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, IN HIS OFFICIAL CAPACITY AS THE PRESIDENT OF THE ARIZONA SENATE, *et al.*,
Petitioners,

v.

MI FAMILIA VOTA, *et al.*,
Respondents.

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

BRIEF IN OPPOSITION FOR THE DEMOCRATIC NATIONAL COMMITTEE AND THE ARIZONA DEMOCRATIC PARTY

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QUESTIONS PRESENTED

1. Whether the National Voter Registration Act's ban on States' systematic removal of "the names of ineligible voters" from the voting rolls less than 90 days before a federal election preempts Arizona's mandate for systematic removals during that period of alleged noncitizens. (Question 2 in the Republican National Committee petition.)

2. Whether the National Voter Registration Act's requirement that states "accept and use" the federal voter-registration form, which does not require documentary evidence of U.S. citizenship, preempts Arizona's mandate that federal-form registrants provide such evidence in order to vote by mail—the method nearly 90% of Arizonans use to cast their ballots. (Question 2 in the Petersen/Montenegro petition.)

RULE 29.6 STATEMENT

Neither the Democratic National Committee nor the Arizona Democratic Party has a parent corporation, and neither organization has any stock, meaning that no publicly held corporation owns 10 percent or more of either organization's stock.

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INTRODUCTION

In *Arizona* v. *Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013) ("*ITCA*"), this Court held that the National Voter Registration Act ("NVRA") preempted Arizona's demand for documentary evidence of U.S. citizenship from Arizonans registering to vote in federal elections using the federal voter-registration form. Nine years later, Arizona sought to circumvent *ITCA*, enacting two statutes—House Bill ("H.B.") 2243 and H.B. 2492—that make it harder for federal-form applicants to register and vote without such documentary evidence. When those statutes were challenged as violating federal law, the lower courts applied *ITCA* in holding that (as relevant here) several provisions are indeed preempted by the NVRA.[1]

Petitioners—Arizona Senate President Warren Petersen and Arizona House Speaker Steve Montenegro ("Legislators"), along with the Republican National Committee ("RNC")—now seek further review. Review is unwarranted for several reasons.

To begin with, neither question addressed herein implicates a circuit conflict. Petitioners do not even claim that one exists regarding Arizona's ban on voting by mail for people who do not provide DPOC. The RNC does posit a conflict regarding Arizona's systematic removals from the voting rolls less than 90 days before a federal election. But the very court with which the

[1] For convenience, this opposition preserves petitioners' use of "DPOC" as a short-form for documentary "proof" of U.S. citizenship. Both the term and short-form are misleading, however, because documentation of citizenship can be forged, just as an attestation can be false. Documentary (and nondocumentary) "evidence" of citizenship would therefore be more accurate.

Ninth Circuit is supposedly in conflict has made clear that the lower courts are aligned.

In any event, the decision below is correct on both issues.

First, the Ninth Circuit rightly concluded that H.B. 2243 violates the NVRA's "90-day provision"—i.e., its ban on most systematic removals by States from the voter rolls less than 90 days before a federal election—by directing the systematic removal of alleged noncitizens from the rolls during that period. This holding, which aligns with decisions of the Fourth and Eleventh Circuits, flows ineluctably from the NVRA's broad prohibition on "any" such systematic removals less than 90 days before a federal primary or general election, and Congress's choice to specify other exceptions from the prohibition but not to exclude removal based on citizenship. The RNC's contrary position violates basic principles of statutory interpretation and wholly ignores the problem of erroneous removals that Congress was attempting to address with the 90-day provision.

Second, the Ninth Circuit correctly ruled that the NVRA preempts H.B. 2492's requirement that federal-form registrants provide documentation of U.S. citizenship in order to vote by mail in federal elections. *ITCA* held that States "must accept the Federal Form"—which does not require such documentation—"as a complete and sufficient registration application." 570 U.S. at 9. By barring federal-form registrants who do not provide DPOC from voting by mail, Arizona treats the form as *in*complete and *in*sufficient. The legislators' response, a proposed dichotomy between registering to vote and access to the ballot (with the NVRA governing only the former) has not been accepted by any court and would gut the statute's critical protections, inevitably

resulting in more eligible American citizens being denied their right to cast ballots in federal elections.

Petitioners characterize these holdings as intruding on state sovereignty, including by supposedly precluding States from taking *any* measures to remove noncitizens from the voting rolls. These criticisms are unfounded. The NVRA allows States to remove ineligible voters who were never eligible (including noncitizens) and to conduct removals based on individualized evidence of ineligibility at any time, including less than 90 days before a regular federal election. But States cannot circumvent the limits on systematic removals that Congress—exercising its express constitutional authority to regulate federal elections—put in place to ensure that *eligible* voters have adequate time to correct erroneous removal procedures, thereby protecting Americans' fundamental right to vote. And more generally, petitioners' appeals to States' rights and federalism fall flat. The NVRA concerns registration for and voting in *federal* elections. As the Framers recognized, it does not violate state sovereignty for Congress to ensure robust protection of Americans' right to participate fully in those elections (while leaving States free to set voter qualifications and to regulate their own elections). That is why the Constitution gives Congress broad power to regulate federal elections, power that Arizona (like every other State) accepted upon joining the Union. Petitioners' appeals to federal overreach or state sovereignty are thus misplaced, and provide no basis for this Court's review.

STATEMENT

A. Statutory Background

1. Enacted in 1993, the NVRA directed the federal Election Assistance Commission to create a "voter

registration application form for elections for Federal office" in consultation with states' chief election officers. 52 U.S.C. §20508(a)(2). That form requires applicants to swear under penalty of perjury that they satisfy each eligibility requirement to vote (including citizenship), but does not require documentary evidence of citizenship. *ITCA*, 570 U.S. at 4.

In 2004, Arizona nonetheless began requiring DPOC from anyone who used the federal form to register. *See* Ariz. Rev. Stat. §16-166(F); *ITCA*, 570 U.S. at 6-7. *ITCA* held that the NVRA preempted Arizona's DPOC requirement as to registration for federal elections using the federal form. 570 U.S. at 9-10. This Court explained that the NVRA's mandate that States "accept and use" the federal form for registration "to vote in [federal] elections" means that States "must accept the Federal Form as a complete and sufficient registration application" for such elections. *Id.* at 5, 9.

After *ITCA*, Arizona continued requiring DPOC, but only for registration to vote in state and local elections. People who provided DPOC with their state or federal registration forms were therefore registered to vote in federal, state, and local elections. *See* Pet.App.19a. But people who did not submit DPOC when they registered were either registered only for federal elections (if they used the federal form) or had their applications rejected (if they used the state form). *Id.*

2. In 2022, Arizona enacted H.B. 2492 and 2243, which contain the provisions at issue here.

First, H.B. 2243 requires officials to periodically check available databases for information about the citizenship of federal-only voters and, if such voters are not confirmed to be U.S. citizens, cancel their registrations. Ariz. Rev. Stat. §16-165(A)(10), (G)-(K). More

specifically, it provides that each month (or to the extent practicable), officials must conduct citizenship checks of federal-only voters and voters whom officials have "reason to believe" are not U.S. citizens. *Id.* §16-165(I). These provisions include no temporal limitation on when the prescribed cancellations can occur, meaning they can occur less than 90 days before a regular federal election.[2]

Second, H.B. 2492 bars federal-form registrants who did not provide DPOC from voting by mail, Ariz. Rev. Stat. §16-127(A)(2); *see also id.* §16-121.01(E)—the method that nearly 90% of Arizonans use, Pet.App.355a. (All petition-appendix cites are to the RNC's appendix.)

B. Procedural Background

1. The Democratic National Committee ("DNC") and the Arizona Democratic Party ("ADP"), along with the United States and various civic organizations and Native American tribes, challenged provisions of H.B. 2492 and 2243 promptly after their enactment; the eight lawsuits were consolidated as *Mi Familia Vota* v. *Fontes*, No. 22-cv-00509 (D. Ariz.). The DNC and ADP claimed that the two laws violate the NVRA by (1) allowing systematic removals of alleged noncitizens from the voter rolls within 90 days of a federal election, (2) prohibiting federal-only voters from voting by mail unless they provide DPOC, and (3) prohibiting federal-only voters from casting ballots in presidential elections unless they provide DPOC. Pet.App.13a, 15a.

After ruling in plaintiffs' favor on several issues at summary judgment and thereafter conducting a two-

[2] The changes that H.B. 2243 made to Arizona law supersede those H.B. 2492 made, although both laws require voter-registration cancellation of alleged noncitizens. The arguments herein regarding the NVRA's 90-day provision apply equally to both laws.

week bench trial, the district court entered final judgment for plaintiffs on some claims (while rejecting others) and permanently enjoined the enforcement of provisions the DNC and ADP challenged. Pet.App.427a-428a, 431a.

2.a. Petitioners appealed and moved the Ninth Circuit for a partial stay of the permanent injunction, including with respect to the mail-voting and presidential-election restrictions. Dkt. 730 at 1, *Mi Familia Vota* (May 17, 2024). After both a motions panel and the merits panel denied petitioners' stay request with respect to those restrictions, Pet.App.387a, 394a, petitioners asked this Court for an emergency stay, App. 3, *Republican National Committee* v. *Mi Familia Vota*, No. 24A164 (U.S. Aug. 8, 2024). This Court denied the application as to both the mail-voting and presidential restrictions, while granting a stay concerning a provision challenged by other plaintiffs. Pet.App.426a.

b. After briefing and oral argument, a divided Ninth Circuit panel upheld the district court's injunction of the provisions the DNC and ADP challenged. Two of the court's rulings are relevant to this opposition.

First, the court of appeals held that H.B. 2243 violates the NVRA to the extent it "authorizes systematic cancellation of registrations [of alleged noncitizens] within 90 days before a federal election." Pet.App.47a. Noting that the NVRA prohibits "any" program of systematic cancellations from operating during that period, 52 U.S.C. §20507(c)(2)(A), and the absence of any textual exception related to U.S. citizenship—despite Congress's inclusion of other exceptions—the court concluded that H.B. 2243's systematic cancellation scheme (which, as noted, includes no pre-election carveout) is "precisely the type of systematic cancellation program

that the 90-day Provision was meant to preclude." Pet.App.46a.

Second, the Ninth Circuit held (applying *ITCA*) that H.B. 2492's DPOC requirement for mail voting and presidential elections is preempted by the NVRA's mandate, *see* 52 U.S.C. §20505(a)(1), that states "accept and use" the federal form to register applicants to vote in federal elections. Pet.App.34a, 36a. By demanding that federal-form applicants provide more than what the federal form requires, the court held, Arizona law directly conflicts with the NVRA. Pet.App.32a, 34a. With respect to mail ballots, the court further held that Arizona's bar on mail voting by people who registered using the federal form without providing DPOC is independently preempted because it is an obstacle to the achievement of the NVRA's purpose of broadening ballot access, Pet.App.32a, a conclusion "reinforced by the fact that about 89% of Arizona voters cast ballots by mail in 2020," Pet.App.33a. The court rejected petitioners' argument that the NVRA regulates "only 'registration' in isolation from the rest of the voting process" as irreconcilable with the NVRA's text and purposes, as well as contrary to this Court's broad view of preemption by legislation enacted under the Elections Clause (U.S. Const., art. I, §4). Pet.App.34a (citing *ITCA*). With respect to presidential elections, the Court held that the plain language of the NVRA regulates voter registration for those elections and that this Court had long established Congress's power to do so. Pet.App.35a-36a.[3]

Judge Bumatay dissented from each of these holdings. Pet.App.79a-103a, 119a-127a. The Ninth Circuit

[3] Petitioners do not seek review of the Ninth Circuit's decision striking down DPOC requirements to participate in presidential elections.

subsequently denied rehearing en banc over several dissents. Pet.App.163a.

REASONS FOR DENYING THE PETITIONS

Congress enacted the NVRA pursuant to its constitutional power over federal elections. *See ITCA*, 570 U.S. at 13-15; U.S. Const. art. I, §4, cl. 1. And as the Legislators acknowledge (Pet.26), courts do not apply any presumption against preemption to Elections Clause legislation. *ITCA*, 570 U.S. at 13-15. Adhering to this rule, Pet.App.30a, the Ninth Circuit correctly held here that the NVRA preempts several provisions of H.B. 2243 and 2492. Its holdings do not conflict with that of any other court, or otherwise merit this Court's review.

I. THE NVRA'S 90-DAY PROVISION

A. There Is No Circuit Conflict

The NVRA provides that "State[s] 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). The statute creates exceptions, however, for removals based on a voter's death, request, or (as provided by state law) criminal conviction or mental incapacity. *Id.* §20507(c)(2)(B).

The RNC asserts (Pet.21) that certiorari is warranted because the Ninth Circuit supposedly "deepened" a circuit conflict by holding here that the 90-day provision preempts H.B. 2243 to the extent the latter statute permits systematic removals of alleged noncitizens from the voting rolls less than 90 days before a federal election. In reality, every court to consider the issue has agreed with the Ninth Circuit that the NVRA prohibits states from systematically removing "ineligible

voters" from the rolls, based on alleged lack of citizenship, less than 90 days before a federal election.

1. As the RNC acknowledges (Pet.22-23), the Eleventh and Fourth Circuits reached the same conclusion on this issue as the decision below. The Eleventh Circuit (like the Ninth) did so unanimously in a published opinion after plenary review, relying on the NVRA's plain text. *See Arcia* v. *Florida Secretary of State*, 772 F.3d 1335, 1348 (11th Cir. 2014). The Fourth Circuit, ruling on a motion to stay a preliminary injunction pending appeal, likewise unanimously rejected the argument that the 90-day provision does not encompass the removal of alleged noncitizens. *Virginia Coalition for Immigrant Rights* v. *Beals*, 2024 WL 4601052, at *1 (4th Cir. Oct. 27, 2024) (subsequent history omitted). The court explained that the defendants' argument—the same one pressed here—"violates basic principles of statutory construction by focusing on a differently worded statutory provision that is not at issue here and proposing a strained reading of the [90-day] Provision to avoid rendering that other provision absurd or unconstitutional. That is not how courts interpret statutes." *Id.*

The RNC notes (e.g., Pet.3) that this Court stayed the injunction in that case. *See Beals* v. *Virginia Coalition for Immigrant Rights*, 220 L.Ed.2d 179 (2024). But the now-expired stay was not accompanied by any reasoning, and "it does not follow that th[is] Court necessarily repudiated the Fourth Circuit's reasoning" regarding the proper interpretation of the 90-day provision. *Virginia Coalition for Immigrant Rights* v. *Beals*, 803 F.Supp.3d 454, 473 (E.D. Va. 2025). After all, the stay application advanced multiple arguments unrelated to the correct statutory construction. Indeed, the applicants' *leading* argument was that the injunction came too soon before the 2024 general election, in violation of

Purcell v. *Gonzalez*, 549 U.S. 1 (2006) (per curiam), and its progeny. *See* Appl. 1-2, *Beals* v. *Virginia Coalition for Immigrant Rights*, No. 24A407 (U.S. Oct. 27, 2024). As the district court in *Beals* concluded on remand, therefore, "it appears that" this Court "merely preferred the case go through the [full] litigation and appeal process." *Beals*, 803 F.Supp.3d at 473 n.9. The district court then again "reject[ed]" what it called the "tortured reading" of the NVRA that the RNC presses here. *Id.* at 474.

2. The RNC contends that a circuit conflict exists because of the Sixth Circuit's decision in *Bell* v. *Marinko*, 367 F.3d 588 (6th Cir. 2004). But *Marinko* involved *individualized* challenges regarding voters' eligibility. *Id.* at 589-591. It thus was not about the 90-day provision, which bars only certain systematic removal programs. Indeed, the court never so much as cited that provision, or mentioned the timing of the challenged removals relative to any election. And the Sixth Circuit later confirmed that the removals in *Marinko* were permissible irrespective of their timing (which, again, *Marinko* never mentioned) because they followed "hearing[s] to investigate the residency of *each challenged individual*." *United States Student Association Foundation* v. *Land*, 546 F.3d 373, 385 (6th Cir. 2008) (emphasis added). No holding of *Marinko*'s conflicts with the decision below.

To the extent the RNC is suggesting that *Marinko*'s *reasoning* tracks the RNC's reading of the 90-day provision, and hence would require a future Sixth Circuit panel to embrace the RNC's reading, that provides no basis for certiorari, for three reasons. *First*, the possibility of a circuit conflict developing someday does not warrant review now. If a conflict ever materializes, the Court can address it then. *Second*, the decision below

does not bar either individualized removals (at any time) of ineligible voters who were improperly registered to vote in the first place—the central issue in *Marinko*—or systematic removals at least 90 days before a regular federal election. *Third*, any future Sixth Circuit (or other circuit) panel presented with the RNC's argument would likely reject it given (1) the rejection of that argument by all three circuits to consider it since *Marinko*, and (2) the fact that the argument is—as discussed in the next subsection—demonstrably incorrect.

In short, far from "deepen[ing]" any circuit conflict, RNC Pet.21, the decision below expands a unanimous consensus among the courts of appeals that have considered the issue.

B. The Ninth Circuit's Holding Is Correct

While the lack of any circuit conflict suffices to make further review unwarranted, the Ninth Circuit's holding regarding the 90-day provision is correct, flowing from a straightforward application of the NVRA's unambiguous text.

As noted, the NVRA bars the operation, within 90 days of a federal election, of "any" state program to systematically remove "ineligible voters" from the rolls. 52 U.S.C. §20507(c)(2)(A). The RNC does not argue that the removals H.B. 2243 mandates are not part of such a systematic program. Rightly so: "[T]he word 'any' has an expansive meaning, that is, one or some indiscriminately of whatever kind." *Ali* v. *Federal Bureau of Prisons*, 552 U.S. 214, 219 (2008) (quotation marks omitted). Indeed, this Court has "given effect to this expansive sense of 'any'" in "case after case." *Home Depot U.S.A., Inc.* v. *Jackson*, 587 U.S. 435, 455 (2019) (Alito, J., dissenting) (citing cases). And Arizona's removal program here assuredly qualifies as systematic, because H.B.

2243's removal program is based on computerized matching (specifically a computer program known as SAVE, or "Systematic Alien Verification for Entitlements"). Pet.App.45a.

What the RNC does argue (Pet.34-35) is that the 90-day ban does not apply to removal of alleged noncitizens. Congress's enumerated exceptions to the ban refute that argument. Those exceptions, again, allow states to remove names during this period "at the request of the registrant"; "as provided by State law, by reason of criminal conviction or mental incapacity"; or upon "the death of the registrant." 52 U.S.C. §20507(a)(3)-(4), *cited in id.* §20507(c)(2)(A). Congress thus omitted any exception for citizenship-based removals. And that omission is "good evidence" that such removals are prohibited, *Arcia*, 772 F.3d at 1345, because if "Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent," *Hillman* v. *Maretta*, 569 U.S. 483, 496 (2013).

The RNC contends, however, that evidence of a "contrary legislative intent" exists here. Specifically, the RNC argues (echoing Judge Bumatay's dissent, *see* Pet.App.119a-127a) that the 90-day provision does not cover noncitizens at all, i.e., that "the phrase 'ineligible voters' in the 90-Day Provision doesn't include foreign citizens." Pet.34. According to the RNC, the provision distinguishes between "a person who was never eligible—like a noncitizen" (Pet.35), as to whom no protection is supposedly provided, and a person who was eligible to vote when registering but later became ineligible, whom the provision protects from last-minute removals. That is meritless, and hence provides no basis for certiorari.

Indeed, the extreme convolutedness of the RNC's reading underscores its infirmity. Judge Bumatay, for example, needed five pages—and a graphic—just to *explain* the reading. Pet.App.120a-125a. But in brief, that reading is as follows: *First*, a person who is registered to vote is not a "registrant" for purposes of 52 U.S.C. §20507 (the section containing the 90-day provision) unless the person was actually eligible to vote when registering. *Second*, "registrants" comprise both "eligible voters" and "ineligible voters," with the latter being those who *were* eligible when they were registered (otherwise they wouldn't be "registrants") but later became ineligible. *Third* (and therefore), when the 90-day provision bans last-minute systematic removals of "ineligible voters," it is not talking about people who were ineligible to vote when they registered—those people, again, are supposedly not "registrants" and hence cannot be "ineligible voters"—but only people who were eligible then but later became ineligible (because, for example, of a criminal conviction, or a renunciation of their U.S. citizenship).

The RNC needs this convoluted reading to reach its desired conclusion because a simple reading of the 90-day provision forecloses its argument. The provision straightforwardly says that States cannot "systematically remove the names of ineligible voters" from the rolls during the 90 days before a federal election. 52 U.S.C. §20507(c)(2)(A). Nothing about the provision limits "ineligible voters" to those who were eligible at the time of registration—understandably so, as that would require election officials to undertake the difficult if not impossible task of ascertaining facts about people from years or decades earlier.

Because the 90-day provision's language does not support its reading, the RNC must go outside the

provision to reach its desired conclusion. So it says that "registrants"—a term *not* in the 90-day provision—encompasses both "eligible voters" and "ineligible voters." But that alone does not help the RNC; the same is true under the Ninth Circuit's reading. The RNC therefore has to make the argument more complicated still, by asserting that *only* "registrants" may be "ineligible voters." That is the crux of this entire argument.

But there is simply no basis for it. The use of "ineligible voters" to describe *some* "registrant[s]" in one part of the NVRA (52 U.S.C. §20507(a)(4)) does not mean that *all* "ineligible voters" described anywhere in the NVRA must be "registrant[s]." This is known as the "fallacy of composition," i.e., that because something is true of some members of a group, it must be true of all group members. *Fallacies of Composition/Division*, *Oxford Dictionary of Philosophy* (2d ed. 2016). Here, what makes a "registrant" an "ineligible voter[]" is that she does not meet a state eligibility criterion. *See* 52 U.S.C. §20507(a)(4). An individual who *never* met an eligibility criterion is no less an ineligible voter.

The structure of the NVRA does not require the multi-step process envisioned by the RNC (Pet.35) and Judge Bumatay (Pet.App. 124a-125a), wherein only eligible applicants may become registrants and only registrants may become ineligible voters. Although it can become clear after registration that a voter was never a proper "registrant" due to initial ineligibility, nothing about the initial validity of a registration precludes the person from becoming an "ineligible voter." The individual was simply an ineligible voter from the date of registration. That "ordinary meaning" is the correct one, *Wisconsin Central Limited* v. *United States*, 585 U.S. 274, 277 (2018), because nothing in the NVRA requires (or even suggests) departing from it.

In fact, if all "ineligible voters" were "registrants," then 52 U.S.C. §20507(c)(2)(B)(i) would make little sense, as it excludes three of four categories of "registrants" subject to removal under §20507(a)(3) from the 90-day provision, leaving only movers. Congress knew how to denote registrants ineligible by reason of a change in residence where it intended that narrow category. *See id.* §20507(a)(4)(B). General application of the 90-day provision to "ineligible voters" confirms a broader definition.

The RNC disputes all this by asserting (Pet.35) that under the NVRA, "States must register only 'eligible applicant[s]' who submit a 'valid voter registration form'" (alterations in original) (quoting 52 U.S.C. §20507). But that is wrong; the NVRA does *not* say that States must register "only" eligible applicants who timely submit a valid form, *id.* It says that States must register such applicants, *see* 52 U.S.C. §20507(a), and of course States *shouldn't* register anyone who is not eligible to register and vote. It is obviously possible, however, for ineligible applicants to be registered mistakenly. If that occurs, those "ineligible voters" will appear on "official lists of eligible voters," under the ordinary meaning of those words, which are again their meanings in §20507. And once those phrases are given that meaning, the RNC's convoluted argument collapses: The 90-day ban on removing "ineligible voters" includes those who were ineligible because they are not U.S. citizens.

The RNC derides this plain-language conclusion (Pet.36) as "protect[ing] the franchise of persons not eligible to vote." That is baseless; the 90-day provision does not exist because Congress wanted ineligible people to vote, any more than the right to confront one's accusers or to a jury trial exists to protect the guilty. Those rights exist to reduce the chances of the

government wrongly convicting the *innocent*. Likewise, the 90-day provision exists to reduce the chance of States wrongly removing those who *are* eligible to vote too close to the election for the voter to learn of the error and correct it, thereby increasing the risk of denying those Americans their fundamental right to vote. As courts have explained (including the Ninth Circuit here), the 90-day provision thus reflects (1) Congress's effort to balance the need for States to be able to remove ineligible voters against the danger of *erroneous* removals, and (2) Congress's decision that the proper balance was to prevent removals too close to an election, when there might not be time to correct erroneous removals. Pet.App.46a.

Despite the Ninth Circuit's extended discussion of this key point, *see* Pet.App.45a-47a, the RNC's petition does not acknowledge either the problem of erroneous last-minute removal of eligible voters or the 90-day provision's role in addressing that problem. From start to finish, the RNC instead argues as though any time a state official perceives some indication that a person is not a U.S. citizen, the person must in fact not be. For example, the RNC begins by phrasing the relevant question presented as whether the 90-day provision stops Arizona from removing voters who "are not" U.S. citizens. Pet.i. The proper question is instead whether Arizona can, less than 90 days before a federal election, continue a program to systematically remove people who election officials *suspect*—perhaps rightly but perhaps wrongly—are not U.S. citizens. Similarly, the RNC concludes by accusing the Ninth Circuit (Pet.36) of "protect[ing] the franchise of persons not eligible to vote." In actuality, the 90-day provision protects against last-minute removals of persons that state officials have simply

identified as ineligible to vote, many of whom may in fact be eligible.

The RNC's silence about the problem of erroneous removals, and about the 90-day provision seeking to balance protection against that with the need to remove ineligible voters, is perhaps explained by the fact that erroneous removals are *far* more common than voting by noncitizens (about which the RNC complains so vociferously). As the record here reaffirms, voting by noncitizens is rare. Pet.App.227a-229a. The district court noted, for example, that there were only "15 indictments for non-citizen voting" during a four-year period in which "200 million votes were cast in federal elections." Pet.App.227a-228a. (And even an indictment, of course, does not mean that voting by a noncitizen actually occurred.) Mistakes regarding registered voters' eligibility are much more frequent. One district court found, for instance, that a single state's removal program resulted in over 2,000 eligible voters wrongly being declared ineligible to vote and referred for criminal investigation. *See* Mot. Hr'g Tr. 13, *Alabama Coalition for Immigrant Justice* v. *Allen*, No. 2:24-cv-01254 (N.D. Ala. Oct. 16, 2024). Likewise in *Beals*, the Fourth Circuit recounted the district court's finding there that "eligible citizens … had their registrations canceled and were unaware that this was even so." *Beals*, 2024 WL 4601052, at *2 (omission in original). And the Eleventh Circuit has more generally described the identifications of noncitizens for removal as "far from perfect." *Arcia*, 772 F.3d at 1339. The RNC's decision not to address this central point—and instead to distort matters by pretending that the *only* problem relevant to the 90-day provision is voting by noncitizens—is revealing.

Judge Bumatay did address the panel majority's explanation that the 90-day provision reflects Congress's

effort to balance competing interests by "permit[ting] systematic removal programs at any time except for the 90 days before an election because that is when the risk of disfranchising eligible voters is the greatest." Pet.App.126a. But he deemed that unpersuasive because, in his view, it "fails to explain why voters who are convicted of a crime, have a disability, or have died receive no protections … but foreign citizens are immune from removal." Pet.App.127a. That is unavailing for three reasons.

First, as Judge Bumatay himself acknowledged earlier in his dissent, because legislation often "reflect[s] hard-fought compromises," a law does not "pursue[] its purposes at all costs." Pet.App.102a. Hence, placing weight on the fact that a law could have (in the post-hoc view of a judge or court) achieved its purpose more thoroughly or effectively "frustrates rather than effectuates legislative intent." *Id.* *Second*, it was entirely sensible for Congress to decide that there is a lower risk of erroneous removals of, for example, "voters who are convicted of a crime," Pet.App.127a, than of alleged noncitizens or others covered by the 90-day provision. People convicted of crimes not only enjoyed all the protections that criminal defendants receive in order to minimize the chance of erroneous convictions, but their convictions—almost invariably coming after public proceedings in open court, and embodied in easily verified judicial judgments—are also rarely subject to genuine dispute, and hence rarely the basis for wrongly removing from the rolls people who actually are eligible to vote. *Third*, it was reasonable for Congress to strike a different balance concerning the bases for removal that frequently both arise *and* trigger removal less than 90 days before a regular federal election, namely death, criminal conviction, and adjudication of mental incapacity. Any change of

address arising less than 90 days before a regular federal election, by contrast, will not trigger removal until after the NVRA's multi-year protective process, so systematic list maintenance close to an election will not both catch and remove last-minute movers. Similarly, failure to meet initial eligibility requirements arises at the time of registration and may typically be addressed before the 90-day provision goes into effect.

Congress's desire to minimize erroneous removals via the 90-day provision confirms that the RNC's and Judge Bumatay's reading—excluding from the provision's coverage anyone who was not eligible at the time of registration—makes little sense. Mistakes about a person's eligibility (whether citizenship-based or otherwise) can obviously be made both where officials mistakenly think a person was never eligible and where they mistakenly think the person was eligible at the time of registration but later became ineligible. Judge Bumatay never explained why Congress would have been concerned about erroneous removals only in the latter situation. Nor, of course, does the RNC, given that it ignores this point entirely.

In sum, the Fourth, Ninth, and Eleventh Circuits all got it right: The 90-day provision should be interpreted in accordance with its plain text (not the convoluted reading the RNC proposes). And under the plain text, Arizona—to minimize the danger of erroneous removals that deprive Americans of their right to vote—cannot systematically remove alleged noncitizens from the voter rolls on that basis less than 90 days before any federal election.

II. MAIL VOTING

The Ninth Circuit ruled that under the NVRA (as construed in *ITCA*), States cannot bar people who

register using the federal form from voting by mail in federal elections because they did not provide DPOC. Pet.App.31a-34a. It thus held H.B. 2492 preempted, as a matter of both conflict and obstacle preemption, because the law does precisely that. *Id.* That holding is correct and—as the Legislators implicitly admit—does not implicate any divide among the lower courts. This Court rejected petitioners' request for a stay of the injunction of the relevant provisions, and further review is unwarranted now.

A. There Is No Circuit Conflict

The Legislators do not claim that the decision below creates a circuit conflict on this issue. Nor did Judge Bumatay's dissent. Indeed, neither claimed that *any* case has embraced their view, i.e., held that the NVRA allows States to treat eligible voters who provide all information required to register using the federal form as something less than full registrants in federal elections, by denying them voting rights enjoyed by other registered voters. That is not surprising: The DNC and the ADP are not aware of any other jurisdiction that restricts people's ability to vote by mail (or any other method) the way Arizona does. That itself demonstrates that the Ninth Circuit's ruling, lacking any impact outside a single state, does not merit further review. In any event, the Legislators' (and Judge Bumatay's) failure to identify any case supporting their view goes most if not all the way toward showing that this issue does not warrant certiorari.

B. The Ninth Circuit's Holding Is Correct

The Ninth Circuit rightly concluded that Arizona's ban on mail voting in federal elections by people who registered using the federal form without providing DPOC violates the NVRA. As explained, *ITCA* held

that the NVRA's requirement that States "accept and use" the federal form means that States "must accept the Federal Form as a *complete* and *sufficient* registration application." 570 U.S. at 5, 9 (emphases added). Arizona is not doing that if, as H.B. 2492 requires, it bars registrants who use the federal form—which does not require DPOC—from voting by mail because they did not provide DPOC. Arizona is instead treating such federal forms as *in*complete (because DPOC is absent) and *in*sufficient (because applicants are denied the same voting rights in federal elections as those who submit DPOC).

The Legislators' challenge to the Ninth Circuit's ruling rests on a posited dichotomy (Pet.27) between (1) registration and (2) the access to the ballot that registration provides, with the NVRA governing only registration and having no preemptive effect "with respect to … post-registration facets of the election process." That makes little sense. Registration is not separable from voting; it does not exist as an end in itself but solely as a prerequisite to voting. As this Court said in *ITCA*, therefore, under "Arizona's reading …, the Federal Form … would be a feeble means of 'increas[ing] the number of eligible citizens who register *to vote* in elections for Federal office.'" 570 U.S. at 13 (alteration in original) (emphasis added) (quoting 52 U.S.C. §20501). The Legislators do not address this, or attempt more generally to square their narrowing gloss with *ITCA*'s broad view of the preemptive scope of Elections Clause legislation like the NVRA, *see id.*

These same points answer Judge Bumatay's related argument that "while the NVRA may require that the federal form be 'accepted as *sufficient*' to … vote in [federal] elections, it doesn't require the federal form to be *sufficient* for *all* purposes." Pet.App.98a (quoting

ITCA, 570 U.S. at 10). That is a strawman; no one claims that the form must be treated as sufficient "for all purposes." It need not be treated as sufficient, for example, to vote in state or local elections, or to vote without meeting neutral voting rules applied to all registrants. But it must be treated as sufficient for the purpose of registering to vote with all the same voting rights for federal elections that state law provides to those who register in any other way state law allows. Otherwise, States would be free to impose all manner of voting restrictions on people because they registered using the federal form (or otherwise in conformity with the NVRA's protections). For example, States could make early in-person voting available only to those who did not register using the federal form. Or they could allow those who used the form to vote *only* by mail (i.e., not in person), or only in a single location in the State, or only during a narrow, 30-minute window on Election Day. In the Legislators' and Judge Bumatay's view, the NVRA would have nothing to say about any of this targeted discrimination (or other forms of it States could adopt). That, again, would run counter to *ITCA*, by rendering the federal form "feeble" indeed, 570 U.S. at 13.

The Legislators' narrow conception of registration—as not encompassing the access to the ballot that is the *entire purpose* of registration—is contrary not only to *ITCA* and common sense, but also (relatedly) to the NVRA's text, which makes clear Congress's intent to cover ballot access through registration. Indeed, the NVRA expressly declares that the right "to vote" is fundamental, and that States must "promote the exercise of that right." 52 U.S.C. §20501(a)(1), (3). The law's stated purposes, moreover, include "enhanc[ing] the participation of eligible citizens *as voters*." *Id.* §20501(b)(2) (emphasis added). And as the Legislators concede (Pet.27),

language in the NVRA should not be treated as "surplusage." Yet that is how they treat the NVRA's text about the right not just to register but to vote.

Judge Bumatay responded that "there are dangers in using supposed purpose rather than statutory text to interpret the law," Pet.App.101a, and that the NVRA's purposes cut both ways here because they involve "both expanding voting and preventing voter fraud," Pet.App.102a. But to start, the Ninth Circuit did not rely on "supposed purpose rather than statutory text," *id.* at 101a; the law's purposes are, as stated, *in the text*. That aside, it strains credulity to assert that preventing fraud was the principal objective of H.B. 2492, given that the law exempts from the DPOC requirement *everyone* who registered before 2004, when Arizona began requiring DPOC. Ariz. Rev. Stat. §16-166(G); *ITCA*, 570 U.S. at 6-7. Moreover, Judge Bumatay inferred a fraud-prevention objective from the NVRA's stated purposes of "protect[ing] the integrity of the electoral process" and "ensur[ing] that accurate and current voter registration rolls are maintained." 52 U.S.C. §20501(b)(3)-(4). But Arizona's mail-voting restriction has nothing to do with maintaining accurate and current voter rolls. The Legislators have never argued otherwise, nor did the State itself do so at any point in the lower courts. And there is no basis in the record to suggest that funneling federal-form applicants who do not provide DPOC to vote in person (rather than by mail) will prevent noncitizen voting. As for protecting the integrity of the electoral process, "integrity" means something more than ballot security; it denotes "[m]oral soundness." *Integrity*, *Black's Law Dictionary* (12th ed. 2024); *accord Integrity*, *Merriam-Webster's Third New International Dictionary* 1174 (1993) ("soundness" or "an uncompromising adherence to a code of moral … or other values");

Integrity, *Oxford English Dictionary* (2d ed. 1989) ("[s]oundness of moral principle"). In a democratic system, undue restrictions on the right to vote undermine the moral soundness of an election. *See, e.g.*, *Anderson* v. *Celebrezze*, 460 U.S. 780, 806 (1983). In any event, protecting the integrity of elections is not just about preventing fraud. It is also about preventing undue restrictions of the right to vote, such as Arizona's mail-voting ban. Put simply, the Ninth Circuit did not, as Judge Bumatay asserted, "let one singular purpose guide the preemption analysis," Pet.App.102a. It recognized that considering the applicable textually stated purposes reinforces the conclusion of preemption drawn from the statute's operative language.

Other courts have agreed, concluding based on the text that Congress sought with the NVRA to ensure that the "right to *exercise the[] franchise* … not be sacrificed." *Project Vote/Voting for America, Inc.* v. *Long*, 682 F.3d 331, 335 (4th Cir. 2012) (emphasis added). That purpose cannot be served by protecting registration alone: Because, as explained, "[r]egistration is indivisible from election," States may not, "by separating registration from voting, … undermine the power that Article I section 4 grants to Congress." *ACORN* v. *Edgar*, 56 F.3d 791, 793 (7th Cir. 1995). States, that is, cannot circumvent Congress's mandates in the NVRA by imposing discriminatory prerequisites to *voting* that effectively deny—based on registration method—the protections for *registration* that the statute provides. That is what, for all practical purposes, Arizona's prohibition on mail voting *for particular registrants only* is: a regulation of registration itself. Allowing such a bar, and denying the NVRA any impact on voting, would effectively nullify the NVRA's protections regarding registration.

The Legislators assert, however, that the Ninth Circuit is the "first to hold" that the NVRA's preemptive scope "is not confined to the discrete matter of voter registration." Pet.3; *accord* Pet.25. But as the cases cited earlier make clear, other courts *have* held that the NVRA's preemptive scope extends beyond a narrow view of registration. Nor are those cases exhaustive. For example, in *Public Interest Foundation, Inc.* v. *Bellows*, 92 F.4th 36, 54 (1st Cir. 2024), the First Circuit held that the NVRA preempted Maine's restrictions on the use and publication of the state's voter file. The Tenth Circuit did the same regarding New Mexico's restrictions on the use and sharing of voter data. *See Voter Reference Foundation, LLC* v. *Torrez*, 160 F.4th 1068, 1088 (10th Cir. 2025). And so did the Eleventh Circuit, in holding that the NVRA regulates voter files. *See Greater Birmingham Ministries* v. *Secretary of State*, 105 F.4th 1324, 1329-1332 (11th Cir. 2024).

Rejecting the consensus view of other courts, Judge Bumatay argued that there is no difference between Arizona's mail-voting restriction and a state law providing that "a person who has not provided satisfactory evidence of a disability is not eligible to receive an early ballot by mail." Pet.App.99a. But even putting aside that this hypothetical doesn't work because the posited rule is not tied to the registration methods that the NVRA protects, that rule *would* be preempted, by the Voting Accessibility for the Elderly and Handicapped Act. 52 U.S.C. §21014(b). In the same manner, the NVRA expressly provides—through the "accept and use" mandate and the absence of a DPOC requirement on the federal form—that people can, without submitting DPOC, fully register to vote in federal elections, with the right to cast a ballot in all the same ways state law provides those who register using any other method. Arizona's

mail-voting restriction conflicts with that federal mandate. And as discussed, the Legislators' and Judge Bumatay's view would eviscerate that mandate, reducing the accept-and-use requirement to just a requirement that States freely allow people a lesser form of registration, with no protection against States imposing restrictions on such second-class registrants' ability to actually cast a ballot. But registration is not an end unto itself, and the NVRA is not so easily circumvented.

Contrary to the Legislators' suggestion (Pet.30), the NVRA's reference to mail voting supports the Ninth Circuit's holding. Section 20505(c) provides that States *may* prohibit mail voting by certain newly registered individuals who registered by mail. Under this Court's precedent, it is a "sensible inference" from this limited authorization of restrictions on mail voting by those who register using an NVRA-mandated mechanism that Congress "must have … meant" to prevent states from imposing *other* such restrictions. *NLRB* v. *SW General, Inc.*, 580 U.S. 288, 302 (2017). That interpretation is not divorced from the "NVRA's text" (Legislators' Pet.30); it is a straightforward application of the "[e]xpressio unius" canon, which this Court's precedent (and common sense) make clear is "textual," *Brueswitz* v. *Wyeth LLC*, 562 U.S. 223, 232-233 (2011).

Nor does the Ninth Circuit's reading constitute Congress "hid[ing] elephants in mouseholes," as Judge Bumatay claimed, Pet.App.100a. That claim rested on the false premise that under the decision below, the NVRA "displace[s] the whole field of mail-in voting rules," *id.* In fact, under the Ninth Circuit's holding, generally applicable rules regarding mail voting remain undisturbed, and the "accept and use" mandate simply means, as explained, that States cannot *discriminate* against those who register in compliance with the

requirements of the federal form, including by restricting the voting rights that state law would otherwise provide those people. That is not an "elephant," i.e., it does not "mean that all state limitations on absentee and mail voting would be preempted," Pet.App.101a, or that there is an "affirmative right to enjoy any and every mode of obtaining and returning a ballot that a State may make available" (Legislators' Pet.28). For that matter, it is not "hid[ing]" in a "mousehole" either; it appears prominently in the (textual) "accept and use" mandate, the first provision of the relevant NVRA section, *see* 52 U.S.C. 20505(a)(1).

Finally, the Legislators wrongly complain (Pet.28-29) that the Ninth Circuit should not have "ascribe[d] federal statutory protection" to mail voting because mail voting is a mere "privilege." The case on which they rely, *McDonald* v. *Board of Election Commissioners of Chicago*, 394 U.S. 802 (1969), described "absentee voting" as a "privilege[]" as a *constitutional* matter, *id.* at 810. True or not, that is immaterial to the question of "federal *statutory* protection" here, Legislators' Pet.28 (emphasis added), i.e., whether Congress may prohibit Arizona from penalizing voters for invoking the NVRA's registration protections by barring them from using voting methods the State otherwise makes available. Congress surely can do that, pursuant to its constitutional authority to regulate the "manner" of voting in federal elections, U.S. Const. art. I, §4, cl. 1. The Legislators' reliance on *Crawford* v. *Marion County Election Board*, 553 U.S. 181 (2008), is likewise misplaced. Contrary to their suggestion (Pet.29), that case—which produced no majority opinion—nowhere states that "travel to a polling place" is among the "usual burdens of voting." And it is assuredly not a usual burden in Arizona, where

nearly 90% of voters cast ballots by mail in the 2020 federal elections. Pet.App.355a.

In short, the Ninth Circuit's ruling regarding mail voting was correct, in addition to not conflicting with the decision of any other court.

III. This Case Is A Poor Vehicle

Even if either of the questions addressed herein warranted review, the RNC is wrong to suggest (Pet.27-28) that this case presents a good vehicle. Arizona's challenged removal scheme has never been enforced—at least partly because petitioners made no effort to require its enforcement by state officials. That choice has deprived this Court of information about the laws' operation, information that could shed light on the RNC's claim (Pet.25) that the challenged scheme would resolve "serious practical problems." If this Court wishes to take up this issue, it should do so in a case with a record of enforcement (or at least one in which the lack of such a record is not the petitioner's responsibility).

Moreover, the RNC's contention (Pet.26) that the Ninth Circuit's interpretation of the 90-day provision "raises 'serious constitutional doubts'" was not raised below. As a result, this Court does not have the benefit of the lower courts' analysis of that argument. Because this Court is "a Court of review, not of first view," *Rivers* v. *Guerrero*, 605 U.S. 443, 458 (2025), it should, if it wishes to consider the RNC's constitutional challenge, await a case in which the challenger preserved it below. That is particularly true given that "[s]triking down an Act of Congress is the gravest and most delicate duty that this Court is called on to perform." *Shelby County* v. *Holder*, 570 U.S. 529, 556 (2013) (quotation marks omitted).

CONCLUSION

The petitions for writs of certiorari should be denied.

Respectfully submitted,

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