

Nos. 25-1017, 25-1019, 25-1022

IN THE

Supreme Court of the United States

REPUBLICAN NATIONAL COMMITTEE,

Petitioner,

v.

MI FAMILIA VOTA, ET AL.,

Respondents.

(For Continuation of Caption, See Inside Cover)

**On Petitions for Writs of Certiorari
to the United States Court of Appeals
for the Ninth Circuit**

**BRIEF OF *AMICI CURIAE* THE STATES OF
KANSAS, ALABAMA, ALASKA, ARKANSAS,
FLORIDA, GEORGIA, IDAHO, INDIANA, IOWA,
KENTUCKY, LOUISIANA, MISSISSIPPI,
MISSOURI, MONTANA, NEBRASKA, NEW
HAMPSHIRE, NORTH DAKOTA, OHIO,
OKLAHOMA, SOUTH CAROLINA, SOUTH
DAKOTA, TENNESSEE, TEXAS, UTAH, AND WEST
VIRGINIA IN SUPPORT OF PETITIONERS**

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Petitioners,

v.

MI FAMILIA VOTA, ET AL.,
Respondents.

ARIZONA, ET AL.,
Petitioners,

v.

PROMISE ARIZONA, ET AL.,
Respondents.

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INTEREST OF *AMICI CURIAE*¹

Amici curiae the States of Kansas, Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, and West Virginia have a fundamental interest in ensuring the integrity of their elections. “There is no question about the legitimacy or importance of the [States’] interest in counting only the votes of eligible voters.” *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 196 (2008) (plurality op.). The States further this interest when they guard their elections against voting by non-citizens. *See Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (*per curiam*) (“Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government.”).

This case presents yet another assault on State efforts to promote election security. In 2022, the Arizona Legislature passed H.B. 2492 and H.B. 2243 to help safeguard Arizona’s elections. The laws, unsurprisingly, soon came under fire from activist groups who sought in federal court what they could not obtain in the statehouse. Adopting plaintiffs’ strained reading of relevant federal law, the Ninth Circuit subsequently gutted Arizona’s common-sense measures to enforce its voter requirements and protect its elections. Remarkably, the court determined that the National Voter Registration Act

¹ *Amici* provided timely notice to the parties of their intent to file this brief. *See* Rule 37.2.

(NVRA)—which obligates States to maintain “clean” voter rolls without ineligible voters—actually preempts Arizona’s efforts to keep ineligible noncitizens off its voter rolls.

Making matters worse, the court found 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. In other words, the court determined that this statute was effectively void upon enactment. The court’s reasoning undermined the ability of the Arizona Legislature to perform its constitutional prerogative of enacting *enforceable* law. The Ninth Circuit’s conclusion in this respect conflicts with basic principles of federalism and with caselaw that recognizes the dangers and limits of consent decrees.

Voting by noncitizens—whether lawfully present or not—is real.² Indeed, Amicus State of Kansas alone has charged three noncitizens with voting illegally (voting without being qualified) in the last five months.³ States must be able to enact

² *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> (last visited Dec. 16, 2025) (noting that a preliminary sweep of Texas voter rolls flagged 2,700 potential non-citizens registered to vote).

³ See, e.g., *State v. Ceballos*, No. CM-2025-CR-000010 (Comanche Cnty., Kan., Dist. Ct.) (prosecution alleging non-citizen repeatedly voted in Kansas elections); *State v. Gomez*, No. RN-2025-CR-000838 (Reno Cnty., Kan., Dist. Ct.); *State v.*

meaningful laws to address this issue and to promote election integrity. Nor must a State wait for such crimes to occur before it acts. 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 ambit of the NVRA well beyond the statute’s text, and it threatens the States’ ability to define their political communities, to police voter fraud, and to legislate.

This Court’s review of the NVRA’s effect on state proof-of-citizenship requirements is overdue. In 2020, the Tenth Circuit held that Kansas’s proof-of-citizenship requirement was preempted by the NVRA. *Fish v. Schwab*, 957 F.3d 1105, 1136-44 (10th Cir. 2020). This Court denied the State’s petition for writ of certiorari. *Schwab v. Fish*, 141 S. Ct. 965 (2020). Since then, more States have adopted such 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). Clarification of the preemptive scope of the NVRA is urgently needed. This Court should grant the

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; last updated Dec. 3, 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*).

petitions for a writ of certiorari and reverse the Ninth Circuit.⁴

SUMMARY OF THE ARGUMENT

The Ninth Circuit gutted Arizona’s common-sense measures to promote election security. Two mistakes by the court, out of many, go to the heart of state sovereignty and governance.

First, the Ninth Circuit’s reading of the NVRA is both wrong and violates basic principles of federalism. This Court should now reject the Ninth Circuit’s overbroad application of *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013), and protect the States’ authority to regulate the selection of presidential electors and to set election procedures.

Second, the Ninth Circuit permitted a consent decree to undermine the authority of the Arizona Legislature to legislate. At its most basic level, a State must be able to exercise its constitutional prerogative to make law. By elevating a consent decree above the democratic process, the Ninth Circuit undermined the authority of States to legislate and silenced the voices of their citizens.

This Court’s review is necessary to correct these assaults on our system of federalism.

⁴ Although *Amici* have several concerns with the Ninth Circuit’s opinion, they limit their focus in this brief to the Ninth Circuit’s NVRA preemption analysis and use of a preexisting consent decree to handcuff the Arizona Legislature.

ARGUMENT

Arizona has long been inundated with both legal and illegal immigration and the attendant harmful consequences of the latter. *See Arizona v. United States*, 567 U.S. 387, 397 (2012). Arizona has understandably and repeatedly sought to mitigate this harm, including by trying to stop noncitizens from voting in its elections. Arizona naturally requires, as a qualification to be an elector, that a person be an American citizen, Ariz. Const. art. VII, § 2, and be registered to vote, *see* Ariz. Rev. Stat. §§ 16-120(A), 16-121(A). To help enforce these qualifications, Arizona's latest efforts include H.B. 2492, which ensures that state-form registrants provide documentary proof of citizenship—a requirement that has been utilized in some form or fashion for decades. *See Purcell*, 549 U.S. at 2. The statute also prevents applicants who have not provided proof of citizenship from voting in presidential elections and from voting by mail. Similarly, H.B. 2243 provides procedures to minimize voting in Arizona by noncitizens and nonresidents.

For as long as Arizona has tried to protect its elections, activist groups have attempted to undermine its efforts. But the right to police elections involves 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. FEC*, 800 F. Supp. 2d 281, 288 (D.D.C. 2011) (Kavanaugh, J.) (three-judge

district court). Thus, the States, as sovereigns, “may reserve participation in [their] democratic institutions for citizens of this country.” *Id.* at 287 (quotations omitted). Each State has an “obligation to preserve the basic conception of a political community,” *id.* (quoting *Foley v. Connelie*, 435 U.S. 291, 296 (1978)), by delineating and enforcing the qualifications to be an elector. The Constitution respects and guarantees this role for States.

And the Constitution also respects the ability of States to make and enforce law. The Constitution does not permit a preexisting consent decree to bind a state legislature that was never a party to the agreement and thus prevent the legislature from ever again meaningfully creating law. This is especially true when a violation of federal law was never adjudicated.

The Ninth Circuit ran afoul of the vertical and horizontal separation of powers that serve as the bedrock of our Nation.

I. The Ninth Circuit’s interpretation of the NVRA is wrong and violates basic principles of federalism.

The Ninth Circuit’s opinion is an “unprecedented” distortion of the NVRA and assault on the States. *See* RNC App. 78a⁵ (Bumatay, J., dissenting). This error follows the Tenth Circuit’s similar misconstrual of the NVRA in 2020. *Fish*, 957

⁵ Appendix cites are to the petitioner’s appendix supporting the petition with the lowest docket number: *Republican National Committee v. Mi Familia Vota*, No. 25-1017.

F.3d at 1136-44. This Court should now repudiate the Ninth Circuit’s reasoning, ensuring that lower courts do not impermissibly perpetuate this error and that States may still regulate elections consistent with their authority under the Constitution.

a. *Inter Tribal Council* does not limit States’ ability to treat voter registration as a voting qualification.

In determining that the NVRA preempted Arizona’s election security requirements, the Ninth Circuit improperly expanded this Court’s decision in *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013). *See RNC App.* 31a–32a, 34a. It is thus imperative that this Court clarify the scope of *Inter Tribal Council*, lest it completely “brush[] aside the constitutional authority of the States and produc[e] truly strange results.” 570 U.S. at 38 (Alito, J., dissenting).

Inter Tribal Council cannot bear the weight that it was given by the Ninth Circuit. Since this Court decided *Inter Tribal Council*, essential predicates of its analysis have been undermined. While the *Inter Tribal Council* Court observed there would be “serious constitutional doubts if [the NVRA] precluded a State from obtaining the information necessary to enforce its voter qualifications,” *id.* at 17, it reasoned that this was a non-issue because States could get that information by petitioning the Election Assistance Commission to change the federal forms

and could even challenge any decision of the EAC under the Administrative Procedure Act, *id.* at 19.

Reliance on agency action to address constitutional concerns is an anomaly among this Court's precedents, which typically reflect suspicion that a valid "cure" for constitutionally dubious laws may be appropriately left to unelected federal bureaucrats. *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 473 (2001). History has now shown that agency action is not the panacea the *Inter Tribal Council* Court thought it could be. Kansas and Arizona followed the guidance of this Court and asked the EAC to modify the federal form to include state-specific instructions to require registrants to submit documentary proof of citizenship. However, the EAC refused to modify the form to require the information the States thought necessary to secure their elections, and the Tenth Circuit upheld that refusal. *See Kobach v. U.S. Election Assistance Comm'n*, 772 F.3d 1183, 1194–99 (10th Cir. 2014).

The States enjoy primacy in the regulation of elections. The history of voter registration and electoral regulation "from the foundation of the government to our day" is one of state regulation, with only *minor* exceptions. *United States v. Gradwell*, 243 U.S. 476, 484 (1917). "With it thus clearly established that the policy of Congress for so great a part of our constitutional life has been, and now is, to leave the conduct of the election of its members to state laws, administered by state officers," the assumption is that Congress will only "regulate such elections . . . by

positive and clear statutes.” *Id.* at 485. *Gradwell* recognized the presumption against preemption in election law. At the very least, it applied a requirement akin to the federalism clear-statement rule. See *United States v. Bass*, 404 U.S. 336, 349 (1971) (“[U]nless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state balance.”). *Inter Tribal Council* disregarded *Gradwell* too casually as a case not involving preemption or not involving congressional regulation of elections. *Inter Tribal Council*, 570 U.S. at 13 n.5. However, there is no basis for treating an ambiguous law passed pursuant to the Elections Clause any differently than an ambiguous law passed under another constitutional grant of authority. This Court should clarify that the presumption against preemption applies in both instances.

At a minimum, the history of state control of election regulations generally, and voter registration more specifically, reflects “congressional acceptance of a broad scope of” state authority in the area. See *Dames & Moore v. Regan*, 453 U.S. 654, 677 (1981). Indeed, this Court has held that “States have broad powers to determine the conditions under which the right of suffrage may be exercised.” *Shelby County v. Holder*, 570 U.S. 529, 543 (2013) (internal citations omitted).

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, § 1, cl. 1 (elections for president); U.S. Const. amend. XVII (elections for the U.S. Senate); *see also Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 780 (2018) (Thomas, J., concurring). Those constitutional 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)).

The historical record shows that the Framers intentionally denied Congress the power to establish qualifications for voters. *See* Robert G. Natelson, *The Original Scope of the Congressional Power to Regulate Elections*, 13 U. Pa. J. Constitutional L. 1, 10–18 (2010). James Madison recognized that “the right of suffrage is very justly regarded as a fundamental article of republican government” and that to leave “it open for the occasional regulation of the Congress, would have been improper.” Federalist No. 52, p. 323 (C. Rossiter ed. 1961). He also noted that to “have reduced the different qualifications in the different States to one uniform rule, would probably have been as dissatisfactory to some of the States as it would have been difficult to the convention.” *Id.* In other words, except for certain constitutional requirements not relevant here, the qualifications of voters are left up to the States; not to Congress.

Further, this Court has made clear that “[n]ot only do States retain sovereignty under the Constitution, there is also a fundamental principle of *equal sovereignty* among the States.” *Shelby County*, 570 U.S. at 544 (quotation marks omitted). While “State legislation may not contravene federal law[,] [t]he Federal Government does not, however, have a general right to review and veto state enactments before they go into effect.” *Id.* at 542.

Congress did not fundamentally alter these practices and principles when it passed the NVRA. This conclusion is supported by the legal precept that “where a government practice has been open, widespread, and unchallenged since the early days of the Republic, the practice should guide our interpretation of an ambiguous constitutional provision.” *N.Y. State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 36 (2022) (quoting *NLRB v. Noel Canning*, 573 U.S. 513, 572 (2014) (Scalia, J., concurring in judgment)). The Court should respect the States’ leading role in the context of voter registration—and their role in creating and enforcing voter qualifications—by not interpreting the Elections Clause to undermine their efforts.

Granting the petitions for a writ of certiorari and ultimately reversing the Ninth Circuit would also provide this Court an opportunity to clarify its holding in *Inter Tribal Council*, acknowledging that “[p]rescribing voter qualifications” and enforcing them is constitutionally reserved to the States. 570 U.S. at 17; *see also id.* at 28 (Thomas, J., dissenting).

And more importantly, the Court did not say whether the result would be different if the “voter qualification Arizona [sought] to enforce” was registration as opposed to citizenship. *Id.* at 17 n.9.

Under Arizona law, registration is itself a qualification: “An elector shall not vote in an election called pursuant to the laws of this state unless the elector has been registered to vote.” Ariz. Rev. Stat. § 16-120(A). Registration is both a means of enforcing the citizenship qualification, *see* Ariz. Const. art. VII, § 2(a), as well as a substantive requirement in that it is a necessary condition for exercising the franchise. Simply put, registration is as “fundamental to the definition of [Arizona’s] political community” as is the citizenship requirement itself. *Bluman*, 800 F. Supp. 2d at 288. The Arizona Legislature has made registration a prerequisite to voting, through which it “secure[s] the purity of elections and guard[s] against abuses of the elective franchise.” Ariz. Const. art. VII, § 12.

b. The NVRA does not preempt the States’ right to regulate their selection of presidential electors, which is plenary under the Electors Clause

This Court has long held that the Electors Clause, U.S. Const. art. II, § 1, cl. 2, means what it says: “[T]he appointment and mode of appointment of electors belong exclusively to the states under the constitution of the United States.” *See McPherson v. Blacker*, 146 U.S. 1, 35 (1892); *see also Bush v. Gore*,

531 U.S. 98, 104 (2000) (*per curiam*) (citing *McPherson* for the proposition that “the state legislature’s power to select the manner for appointing electors is plenary”). In other words, the Electors Clause specifically “authorize[s] States to conduct and regulate . . . Presidential elections.” *Trump v. Anderson*, 601 U.S. 100, 112 (2024).

Applying that common-sense understanding to Arizona’s regulation of voting for presidential electors makes bare the Ninth Circuit’s error. Per Arizona law, the only people who may vote in presidential elections are those who provide documentary proof of citizenship when they registered via the state form or, if they are registering with the federal form, who have had their citizenship verified. Ariz. Rev. Stat. § 16-121.01(E); *see also id.* § 16-127(A). Thus, in keeping with the States’ power under the Electors Clause, the Arizona Legislature directed that Arizona’s presidential electors would be selected by only those voters who have proven American citizenship.

The Ninth Circuit found the NVRA preempted Arizona’s voting laws. *See* RNC App. 35a–36a. But Congress enacted the NVRA pursuant to its power under the Elections Clause to regulate the “Times, Places and Manner of holding Elections for Senators and Representatives.” *See Inter Tribal Council*, 570 U.S. at 7–8 (quoting U.S. Const. art. I, § 4, cl. 1). The “ability, care, and fulness of details” that marked the drafting of the Constitution makes it appropriate to apply the foundational maxim of *Expressio unius est exclusio alterius*—the expression of one thing is the

exclusion of the other. *See Township of Pine Grove v. Talcott*, 86 U.S. (19 Wall.) 666, 674–75 (1873). Thus, by expressly referencing only “Elections for Senators and Representatives,” the Elections Clause confers some authority on Congress only to regulate those specified elections. *See* Michael T. Morley, *Dismantling the Unitary Electoral System? Uncooperative Federalism in State and Local Elections*, 111 Nw. L. Rev. Online 103, 108 (2017).

In contrast, the Constitution *expressly* provides for the selection of presidential electors in the Electors Clause. The Electors Clause vests full authority in the States (not Congress) to “appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress.” U.S. Const. art. II, § 1, cl. 2. Thus, Congress cannot use any Elections Clause power to regulate presidential elections; it is “limited to” what is enumerated therein. *See United States v. Lopez*, 514 U.S. 549, 566 (1995).

No precedent from this Court says otherwise, including *Burroughs v. United States*, 290 U.S. 534 (1934), on which Ninth Circuit incorrectly relied. *See* RNC App. 35a–36a. *Burroughs* presumed that a law interfering “with the power of a state to appoint” presidential electors would be constitutionally questionable, and thus suggests that the federal government’s interest in federal elections justifies federal law ensuring their integrity. *See* 290 U.S. at 544–47. But that does not undermine the Electors

Clause, which “gives the States far-reaching authority over presidential electors.” *Chiafalo v. Washington*, 591 U.S. 578, 588 (2020).

At its core, what the Constitution creates—and what this Court’s precedent supports—is a particular, mandated relationship between federal and state responsibilities in the selection of presidential electors. *See* U.S. Const. art. II, § 1, cl. 2–4. A presidential election is not “an ordinary election.” *Bush*, 531 U.S. at 112 (Rehnquist, C.J., concurring). “The right to vote in presidential elections under Article II inheres not in citizens but in states.” *Att’y Gen. of Territory of Guam v. United States*, 738 F.2d 1017, 1019 (9th Cir. 1984). That is, in a presidential election, the State is the voter. It follows that how a State exercises its right to vote is left to its discretion, *see, e.g., McPherson*, 146 U.S. at 35, and, as a corollary, that federal laws governing voter registration do not *limit* that discretion.

The Ninth Circuit eroded long-held principles of federalism by impinging on States’ rights to govern the selection of presidential electors. This Court has held that the word “appoint” in the Electors Clause confers on state legislatures “the broadest power of determination.” *McPherson*, 146 U.S. at 27. Adding insult to injury, the Ninth Circuit’s infringement on state authority is wholly unjustified, as Arizona’s laws seek to *protect* the integrity of elections. And Arizona’s laws do not impinge on other constitutional protections. To sanction such rogue judicial

interference would be to annihilate the powers granted to States under the Electors Clause.

c. The NVRA does not preempt the States' sovereign right to regulate their state election procedures.

The NVRA specifically provides that States retain the right to “establish” their own “procedures” for voter registration in the three described ways, 52 U.S.C. § 20503(a), which is what Arizona did. More to the point, the NVRA concerns *registering* by mail, not *voting* by mail. 52 U.S.C. § 20505.

The overreach below is even more egregious in that the reasoning just as easily applies to state elections. Ariz. Rev. Stat. § 16-121.01(E) bars mail-in voting for “any election,” which includes state elections, in the absence of proof of citizenship. And “the Framers of the Constitution intended the States to keep for themselves, as provided in the Tenth Amendment, the power to regulate elections.” *Gregory v. Ashcroft*, 501 U.S. 452, 461–62 (1991) (quotations omitted).

The Ninth Circuit’s opinion illustrates the fundamental federalist concerns inherent in any interference with state electoral laws. While the Constitution mandates that valid congressional acts are supreme, it is “expedient and wise that the operations of the State and national governments should, as far as practicable, be conducted separately, in order to avoid undue jealousies and jars and

conflicts of jurisdiction and power.” *Ex parte Siebold*, 100 U.S. 371, 392 (1879).

Thus, congressional acts are presumed to have avoided “as far as possible . . . unnecessary interference with State laws and regulations, with the duties of State officers, or with local prejudices.” *Id.* at 393. “The true interest of the people of this country requires that both the national and State governments should be allowed, without jealous interference on either side, to exercise all the powers which respectively belong to them according to a fair and practical construction of the Constitution.” *Id.* at 394. Arizona has made a reasonable judgment that the special dangers mail-in voting may pose to its elections warrant extra protection. *See, e.g., Crawford*, 553 U.S. at 195–96 (noting how an election fraud scheme “perpetrated using absentee ballots . . . demonstrate[d] that not only is the risk of voter fraud real but that it could affect the outcome of a close election”).

That the Ninth Circuit ignored those principles is underscored by its obstacle preemption analysis. *See* RNC App. 32a–34a. Obstacle preemption is strong medicine to be prescribed cautiously. “No more than in field preemption can the Supremacy Clause be deployed . . . to elevate abstract and unenacted legislative desires above state law.” *Va. Uranium, Inc. v. Warren*, 587 U.S. 761, 778 (2019) (Gorsuch, J., op.). The Ninth Circuit, to be sure, pointed to the NVRA’s enacted findings and purposes, *see* RNC App. 32a–34a, but “[c]ongressional . . . musings . . . do not satisfy

the Article I, § 7 requirements for enactment of federal law and, therefore, do not pre-empt state law under the Supremacy Clause,” *Wyeth v. Levine*, 555 U.S. 555, 587–88 (2009) (Thomas, J., concurring in judgment). And for good reason. “[N]o legislation pursues its purposes at all costs” and “[e]very statute [pro]poses, not only to achieve certain ends, but also to achieve them by particular means.” *Freeman v. Quicken Loans, Inc.*, 566 U.S. 624, 637 (2012) (internal citations omitted). Yet the implicit premise of the Ninth Circuit’s decision is that the NVRA does just that, and that it was Congress’s intent to displace State law in order “to increase voter turnout” regardless of the risk of fraud. *See* RNC App. 33a.

Nothing justifies such a leap of logic. Indeed, given the States’ historic primacy in election regulation, *see, e.g., Gradwell*, 243 U.S. at 484–85, the more tenable conclusion is that the NVRA left as much as possible to the States, including regulation of mail-in voting. And the NVRA itself conveys that it is concerned with the exclusive right of citizens to vote in elections. The first codified finding is that “the right of *citizens of the United States* to vote is a fundamental right.” 52 U.S.C. § 20501(a)(1). And its codified purposes are

- (1) to establish procedures that will increase the number of *eligible citizens* who register to vote in elections for Federal office;
- (2) to make it possible for Federal, State, and local governments to implement this

chapter in a manner that enhances the participation of *eligible citizens* as voters in elections for Federal office;

(3) to protect the *integrity* of the electoral process; and

(4) to ensure that *accurate and current voter registration rolls* are maintained.

52 U.S.C. § 20501(b) (emphases added). Arizona’s statutes are aligned with the purposes behind the NVRA: ensuring that eligible citizens vote, that elections are secure, and that voter registration rolls are accurate and up-to-date.

Again, “[t]here is no question about the legitimacy or importance of the [States’] interest in counting only the votes of eligible voters.” *Crawford*, 553 U.S. at 196. In holding that a broad goal of increasing voter turnout should override a State’s goals of ensuring the integrity of the voting process, stopping dilution of voting rights, and encouraging public faith in elections—efforts aligned with the NVRA’s codified purposes—the Ninth Circuit’s holding epitomizes the vices of obstacle preemption.

II. A consent decree cannot infringe upon a State’s sovereign authority to legislate for the public good.

Not content with expanding the preemptive scope of the NVRA at the expense of the States, the Ninth Circuit also found that a federal consent decree

may wholly undermine the sovereign authority of States to make law. RNC App. 47a–49a.

The Ninth Circuit held that Arizona’s new statutory requirement that applicants provide documentary proof of citizenship when they register 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 our system of government. The notion that a consent decree—not adjudicated on the merits and agreed to by a limited number of litigants—could limit the power of a state legislature *to legislate* infringes upon the States’ powers, amounts to legislating (or vetoing) from the bench, and exceeds the jurisdictional powers afforded to federal courts. *See* RNC App. 104a (Bumatay, J., dissenting); *see also Shelby County*, 570 U.S. at 542 (“The Federal Government does not . . . have a general right to review and veto state enactments before they go into effect.”). Indeed, one of the bases for modifying a consent decree is a change in relevant state law. *See* RNC App. 104a (Bumatay, J., dissenting) (citing cases). The law controls a consent decree; not vice versa.

This Court has appropriately 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* RNC 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 that results in a consent decree, there is a strong risk of collusion between the group and executive officials who 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* RNC App. 104a (Bumatay, J., dissenting) (recognizing that “[t]he 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, as in other States, “[t]he legislative authority of the state shall be vested in the legislature.” Ariz. Const. art. 4, 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 were enacted in 2022—years after the LULAC Consent Decree. Yet the Ninth Circuit found the LULAC Consent Decree barred enforcement of H.B. 2492’s requirement that county recorders reject state-form applications without documentary proof of citizenship. RNC App. 49a. The court shrugged off concerns about federal judges infringing on state legislative power because, it believed, the LULAC Consent Decree only “limits the ability of executive officers in Arizona to enforce” the requirement. RNC App. 48a–49a.

The Ninth Circuit’s conclusion offers a distinction without a difference; it “misses the point.” RNC App. 170a (Nelson, J., dissenting from denial of rehearing en banc). Legislatures do not enact law to gather dust in statute books; they enact law to be effective. *See* RNC App. 108a (Bumatay, J., dissenting) (“[T]he heart of the legislative power is to transform the words of proposed legislation into enforceable statutes.”). If the enforcement of any new statute is barred by a preexisting consent decree, then the statute amounts to no more than 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.” RNC App. 104a (Bumatay, J., dissenting). It incentivizes

current plaintiffs to seek broad, far-reaching consent decrees, and it provides future plaintiffs with means of winning their own case: see if the new law can be shoehorned into an existing consent decree. By going above and beyond the instant case that initially resulted in the consent decree, such conduct 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 it; the public-official parties were executive officers, not legislators. The parties could not “consent to do something together that they lack[ed] the power to do.” *Perkins v. City of Chicago Heights*, 47 F.3d 212, 216 (7th Cir. 1995). In other words, they could not give away the Arizona Legislature’s authority to make enforceable law. See *Loc. No. 93, Int’l Ass’n of Firefighters, 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 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 also 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. 4, pt. 1, § 1. Arizona citizens may directly propose and implement legislation. The Ninth Circuit’s analysis leaves no room for how law comes about—whether through a state legislature or through a citizen-led initiative. If state executive officials can bind a non-party, separate branch of government to a consent decree, then under the Ninth Circuit’s reasoning nothing stops them from binding the state’s citizens as well. The Ninth Circuit’s opinion undermines Arizona’s direct-democracy measures just as it undermines the traditional legislative process.

The Ninth Circuit “lost sight of its limitations.” See *Keith*, 118 F.3d at 1393; see also *Lelsz v. Kavanagh*, 807 F.2d 1243, 1253 (5th Cir. 1987) (“Lack of restraint on an organ of government (even the judiciary) is the antithesis of law.”). The court sought to improperly use the LULAC Consent Decree “to handcuff [the Arizona Legislature] in perpetuity.” RNC App. 105a (Bumatay, J., dissenting). Yet it “is not a job of a federal judge” to “expand” consent decrees to avoid compliance (or enforcement) of new

law. *United States v. Junction City Sch. Dist.*, 14 F.4th 658, 668 (8th Cir. 2021).

In summary, the Ninth Circuit cast aside a state's ability to legislate in favor of a preexisting consent decree. And it became the second circuit to grossly misread the NVRA in the context of state proof-of-citizenship requirements. *See Fish*, 957 F.3d at 1136-44. It is imperative that this Court review this egregious assault on state sovereignty. And it is essential that this Court provide clarity to the numerous States that have already enacted, or are contemplating enacting, similar proof-of-citizenship laws.

CONCLUSION

For the foregoing reasons, this Court should grant the petitions for a writ of certiorari.

Respectfully submitted,

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