Nos. 25-1017, 25-1019

In the Supreme Court of the United States

REPUBLICAN NATIONAL COMMITTEE, *Petitioner*,
v.
MI FAMILIA VOTA, ET AL., *Respondents*.

WARREN PETERSEN, PRESIDENT OF THE ARIZONA SENATE, ET AL., *Petitioners*,
v.
MI FAMILIA VOTA, ET AL., *Respondents*.

ON PETITIONS FOR WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR CENTER FOR ELECTION CONFIDENCE, INC., RESTORING INTEGRITY AND TRUST IN ELECTIONS, INC., AND HONEST ELECTIONS PROJECT AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

CHRISTOPHER E. MILLS
Counsel of Record
Spero Law LLC
557 East Bay Street
#22251
Charleston, SC 29413
(843) 606-0640
cmills@spero.law

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INTEREST OF *AMICI CURIAE*

Center for Election Confidence, Inc., is a non-profit organization that promotes ethics, integrity, and professionalism in the electoral process. CEC works to ensure that all eligible citizens can vote freely within an election system of reasonable procedures that promote election integrity, prevent vote dilution and disenfranchisement, and instill public confidence in election systems and outcomes. CEC also periodically engages in public-interest litigation to uphold the rule of law and election integrity.*

Restoring Integrity and Trust in Elections, Inc. is a non-profit organization with the mission of protecting the rule of law in the qualifications for, process and administration of, and tabulation of voting throughout the United States. RITE supports laws and policies that promote secure elections and enhance voter confidence in the electoral process.

The Honest Elections Project is a nonpartisan organization devoted to supporting the right of every lawful voter to participate in free and honest elections. Through public engagement, advocacy, and public-interest litigation, the Project defends the fair, reasonable measures that legislatures put in place to protect the integrity of the voting process. The Project

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* Under Rule 37.2, *amici* provided timely notice of their intention to file this brief. Under Rule 37.6, no counsel for a party authored this brief in whole or in part, and no person other than *amici curiae* or their counsel made a monetary contribution to its preparation or submission.

supports commonsense voting rules and opposes efforts to reshape elections for partisan gain.

Amici have a significant interest in this case, which implicates the state legislatures' primary role in setting the rules for elections.

SUMMARY OF THE ARGUMENT

The Ninth Circuit's decision departs from this Court's precedents and endangers election integrity in many ways. This brief focuses on two of the issues warranting this Court's review.

First, the Ninth Circuit badly erred in holding that the National Voter Registration Act (NVRA) preempts Arizona's law requiring proof of citizenship to vote by mail. Like most States, Arizona has long provided opportunities for voters to cast a ballot by mail—with safeguards to ensure that the absentee ballot process maintains its integrity. One of those is that applicants must provide proof of citizenship. Other voters who have properly registered may vote in-person, during Arizona's early voting period or on Election Day.

In a novel and thinly reasoned decision that would disrupt common absentee regulations, the Ninth Circuit held that the NVRA preempted this proof of citizenship requirement. The court identified no express preemption language, but summarily found preemption based on (1) the NVRA's requirement that States "accept and use" the Federal Form for *registration* and (2) one of the NVRA's purpose statements about increasing voter registration. Neither of these suffices for preemption, especially in an area in which "the Elections Clause empowers Congress to regulate *how* federal elections are held, but not *who* may vote in them." *Arizona* v. *Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 16 (2013). The National Voter Registration Act focuses on voter *registration*, and it is unclear whether *any* decision had held it to preempt state regulations of voting *methods*.

This decision on mail-in voting would have significant negative repercussions. For instance, the purposes-and-objectives preemption analysis below would appear to mandate nationwide, no-excuse absentee balloting (at least for Federal Form users)—and to preempt many other routine election rules, if some party can claim that those rules might keep some people from voting. The decision thus threatens States' significant interests in protecting the integrity of their elections.

Second, the Ninth Circuit also erred in invalidating Arizona's provision allowing for removal of noncitizens from voting rolls. Though the Ninth Circuit focused on the NVRA's prohibition on removal programs within 90 days of an election, the court's logic suggests that States could *never* remove individuals who could not have properly registered to vote in the first place, including noncitizens, minors, and fictitious persons. The absurdity of this interpretation reinforces that the Ninth Circuit failed to read the statute as a coherent whole.

However far this holding below sweeps, the damage to American elections would be severe. An illegal vote cancels out a lawful vote. Once votes are tabulated, proper voters have generally no recourse for the unlawful dilution of their votes. And there is no apparent remedy for the resulting damage to American political self-definition. Voting by citizens is the core mechanism to protect our self-government, and the decision below threatens that mechanism.

Arizona's effort to protect the integrity of the ballot box accords with the Elections Clause and federal law. This Court should grant certiorari and reverse.

REASONS FOR GRANTING THE WRIT

I. The NVRA does not preempt Arizona's limits on mail-in voting.

When Congress passed the NVRA, it set a minimum national threshold for "procedures to register to vote in elections for Federal office." 52 U.S.C. § 20503(a). That's it. The NVRA does not decide how people vote—the manner and means of casting a ballot. Arizona's law addresses a different problem, namely, who can vote by mail. The Elections Clause vests state legislatures with the "duty" to make law concerning federal elections, and Congress generally has not "ma[d]e or alter[ed] such Regulations" in the context of mail-in voting. *Moore* v. *Harper*, 600 U.S. 1, 10 (2023); U.S. Const. art. I, § 4. Because nothing in the NVRA says otherwise, that should end the preemption analysis.[1] The Ninth Circuit egregiously

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[1] One might question the *Inter Tribal Council* majority's broad interpretation of the Elections Clause, but that issue is not before this Court. Cf. *Inter Tribal Council*, 570 U.S. at 29–33, 36 (Thomas, J., dissenting). The NVRA's relationship with the Elections Clause continues to be debated. Proponents of the position that the NVRA was enacted under the Elections Clause point to *Inter Tribal Council*, while opponents argue that any connection in *Inter Tribal Council* between the NVRA and the Elections Clause could be dictum. For instance, the U.S. House Committee on House Administration, which has jurisdiction over the Elections Clause (Rule X(k)(12), Rules of the U.S. H. of Reps. (119th Cong.)), is on recent record favoring the opposing view. See, *e.g.,* H.R. Rep. No. 118-386, at 6 (2024) ("[T]he Court's gloss on the scope of the Elections Clause is nothing more than an *obiter dictum* because it was not necessary to decide the Court's

erred by taking pieces of the NVRA out of context and invoking a singular, misconstrued legislative purpose to override Arizona's mail-in ballot limits.

Time and again, this Court has explained that preemption "must stem from . . . a valid statute enacted by Congress." *Kansas* v. *Garcia*, 589 U.S. 191, 202 (2020) (collecting cases). The text is what "communicates the scope of Congress's pre-emptive intent." *Inter Tribal Council*, 570 U.S. at 14; see *CSX Transp., Inc.* v. *Easterwood*, 507 U.S. 658, 664 (1993) ("Evidence of pre-emptive purpose is sought in the text and structure of the statute at issue.").

From the NVRA's enactment in 1993 until this case, apparently no court had held that the NVRA nationalizes any aspect of the law concerning voting by mail. The Ninth Circuit below tried to justify its novel preemption analysis with an inference from a single line in the NVRA and an appeal to a "brooding federal interest"—voter participation—that the NVRA addresses only in the context of registration. *Virginia Uranium, Inc.* v. *Warren*, 587 U.S. 761, 767 (2019) (opinion of Gorsuch, J.).

The preemption theory adopted below squeezes a regulatory elephant—access to certain voting methods—into a mousehole of text about *registration*. See *id.* at 771. And it turns the NVRA's national floor for voter registration into a federal trump-card

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statutory interpretation of 'accept and use' in the NVRA."). Without taking a position on this debate, *amici* refer to the NVRA as Elections Clause legislation due to that position's broad support in the Courts of Appeals.

displacing state laws that regulate procedures relating to the actual *casting* of ballots. The NVRA's text does not countenance that extraordinary result. Because the decision below deviates from this Court's established statutory interpretation principles, the Court's review—and reversal—is needed.

A. The NVRA's "accept and use" requirement does not preempt Arizona's vote-by-mail rule.

For preemption, the text of a federal law must override state law according to the rules of "standard English usage." *Garcia*, 589 U.S. at 204. What matters, as in all statutory interpretation questions, is the text's "fairest reading," in context. *Inter Tribal Council*, 570 U.S. at 9–15.

To begin, the NVRA does not expressly preempt Arizona's mail-in rule. The NVRA requires that "notwithstanding any other Federal or State law, in addition to any other method of voter registration provided for under State law, each State shall establish procedures to register to vote in elections for Federal office" by an application attached to a driver's license application, by mail, and in person. 52 U.S.C. § 20503(a). By saying "notwithstanding any other . . . State law," this provision *does* expressly preempt some state laws. But the provision is about registration, not voting by mail. So all that the NVRA expressly preempts are state laws that do not meet the federal floor for registration in the NVRA.

This textual distinction between registration and voting is key. When Congress passed the National Voter *Registration* Act, the deal it struck only

standardized a national floor for the registration process. See 52 U.S.C. § 20503(a) ("establish[ing] procedures to register to vote"). Every substantive section of the NVRA is expressly tied to "registration."[2]

The NVRA also requires that States "accept and use" the federal "mail voter registration application." *Id.* § 20505(a)(1); see *Inter Tribal Council*, 570 U.S. at 20. While this requirement means that States must "accept the Federal Form as a complete and sufficient registration application," *id.* at 9, it does not "prescribe the way in which those voters must cast their vote—either in person, by mail, or other method." Pet. 98a (Bumatay, J., dissenting).[3] By the NVRA's own terms, the Federal Form "may require only such identifying information" as state officials need "to administer voter registration and other parts of the election process." 52 U.S.C. § 20508(b)(1). Reading the NVRA's requirement to "accept and use" the Form to extend beyond registration and mandate *voting* procedures has no stopping point. *Every* voting regulation—poll hours, locations, early voting and absentee rules,

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[2] See 52 U.S.C. § 20503 ("procedures for voter registration"); *id.* § 20504 ("Simultaneous application for voter registration"); *id.* § 20505 ("Mail registration"); *id.* § 20506 ("Voter registration agencies"); *id.* § 20507 ("administration of voter registration"). Indeed, when a senator tried to add provisions addressing voting by mail for citizens overseas, the key sponsor defeated the amendment on the ground that the bill "deals with voter registration, not voting." 139 Cong. Rec. S2988-01 (daily ed. Mar. 17, 1993) (statement of Sen. Ford).

[3] All references to the petition appendix are to the one filed in No. 25-1017.

identification rules—could be said to "require" something more than the Federal Form of the registered citizen.

The Ninth Circuit's analysis here contained minimal reasoning. Pet. 31a–32a. For its part, the district court seemed to believe that the "accept and use" provision requires Federal Form registrants to be treated as well as anyone else. Pet. 355a–56a. But the text does not support that reading. Registration simply must allow citizens to exercise the "fundamental right" "to vote," 52 U.S.C. § 20501(a)(1), as it is available pursuant to law. Regulations around mail-in voting, including access to it, vary by State, and always have. Indeed, as discussed below, no-excuse voting by mail was rare when the NVRA became law and is still not a universal practice among the States.[4] And the right to vote is not a "one-way ratchet," in which every state law innovation with respect to voting is immediately incorporated into the Constitution. *Ohio Democratic Party* v. *Husted*, 834 F.3d 620, 635 (CA6 2016). Indeed, the state legislative "process does not include a constitutional ratchet." *Luft* v. *Evers*, 963 F.3d 665, 670 (CA7 2020).

The Ninth Circuit did not expressly address the other part of the district court's textual preemption analysis, which relied on 52 U.S.C. § 20505(c)(1)'s permission for States to require first-time voters to vote in person to conclude that States are *foreclosed* from imposing other qualifications. Pet. 354a. That

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[4] Ballotpedia, *Absentee/Mail-in Voting*, https://perma.cc/KH76-6WSY.

reasoning would seemingly force States to give Federal Form users—and, based on the Ninth Circuit's holding on the *LULAC* consent decree and state form applicants, presumably all mail registrants—*preferential* treatment. Take a State that conditions access to its permanent vote-by-mail list on registering in-person at the department of motor vehicles, where identity verification procedures are more robust. Under the district court's most-favored-nation reading of the NVRA's language, the State must let Federal Form users on that list, but not state form registrants who register at the DMV or state public assistance agencies.

Other absurdities abound from this reading. It would block States from reserving early voting for registrants who submit proof of citizenship. It would require States to accept the Federal Form as an application for a mail-in ballot if they treat other registration applications in that manner. It would prevent States from offering more polling locations to facilitate voting by the larger number of persons eligible to vote for both state and federal offices who must complete longer ballots. It could even block States from *adding* personnel to polling places dedicated to expediting the processing of non-Federal-only voters. But the NVRA says *nothing* about any of these topics.

In the end, there is no indication in the NVRA that Congress intended to intrude so deeply into how States fulfill their constitutional duty to administer federal elections. Because the NVRA's text goes "no farther" than establishing voter registration

requirements, that is where the statute's preemption ends. *Ex parte Siebold*, 100 U.S. 371, 386 (1879).

B. The NVRA's purposes do not preempt Arizona's mail-in rule.

The Ninth Circuit's other rationale was that Arizona's rule is "an obstacle to the NVRA's purpose" of "'enhanc[ing] the participation of eligible citizens as voters in elections for Federal office.'" Pet. 32a (quoting 52 U.S.C. § 20501(b)(2)). But "[a] sound preemption analysis cannot be as simplistic as that." *Virginia Uranium*, 587 U.S. at 778 (opinion of Gorsuch, J.). The Ninth Circuit's selective use of a purpose statement about *registration* to assume that federal law single-mindedly pursues a goal about *voting* and thus preempts state law that might pursue overlapping goals contradicts this Court's precedents.

In the preemption analysis, "the federal restrictions or rights that are said to conflict with state law must stem from either the Constitution itself or a valid statute enacted by Congress." *Garcia*, 589 U.S. at 202. "[P]reemption cannot be based on 'a freewheeling judicial inquiry into whether a state statute is in tension with federal objectives.'" *Ibid.* (quoting *Chamber of Com. of U.S.* v. *Whiting*, 563 U.S. 582, 607 (2011)). "[S]uch an endeavor would undercut the principle that it is Congress rather than the courts that pre-empts state law." *Whiting*, 563 U.S. at 607 (internal quotation marks omitted). After all, "no law pursues its purposes at all costs." *Pulsifer* v. *United States*, 601 U.S. 124, 152 (2024) (citation modified).

Here, the NVRA expresses four purposes:

> (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). It also expresses Congress's "find[ing]" that "discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionately harm voter participation by various groups." *Id.* § 20501(a).

None of these can show preemption here, even putting aside that the district court found that Arizona's laws impose a minimal burden on the right to vote. See Pet. 309a–17a. The NVRA's purpose statements are all tied to *registration*. They do not speak to increasing ballot access directly. No doubt, the statute broadly seeks to increase registration and even to "enhance[]" "participation," though only via other provisions limited to registration—which is a requirement to vote in all but one State.[5] And the

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[5] See U.S. Election Assistance Comm'n, *Voter Roll Privacy*, https://perma.cc/D3ND-AQKJ.

statute speaks "of eligible citizens," balancing the increased registration goal and "protect[ing] the integrity of the electoral process." 52 U.S.C. § 20501(b). The Ninth Circuit ignored the NVRA's focus on registration and integrity-enhancing purposes, elevating a snippet of purpose above the operative text of the statute.

In many decisions, this Court has squarely rejected that approach to interpretation: "No statute pursues a single policy at all costs, and [the courts] are not free to rewrite this statute (or any other) as if it did." *Bartenwerfer* v. *Buckley*, 598 U.S. 69, 81 (2023); see generally *Virginia Uranium*, 587 U.S. at 778–79. What's more, the Ninth Circuit's logic has no stopping point. Under its reading, the NVRA would preempt not only a commonplace mail-in voting rule like this one, but nearly every law that regulates elections, essentially codifying the *Anderson-Burdick* balancing test used to assess many challenges to election rules. Many States impose photographic identification requirements on voters or invalidate ballots that do not arrive with required indications of validity, like witness certifications and secrecy envelopes. The rule below would seemingly preempt these laws, along with myriad other rules and regulations States impose on voting, because they *might* have a negative effect on voter turnout.

There is no reason to think that one purpose statement about registration implies preemption of all the mail-in vote regulations across the nation. "The mere fact that state laws like the [Arizona] provisions at issue overlap to some degree with federal [voter

registration] provisions does not even begin to make a case for conflict preemption." *Garcia*, 589 U.S. at 211.

C. The decision below creates significant uncertainty about rules governing voting by mail and would undermine election integrity.

Since the NVRA's enactment in 1993, *amici* are unaware of any decision using it to preempt a state law that regulates access to different methods of voting—until now. And that is not because such state laws are innovations. Far from it. In 1993, many States reserved access to voting by mail to those who may be absent from the jurisdiction or were too ill or disabled to make it to the polls.[6] Only eleven States permitted no-excuse in-person early voting.[7] Restricting access to voting by mail is still commonplace.[8]

The logic of the decision below would seemingly doom all these longstanding state laws that require voters provide additional information and excuses to vote absentee, at least as applied to Federal Form registrants. And the sheer novelty of this view is

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[6] J. Fortier, *Absentee and Early Voting, Trends, Promises, and Perils* 26 (Am. Enter. Inst. Press 2006).

[7] D. Biggers & M. Hanmer, *Who Makes Voting Convenient? Explaining the Adoption of Early and No-Excuse Absentee Voting in the American States*, 15 State Pol. & Pol'y Q. 192, 199 (2015), https://tinyurl.com/3rvkjb5c.

[8] National Conference of State Legislatures, *Table 2: Excuses to Vote Absentee* (Aug. 26, 2025), https://perma.cc/E3WV-V937; see, *e.g.*, Conn. Gen. Stat. § 9-135; Del. Code tit. 15, § 5502; N.Y. Elec. Law § 8-400.

compelling evidence that it is wrong. See *Free Enter. Fund* v. *Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 505 (2010).

The Ninth Circuit's broad preemption approach would effectuate a revolution in election law. Challengers to a state voting regulation would only need to show that the regulation *might* fail to "increase voter turnout" or "promote the exercise" of the right to vote, and voilà, obstacle preemption precludes the state regulation. On this reading, the NVRA would swallow the entirety of the jurisprudence surrounding the federal right to vote, effectively overturning many of this Court's decisions. The rights of voters to participate in elections run according to the rules of their States—and safeguarded by those rules—are too important to let this uncertainty reign.

Arizona and other States have a profound responsibility to ensure that only U.S. citizens vote in their elections. States "indisputably [have] a compelling interest in preserving the integrity of [their] election process." *Purcell* v. *Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam). Laws designed to protect the integrity of the election, at any stage in the process, fulfill a critical policy goal: instilling public confidence in the electoral process, which "encourages citizen participation in the democratic process." *Crawford* v. *Marion County Election Bd.*, 553 U.S. 181, 197 (2008).

As this Court recently explained in the context of absentee ballots, 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 Committee*, 594 U.S. 647, 686 (2021). Voting and election fraud—especially with respect to

absentee ballots—remains a problem that States have a duty to prevent. Arizona's rule furthers the State's vital interest in protecting the integrity of its elections, including elections for federal office that it administers. The decision below threatens this interest, which is shared by all States.

II. The Ninth Circuit's decision would prevent States from removing noncitizens, minors, and fictitious persons from voting rolls.

The Ninth Circuit also egregiously erred in invalidating Arizona's inspections of its voter roll to determine whether any person is not a U.S. citizen, at least when those inspections are within 90 days of an election. The court relied on the NVRA's provision that "[a] State shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters." 52 U.S.C. § 20507(c)(2)(A). But as Judge Bumatay explained below—to no apparent response by the Ninth Circuit majority—"foreign citizens aren't included in the protection of 'ineligible voters' in the 90-Day Provision," so their removal does not implicate this provision. Pet. 125a. Judge Bumatay was right: individuals who were never eligible to vote in the first place, whether foreign citizens, minors, or other categorically ineligible persons, could not have been an "eligible applicant" in the first place, putting them outside the 90-day provision's "eligible voter"/"ineligible voter" dichotomy. Pet. 124a–25a.

As Judge Bumatay also observed, reading the 90-day provision as the Ninth Circuit majority did "would

lead to absurd results and raise serious constitutional concerns" by transforming the NVRA into "a congressional ban on removing foreign citizens for voting in American elections." Pet. 126a. In fact, the reading adopted below would seem to prevent States from *ever* removing noncitizens, minors, or others not qualified to vote from voter rolls. The Ninth Circuit had no apparent response, and its decision would severely undermine state sovereignty and Americans' right to govern themselves.

A. The NVRA does not require States to permanently maintain noncitizens and others not qualified to vote on voting rolls.

"[S]imilar language contained within the same section of a statute must be accorded a consistent meaning." *Nat'l Credit Union Admin.* v. *First Nat. Bank & Tr. Co.*, 522 U.S. 479, 501 (1998). Courts interpret statutes to provide "a symmetrical and coherent regulatory scheme." *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (citation modified).

Below and in similar cases, challengers have tried to divorce the "program" prohibited in the 90-day period before an election from the "general program" that the statute obligates States to run—and that provides the only permissible mechanism to remove voters, apart from the person's own request, criminal conviction, or mental incapacity. The *reason* they try to avoid the statutory context is apparent: applied across the statute, their reading would mean that the NVRA prohibits States from removing a wide swath of individuals who cannot legally vote from the voter rolls, including noncitizens, minors, and others—*ever*.

But this artificial siloing of the 90-day provision contradicts basic statutory interpretation principles—and renders the interpretation adopted below absurd (and unconstitutional).

Subsection (a)(3) of 52 U.S.C. § 20507 requires States to "provide that the name of a registrant may not be removed from the official list of eligible voters except—(A) at the request of the registrant; (B) as provided by State law, by reason of criminal conviction or mental incapacity; or (C) as provided under paragraph (4)." Paragraph (4), in turn, requires States to "conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of—(A) the death of the registrant; or (B) a change in the residence of the registrant, in accordance with subsections (b), (c), and (d)." *Id.* § 20507(a)(4).

Putting these subsections together, States cannot remove a "registrant" from a voter roll except at the registrant's request, for criminal conviction or mental incapacity, or via a "general program" that identifies individuals who have died or changed residences.

Subsection (c), meanwhile, is titled "Voter removal programs." It first describes how a State "may meet the requirement of subsection (a)(4) by establishing a program" with certain parameters. *Id.* § 20507(c)(1). Right from the start, then, the statute links the "program" discussed in subsection (c) with the "general program" discussed in subsection (a)(4). Subsection (c) goes on to require States to "complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the

names of ineligible voters from the official lists of eligible voters." *Id.* § 20507(c)(2)(A). This provision, however, "shall not be construed to preclude" "the removal of names from official lists of voters on a basis described in paragraph (3)(A) or (B) or (4)(A) of subsection (a)"—which were at the registrant's request, criminal conviction, mental incapacity, and death. *Id.* § 20507(c)(1). Only one basis for removal from subsection (a) remains to be prohibited during the 90-day period: "a change in the residence of the registrant," which is covered by subsection (d).

Nothing in these provisions speaks to noncitizens—or others whose registrations were void *ab initio*, such as minors, fictitious persons, or individuals who misrepresent their residence. So if the Ninth Circuit is right that the 90-day limitation on programs prohibits removal on these bases—because the statute has listed exceptions (Pet. 44a)—States could *never* remove individuals falling within these categories, no matter when the removal happens or whether it is after a systematic inquiry. On that reading, the NVRA would "prohibit a state from ever removing from its voting list a noncitizen"—or a minor or fictitious person—"even though the [person] should never have been registered in the first place." *United States* v. *Florida*, 870 F. Supp. 2d 1346, 1349 (N.D. Fla. 2012).

Thus, as Judge Hinkle has explained, the "conclusion is inescapable": subsection (a)(3)'s "prohibition on removing a registrant except on specific grounds simply does not apply to an improperly registered noncitizen" (or minor, etc.). *Id.* at 1349–50. And if subsection (a)(3) "does not prohibit

a state from removing an improperly registered noncitizen, then [subsection (c)(2)] does not prohibit a state from systematically removing improperly registered noncitizens during the quiet period." *Id.* at 1350. "[N]ot only does paragraph (c)(2) incorporate by reference paragraphs (a)(3) and (a)(4) in setting forth those removals excepted from the 90-day period, but the language of each of the two provisions tracks the other," making these provisions "inextricably linked." *Arcia* v. *Detzner*, 908 F. Supp. 2d 1276, 1282–83 (S.D. Fla. 2012), *rev'd and remanded sub nom. Arcia* v. *Fla. Sec'y of State*, 772 F.3d 1335 (CA11 2014); *see Arcia*, 772 F.3d at 1348 (Suhrheinrich, J., dissenting) (agreeing with this reasoning).

Trying to get around this problem, challengers elsewhere have highlighted that "[s]ection 8(a)(3) refers to 'registrant[s]' while the [90-Day] Provision refers to 'ineligible voters.'"[9] But this does not address the statutory problem. "[T]here is no reason to believe the reference to removing a 'registrant' in [subsection (a)(3)] means something different than removing 'ineligible voters' in [subsection (c)(2)]." *Florida*, 870 F. Supp. 2d at 1350. "[B]y definition, someone who is being 'removed' has already registered, so an 'ineligible voter' is a 'registrant.'" *Ibid.*; see Pet. 185a (Nelson, J., dissenting from the denial of rehearing en banc) ("ineligible voters" is "a subset of registrants").

Thus, the Ninth Circuit's reading "produce[s] an absurd result": a State cannot "remove from its voting

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[9] United States' Reply in Support of its Motion for Preliminary Injunction 2 n.1, *Virginia Coal. for Immigrant Rts.* v. *Beals*, No. 24-cv-1778, Dkt. 100, 2024 WL 6048999 (E.D. Va. Oct. 23, 2024).

rolls minors, fictitious individuals, individuals who misrepresent their residence in the state, and non-citizens." *Arcia*, 908 F. Supp. 2d at 1282. An example helps illustrate the point. Say a fluke within a State's internal motor vehicle-voter processes leads it to add 15-year-olds onto the voter rolls. Under the reading below, the State could not simply reverse the automatic addition of minors not qualified to vote to the voter rolls within 90 days of an election. That result is odd (and constitutionally deficient) enough. Odder still would be that the reading below would prohibit the state from *ever* removing these minors from the voter rolls.

Not only would these results of the Respondents' reading be absurd, they are also inconsistent with Congress's statutory intent. See *Pub. Citizen* v. *U.S. Dep't of Just.*, 491 U.S. 440, 471 (1989) (Kennedy, J., concurring in judgment) (noting the proper application of the absurdity canon where "it is quite impossible that Congress could have intended the result, and where the alleged absurdity is so clear as to be obvious to most anyone" (citation omitted)). The NVRA's first statutory finding is that "the right of *citizens* of the United States to vote is a fundamental right." 52 U.S.C. § 20501(a)(1) (emphasis added). And its statutory purposes all relate to the right of "eligible citizens" to participate in elections held with integrity and accuracy. *Id.* § 20501(b). Prohibiting States from removing self-identified noncitizens, minors, and fictitious persons from voter rolls would be an exceedingly strange way of effectuating these purposes.

The statutory language reinforces this conclusion. The listed exceptions—death, incapacity, conviction, and a change in residence—"indicate[] that what Congress had in mind when it drafted these sections was removing a person on grounds that typically arise after an initial proper registration." *Florida*, 870 F. Supp. 2d at 1350. But "Congress was not addressing the revocation of an improperly granted registration of a noncitizen." *Ibid.* Unlike residency changes, citizens become noncitizens only very rarely: the year the NVRA was enacted, about 697 citizens (out of about 260 million) renounced their citizenship.[10] Likewise, persons of age do not become minors, and real persons do not become fictitious. So it is much more reasonable to think that Congress's limitations in the NVRA were geared toward the listed categories, which can and often do change, rather than categories that could make a registration void *ab initio* like age and citizenship. Otherwise, "non-citizens, who were never eligible to vote in the first instance, will remain on the voting rolls within 90 days of a Federal election, and there is nothing practical [any] State" "can do about it." *Arcia* v. *Detzner*, 2015 WL 11198230, at *1 (S.D. Fla. Feb. 12, 2015).

Interpreting the NVRA as the Ninth Circuit did would raise serious constitutional doubts about its validity: "the Elections Clause empowers Congress to regulate *how* federal elections are held, but not *who* may vote in them." *Inter Tribal Council*, 570 U.S. at

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[10] Joint Comm. on Taxation, *Issues Presented by Proposals to Modify the Tax Treatment of Expatriation* 7 (June 1, 1995), https://perma.cc/W5WP-Z9JM.

16.[11] Given that the reading below would "preclude[]" States from enforcing their voting qualifications as applied to federal elections via the Qualifications Clause and the Electors Clause, the Petitioners' "plausible" reading of the NVRA should control. *Id.* at 17–18.

Tellingly, other courts confronted with these problems have glossed over them, declining to "decide today whether" "the General Removal Provision . . . allow[s] for removals of non-citizens." *Arcia*, 772 F.3d at 1346; see *Virginia Coal. for Immigrant Rts.* v. *Beals*, 2024 WL 4601052, at *2 (CA4 Oct. 27, 2024) ("leaving questions about other provisions for another day").

But courts must read a statute to fit "all parts into an harmonious whole." *Brown & Williamson*, 529 U.S. at 133. "Whatever the virtues of judicial minimalism, it cannot justify judicial incoherence." *Nat'l Aeronautics & Space Admin.* v. *Nelson*, 562 U.S. 134, 166 (2011) (Scalia, J., concurring in judgment). What matters is "the text of the whole statute." *Maracich* v. *Spears*, 570 U.S. 48, 65 (2013). And the Ninth Circuit's reading of the 90-day provision cannot provide a sensible, coherent regime.

B. The decision below threatens citizens' right to have their vote count.

The decision below preventing removal of noncitizens from Arizona's voter rolls would under-

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[11] Of course, Federalist No. 59 highlights that this "federal fail-safe" guards against "extraordinary circumstances" in the States.

mine the right of American citizens to have their votes counted fairly in accurate elections.

Most obviously, States and American citizens are grievously harmed when a noncitizen (or minor or other person not qualified to vote) votes. Each illegal vote cancels out a proper one—and could even provide the margin of victory for a candidate who would not otherwise have been elected. And the illegal vote generally cannot be remedied once it is cast and tabulated, so any later prosecution of unqualified voters is no immediate comfort for every eligible voter relying on the election at hand to produce a result that reflects the will of the people.

As this Court has said, "[t]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Purcell*, 549 U.S. at 4 (quoting *Reynolds* v. *Sims*, 377 U.S. 533, 555 (1964)). "To the extent that a citizen's right to vote is debased, he is that much less a citizen." *Reynolds*, 377 U.S. at 567. Excluding noncitizens "from basic governmental processes is not a deficiency in the democratic system but a necessary consequence of the community's process of political self-definition." *Cabell* v. *Chavez-Salido*, 454 U.S. 432, 439 (1982). "States can prevent non-citizens from serving as probation officers, or teaching in public schools." *OPAWL - Bldg. AAPI Feminist Leadership* v. *Yost*, 118 F.4th 770, 777 (CA6 2024) (citations omitted). "Why? Because the 'distinction between citizens and aliens, though ordinarily irrelevant to private activity, is fundamental to the definition and government of a

State.'" *Ibid.* (quoting *Ambach* v. *Norwick*, 441 U.S. 68, 75 (1979)).

The Ninth Circuit expressed concern about "inaccurate removal" and "[e]ligible voters" not being "able to correct the State's errors in time to vote." Pet. 46a. But any hypothetical *citizen* removed from the rolls can generally remedy any harm by casting a provisional ballot and providing proof of citizenship.[12]

The threat of the decision below not just to election integrity in terms of counting ballots but also to the integrity of our self-government requires this Court's intervention.

CONCLUSION

The Court should grant certiorari.

Respectfully submitted,

CHRISTOPHER E. MILLS
Counsel of Record
Spero Law LLC
557 East Bay Street
#22251
Charleston, SC 29413
(843) 606-0640
cmills@spero.law

Counsel for *Amici Curiae*

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[12] See National Conference of State Legislatures, *Provisional Ballots* (Apr. 16, 2025), https://perma.cc/W575-RJ3A.