No. 25-1017, Vide 25-1019, 25-1022

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.

ARIZONA, ET AL.,
Petitioners,
v.
MI FAMILIA VOTA, ET AL.,
Respondents.

On Petitions for Writs of Certiorari to the U.S. Court of Appeals for the Ninth Circuit

BRIEF OF *AMICI CURIAE* PROFESSOR MICHAEL T. MORLEY AND FLORIDA STATE UNIVERSITY ELECTION LAW CENTER IN SUPPORT OF NEITHER PARTY

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INTEREST OF *AMICI CURIAE*[1]

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The FSU Election Law Center was established by the Florida Legislature to "[c]onduct and promote rigorous, objective, nonpartisan, evidence-based research concerning important constitutional, statutory, and regulatory issues relating to election law," FLA. STAT. § 1004.421(2)(a) (2025), including "[d]octrines relating to justiciability," *id.* § 1004.421(1)(a)13. The Center is empowered to "[p]rovide formal or informal assistance . . . to governmental entities or officials at the federal, state, or county levels, concerning elections or election law, including, but not limited to, research, reports, public comments, testimony, or briefs." *Id.* § 1004.421(3)(e). The Election Law Center operates pursuant to academic freedom protections. *Id.* § 1004.421(7). Accordingly, the Center's arguments and positions should not be attributed to Florida State University,

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[1] *Amici* provided notice to all parties of their intent to file this brief on March 12, 2026. Pursuant to Sup. Ct. R. 37.6, no counsel for a party authored this brief in whole or in part, and no counsel or party other than *amici* or their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

the FSU College of Law, or either school's administration.

SUMMARY OF ARGUMENT

This Court should grant certiorari on several of the questions presented asserted in the various petitions in this matter.

1. This Court should grant certiorari on what the term "necessary" means for purposes of the NVRA.[2] The Ninth Circuit held that Arizona's documentary proof of citizenship ("DPOC") and documentary proof of residency ("DPOR") requirements violated the National Voter Registration Act ("NVRA"), 52 U.S.C. § 20505(a)(2); *see also* 20508(b)(1), as applied to individuals using Arizona's state mail application form to register for federal elections because those requirements were not "necessary" to confirm their eligibility. In the Ninth Circuit's view, federal law requires states to simply accept people's self-certification that they satisfy a state's voter eligibility requirements. *See Mi Familia Vota v. Fontes*, 129 F.4th 691, 713, 719 (9th Cir. 2025), *reh'g en banc denied*, 152 F.4th 1153 (9th Cir. 2025), *petition for cert. filed*, No. 25-1017 (U.S. Feb. 19, 2026). Other courts have likewise construed the term "necessary" very strictly in the NVRA context. *See, e.g.*, *Fish v. Kobach*, 840 F.3d 710, 716-17 (10th Cir. 2016); *League*

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[2] *See* Petition for Writ of Certiorari, *RNC v. Mi Familia Vota*, No. 25-1017, at i (U.S. filed Feb. 19, 2026) (Question Presented #1); Petition for Writ of Certiorari, *Petersen v. Mi Familia Vota*, No. 25-1019, at i (U.S. filed Feb. 19, 2026) (Question Presented #1).

of Women Voters of the United States v. Newby, 838 F.3d 1 (D.C. Cir. 2016).

As far back as *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 413 (1819), however, this Court has recognized the term "necessary" does not "always import an absolute physical necessity . . . ." And courts have applied this term in far less demanding ways in other statutory contexts. *See, e.g.*, *Price v. Johnson*, 334 U.S. 266, 279 (1948); *Fattahi v. BATF*, 328 F.3d 176, 180 (4th Cir. 2003); *Int'l Trad. Co. v. Comm'r*, 275 F.2d 578, 585 (7th Cir. 1960).

In *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 17 (2013) (Scalia, J.), this Court recognized that applying the NVRA in a manner that impedes a state's ability to enforce its voter qualification requirements would raise serious constitutional questions. This Court should grant certiorari to assess whether the lower court's interpretation of "necessary" in the NVRA has placed too great a burden on Arizona's constitutional prerogative to do so.

2. This Court should also grant certiorari to resolve the circuit split over the scope of federal courts' power to grant consent decrees in challenges to the validity of legal provisions.[3] Some courts have held that a federal court "can approve a consent decree which overrides state law provisions" only "upon properly supported findings that such a remedy is

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[3] *See* Petition for Writ of Certiorari, *RNC v. Mi Familia Vota*, No. 25-1017, at i (U.S. filed Feb. 19, 2026) (Question Presented #1); Petition for Writ of Certiorari, *Petersen v. Mi Familia Vota*, No. 25-1019, at i (U.S. filed Feb. 19, 2026) (Question Presented #1).

necessary to rectify a ***violation of federal law***." *Perkins v. City of Chi. Heights*, 47 F.3d 212, 216 (7th Cir. 1995) (emphasis in original); *accord St. Charles Tower, Inc. v. Kurtz*, 643 F.3d 264, 270 (8th Cir. 2011).

Others, in contrast, have approved consent decrees such as the one at issue in this case, *see League of United Latin Am. Citizens of Ariz. v. Reagan*, No. 2:17-cv-4102-PHX, D.E. #37 (D. Ariz. June 18, 2018), which did not rest on a judicial determination that the challenged state laws were unconstitutional or contrary to federal law. *See, e.g.*, *Citizens for a Better Env't v. Gorsuch*, 718 F.2d 1117, 1125-26 (D.C. Cir. 1983). This question goes to the heart of the scope and nature of the federal judiciary's constitutional authority to engage in judicial review and warrants this Court's attention.

3. In addition, this Court should grant certiorari to clarify whether the NVRA prohibits a state from systematically removing non-citizens from its voter registration database during the 90 days before federal primary or general elections. *See* 52 U.S.C. § 20507(c)(2)(A).[4] Read literally, the NVRA does not permit states to remove non-citizens from its voter registration database at all. *See id.* § 50207(a)(3); *see also United States v. Florida*, 870 F. Supp. 2d 1346, 1349 (N.D. Fla. 2012). Since such an interpretation would likely be unconstitutional, *see Inter Tribal Council*, 570 U.S. at 16-17, this Court should determine whether the NVRA's restrictions on the removal of registration records, including the 90-day

[4] *See* Petition for Writ of Certiorari, *RNC v. Mi Familia Vota*, No. 25-1017, at i (U.S. filed Feb. 19, 2026) (Question Presented #2).

blackout period, apply to non-citizens who were erroneously registered and never eligible to vote in the first place.

4. Finally, this Court should grant a writ of certiorari on whether Article III allows a plaintiff to assert associational standing, and a court to enter a final judgment on the merits, based on a judicial finding that one or more "unidentified members" of a plaintiff organization "'may be' injured."[5] The Ninth Circuit answered yes. *Fontes*, 129 F.4th at 709. In *Summers v. Earth Island Institute*, 555 U.S. 488, 498 (2009), this Court held that, to assert associational standing, a plaintiff organization must "establish[] that at least one identified member had suffered or will suffer harm." Moreover, identifying the plaintiff organization's injured members helps prevent plaintiffs from using associational standing as a "backdoor" mechanism for avoiding this Court's prohibition on universal defendant-oriented injunctions in *Trump v. CASA, Inc.*, 606 U.S. 831, 852 (2025). Associational standing raises a plethora of complex procedural problems. Michael T. Morley & F. Andrew Hessick, *Against Associational Standing*, 91 U. CHI. L. REV. 1538 (2024). Requiring the plaintiff organization to identify the allegedly injured members is a small step toward addressing at least some of them. *Id.* at 1588-91.

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[5] Petition for Writ of Certiorari, *Arizona v. Promise Arizona*, No. 25-1022, at i (U.S. filed Feb. 19, 2026) (Question Presented #1).

ARGUMENT

I. THIS COURT SHOULD GRANT CERTIORARI CONCERNING THE MEANING OF "NECESSARY" UNDER THE NATIONAL VOTER REGISTRATION ACT.

This Court should grant certiorari on what the term "necessary" means for purposes of the NVRA. *See* Petition for Writ of Certiorari, *RNC v. Mi Familia Vota*, No. 25-1017, at i (U.S. filed Feb. 19, 2026) (Question Presented #1); Petition for Writ of Certiorari, *Petersen v. Mi Familia Vota*, No. 25-1019, at i (U.S. filed Feb. 19, 2026) (Question Presented #1).

1. The NVRA regulates four different methods of registering to vote in federal elections:

- **Driver's license application** – A state driver's license application ***must*** include "a voter registration application form" for registering to vote in federal elections. 52 U.S.C. § 20504(c)(1); *see also id*. §§ 20503(a)(1), 20504(a)(1). The voter registration portion of a driver's license application:

> may require only the minimum amount of information ***necessary*** to—
>
> (i) prevent duplicate voter registrations; and
>
> (ii) enable State election officials to assess the eligibility of the applicant and to administer voter registration and other parts of the election process.

Id. § 20504(c)(2)(B)(i)-(ii) (emphasis added).

- **Federal mail application** – A state also ***must*** "accept and use" the federal "mail voter registration application form" created by the U.S. Election Assistance Commission ("EAC") to register voters for federal elections. *Id.* § 20505(a)(1); *see also id.* §§ 20503(a)(2), 20508(a)(2). This federal mail application:

> may require only such . . . 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 . . . .

Id. § 20508(b)(1) (emphasis added).

- **State mail application** – Additionally, a state is permitted to "develop and use" a state "mail vote registration form" created by the state itself to register voters for federal elections. *Id.* § 20505(a)(2); *see also id.* § 20503(a)(2). This form must "meet[] all of the criteria" set forth in § 20508(b)(1) for the federal mail registration form. *Id.* § 20505(a)(2).

- **Public assistance office form** – All offices that provide public assistance or state-funded services for the disabled must either distribute the federal mail application created by the EAC or "the office's own form" if it is "equivalent" to the federal mail application. *Id.* § 20506(a)(6)(A)(ii); *see also id.* §§ 20503(a)(3)(B), 20506(a)(2)(A)-(B), (a)(6)(A)(i).

2. Arizona law requires a person to provide documentary proof of citizenship (DPOC), *see* ARIZ. REV. STAT. § 16-121.01(C); *see also id.* §§ 16-101(A)(1), 16-152(A)(23), 16-166(F), and documentary proof of

residency (DPOR), *id*. §§ 16-121.01(A), 16-123, in order to register to vote in any elections—federal or state—using Arizona's state mail application. The Ninth Circuit held that, as applied to federal elections, these requirements violated the NVRA's restrictions on state mail applications. *Mi Familia Vota v. Fontes*, 129 F.4th 691, 712-13 (9th Cir. 2025) (DPOR), *reh'g en banc denied*, 152 F.4th 1153 (9th Cir. 2025), *petition for cert. filed*, No. 25-1017 (U.S. Feb. 19, 2026); *id*. at 719 (DPOC).

Under the NVRA, state mail applications must "meet[] all of the criteria" for federal mail applications. 52 U.S.C. § 20505(a)(2). In turn, federal mail applications may "seek only the information 'necessary' to assess an applicant's eligibility . . . ." *Id*. § 20508(b)(1). The Ninth Circuit observed, "The ordinary meaning of 'necessary' is 'essential.'" *Fontes*, 129 F.4th at 713; *accord id*. at 719. Applying this definition, it held, "The requirement of DPOR is not 'necessary' for new applicants because attestation sufficiently confirms the eligibility of registered voters." *Id*. at 713. The court went on to likewise declare, "DPOC is not 'necessary' . . . because . . . the state form's checkbox requirement supplies proof of citizenship by an attestation." *Id*. at 719.

In other words, U.S. citizenship and state residency are valid and enforceable voter eligibility requirements under the Arizona Constitution. ARIZ. CONST. art. VII, § 2(A); *accord* ARIZ. REV. STAT. § 16-101(A)(1), (A)(3). Federal law nevertheless makes it illegal for the state to ask for proof of such citizenship or residency because the state can instead simply take an applicant's word for it. *See Fontes*, 129 F.4th

at 712-13 ("We hold that DPOR is not 'necessary' . . . ."); *id.* at 719 ("DPOC is not legitimately necessary for registration."). As discussed below, other circuits have likewise adopted this interpretation of the term "necessary" as it appears in the NVRA. *See Fish v. Kobach*, 840 F.3d 710, 716-17 (10th Cir. 2016) (holding, for purposes of driver's license applications under 52 U.S.C. § 20504(c)(1), that an "attestation under penalty of perjury is the *presumptive* minimum amount of information necessary for state election officials to carry out their eligibility-assessment and related duties"), *permanent injunction granted sub nom.*, *Fish v. Schwab*, 957 F.3d 1105, 1142, 1144 (10th Cir. 2020); *Kobach v. U.S. Election Assistance Comm'n*, 772 F.3d 1183, 1197-98 (10th Cir. 2014); *see also League of Women Voters of the United States v. Newby*, 838 F.3d 1 (D.C. Cir. 2016).

3. The Ninth Circuit supported its interpretation of the word "necessary" by citing this Court's ruling in *Wiliams v. Taylor*, which did not involve the NVRA but rather the Antiterrorism and Effective Death Penalty Act ("AEDPA") of 1996, 110 Stat. 1214 (Apr. 24, 1996). And *Williams* did not discuss the meaning of the word "necessary," but rather explored the meaning of the word "fail," 529 U.S. 420, 431 (2000). *See Fontes*, 129 F.4th at 713, 719.

The Ninth Circuit also cited two dictionaries. *See id.* (citing *Necessary*, *Black's Law Dictionary* (12th ed. 2024); *Necessary, Oxford English Dictionary* (2d ed. 1989)). The first of these dictionaries was published over three decades after the NVRA's adoption. It defines "necessary" as "[t]hat which is needed for some

purpose or reason; essential." *Necessary*, *Black's Law Dictionary* (12th ed. 2024).

This Court has held, however, that a statute must be construed based on "dictionar[ies] from the period during which [it] . . . was enacted." *Regents of the Univ. of California v. Pub. Emp. Rel. Bd.*, 485 U.S. 589, 598 (1988); *see also Corner Post, Inc. v. Bd. of Govs. of the Fed. Res. Sys.*, 603 U.S. 799, 800 (2024) ("Contemporaneous legal dictionaries"). The edition of *Black's Law Dictionary* current at the time of the NVRA's adoption—the sixth edition, published in 1990, stated the word "necessary" is "susceptible of various meanings," and "must be considered in the connection in which it is used." *Necessary*, *Black's Law Dictionary* (6th ed. 1990).

> It 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. It is an adjective expressing degrees, and may express mere convenience or that which is indispensable or an absolute physical necessity. It may mean something which in the accomplishment of a given object cannot be dispensed with, or it may mean something reasonably useful and proper, and of greater or lesser benefit or convenience, and its force and meaning must be determined with relation to the particular object sought.

Id.

As far back as *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 413 (1819), this Court has recognized the term "necessary" does not "always import an absolute physical necessity . . . so strong, that one thing, to which another may be termed necessary, cannot exist without that other." *McCulloch* explained, "[I]n the common affairs of the world," the term "frequently imports no more than that one thing is convenient, or useful." *Id.* It added, "To employ the means necessary to an end, is generally understood as employing any means calculated to produce the end, and not as being confined to those single means, without which the end would be entirely unattainable." *Id.* at 413-14. Courts of Appeals have applied this looser, less demanding definition across a variety of contexts. *See, e.g.*, *Price v. Johnson*, 334 U.S. 266, 279 (1948) (rejecting the conclusion that a writ is "necessary for the exercise of [a court's] jurisdiction[]" under the All Writs Act "only if 'necessary' in the sense that the court could not otherwise physically discharge its appellate duties"); *Fattahi v. BATF*, 328 F.3d 176, 180 (4th Cir. 2003) ("'[N]ecessary need not mean *absolutely* necessary."); *Int'l Trad. Co. v. Comm'r*, 275 F.2d 578, 585 (7th Cir. 1960) ("The word 'necessary' has been construed to mean 'appropriate and helpful.'"); *cf. Fish*, 840 F.3d at 734-35.

4. This Court should grant certiorari to consider which of these competing definitions is more consistent with its holding in *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013) (Scalia, J.). That case involved an NVRA provision which required states to "accept and use" the EAC-created federal mail application. 42 U.S.C. § 1973gg-4(a)(1), *recodified* as 52 U.S.C. § 20505(a)(1). The Court held

that people who submitted federal mail applications could not also be required to submit documentary proof of citizenship as well to register for federal elections. *Inter Tribal Council*, 570 U.S. at 15.

The *Inter Tribal Council* Court recognized, however, that the Constitution grants states authority to determine voter qualifications for federal elections. *Id*. at 17. Accordingly, "it would raise serious constitutional doubts if a federal statute precluded a State from obtaining the information necessary to enforce its voter qualifications." *Id*. The Court avoided such concerns by emphasizing that the NVRA allows states to ask the EAC to "alter the Federal Form to include information ***the State deems necessary*** to determine eligibility." *Id*. at 19 (emphasis added) (citing 42 U.S.C. § 1973gg-7, *recodified* as 52 U.S.C. § 20508(a)(2)). And the Court further emphasized a state "may challenge the EAC's rejection of that request in a suit under the Administrative Procedures Act." *Id*. The EAC is under a "nondiscretionary duty to include [a state's] concrete evidence requirement on the Federal Form" when "a mere oath will not suffice to effectuate [the state's] citizenship requirement" for voter registration. *Id* at 20.

It is unclear whether *Inter Tribal Council*'s strategy for avoiding constitutional doubts about the NVRA has played out as this Court anticipated. Shortly after *Inter Tribal Council* was issued, Arizona and Kansas asked the EAC to amend the instructions accompanying the federal mail application to require applicants from their respective states to provide documentary proof of citizenship to register. The

EAC's Executive Director rejected the request, and the Tenth Circuit ultimately affirmed that refusal because the states had failed to show that proof of citizenship was "'necessary' to enforce their respective states' voter qualifications." *Kobach*, 772 F.3d at 1196-97. The court opined that a state was not entitled to have the EAC require people using the federal mail application to provide documentary proof of citizenship unless the state could show "a substantial number of noncitizens have registered using the Federal Form." *Id*. at 1197-98.

Two years later, after the EAC hired a new Executive Director, he approved requests from Alabama, Georgia, and Kansas to add documentary proof of citizenship requirements to the instructions accompanying the federal mail application for those states. The D.C. Circuit ordered entry of a preliminary injunction barring the EAC from enforcing that determination, however, because he had deferred to the states themselves as to whether the modification was "necessary." *League of Women Voters of the United States v. Newby*, 838 F.3d 1, 10-11 (D.C. Cir. 2016). The court added that the states had provided "precious little record evidence" that a proof-of-citizenship requirement was needed to prevent "fraudulent registration by non-citizens." *Id*. at 13. Courts have applied this similar to prevent states from requiring documentary proof of citizenship from applicants registering through driver's license applications, as well. *See, e.g.*, *Fish*, 840 F.3d at 716-17.

Thus, this Court should grant certiorari to assess whether lower courts' interpretation of the term

"necessary" in the NVRA is both consistent with this Court's expectations from *Inter Tribal Council* and sufficient to dispel the constitutional concerns about federal interference with states' ability to enforce their voter qualifications for federal elections which *Inter Tribal Council* identified.

II. THIS COURT SHOULD RESOLVE THE CIRCUIT SPLIT OVER WHETHER FEDERAL COURTS MAY APPROVE CONSENT DECREES TO ENJOIN STATE LAWS WITHOUT DETERMINING WHETHER THOSE LAWS ARE UNCONSTITUTIONAL OR OTHERWISE INVALID

This Court should also grant certiorari on whether federal courts may issue consent decrees barring the enforcement of state laws—particularly state election laws—without first determining whether those laws are actually unconstitutional. *See* Petition for Writ of Certiorari, *RNC v. Mi Familia Vota*, No. 25-1017, at i (U.S. filed Feb. 19, 2026) (Question Presented #1); Petition for Writ of Certiorari, *Petersen v. Mi Familia Vota*, No. 25-1019, at i (U.S. filed Feb. 19, 2026) (Question Presented #1).

As a threshold matter, despite their longstanding pedigree, consent decrees appear to raise serious justiciability concerns.

> When parties have reached accord as to the proper disposition of a lawsuit, there is no longer a live controversy for a court to resolve. Rather than entering a consent decree, the court should require the parties to memorialize

> their understanding in a settlement agreement—i.e., a private contract—and dismiss the case without entering a substantive order that specifies or alters the parties' legal rights and obligations.

Michael T. Morley, *Consent of the Governed or Consent of the Government? The Problems with Consent Decrees in Government-Defendant Cases*, 16 U. PA. J. CONST. L. 637, 644 (2014).

Even aside from such justiciability concerns, consent decrees enjoining the enforcement of statutes or regulations allow governmental defendants to "circumvent traditional legislative and regulatory processes" for the repeal of such provisions and "entrench their policy preferences." *Id.* at 682. Accordingly, a deep and persistent circuit split has arisen as to whether courts may enter such decrees without determining that the underlying legal provision being enjoined is actually unconstitutional or otherwise invalid. Some courts have held that a federal court "can approve a consent decree which overrides state law provisions" only "upon properly supported findings that such a remedy is ***necessary*** to rectify a ***violation of federal law***." *Perkins v. City of Chi. Heights*, 47 F.3d 212, 216 (7th Cir. 1995) (emphasis in original); *accord St. Charles Tower, Inc. v. Kurtz*, 643 F.3d 264, 270 (8th Cir. 2011); *cf.* Morley, *supra* at 689 ("A court should not issue a consent decree in a government-defendant case unless . . . the court determines that (i) the plaintiff has stated valid claims and (ii) the relief is closely tailored to remedy the legal violations at issue.").

Other courts, in contrast, have approved consent decrees such as the one at issue in this case, *see League of United Latin Am. Citizens of Ariz. v. Reagan*, No. 2:17-cv-4102-PHX, D.E. #37 (D. Ariz. June 18, 2018), which did not rest on a judicial determination that the challenged state laws were unconstitutional or contrary to federal law. *See, e.g.*, *Citizens for a Better Env't v. Gorsuch*, 718 F.2d 1117, 1125-26 (D.C. Cir. 1983) ("[A] district court has power to enter a consent decree without first determining that a statutory violation has occurred."). This is a critical issue that directly implicates the scope and nature of the federal judiciary's power to engage in judicial review. It assumes particular salience in the context of challenges to state laws governing federal elections, where the Constitution expressly grants power specifically to the state legislature, rather than the state as a whole. *See* U.S. CONST. art. I, § 4, cl. 1; *id*. art. II, § 1, cl. 2; *see also* Michael T. Morley, *The New Elections Clause*, 91 NOTRE DAME L. REV. REFLECTIONS 79, 99 (2016). Thus, this Court should grant certiorari to resolve the scope of federal courts' authority to issue consent decrees enjoining enforcement of challenged legal provisions which have not been held unconstitutional or otherwise invalid.

III. THIS COURT SHOULD GRANT CERTIORARI TO CLARIFY THE NATIONAL VOTER REGISTRATION ACT'S APPLICABILITY TO THE REMOVAL OF NON-CITIZENS FROM VOTER REGISTRATION DATABASES

Additionally, this Court should grant certiorari on whether the NVRA prohibits states from

systematically removing voter registration records of non-citizens within ninety (90) days of a federal election. *See* Petition for Writ of Certiorari, *RNC v. Mi Familia Vota*, No. 25-1017, at i (U.S. filed Feb. 19, 2026) (Question Presented #2).

1. The NVRA's Removal Authorization Provision, 52 U.S.C. § 50207(a)(3), specifies that election officials may remove individuals who have been registered to vote from the voter registration database only on four grounds:

- "at the request of the registrant," 52 U.S.C. § 50207(a)(3)(A);

- "as provided by State law, by reason of criminal conviction or mental incapacity," *id.* § 50207(a)(3)(B);

- "the death of the registrant," *id.* § 50207(a)(3)(C), (a)(4)(A); or

- "a change in residence" pursuant to the procedure established by § 50207(b)-(d), *id.* § 50207(a)(3)(C), (a)(4)(B).

The plain text of the Removal Authorization Provision "seems to prohibit a state from ever removing from its voting list a noncitizen, even though the noncitizen should never have been registered in the first place." *United States v. Florida*, 870 F. Supp. 2d 1346, 1349 (N.D. Fla. 2012).

All of the grounds for removal which the Removal Authorization Provision permits involve changes in circumstance that occur ***after*** a person submits their

registration information. *Id*. at 1350. The NVRA simply does not contemplate the possibility that a person who does not satisfy a state's eligibility qualifications at the time of registration, such as a non-citizen, may be added to the voter registration database whether through mistake, fraud, or otherwise. In other words, the NVRA authorizes the removal of a person's voter registration under various circumstances in which they ***lose*** their eligibility to vote, but it does not expressly address or permit removal of registration for people who were never eligible to vote in the first place—including non-residents and especially non-citizens.

As this Court recognized in *Arizona v. Inter Tribal Council of Arizona, Inc.*, the Constitution empowers state to establish voter qualifications for federal elections. 570 U.S. 1, 16-17 (2013). And it would "raise serious constitutional doubts" to interpret the NVRA to prevent states from enforcing those qualifications. *Id*. at 17. Accordingly, the few courts to have considered the issue have held that the constitutional avoidance doctrine counsels against interpreting the NVRA to prohibit states from removing non-citizens from their voter registration databases. They suggest the NVRA's Removal Authorization Provision, § 50207(a)(3)(A), likely must be read as if it included lack of U.S. citizenship—or, more broadly, ineligibility at the time of initial registration—as an authorized basis for removal. *See Florida*, 870 F. Supp. 2d at 1349-50 ("This conclusion is inescapable: [the Removal Authorization Provision's] prohibition on removing a registrant except on specific grounds simply does not apply to an improperly registered noncitizen."); *see also Arcia v.*

Sec'y of Florida, 772 F.3d 1335, 1345 (11th Cir. 2014) ("Certainly an interpretation of the [Removal Authorization] Provision that prevents Florida from removing non-citizens would raise constitutional concerns regarding Congress's power to determine the qualifications of eligible voters in federal elections.").

2. The NVRA's Blackout Provision provides in relevant part, "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). This prohibition is inapplicable, however, to the removal of voter registration records pursuant to most parts of the Removal Authorization Provision, § 20507(a)(3). Even during the Blackout Period, an election official may remove a registrant from the voter database at the registrant's request, *id.* § 20507(a)(3)(A), (c)(2)(B)(i); pursuant to the registrant's "criminal conviction or mental incapacity," *id.* § 20507(a)(3)(B), (c)(2)(B)(i); or the registrant's death, *id.* § 20507(a)(4)(A), (c)(2)(B)(i).

Courts such as the panel below have held that the Blackout Period, § 20507(c)(2)(A), prevents election officials from systematically removing apparent non-citizen voters during the ninety (90) days before a federal election. *Fontes*, 129 F.4th at 715; *see also Arcia*, 772 F.3d at 1339; *Va. Coal. for Immigrant Rights v. Beals*, 803 F. Supp. 3d 454, 473 (E.D. VA. 2025) (citing *Va. Coal. for Immigrant Rights v. Beals*, No. 24-2071, 2024 U.S. App. LEXIS 27584, at *1 (4th Cir. Oct. 27, 2024)).

As explained above, the Blackout Period, § 20507(c)(2)(A), does not limit election officials' ability to remove registration records on most of the grounds listed in the Removal Authorization Provision, § 20507(a)(3). The Removal Authorization Provision, in turn, should be read as authorizing the removal of non-citizens in order to prevent the NVRA's likely unconstitutionality. It therefore appears the Blackout Period should not limit election officials' ability to remove registration records of apparent non-citizens. As the Northern District of Florida held, if the Removal Authorization Provision "does not prohibit a state from removing an improperly registered noncitizen, then [the Blackout Period Provision] does not prohibit a state from systematically removing improperly registered noncitizens during" the ninety days before a federal election. *Florida*, 870 F. Supp. 2d at 1350; *accord Arcia*, 772 F.3d at 1348-49 (11th Cir. 2014) (Suhrheinrich, J., dissenting);[6] *cf. Drouillard v. Roberts*, No. 24-cv-6969-CRB, 2024 U.S. Dist. LEXIS 200298, at *28 n.21 (N.D. Cal. Nov. 4, 2024) ("[T]here is some question as to whether a state can remove *noncitizens* from its voting rolls within 90 days of an election." (emphasis added)).

Or, to approach the matter from a slightly different angle, since the NVRA did not contemplate the erroneous addition of ineligible non-citizens to the voter registration database in the first instance, and that omission raises serious constitutional problems,

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[6] The majority in *Arcia*, in contrast—while not expressly or directly overturning *Florida*—held that the NVRA's Blackout Period "encompass[es] programs of any kind, including a program . . . to remove non-citizens." *Arcia*, 772 F.3d at 1344.

Inter Tribal Council, 570 U.S. at 17, the NVRA should simply be read as inapplicable to the removal of such individuals from voter registration databases, rather than selectively applying some NVRA provisions, but not others, to such removals, *see Florida*, 870 F. Supp. 2d at 1350 ("[N]one of this"—referring to both the Removal Authorization Provision and the Blackout Provision—"applies to removing noncitizens who were not properly registered in the first place.").

The courts that have applied the Blackout Provision to bar the removal of non-citizens, in contrast, have largely disregarded the fact the NVRA simply does not address the removal of non-citizens in the first place. *Fontes*, 129 F.4th at 715 (failing to address the potential implications of the fact that the "NVRA does not discuss . . . a State's authority to remove noncitizens from the voter registration rolls" (quotation marks omitted)); *Arcia*, 772 F.3d at 1347 (rejecting the notion that the "perceived need for an equitable exception" to the Removal Authorization Provision in order to authorize the removal of non-citizens "also requires us to find the same exception in the [Blackout] Provision").

Thus, this Court should grant certiorari to clarify whether the NVRA's Blackout Provision limits a state's ability to systematically remove non-citizens who were erroneously registered and never eligible to vote in the first place for nearly half of every federal election year.

IV. THIS COURT SHOULD GRANT CERTIORARI TO ENFORCE ITS REQUIREMENT THAT A PLAINTIFF ORGANIZATION ASSERTING ASSOCIATIONAL STANDING MUST IDENTIFY THE PARTICULAR MEMBERS WHO HAVE SUFFERED ARTICLE III INJURY-IN-FACT

Finally, this Court should grant a writ of certiorari on whether Article III allows a plaintiff to assert associational standing and a court to enter a final judgment on the merits based on a judicial finding that one or more "unidentified members" of a plaintiff organization "'may be' injured." Petition for Writ of Certiorari, *Arizona v. Promise Arizona*, No. 25-1022, at i (U.S. filed Feb. 19, 2026) (Question Presented #1).

Associational standing is an "anomalous" exception to Article III's injury-in-fact requirement that is a "poor fit . . . [with] the structure of litigation in the United States" and "almost completely unnecessary." Michael T. Morley & F. Andrew Hessick, *Against Associational Standing*, 91 U. CHI. L. REV. 1538, 1541, 1546 (2024); *see also FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367, 403 (2024) (Thomas, J., concurring) ("[O]ur associational-standing doctrine appears to create serious problems, both constitutional and otherwise."). If this Court chooses to retain the doctrine, then at the very least a plaintiff organization should be required to comply with the requirement from *Summers v. Earth Island Inst.*, 555 U.S. 488, 498 (2009), that the organization "establish[] that at least one identified member had suffered or would suffer harm."

Requiring plaintiff organizations to identify the particular members whose injuries have given rise to the case would enable district courts to tailor their injunctions to those members. This Court's recent landmark ruling in *Trump v. CASA, Inc.*, 606 U.S. 831, 852 (2025), holds that district courts' injunctions must generally be drawn to protect the rights only of "the plaintiffs before the court." Injunctions in associational standing cases, in contrast, "often prohibit the government from enforcing the challenged provision against anyone, anywhere in the nation . . . ." Michael T. Morley, *Disaggregating Nationwide Injunctions*, 71 ALA. L. REV. 1, 25-27 (2019). Requiring plaintiff organizations to identify the members who have suffered Article III injury-in-fact would prevent such organizations from using associational standing as a "backdoor" method of obtaining effectively universal defendant-oriented injunctions. *See Ass'n of Am. Physicians & Surgeons v. FDA*, 13 F.4th 531, 541 (6th Cir. 2021) ("If the Court decides to rein [universal injunctions] in, it may need to reassess associational standing along with them."); *see also* Morley & Hessick, *supra* at 1588-91.

CONCLUSION

For these reasons, this Court should grant these petitions for certiorari.

Respectfully Submitted,

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