*, 899 F.3d 1121, 1123 (10th Cir. 2018). As Black's Law Dictionary has put it, the term "may import absolute physical necessity or inevitability, or it may import that which is only convenient, useful, appropriate, suitable, proper, or conducive to the end sought." *Ayestas*, 584

U.S. at 44 (internal quotation marks omitted) (quoting Black's Law Dictionary 928 (5th ed. 1979)).

Given that the NVRA provides States with the flexibility to design and use their own voter-registration forms, States should receive great deference in deciding what information is "necessary" to ensure voter qualifications. *See* App.110a (Bumatay, J., dissenting). The term "necessary" in 52 U.S.C. § 20508(b)(1) is used in conjunction with a reference to "State election official[s]" who are to "assess the eligibility of the applicant." States must therefore have discretion to determine what information their election officials require to make that assessment.

Section 8 of the NVRA reinforces this point. It imposes on States the duty to "ensure that *any eligible* applicant is registered to vote." 52 U.S.C. § 20507(a)(1) (emphasis added). And so state election officials must be able to request the information that they find necessary to determine whether each and every applicant is "eligible." Even if a mere attestation of citizenship were sufficient to ensure that *most* applicants are qualified, States can reasonably conclude that an attestation alone does not enable their election officials to determine eligibility in the case of *every* single applicant, especially given the numerous documented instances of voting by noncitizens.

The Ninth Circuit also erred in holding that Arizona could not require proof of citizenship for its state registration form because of the requirement in 52 U.S.C. § 20506(a)(6)(A)(ii) that forms provided by state public assistance agencies must be "equivalent" to the federal form. "Equivalent" does not necessarily mean "identical"; it can also mean "corresponding" or "having the same effect." App.114a-15a (Bumatay, J., dissenting). This latter interpretation makes much more sense here given the overall structure of the NVRA, which allows separate federal and state forms. Again, "state-developed forms may require information the Federal Form does not," *Inter Tribal Council*, 570 U.S. at 12—thus, the two forms need not be identical. "Equivalent" is best read as referring to a state form that meets all of the listed criteria for a federal form stated in 52 U.S.C. § 20508(b), as required by 52 U.S.C. § 20505(a)(2).

Even if there were any ambiguity in the NVRA's use of terms "necessary" or "equivalent," these provisions should be interpreted to allow States to obtain the information that they determine is necessary to enforce their voter qualifications. Where a statute's language is subject to two reasonable interpretations, one that creates serious constitutional concerns and one that does not, the Court should choose the one that does not. *See, e.g., Gregory v. Ashcroft*, 501 U.S. 452, 464 (1991). And as this Court recognized in *Inter Tribal Council*, there would be "serious constitutional doubts if [the NVRA] precluded a State from obtaining the information necessary to enforce its voter qualifications." 570 U.S. at 17 (recognizing "the power to establish voting requirements" would be "of little value without the power to enforce" them); *see also id.* at 28 (Thomas, J., dissenting) (same). A statute that prohibited States from requiring proof of an applicant's qualifications—as opposed to the applicant's mere say so—would infringe on the States' constitutional authority.

This Court should be particularly hesitant to read the NVRA as preempting state efforts to enforce voter qualifications given the States' historical primacy in the areas of voter registration and electoral regulation. As this Court explained in *United States v. Gradwell*, 243 U.S. 476 (1917), "the policy of Congress for so great a part of our constitutional life has been . . . to leave the conduct of the election of its members to state laws, administered by state officers." *Id.* at 484-85. Thus, the assumption is that Congress will only "regulate such elections . . . by positive and clear statutes." *Id.* at 485. *Gradwell* recognized a presumption against preemption in election law, or at the very least a principle akin to the federalism clear-statement rule. *Inter Tribal Council* too casually classified *Gradwell* as a case not involving preemption or not involving congressional regulation of elections. 570 U.S. at 13 n.5. But there is no basis for treating an ambiguous law passed under the Elections Clause any differently than an ambiguous law passed under another constitutional grant of authority. This Court should recognize that the presumption against preemption applies in both instances.

The Ninth Circuit's misinterpretation of the NVRA undermines the States' constitutional role in creating and enforcing voter qualifications and cannot withstand scrutiny.

II. A consent decree cannot block a State's sovereign authority to legislate.

In addition to misinterpreting the NVRA, the Ninth Circuit went a step further and held that a federal consent decree may wholly undermine the sovereign authority of States to make law. App.47a-49a.

The Ninth Circuit held that Arizona's new statutory requirement that applicants provide documentary proof of citizenship when they register to vote via the state form was invalid because it violated a consent decree entered in *League of United Latin American Citizens of Arizona v. Reagan*, No. 2:17-cv-4102 (D. Ariz. 2018) (LULAC Consent Decree). The court's reasoning upends the traditional separation of powers. Allowing a consent decree—not adjudicated on the merits and agreed to by a limited number of litigants—to limit the power of a state legislature to pass laws amounts to an impermissible veto from the bench and exceeds the jurisdictional powers of federal courts. *See* App. 104a (Bumatay, J., dissenting); *see also Shelby County v. Holder*, 570 U.S. 529, 542 (2013) ("The Federal Government does not . . . have a general right to review and veto state enactments before they go into effect."). Indeed, one of the principal bases for modifying a consent decree is a change in relevant state law. *See* Fed. R. Civ. P. 60(b)(5); *Foster v. Stanek*, Memorandum and Order, 18-cv-02552 (D. Kan., Aug. 31, 2023) (recognizing that a Rule 60(b)(5) motion asserting that a consent decree is "no longer equitable" should be granted when "a significant change in factual circumstances or in law warrants revision of the decree." (citing *Jackson v. Los Lunas Cmty. Program*, 880 F.3d 1176, 1201 (10th Cir. 2018)); App.104a (Bumatay, J., dissenting) (citing cases). The law controls a consent decree; a consent decree cannot control what laws a legislature may pass.

This Court has recognized that "the dynamics of institutional reform litigation"—like the case resulting in the LULAC Consent Decree—"differ from those of other cases" and "often raise sensitive federalism concerns." *Horne v. Flores*, 557 U.S. 433, 448 (2009). "'Such litigation commonly involves areas of core state responsibility,'" like regulating "voting." *Chisom v. Louisiana ex rel. Landry*, 116 F.4th 309 (5th Cir. 2024) (en banc) (quoting *Horne*, 557 U.S. at 448). Consent decrees pose thorny issues because "public officials sometimes consent to, or refrain from vigorously opposing, decrees that go well beyond what is required by federal law." *Horne*, 557 U.S. at 448. This conduct attempts to saddle future officials with "the policy preferences of their predecessors," and such decrees may "'improperly depriv[e] future officials of their designated legislative and executive powers.'" *Id.* at 449 (quoting *Frew v. Hawkins*, 540 U.S. 431, 441 (2004)); *see also* App.169a (Nelson, J., dissenting from denial of rehearing en banc) ("Consent decrees subvert republican government.").

When an activist group is the plaintiff in a suit resulting in a consent decree, there is a strong risk of collusion between the group and a sympathetic executive official who may want to bind the hands of future policymakers. *See Nw. Env't Advocates v. EPA*, 340 F.3d 853, 855 (9th Cir. 2003) (Kleinfeld, J., dissenting); *see also* App.104a (Bumatay, J., dissenting) ("The opportunity for abuse is clear."); *cf. Kasper v. Bd. of Election Comm'rs of the City of Chicago*, 814 F.2d 332, 340 (7th Cir. 1987) (recognizing that "district judges should be on the lookout for attempts to use consent decrees to make end runs around the legislature"). Accordingly, when a consent decree is at issue, "[a] federal court must preserve the appropriate relation between state and national power." *See Kasper*, 814 F.2d at 340.

In Arizona, like other States, "[t]he legislative authority of the state shall be vested in the legislature." Ariz. Const. art. IV, pt. 1, § 1; *see also State v. Prentiss*, 786 P.2d 932, 936 (Ariz. 1989) ("The legislature has the exclusive power to declare what the law shall be.").

The statutes at issue here were enacted in 2022—several years after the LULAC Consent Decree. Yet the Ninth Circuit found that the consent decree barred enforcement of H.B. 2492's requirement that county recorders reject state-form applications without documentary proof of citizenship. App.49a. The court brushed aside federalism and separation of powers concerns because it believed that the LULAC Consent Decree only "limits the ability of executive officers in Arizona to enforce" the requirement. App.48a-49a.

That is a distinction without a difference and "misses the point." App.170a (Nelson, J., dissent from denial of rehearing en banc). Legislatures do not enact laws to gather dust on a bookshelf; they enact them to be effective. *See* App.108a (Bumatay, J., dissenting) ("[T]he heart of the legislative power is to transform the words of proposed legislation into enforceable statutes."). If a consent decree can bar the enforcement of any new statute, then the statute can easily be rendered a dead letter. The Ninth Circuit's rationale means "state executive-branch officials can permanently circumvent legislative authority by entering whatever arrangements they want with private parties." App. 104a (Bumatay, J., dissenting). It also incentivizes plaintiffs to seek broad, far-reaching consent decrees to hobble future legislatures. The Ninth Circuit's reasoning conflicts with this Court's observation "that a federal consent decree must spring from, and serve to resolve, a dispute within the court's subject-matter jurisdiction." *Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 437 (2004).

The parties to the LULAC Consent Decree "could not agree to terms which would exceed their authority and supplant state law." *Keith v. Volpe*, 118 F.3d 1386, 1393 (9th Cir. 1997). The Arizona Legislature was not a party to the consent decree, so the decree could not remove the Arizona Legislature's authority to make enforceable law. *See Loc. No. 93, Int'l Ass'n of Fire-fighters, AFL-CIO C.L.C. v. City of Cleveland*, 478 U.S. 501, 529 (1986) ("[O]f course, a court may not enter a consent decree that imposes obligations on a party that did not consent to the decree."); *see also, e.g., League of Women Voters of Mich. v. Benson*, No. 2:17-CV-14148, 2019 WL 8106156, at *3 (E.D. Mich. Feb. 1, 2019) (three-judge district court) (finding the secretary of state could not enter into a consent decree invalidating legislative districts approved by the Michigan Legislature because the state constitution vested that authority in the Legislature and the Legislature had not provided its "express consent" to the proposed consent decree).

The Ninth Circuit's analysis is particularly disturbing because the Arizona Constitution provides that "the people reserve the power to propose laws and amendments to the constitution and to enact or reject such laws and amendments at the polls, independently of the legislature." Ariz. Const. art. IV, pt. 1, § 1. Arizona citizens may directly propose and implement legislation, yet the Ninth Circuit's reasoning would apply equally to citizen-initiated legislation. Thus, under the Ninth Circuit's erroneous holding, an activist group and a state executive official could even bind the constitutional authority of Arizona citizens to enact legislation by popular initiative.

The Ninth Circuit improperly used the LULAC Consent Decree "to handcuff" the Arizona Legislature and the citizens of Arizona "in perpetuity." App.105a

(Bumatay, J., dissenting). Yet it "is not a job of a federal judge" to "expand" consent decrees to bar the enactment or enforcement of new laws. *United States v. Junction City Sch. Dist.*, 14 F.4th 658, 668 (8th Cir. 2021). This Court should correct the Ninth Circuit's egregious assault on state sovereignty.

III. Congress did not and cannot force States to keep noncitizens on their voter rolls.

When States find noncitizens registered to vote, they can remove them from the rolls. And they should—not only because every unlawful vote effectively cancels out a lawful vote, but because foreign citizens cannot participate in our "[s]elf-government" "by definition." *Cabell*, 454 U.S. at 438; *see Bluman*, 800 F. Supp. 2d at 287-88; *cf. Trump v. Barbara*, 146 S. Ct. 2438, 2458 (2026) ("[Citizenship is] the right to . . . participate in our political community."); *Reynolds v. Sims*, 377 U.S. 533, 554 (1964) ("[The Constitution] protects the right of all qualified citizens to vote.").

The NVRA, which recognizes that voting is a "right of citizens," 52 U.S.C. § 20501, and *requires* that States regularly clean their voter rolls, does not stand in the way. It primarily added protections for voters who change their residence. For those voters, it makes sense that States should complete systematic removals ahead of time because movers "can continue to be eligible to vote." *Id.* § 20507(d)(2)(B). But when the State finds on its list someone who could *under no circumstances* be eligible to vote, such as a noncitizen, the NVRA does not bar removal. If it did—if the statute forced States to keep identified noncitizens on their voter rolls for any amount of time—then it would go beyond Congress's limited power "to regulate *how* federal elections are held" and intrude upon the State's power to decide "*who* may vote in them." *Inter Tribal Council*, 570 U.S. at 15-17.

A. The 90-day provision does not bar the removal of noncitizens.

The 90-day provision must be read in context. The NVRA requires that States "conduct a general program" to remove voters who have died or moved. 52 U.S.C. § 20507(a)(4). States can meet this requirement with a program that uses change-of-address information from the Postal Service, *id.* § 20507(c)(1), and confirms a registrant's move outside the jurisdiction with specific notice procedure, *id.* § 20507(d)(1)-(2). In the same subsection describing this general removal program, the statute requires that States complete such programs—*i.e.*, finish removing the names of voters who have moved, failed to respond, and been inactive in elections—90 days before a federal election. *Id.* § 20507(c)(2)(A).

Reading the 90-day provision in isolation, the Ninth Circuit concluded that it applies to every possible removal program "without . . . limitation." App.42a. Programs to remove noncitizens are barred for 90 days, the court reasoned, because the statute specifically *permits* certain removals during that time. *Id.* Where Congress "enumerates [ ] exceptions" from a general rule, others "are not to be implied," the argument goes. *Id.*; *see* DNC.Opp.12.

But the argument against implied exceptions misses the target. Neither the RNC nor the dissenters proposed *adding exceptions* to the 90-day provision. The argument is that the 90-day bar does not cover programs to remove noncitizens in the first place. By assuming that Congress meant to cover the waterfront of possible removals, the Ninth Circuit sidestepped the question in dispute.

The clearest indication that Congress did *not* intend to cover the waterfront is subsection (a)(3), the provision that bars removals at any time. Congress wrote that "a registrant may not be removed from the official list of eligible voters except" for four specific reasons: request, conviction or incapacity, death, or change in residence. 52 U.S.C. § 20507(a)(3). But no one thinks those are the *only* four reasons a State can remove a name on the voter roll. States can and do remove people who are too young, who fraudulently registered, or who were registered by mistake. And—the parties agree—they can remove noncitizens too.[4]

If Congress did not prohibit unstated grounds for removal in subsection (a)(3), then the same language in subsection (c)(2) should not be read more expansively to prohibit such removals for 90 days. *See id.* at 1287-88 (suggesting "violence . . . to the statutory scheme" otherwise); *United States v. Florida*, 870 F.

[4] A contrary view of subsection (a)(3)—one barring the removal of noncitizens at any time—would be "absurd," *Arcia v. Detzner*, 908 F. Supp. 2d 1276, 1282 (S.D. Fla. 2012), *rev'd*, 746 F.3d 1273 (11th Cir. 2014), *superseded*, 772 F.3d 1335 (11th Cir. 2014), and unconstitutional too, *see supra* pp. 4-5 (explaining that the Constitution gives States the power to determine voter qualifications); *accord Arcia*, 746 F.3d at 1288 (Jordan, J., concurring), *withdrawn*, 772 F.3d 1335 ("Such a result [would be] instinctively difficult to accept" given "states' authority to determine the qualifications of eligible voters in federal elections. *See* U.S. Const. art. I, §§ 2, 4[.]").

Supp. 2d 1346, 1350 (N.D. Fla. 2012) ("Surely 're-moved' in 8(a)(3) and 'remove' in 8(c)(2) mean the same thing."); *accord Arcia*, 908 F. Supp. 2d at 1283. Put another way, Plaintiffs apply their logic selectively: exceptions to the 90-day bar prove an otherwise universal rule, they say, but exceptions to the any-time bar do not. The Court should be loath to "attribute [such] a schizophrenic intent to the drafters." *Cf. Delta Air Lines v. August*, 450 U.S. 346, 353 (1981).

What the Court needs is a *harmonious* reading of subsections (a)(3) and (c)(2), and there are a couple of paths it could take.[5]

1. The Court could recognize that when this section of the NVRA discusses removals, it means those enumerated grounds listed in subsection (a). This straightforward reading requires no extra scaffolding—no need to opine on *why* Congress chose to regulate only removals by request, conviction or incapacity, death, or change in residence. It is enough to see that "these two provisions are meant to be read in conjunction with one another." *Arcia*, 908 F. Supp. at 1283. Thus, when the 90-day bar refers to a "program . . . to systematically remove the names of ineligible voters from the official lists of eligible voters," 52 U.S.C. § 20507(c)(2), it means those whom Congress already contemplated *could be* "removed from the official list of eligible voters," *id.* § 20507(a)(3).

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[5] Amici will not dwell on the worst option of all—reading subsection (a)(3) to prohibit removing noncitizens *at any time*. Plaintiffs have expressly conceded that noncitizens can be removed so long as their removal is "individualized" or "complete" 90 days before a federal election. *E.g.*, DNC.Opp.10-11. Even if Plaintiffs had not conceded the point, this reading of subsection (a)(3) would be patently unconstitutional. *Supra* n.4.

Plaintiffs insist that the 90-day bar must be broader because Congress excluded from its scope "three of [the] four categories" from subsection (a), so "only movers" would be protected during the 90 days. DNC.Opp.15. But their only reason for resisting this conclusion is that "Congress knew how" to say "change in residence." *Id.* This is a weak inference, which at least two courts have had no trouble rejecting. *See Florida*, 870 F. Supp. 2d at 1350 ("During the 90-day [ ] period, a state may pursue a program to systematically remove registrants . . . not based on a change of residence."); *Arcia*, 908 F. Supp. 2d at 1282 ("The Court finds no reason to conclude that the 90-day Provision applies to anything other than removals of registrants based on a change in residence."). And the same kind of argument can be run in reverse: Congress also knew how to write "[a]ny State program or activity to protect the integrity of the electoral process" when it wished to address removals beyond the scope of subsection (a)(3). *Id.* at 1284 (quoting 52 U.S.C. § 20507(b); concluding that "subsection (b) was meant to apply to programs aimed at removing those voters whose status as registered voters was void *ab initio*").[6]

Reading the 90-day bar as restricting only programs related to residence coheres with the rest of the statute. For starters, Congress was clearly preoccupied with protecting voters from erroneous removal

[6] Reading only subsection (b), "Confirmation of voter registration," to govern void *ab initio* registrations is attractive for another reason too. That subsection uses the more capacious phrase "the removal of the name of any person," 52 U.S.C. § 20507(b)(2), whereas subsection (c)(2) pauses removals of "ineligible voters" for 90 days and exempts "the removal of names," *id.* § 20507(c)(2)(A), (B)(i).

based on changes in residence. *Welker v. Clarke*, 239 F.3d 596 (3d Cir. 2001) ("[T]he NVRA strictly limited removal of voters based on change of address[.]"). The NVRA's "general" program is the only program regulated in detail, and the only one described in the subsection "Voter removal programs," which contains the 90-day bar. 52 U.S.C. § 20507(c)(1), *inc'g by ref. id.* § 20507(a)(4). As the text reflects, Congress was concerned about voters who move but "remain[ ]" in the same jurisdiction. *Id.* § 20507(d)(2). To protect these voters, Congress ensured that they would have notice and a grace period before their removal, *id.*, and guaranteed them a polling place even if they fail to contact their registrars, *id.* § 20507(e). Likewise, voters who leave their "registrar's jurisdiction," rather than being immediately removed, should be "inform[ed]" about how to "continue to be eligible to vote." *Id.* § 20507(d)(2)(B).

In contrast to movers, voters who die or are disqualified due to criminal conviction or mental incompetence are disqualified anywhere within the jurisdiction. Even if they find a new polling place, update their records, or receive new voter-registration information, they cannot "continue to be eligible." *Id.* Accordingly, the NVRA permits their removal at any time. *Id.* § 20507(c)(2)(B)(i). It makes sense that Congress protected movers to a greater degree than names removed for other reasons.

In any event, there is no reason to "second-guess[ ]" Congress's statutory focus on residency, *cf. Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 774 (2018), and presume that the 90-day provision should be more "expansive," App.43a. Indeed, it would be much more anomalous if Congress had written the 90-

day bar to restrict removals of noncitizens, minors, and others that it did not anticipate anywhere else in the statute. Those who say that the 90-day span must be a "quiet period," *Va. Coal. for Immigrant Rights v. Beals*, 803 F. Supp. 3d 454, 471-74 (E.D. Va. 2025), moreover, cannot square their view with the textual exceptions: If the "risk" is so "great[ ]" during the 90 days, *Arcia*, 772 F.3d at 1346, then why would Congress permit systematic programs to remove names based on criminal conviction or death to run *continuously* and *conspicuously* all the way through election day? It would be especially strange for Congress to offer greater protection to noncitizens than to American felons, where Congress recognized in the same statute that citizenship is effectively an eligibility requirement for federal elections, *see* 52 U.S.C. §§ 20504(c)(2)(C)(i); 20506(a)(6)(A)(i)(I); 20508(b)(2)(A), and it is illegal for noncitizens to vote in them, 18 U.S.C. § 611, or fraudulently claim citizenship to vote, 18 U.S.C. § 1015(f).

The most coherent reading of the 90-day bar is that it regulates the same kind of removal programs that the statute requires—general programs for dealing with change in residence. Plaintiffs ascribe to Congress an irrational aim to restrict *sub silentio* every conceivable removal program with a few exceptions—conviction, death, etc.—which are not obviously more important than any other ground for removing someone who is not eligible to vote.

2. The RNC, the dissenters below, and multiple courts have advanced an interpretation that explains both why Congress did not list every possible ground for removal in subsection (a)(3) and why it was unnecessary to list other exceptions to the 90-day bar. On this reading, "what Congress had in mind . . . was removing a person on grounds that typically arise *after* an initial proper registration. Congress was not addressing the revocation of an improperly granted registration of a noncitizen." *Florida*, 870 F. Supp. 2d at 1350. Subsections (a)(3) and (c)(2) address "the removal of once-eligible voters—those who were at one time *bona fide* registrants, yet . . . became thereafter ineligible." *Arcia*, 908 F. Supp. 2d at 1283. Neither provision addresses those "whose registration was *void ab initio*," such as disqualified felons, the mentally incompetent, "minor[s], non-citizens, fictitious persons, or any other . . . null[ ] . . . registration." *Id.* "Congress did not intend to bar [their] removal[.]" *Bell v. Marinko*, 367 F.3d 588, 591-92 (6th Cir. 2004).

Plaintiffs invite the Court to share their confusion over this argument, but the idea is simple: Because a noncitizen is not an "eligible applicant," § 20507(a)(1), he never becomes "a registrant" who is protected from removal in general, § 20507(3), or during the 90-day period specifically, § 20507(c)(2), *inc'g by ref.*, § 20507(a)(3)-(4) (referring to "the registrant").

Plaintiffs deride this reading, but they offer no plausible alternative. If some "registrants" could be "registered mistakenly," DNC.Opp.15, then surely they must be removable. Yet subsection (a)(3) seems to bar the removal of "a registrant" except for the enumerated reasons. Therefore, either Congress did not mean "remove" in subsections (a)(3) and (c)(2) to cover noncitizens, *see Florida*, 870 F. Supp. 2d at 1350, or it did not mean "registrant" in (a)(3) and "ineligible voters" in (c)(2) to cover noncitizens, *see* App.122a-25a; *Bell*, 367 F.3d at 592. Either way, because (a)(3) and (c)(2) must be read *in pari materia*, the 90-day provision cannot cover the removal of noncitizens.

B. If the 90-day provision bars the removal of noncitizens, then it is unconstitutional.

As the Court "has recognized" many times, "States retain the power to regulate their own elections," *Burdick v. Takushi*, 504 U.S. 428, 433 (1992), and this power is at its apex when States establish "qualifications for . . . the franchise," *Carrington*, 380 U.S. at 91. The constitutional text, structure, and history all forbid Congress from exercising "control" over "*who* may vote." *Inter Tribal Council*, 570 U.S. at 16. Because Congress cannot control voter qualifications directly or indirectly, any burdens on a State's "power to enforce" those qualifications also "raise serious constitutional doubts." *Id.* at 17-18.

The Ninth Circuit crossed the line from raising constitutional doubts to embracing unconstitutionality when it held that Arizona could not use "state and federal databases" and "mailing of notices" to identify and remove noncitizens before a federal election. App.45a. This is no modest intrusion. States hold primary elections, general elections, and sometimes runoff elections for federal office every two years, and they often use the same voter roll for state elections at the same time. In Alabama this year, the "90 days" began in mid-February and, due to runoffs and special elections, will not end until November 3. That adds up to more than 70% of the days in 2026 that the State could not enforce its voter qualifications if the Ninth Circuit were correct. Even if it hadn't held a special election, Alabama—and most States—would be subject to the Ninth Circuit's bar for about 180 days every two years.

Prohibiting States from enforcing important voter qualifications for half of every election year does not fairly "balance" their sovereignty with Congress's limited power over how elections are run. *Contra* App.46a (quoting *Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1346 (11th Cir. 2014)). States may become aware of noncitizens on the voter rolls at any time. They may face challenges in getting the information they need to conduct proper reviews. When Alabama Secretary of State Wes Allen tried to coordinate with the federal government on noncitizen voting, he was stonewalled for over a year. *See United States v. Alabama*, No. 2:24-cv-01329 (N.D. Ala. Oct. 1, 2024), DE11-1 ¶¶ 17-37. The Secretary finally went to other state agencies for citizenship data, and the United States sued to stop him from using it on the ground that it was too late. As a result, Alabama could not even *ask* voters who had *told the State* they were noncitizens to update their information. *United States v. Alabama*, *supra*, DE56. If nothing else, this episode demonstrates how misinterpretation of the 90-day bar impedes the enforcement of voter qualifications; the Court should return to the States the time and flexibility they need.[7]

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[7] Unfortunately, we now know that some noncitizens *did* vote in Alabama's 2024 elections after the Secretary's letter campaign was enjoined. *See, e.g.*, *United States v. Homero Ramos*, No. 7:26-CR-98 (N.D. Ala. Oct. 27, 2026), DE33 (sentencing noncitizen defendant for two counts of fraudulent voting under 52 U.S.C. § 20511(2)(B)).

Some courts have upheld the bar because it applies only "when the risk of disenfranchising eligible voters is the greatest," *Arcia*, 772 F.3d at 146, ignoring that the risk of unlawful voting is the greatest at the same time. As an election gets closer, a State has less time to investigate, uncover, and address fraud or mistakes. In the Ninth Circuit's view, the 90-day provision thus ties a State's hands at the most critical time in the cycle. And if States *do* find noncitizens on their voter rolls during the 90 days, they're told to sit on their hands, let the noncitizens vote, and wait until after the election to act. "[D]ebasement and dilution of the votes of American citizens will naturally follow." *Arcia v. Detzner*, No. 12-22282-CIV, 2015 WL 11198230, at *2 (S.D. Fla. Feb. 12, 2015); *contra Democratic Nat'l Comm.*, 594 U.S. at 686 ("[I]t should go without saying that a State may take action to prevent election fraud without waiting for it to occur[.]").

The ability to conduct "individualized" removals "at any time" is not a real solution. *Contra* DNC.Opp.3. Calling the suggestion "specious," one court rightly "question[ed] how any such individualized process could ever be implemented and undertaken by a state in an effective and orderly fashion 90 days before a Federal election." *Arcia*, 2015 WL 11198230, at *2. Tellingly, Plaintiffs and the Ninth Circuit never explain how a non-systematic removal program would work. And if Arizona's notice and cure provisions do not count as "individualized information or investigation," App.43a, then it is difficult to see what would—short of a State accidentally stumbling upon a single registered noncitizen.

Aside from the practical problems of "investigat[ing]" thousands of names "individual[ly]," *id.*, it is unclear what would survive the Ninth Circuit's *other* holding that searching a subset of "all voters" likely to be noncitizens is "discriminatory," App.40a-41a. In the Ninth Circuit, the States can conduct a noncitizen removal program that is "uniform" but "non-systematic," "individualized" but not "subjective," "rigorous" but not "database"-driven. Arizona has been told to walk a tightrope over the Grand Canyon—possible, perhaps, but rather risky. This cannot be a sovereign State's only choice for much of the election year, every election year. The "power to enforce" eligibility criteria must mean more. *Inter Tribal Council*, 570 U.S. at 17.

* * *

When States identify noncitizens on their voter rolls, they must have the power to remove them—just as they must have the power to remove disenfranchised felons, minors, or any other person not qualified to vote. For too long, federal courts have turned States into bystanders—betraying the Constitution's promise that States retain the power to decide who enters the voting booth. At a minimum, the Court should follow its "settled policy" and read the NVRA in a way that avoids putting its constitutionality in doubt. *Gomez v. United States*, 490 U.S. 858, 864 (1989). The text contains no "unambiguous" language that would "force[ ]" the Court's hand, so it should assume that Congress did not "mean[ ] to exercise or usurp any unconstitutional authority." *United States v. Coombs*, 37 U.S. 72, 74 (1838).

If, however, the Court believes that the best reading of the NVRA is to prohibit States from removing noncitizens—whether always or in the 90 days before any federal election—then it is unconstitutional.

CONCLUSION

This Court should reverse.

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