

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

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IN THE  
**Supreme Court of the United States**

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REPUBLICAN NATIONAL COMMITTEE,

*Petitioner,*

*v.*

MI FAMILIA VOTA, *et al.*,

*Respondents.*

[Additional Captions Listed On Inside Cover]

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ON PETITIONS FOR WRITS OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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**BRIEF OF *AMICUS CURIAE* FEDERATION  
FOR AMERICAN IMMIGRATION REFORM  
IN SUPPORT OF PETITIONERS**

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WARREN PETERSEN, PRESIDENT OF THE  
ARIZONA SENATE, *et al.*,

*Petitioners,*

*v.*

MI FAMILIA VOTA, *et al.*,

*Respondents.*

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ARIZONA, *et al.*,

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*v.*

PROMISE ARIZONA, *et al.*,

*Respondents.*

**TABLE OF CONTENTS**

	<i>Page</i>
TABLE OF CONTENTS.....	i
TABLE OF CITED AUTHORITIES .....	iii
INTEREST OF <i>AMICUS CURIAE</i> .....	1
SUMMARY OF ARGUMENT.....	1
ARGUMENT.....	3
I.    Legal Framework.....	3
A.    Federal Law.....	3
B.    State Law.....	4
II.   The courts below erred in concluding that HB 2492 contradicts federal law.....	6
A.   The Constitution gives States significant power over voting.....	6
B.   The NVRA does not preempt HB 2492 ....	8
1.   Arizona law does not conflict with the NVRA's requirement that States accept and use the Federal Form .....	8

*Table of Contents*

	<i>Page</i>
2. States retain the power to create and use their own mail-in voter registration forms under the NVRA.....	10
3. NVRA does not prevent the States from purging ineligible voters from the voter rolls .....	12
C. HB 2492 does not violate the Materiality Provision of the Civil Rights Act .....	12
CONCLUSION .....	16

TABLE OF CITED AUTHORITIES

	<i>Page</i>
<b>Cases</b>	
<i>Arizona v. Inter Tribal Council of Ariz., Inc.</i> , 570 U.S. 1 (2013) . . . . .	3-5, 7-11, 14, 15
<i>Basic Inc. v. Levinson</i> , 485 U.S. 224 (1988) . . . . .	13
<i>Buckley v. Am. Constitutional Law Found.</i> , 525 U.S. 182 (1999) . . . . .	7
<i>Chevron, U.S.A., Inc. v. NRDC, Inc.</i> , 467 U.S. 837 (1984) . . . . .	15
<i>Crawford v. Marion Cty. Election Bd.</i> , 553 U.S. 181 (2008) . . . . .	6
<i>Ex parte Siebold</i> , 100 U.S. 371 (1880) . . . . .	14, 15
<i>Foley v. Connelie</i> , 435 U.S. 291 (1978) . . . . .	6
<i>Gonzales v. Oregon</i> , 546 U.S. 243 (2006) . . . . .	15
<i>Husted v. A. Philip Randolph Inst.</i> , 584 U.S. 756 (2018) . . . . .	7
<i>Illinois Bd. of Elections v. Socialist Workers Party</i> , 440 U.S. 173 (1979) . . . . .	6

*Cited Authorities*

	<i>Page</i>
<i>Loper Bright Enters. v. Raimondo</i> , 603 U.S. 369 (2024) . . . . .	15
<i>Mi Familia Vota v. Fontes</i> , 129 F.4th 691 (9th Cir. 2025) . . . . .	12
<i>Mi Familia Vota v. Fontes</i> , 152 F.4th 1153 (9th Cir. 2025) . . . . .	1, 2
<i>Oregon v. Mitchell</i> , 400 U.S. 112 (1970) . . . . .	7
<i>Purcell v. Gonzalez</i> , 549 U.S. 1 (2006) . . . . .	6
<i>Rice v. Santa Fe Elevator Corp.</i> , 331 U.S. 218 (1947) . . . . .	14
<i>Storer v. Brown</i> , 415 U.S. 724 (1974) . . . . .	6
<i>United States v. Bass</i> , 404 U.S. 336 (1971) . . . . .	15
<i>United States v. Bathgate</i> , 246 U.S. 220 (1918) . . . . .	15
<i>United States v. Gradwell</i> , 243 U.S. 476 (1917) . . . . .	15

*Cited Authorities*

	<i>Page</i>
<i>Wesberry v. Sanders</i> , 376 U.S. 1 (1964).....	6
<i>Yick Wo v. Hopkins</i> , 118 U.S. 356 (1886).....	6
<i>Young v. Fordice</i> , 520 U.S. 273 (1997).....	10

**Constitutional Provisions**

Ariz. Const. art. VII, § 2 .....	4
U.S. CONST. amend. XVII, cl. 2.....	3
U.S. CONST. art. I, § 2, cl. 2 .....	3, 7
U.S. CONST. art. I, § 4, cl. 1 .....	3
U.S. CONST. art. I, § 4, cl. 2 .....	3, 7
U.S. CONST. art. II, § 1, cl. 4 .....	3
U.S. CONST. art. VI, cl. 2 .....	7

**Statutes and Other Authorities**

52 U.S.C. § 10101(a)(2)(B) .....	4, 12, 13
52 U.S.C. § 20501(b)(3) .....	3

*Cited Authorities*

	<i>Page</i>
52 U.S.C. § 20505(a)(1) .....	4, 8
52 U.S.C. § 20505(a)(2) .....	10
52 U.S.C. § 20507(a)(4) .....	12
52 U.S.C. § 20507(c).....	12
52 U.S.C. § 20507(d) .....	12
52 U.S.C. § 20508(b)(1) .....	10
52 U.S.C. § 20508(b)(2) .....	11
52 U.S.C. § 20508(b)(3) .....	11
Ariz. Rev. Stat. § 16-101(A)(1) .....	4
Ariz. Rev. Stat. § 16-121.01(C) .....	5, 9
Ariz. Rev. Stat. § 16-121.01(D).....	9
Ariz. Rev. Stat. § 16-121.01(D)(1)-(5).....	9
Ariz. Rev. Stat. § 16-121.01(E).....	10
Ariz. Rev. Stat. § 16-165 .....	5
Ariz. Rev. Stat. § 16-165(K) .....	5

*Cited Authorities*

	<i>Page</i>
Ariz. Rev. Stat. § 16-579(A)(1) .....	4
BLACK'S LAW DICTIONARY 896 (11th ed. 2019) . . .	13
Gloria J. Browne-Marshall, <i>THE VOTING RIGHTS WAR: THE NAACP AND THE ONGOING STRUGGLE FOR JUSTICE</i> (2016) .....	13
Civil Rights Act of 1964, PUB. L. NO. 88-352, §101(a), 78 Stat. 241 (same) .....	13
HB 2243 .....	4, 5
HB 2492 .....	4-6, 8, 9, 12
Pamela S. Karlan, <i>Discrete and Relational Criminal Representation: The Changing Vision of the Right to Counsel</i> , 105 HARV. L. REV. 670 (1992) .....	13
Sup. Ct. R. 37.2 .....	1
Sup. Ct. R. 37.6 .....	1

**INTEREST OF *AMICUS CURIAE*<sup>1</sup>**

*Amicus curiae* Federation for American Immigration Reform (“FAIR”) is a nonprofit corporation and membership organization that was founded in 1979 and has its principal place of business in Washington, D.C. FAIR’s mission is to advocate for immigration policy that is in America’s best interest. In pursuit of this mission, FAIR regularly participates in litigation to protect the rights and benefits of United States citizens, including their exclusive right to participate in elections. In this case, the lower courts enjoined Arizona laws enacted to prevent noncitizens from voting in elections and thereby ensure citizen self-governance. FAIR therefore has a strong interest in this case.

**SUMMARY OF ARGUMENT**

This case presents questions of exceptional importance regarding citizens’ right to self-governance and the states’ power to protect it. The courts below struck down laws of Arizona that were enacted to protect the right of all citizens to vote and to prevent noncitizens from voting in its elections. By striking down Arizona’s laws, the courts below have “undermine[d] republican government, shred[ded] federalism and the separation of powers, and imperill[ed] free and fair elections.” *Mi Familia Vota v.*

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1. In accordance with Rule 37.2, *amicus* timely notified counsel of record for both Petitioners and Respondents of its intent to file this brief. In addition, pursuant to Rule 37.6, counsel for *amicus* authored this brief in whole, no party’s counsel authored this brief in whole or in part, and no person or entity—other than *amicus*, its members, or its counsel—contributed monetarily to its preparation or submission.

*Fontes*, 152 F.4th 1153, 1156 (9th Cir. 2025) (Nelson, J., dissenting from denial of reh’g en banc).

The courts below erred in concluding that Arizona’s laws run afoul of the federal National Voter Registration Act (“NVRA”) and the Materiality Provision of the Civil Rights Act. Nothing in the NVRA precludes States from requiring documents substantiating facts attested to on its own registration form or from investigating and verifying voter eligibility requirements attested to on the Federal Form. Arizona accepts registrations submitted on the Federal Form as required by the NVRA, and it also permissibly verifies that such registrants meet eligibility requirements by confirming that each registrant is a U.S. citizen.

In addition, requiring state-form applicants to disclose their birthplace does not run afoul of the Materiality Provision of the Civil Rights Act. Noncitizens are exponentially more prevalent among those born outside the United States than among those born in the United States. Thus, identifying the subset of people *not born in the United States* obviously provides useful information material to the determination of whether the registrant is an U.S. citizen. Because the decisions of the courts below undermine the ability of States to protect citizens’ right to self-government and ensure the integrity of their elections, this Court should grant certiorari and reverse.

## ARGUMENT

### I. Legal Framework

#### A. Federal Law

The United States Constitution ties voter qualifications for elections for Representatives to the “Qualifications requisite for Electors of the most numerous Branch of the State Legislature” in each State. U.S. CONST. art. I, § 2, cl. 2.<sup>2</sup> In addition, the Elections Clause provides that state legislatures shall prescribe the “Times, Places and Manner of holding Elections for Senators and Representatives,” U.S. CONST. art. I, § 4, cl. 1, subject to the power of “Congress at any time by Law [to] make or alter such Regulations.” *Id.* art. I, § 4, cl. 2. Article II provides that the States “shall 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 Congress: but no Senator or Representative . . . shall be appointed an Elector.” *Id.* art. II, § 1, cl. 4.

The NVRA was passed to “increase the number of eligible citizens who register to vote for Federal office,” and to “protect the integrity of the electoral process.” 52 U.S.C. § 20501(b)(3). The NVRA accomplishes these objectives by “requir[ing] States to provide simplified systems for registering to vote in federal elections.” *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1,

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2. The Seventeenth Amendment extended this same requirement to voter qualifications for elections for Senators. U.S. CONST. amend. XVII, cl. 2

16 (2013) (internal quotation marks omitted). Chief among the NVRA’s “simplified system” is the so-called “Federal Form” that States must “accept and use” to register voters. 52 U.S.C. § 20505(a)(1).

The Civil Rights Act of 1964 prohibits denying the right to vote based on errors or omissions that are immaterial to determining whether the person is qualified to vote under state law:

No person acting under color of law shall . . . deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election[.]

52 U.S.C. § 10101(a)(2)(B) (“Materiality Provision”).

## **B. State Law**

To be qualified to vote in Arizona, a person must be a United States citizen and a resident of Arizona. Ariz. Const. art. VII, § 2. In 2022, Arizona’s legislature enacted House Bill 2243 (“HB 2243”) and House Bill 2492 (“HB 2492”) to improve election integrity by ensuring that voter qualifications are enforced and that voter rolls are accurate.

HB 2492 updates voter qualifications to require documentary proof of citizenship, Ariz. Rev. Stat. § 16-101(A)(1), and proof of residence. *Id.* § 16-579(A)(1). HB

2492 further provides that failure to include proof of citizenship on a state voter registration form is grounds for the application to be rejected. *Id.* § 16-121.01(C). In accordance with *Inter Tribal Council*, 570 U.S. at 7, these new documentary proofs are not required for applicants using the Federal Form to register to vote in congressional elections.

HB 2243 enumerates the reasons why a voter's registration may be cancelled. It also provides that, before a registration can be cancelled, the election official must provide written notice of the impending cancellation with instructions for the voter to remedy their registration. Ariz. Rev. Stat. § 16-165. The notice must "include a list of documents the person may provide" to establish his or her citizenship as well as "a postage prepaid preaddressed return envelope." *Id.* Registration will thus only be cancelled following written notice and an opportunity to establish eligibility. Furthermore, once a registration is cancelled, written notice is again provided to the person explaining the cancellation and including instructions on how to register to vote if and when the person is qualified. *Id.* § 16-165(K).

The courts below struck down Arizona's election laws because they erroneously concluded that those laws conflict with the NVRA and the Materiality Provision of the Civil Rights Act. This Court should grant certiorari to correct those errors and protect the right of the people to govern themselves.

## **II. The courts below erred in concluding that HB 2492 contradicts federal law.**

The right to vote has long been recognized as a fundamental right of U.S. citizens. *See, e.g., Illinois Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979) (“[V]oting is of the most fundamental significance under our constitutional structure.”); *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964) (“Other rights, even the most basic, are illusory if the right to vote is undermined.”); *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) (holding that the right to vote is “preservative of all rights”); *Foley v. Connelie*, 435 U.S. 291, 296 (1978) (recognizing the “right[] of the people to be governed by their citizen peers”). The fundamental nature of the right to vote requires rules and regulations to ensure fairness and faith in elections. *See Storer v. Brown*, 415 U.S. 724, 730 (1974) (“[A]s a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.”).

### **A. The Constitution gives States significant power over voting.**

States have compelling interests in protecting the integrity and reliability of the electoral process by deterring and detecting voter fraud and—relatedly—safeguarding voter confidence. *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 191 (2008); *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (“A State indisputably has a compelling interest in preserving the integrity of its election process.”) (internal quotation omitted). Accordingly, “States . . . must regulate their elections to ensure that they are conducted in a fair and orderly

fashion.” *Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182, 206 (1999). True, valid federal law supersedes state law when the two conflict, U.S. CONST. art. VI, cl. 2, but the Constitution vests control over voting qualifications and—outside of time-place-manner issues—election provisions in the States.

Specifically, the power of Congress to regulate the “time, place, and manner” of elections in one section of Article I neither applies to nor limits the States’ plenary power to set elector qualifications under a different section of Article I. Compare U.S. CONST. art. I, § 2, cl. 2 with *id.* art. I, § 4, cl. 2. On voter qualifications, State law controls:

One cannot read the Elections Clause as treating implicitly what these other constitutional provisions regulate explicitly. “It is difficult to see how words could be clearer in stating what Congress can control and what it cannot control. Surely nothing in these provisions lends itself to the view that voting qualifications in federal elections are to be set by Congress.”

*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)).<sup>3</sup> While Congress’s authority under the Elections Clause to enact time-place-manner requirements is broad, *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 799 (2018) (Breyer, J., dissenting), Congress

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3. In its *Inter Tribal Council* reply brief, Arizona argued for the first time that registration is a voter qualification, not a time-place-manner restriction, 570 U.S. at 17 n.9, and the Supreme Court did not consider—much less resolve—that issue. *Id.*

has only the authority “to regulate *how* federal elections are held, but not *who* may vote in them.” *Inter Tribal Council*, 570 U.S. at 16 (emphases in original).

**B. The NVRA does not preempt HB 2492.**

The courts below erred in holding that the NVRA preempts HB 2492. Neither the NVRA nor *Inter Tribal Council* infringe on States’ constitutional authority over voter qualifications in federal elections, nor bar States from performing their constitutional duty to safeguard election integrity. Indeed, nothing in the NVRA requires States conclusively to presume the truth of any assertion an applicant makes on the Federal Form, forbids States from verifying assertions made on that form, or precludes States from establishing their own election procedures or purging their voter rolls of ineligible voters.

**1. Arizona law does not conflict with the NVRA’s requirement that States accept and use the Federal Form.**

This Court has held that—by requiring that “[e]ach State accept and use the” Federal Form for voter registration, 52 U.S.C. § 20505(a)(1)—the NVRA only precludes States from requiring applicants using the Federal Form to provide information beyond that required within the Form itself. *Inter Tribal Council*, 570 U.S. at 15 (explaining that “a state-imposed requirement of evidence of citizenship not required by the Federal Form is inconsistent with the NVRA’s mandate that States ‘accept and use’ the Federal Form”). HB 2492 does not conflict with that requirement.

Specifically, the NVRA’s “accept and use” requirement “does not preclude States from deny[ing] registration based on information in their possession establishing the applicant’s ineligibility.” *Inter Tribal Council*, 570 U.S. at 15 To the contrary, the “NVRA clearly contemplates that not every submitted Federal Form will result in registration.” *Id.* HB 2492 complies with the NVRA because HB 2492 does not interfere with Arizona’s acceptance and use of the Federal Form.

Arizona does not require Federal Form applicants to submit evidence of citizenship or residence with the Federal Form; such requirements are only applicable to the state registration form. For state form applicants, HB 2492 requires automatic rejection without evidence of citizenship, but that requirement expressly excludes applicants who submit the Federal Form. *See* Ariz. Rev. Stat. § 16-121.01(C) (requiring rejection where proof of citizenship is lacking “[e]xcept for [applications submitted via] a form produced by the United States election assistance commission”).

With respect to the Federal Form, election officials are instructed to “use all available resources to verify the citizenship status of the [Federal Form] applicant.” *Id.* § 16-121.01(D). Those resources include—without limitation—databases for the Department of Transportation, Social Security Administration, and the United States Citizenship and Immigration Service Systematic Alien Verification for Entitlements Program. *See id.* § 16-121.01(D)(1)-(5). If citizenship cannot be verified based on this information, the election official must provide written notice that “the applicant will not be qualified to vote in a presidential election or by mail

with an early ballot in any election until satisfactory evidence of citizenship is provided.” *Id.* § 16-121.01(E). But the applicant is otherwise registered unless the election official affirmatively determines that the applicant is not a U.S. citizen. *Id.* These procedures do not conflict with the mandate that States “accept and use” the Federal Form as clarified by this Court in *Inter Tribal Council*.

**2. States retain the power to create and use their own mail-in voter registration forms under the NVRA.**

Although the NVRA requires States to “accept and use” the Federal Form, the NVRA also permits States to “develop and use a mail voter registration form that meets all of the criteria stated in section 9(b)[.]” 52 U.S.C. § 20505(a)(2). In other words, although “the NVRA imposes certain mandates on states, describing those mandates in detail[,]” the NVRA “still leaves [the States] room for policy choice.” *Young v. Fordice*, 520 U.S. 273, 286 (1997). Here, Arizona has made a “policy choice” that the NVRA does not preempt.

Under the Elector-Qualifications Clause, Arizona has permissibly decided to require evidence of citizenship on its state mail voter registration form, a decision that is within the NVRA’s bounds. First, the NVRA provides what a mail registration form “may require . . . to assess the eligibility of the applicant.” 52 U.S.C. § 20508(b)(1). But “[t]he NVRA does not list, for example, all other information the State may—or may not—provide or request.” *Young*, 520 U.S. at 286. Because Section 9(b) does not contain any prohibitions on requiring that documentary evidence be submitted in conjunction with

a mail voter registration, States are free to require such information. Accordingly, the fact that the Federal Form does not require documentary proof of citizenship does not preclude States from requiring such information on their own forms.

Next, the NVRA indicates what mail registration forms must contain. It provides that the registration form “shall include a statement that specifies each eligibility requirement (including citizenship); contains an attestation that the applicant meets such requirement; and requires the signature of the applicant, under penalty of perjury.” 52 U.S.C. § 20508(b)(2). The NVRA’s only prohibition is in subsection (b)(3), which provides that the registration form “may not include any requirement for notarization or other formal authentication.” 52 U.S.C. § 20508(b)(3). The Arizona mail voter registration form does not violate anything in the NVRA.

Additionally, “state-developed forms may require information the Federal Form does not.” *Inter Tribal Council*, 570 U.S. at 12. Therefore, under the NVRA, “States retain the flexibility to design and use their own registration forms.” *Id.* Nothing in the NVRA prohibits Arizona’s requiring more information—including documentary evidence—in its own mail registration form than the Federal Form requires. *Id.* The purpose of the Federal Form is to provide a simple, streamlined method for voter registration, not to interfere with the States’ authority to conduct elections.

**3. NVRA does not prevent the States from purging ineligible voters from the voter rolls.**

The NVRA requires that States “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 the death of the registrant; or a change in address of the registrant.” 52 U.S.C. § 20507(a)(4). The NVRA further provides examples of how States may conduct these programs, including the requirement that such programs be completed “not later than 90 days prior to the date of a primary or general election for Federal office.” 52 U.S.C. § 20507(c). Finally, names are not to be removed for change of residence reasons absent written confirmation of an address change or failure to respond to written notice combined with failure to vote. 52 U.S.C. § 20507(d). HB 2492 complies with these requirements. Because the NVRA does not prohibit the States from removing voters based on ineligibility, Arizona is free to remove persons it has determined are not U.S. citizens.

**C. HB 2492 does not violate the Materiality Provision of the Civil Rights Act.**

The courts below erred in holding that HB 2492 violates the Civil Rights Act of 1964’s “Materiality Provision,” 52 U.S.C. § 10101(a)(2)(B), by denying the right to vote based on the omission of immaterial information. *Mi Familia Vota v. Fontes*, 129 F.4th 691, 720-22 (9th Cir. 2025). The lower court’s conclusion that Arizona’s collection of birthplace information is not material to Arizona’s interest under the Elector-Qualifications Clause in identifying noncitizens is simply not credible. Arizona

wants to identify people not born in the United States analogously to why Willie Sutton robbed banks: “that’s where the money is.” Pamela S. Karlan, *Discrete and Relational Criminal Representation: The Changing Vision of the Right to Counsel*, 105 HARV. L. REV. 670, 683 (1992). Here, instead of money, the search is for noncitizens, who are exponentially more prevalent among those born outside the United States than among those born in the United States. Thus, identifying the subset of people *not born in the United States* obviously provides useful information material to the determination of whether the registrant is an U.S. citizen.

The lower courts’ “materiality” determination poses the question of whether an applicant’s place of birth is or “is not material in determining whether such individual is qualified under State law to vote in such election[.]” 52 U.S.C. § 10101(a)(2)(B); *accord* Civil Rights Act of 1964, PUB. L. NO. 88-352, §101(a), 78 Stat. 241 (same). The phrase “not material” or “immaterial” means “lacking any logical connection with the consequential facts.” BLACK’S LAW DICTIONARY 896 (11th ed. 2019); *cf.* *Basic Inc. v. Levinson*, 485 U.S. 224, 239 (1988) (“No particular event or factor short of closing the transaction need be either necessary or sufficient by itself to render merger discussions material.”) (discussing necessity and sufficiency in the context of materiality in securities transactions). Sixty-two years ago, when the Civil Rights Act of 1964 was enacted, immaterial conditions were a real problem. *See, e.g.*, Gloria J. Browne-Marshall, *THE VOTING RIGHTS WAR: THE NAACP AND THE ONGOING STRUGGLE FOR JUSTICE* 110 (2016) (recounting a requirement that prospective Black voters “count the number of jelly beans in a large jar just by

looking at it”). As a simple matter of statutory construction and leaving aside the lack of a federal interest under the Elector-Qualifications Clause, the United States’s claim that foreign birth is *immaterial* to citizenship exceeds what Congress meant in 1964.

Although this Court rejected a full-fledged presumption against preemption<sup>4</sup> for federal legislation under the Elections Clause in *Inter Tribal Council*, 570 U.S. at 13-14 (“We have never mentioned such a principle in our Elections Clause cases.”) (*citing Ex parte Siebold*, 100 U.S. 371, 384 (1880)), this Court did not reject deference to State law and consideration of States’ competing interests in a federalist system as tools of statutory construction. *See id.* To the contrary, even without a presumption against preemption, this Court’s Elections Clause precedents require clear statements from Congress before displacing State authority. Thus, under the *Siebold* decision on which *Inter Tribal Council* relied, courts “presume that Congress has [exercised its authority] in a judicious manner” and “that it has endeavored to guard as far as possible against any unnecessary interference with State laws.” *Siebold*, 100 U.S. at 393.

Similarly, this Court’s Elections Clause precedents not only require Congress to “have expressed a clear purpose to establish some further or definite regulation” before supplanting State authority over elections but also “consider[] the policy of Congress not to interfere

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4. When the “presumption against preemption” applies, courts do not assume preemption “unless that was the clear and manifest purpose of Congress.” *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947).

with elections within a state except by clear and specific provisions.” *United States v. Bathgate*, 246 U.S. 220, 225-26 (1918); *United States v. Gradwell*, 243 U.S. 476, 485 (1917); cf. *United States v. Bass*, 404 U.S. 336, 349 (1971) (requiring clear congressional statement before statute “will . . . be deemed to have significantly changed the federal-state balance”); accord *Gonzales v. Oregon*, 546 U.S. 243, 275 (2006) (same). In the Elections Clause context, *Siebold*, *Gradwell*, and *Bathgate* make clear that federal courts construing federal election statutes will consider the States’ independent constitutional authority and federalism, even without a full-fledged presumption against preemption.

If Congress wants to update the Civil Rights Act to cover information that a State considers important under the Elector-Qualifications Clause, but where the federal Department of Justice disagrees, Congress perhaps could write that law. In doing so, Congress would be working against the canon against constitutional doubt, *Inter Tribal Council*, 570 U.S. at 17 (quoted *infra*) and the recent demise of the *Chevron* doctrine. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024) (overruling deference under *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837, 842-45 (1984)). But it stretches credulity to argue that Congress in 1964 meant the phrase “not material” to include Arizona’s wanting to know whether applicants were born abroad to narrow the field of applicants who warrant further inquiry about their citizenship status. There is an obvious “logical connection” between the two issues.

**CONCLUSION**

For the foregoing reasons, the Court should grant certiorari in these cases and reverse.

Respectfully submitted,

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