No. 25-1017

In the Supreme Court of the United States

REPUBLICAN NATIONAL COMMITTEE,

Petitioner,

v.

MI FAMILIA VOTA, ET AL.

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF FOR PETITIONER

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REPLY

Election cases often come to the Court in an emergency posture. This one doesn't. The Court can resolve two issues on which it granted emergency relief in the run up to the 2024 election. And it can consider those issues with full briefing, without an election hanging in the balance. On top of that, the Court can simultaneously resolve two circuit splits, and the United States supports the RNC's petition. Given the strong case for this Court's review, it's no wonder that Respondents devote most of their discussion to the merits, not whether certiorari should be granted. *See* DNC.Opp.11-19; LUCHA.Opp.17-30; MFV.Opp.18-31.

When Respondents turn to alleged vehicle issues, they only prove there are none. Of three Respondents opposing certiorari, only the LUCHA Respondents try to raise a true obstacle to this Court's review. And even they try to raise an obstacle only to the second question presented—whether the National Voter Registration Act bars removal of noncitizens within 90 days of an election. But as a competitor "for the support of the people" and as a representative of its candidates, the RNC is no "mere bystander[]' in elections. *Bost v. Ill. State Bd. of Elections*, 607 U.S. 71, 78 (2026). The LUCHA Respondents' attempt to single out "voting qualification laws" is irrelevant to the RNC's interests in "fair process" and "the integrity of the electoral process." *Id*. at 77-78. Those interests are no less implicated by the question *who* can vote in an election than *when* their ballots are due. And the fact that the election rules challenged here resulted from

a court's judgment does not transform the RNC into a bystander with a generalized grievance. *Contra* LUCHA.Opp.31-32. The RNC "plainly has Article III standing." U.S.Br.25.

The Court should grant the petition.

ARGUMENT

I. This petition is a good vehicle.

As the United States explained, the RNC's petition "provides a good vehicle to address" the two questions presented. US.Br.3. This petition would allow the Court to resolve those issues "in a posture where its ruling will not determine the outcome of a contested election." US.Br.18. No other vehicle issues complicate review.

A. There is no obstacle to the Court's review.

1. Only the LUCHA Respondents challenge the RNC's standing—dedicating less than three pages to speculate that the RNC "likely" doesn't have standing to appeal. LUCHA.Opp.31.[1] The other respondents eschew this argument for good reason. As the United States explains, "the RNC plainly has Article III standing to challenge the Ninth Circuit's invalidation" of Arizona's laws "at the behest of the DNC." US.Br.25. It suffers numerous injuries "fairly traceable to the judgment below," and "a favorable ruling" from this Court "would redress [that] injury." *West*

[1] The LUCHA Plaintiffs filed separate oppositions to the RNC's petition and the Legislators' petition. The RNC cites and responds only to the opposition to its own petition.

Virginia v. EPA, 597 U.S. 697, 718 (2022). That's all the Court needs to take the case.

To start, the RNC has the same interests that candidates have in the rules governing elections. *See Bost*, 607 U.S. at 77-78. Like candidates, the RNC "compete[s] for the support of the people" in elections in which they "have an interest in a fair process" and "an accurate result." *Id.* Also like candidates, political parties suffer a "loss of legitimacy" when improper rules (like the Ninth Circuit's decision) "undermine the 'integrity of the electoral process.'" *Id.* at 78. Even if the RNC's interests didn't mirror those of candidates, it represents candidates, as the LUCHA Plaintiffs acknowledge (at 31). Those candidates indisputably have standing under *Bost*, and the LUCHA Respondents say nothing to dispute the RNC's associational standing. *See UFCWU v. Brown Grp.*, 517 U.S. 544, 553 (1996); *Tex. Democratic Party v. Benkiser*, 4459 F.3d 582, 587-88 (5th Cir. 2006) (political party had associational standing on behalf of candidate). It's unthinkable that the nation's major political parties are mere "'bystanders'" in elections. LUCHA.Opp.31.

Nor does *Bost* distinguish "voting qualification laws." *Contra* LUCHA.Opp.32. As even the MFV Plaintiffs note, "registration" "exists only so that people can cast a ballot that will be counted." MFV.Opp.32. Invalid registrations "undermine the 'integrity of the electoral process'" no less than invalid ballots. *Bost*, 607 U.S. at 78. In fact, *Bost* borrowed that language from a challenge to a voter identification law—no doubt a "voting qualification law"—brought by Democratic Party plaintiffs. *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 192 (2008)

(plurality op.); *see id.* at 189 n.7 (finding that "the Democrats have standing"); *id.* at 209 n.2 (Souter, J., dissenting) (agreeing). At a minimum, leaving noncitizens on the voter rolls produces "a substantial risk" that "[i]nvalid ballots" will flow into the ballot box. *Bost*, 607 U.S. at 85 (Barrett, J., concurring in the judgment). And because the RNC relies on voter rolls for a variety of core "organizational and voter outreach efforts," it has standing to challenge defective efforts to keep "possible non-citizens" off the voter rolls. *RNC v. N.C. State Bd. of Elections*, 120 F.4th 390, 397-99 (4th Cir. 2024). The LUCHA Respondents' attempt to peel off "voting qualification laws" ignores the interests identified in *Bost* and invites particularly difficult "postelection litigation." 607 U.S. at 81.

2. That state officials declined to appeal the voter-roll issue does not foreclose the RNC's appeal. Citing *Hollingsworth v. Perry*, 570 U.S. 693 (2013), the LUCHA Respondents create an (apparently categorical) rule that no party can appeal a decision invalidating "state laws when state officials have declined to pursue an appeal." LUCHA.Opp.31-32. But *Hollingsworth* was an application of the injury-in-fact requirement, not a departure from it. 570 U.S. at 704-09. It rejected the claims of parties whose "only interest" was vindication of the "constitutional validity" of a law as a "concerned bystanders." *Id.* at 705-07. That holding does not transform the RNC into a "mere bystander[]" despite its independent bases for standing. *See Kim v. Hanlon*, 99 F.4th 140, 154 n.8 (3d Cir. 2024) (*Hollingsworth* is "distinguishable" when an intervenor has "its own injury."); *see also Cherry Hill Vineyards v. Lilly*, 553 F.3d 423, 430 (6th Cir. 2008)

(An "intervenor" has "standing to appeal an adverse judgment, even if the state declines to appeal it, if the intervenor can independently demonstrate that he fulfills the requirements of Article III."); *Doe v. Pub. Citizen*, 749 F.3d 246, 265 (4th Cir. 2014) (same). A rule where parties—and candidates—have standing to challenge the rules in their elections unless those rules were established by a lower court would be nonsensical.

The stay denial in *RNC v. Common Cause Rhode Island* does not suggest otherwise. 141 S. Ct. 206 (2020). That case concerned "state election officials" who "support[ed] the challenged [consent] decree" at all stages of the case. *Id.* But the judgment here enjoins "county recorder[s]" from fulfilling a mandatory duty to "cancel a registration" of a person they've confirmed "is not a United States citizen." Ariz. Rev. Stat. §16-165(A)(10); App.431a. State officials' decision to seek certiorari on different questions does not suggest that all county officials "support" the Ninth Circuit's judgment. *Cf. Common Cause*, 141 S. Ct. 206.[2]

B. No other issues complicate review.

1. Without any obstacle to review, Respondents turn to practical considerations. But those concerns ring hollow too. To start, Respondents note that the state-form issue "is supported by two, independent grounds." LUCHA.Opp.30. But that's no obstacle to a petition that seeks review on both grounds. LUCHA.Opp.30. This Court already stayed enforcement

[2] The Legislative Petitioners seek review of the state-form issue, and no Respondent raises jurisdictional concerns over the state-form question.

of the consent-decree ruling when that issue stood alone. App.426a. Adding the NVRA issue on top of that is a "feature," not a "bug." US.Br.3. The Court should grant review to clarify that neither the NVRA nor a consent decree prohibit what *Inter Tribal Council* permits. *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 12 (2013).

2. Enforcement would not clarify the legal issues. The DNC faults the RNC for the absence of enforcement, and claims that enforcement is needed to "shed light" on the problems raised by the decision below. DNC.Opp.28. But court orders are the reason Arizona's removal scheme hasn't been enforced. When the county recorders asked for an extension of discovery deadlines, the district court granted the request "conditioned upon them providing written assurances to this Court that voter purges are not being implemented and will not be implemented until further direction is received from the Secretary of State." Doc.233, No. 2:22-cv-509 (D. Ariz.). And the DNC can't cite a now-permanent injunction against enforcement as an impediment to review. More importantly, the purely legal questions here would not be clarified by enforcement, which is why the DNC never tries to explain how a record of enforcement would aid this Court.[3]

[3] Constitutional avoidance is not a new argument. *Contra* DNC.Opp.28. It's a tool of statutory construction employed in *Inter Tribal Council*, which is the heart of this case.

II. Both questions presented merit the Court's review.

A. There is little dispute that the questions presented are exceptionally important.

Respondents barely dispute the importance of the questions presented. No party disputes that the voter-roll issue is worthy of the Court's review. As to the RNC's other question presented, only the Mi Familia Vota Respondents contest the importance of enjoining proof of citizenship for a state registration form. They argue that the issue "could arise only under Arizona's unique voter registration scheme." MFV.Opp.11. But the diversity of state election regulations has never diminished the importance of a federal court enjoining enforcement of a state election law. *See, e.g.*, *Inter Tribal Council*, 570 U.S. at 1.

Even if "Arizona's evidence-of-citizenship requirement" were unique, the Court has already reviewed it "as applied to Federal Form applicants." *Id.* at 5. Arizona followed this Court's instruction by applying its "evidence-of-citizenship requirement" only to "state form" applicants. *Id.* at 12 n.4. That the Ninth Circuit shut down that attempt only further justifies this Court's review.

Respondents don't dispute that this Court has granted emergency relief on both questions presented, but they quibble that the *Purcell* principle could have motivated those decisions. DNC.Br.10. Even if true, that only highlights the importance of resolving the questions now instead of waiting for similar disputes to recur on the eve of an election.

B. The circuits are split on both questions presented.

Given their importance, no circuit split is needed to justify this Court's review of the questions presented. *See* S.Ct. Rule 10(c). But the circuits are split on both questions anyway.

1. Respondents quibble with the split from the Eighth Circuit on the consent-decree issue. *See Carson v. Simon*, 978 F.3d 1051, 1060 (8th Cir. 2020). They claim that *Carson* is different because it "involved a state-court consent decree," not a federal one. LUCHA.Opp.12. But they don't explain why the source of the consent decree matters to the issue whether a state executive official has "power to override the [state] Legislature" by entering a consent decree. *Carson*, 978 F.3d at 1060. The state-court venue was irrelevant to the Eight Circuit's holding that "only the Minnesota Legislature, and not the Secretary, has plenary authority to establish the manner of conducting the presidential election in Minnesota." *Id.* The Constitution should apply no differently in Arizona.

This division is not "undercut" by *Moore v. Harper*, 600 U.S. 1, 22 (2023). LUCHA.Opp.13. *Moore* said nothing about consent decrees and did not undermine the Eighth Circuit's reasoning. *Contra* LUCHA.Opp.12-13. In fact, it confirmed that the Election Clause imposes a duty on state legislatures "to prescribe rules governing federal elections." *Moore*, 600 U.S. at 10 (cleaned up). That's why Judge Bumatay cited both *Moore* and *Carson* to illustrate the "particularly acute" "separation-of-powers concerns" raised by the decision below. App.104a-105a.

2. Neither can Respondents sweep aside the split on the voter-roll issue. In the Sixth Circuit, the NVRA doesn't "bar the removal of names from the official [state voter rolls] of persons" such as noncitizens "who were ineligible and improperly registered to vote in the first place." *Bell v. Marinko*, 367 F.3d 588, 591-92 (6th Cir. 2004). In the Ninth Circuit, it does. This disagreement puts the Ninth Circuit "on the wrong side of a circuit split," as Judge Nelson (joined by 5 others) noted. App.165a.

Respondents say that *"Bell* concerned a different provision of the NVRA." LUCHA.Opp.14. It didn't. As Respondents point out, the Sixth Circuit rejected the argument "that Section 20507(a)(3) sets forth the 'exclusive reasons" to remove a person from the voter rolls. LUCHA.Opp.15. The Ninth Circuit said that Section 20507(a)—the same provision—contains the only "exceptions to the 90-day Provision." App.40a, 44a. The Sixth Circuit's holding that the NVRA "protects only 'eligible' voters from unauthorized removal," *Bell*, 367 F.3d at 592, cannot be squared with the Ninth Circuit's holding that the "periodic cancellation of registrations" of never-eligible non-citizens violates the NVRA, App.47a. That this case concerns the 90-day blackout period doesn't reconcile that conflict.

III. Respondents' arguments don't save the Ninth Circuit's reasoning.

A. *Inter Tribal Council* answers the first question presented: Arizona may employ a "more demanding state form" for voter registration. 570 U.S. at 12 n.4.

Respondents' reject that conclusion for a cramped reading of the NVRA that is blind to statutory context. They say "necessary" means "essential" and "equivalent to" means "virtually identical." LUCHA.Opp.21-24. But they pluck those preferred definitions from inapplicable caselaw interpreting irrelevant statutes—to the exclusion of the NVRA's own context. None of their arguments addresses that the context here permits information "necessary" to enable a government official to complete a task, *see Ayestas v. Davis*, 584 U.S. 28, 44 (2018), as opposed to information "necessary" to fulfill a legal condition, *e.g.*, *In re Microsoft Corp. Antitrust Litig.*, 355 F.3d 322, 327 (4th Cir. 2004) (facts subject to collateral estoppel must be "critical and necessary" to the judgment).

Facing that context, Respondents offer no reason to prefer "the strictest sense of the term" over the more "often used" sense of "merely important." *Ayestas*, 584 U.S. at 44. Their cramped reading of "equivalent" suffers the same flaws. None of their arguments can be squared with *Inter Tribal Council*'s explanation that "state-developed forms may require information the Federal Form does not." 570 U.S. at 12.

As for the consent decree, Respondents give little attention to the merits of whether a consent decree entered with no finding of a violation of federal law must yield to a change in state law. *See* LUCHA.Opp.19-21; MFV.Opp.24-29. But this Court has recognized that a decree should yield to "significant changes" in law. *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 380 (1992). This principle should apply with extra force when no court ever found a violation of federal law and the decree was based on a claim of

compliance with state law. App.474a-76a; *see also* U.S.Br.23.

Respondents instead focus on procedure—claiming that the RNC should have returned to the court that entered the decree. LUCHA.Opp.20; MFV.Opp.25. But Respondents don't grapple with their novel use of a consent decree as a standalone claim in a new case. Their approach doesn't treat the consent decree as a "final judgment" that "binds Arizona." LUCHA.Opp.18-19. Respondents did not, for example, try to enforce the decree through contempt proceedings. Instead, Respondents filed this case, finessing a freestanding cause of action to bring a pre-enforcement challenge. This novel collateral enforcement approach shouldn't insulate the LULAC Decree from review.

B. Respondents' arguments on the voter-roll question likewise dodge the question. They insist that the Ninth Circuit's opinion doesn't prevent removal of noncitizens from the rolls "on an individualized basis." LUCHA.Opp.29. It prevents only the removal of noncitizens "systematically" 90 days before an election. LUCHA.Opp.29. That argument ignores that the NVRA does not include non-citizenship as a permissible reason to remove a "registrant." 52 U.S.C. §20507(a)(3). But the distinction lacks a difference, since the NVRA doesn't ever prohibit the removal of never-eligible noncitizens, systematic or otherwise.

The 90-day provision applies only to programs removing "ineligible voters from the official lists of eligible voters." 52 U.S.C. §20507(c)(2)(A). But Respondents' insistence that noncitizens are "ineligible voters"

defies common usage. Noncitizens are not "voters" at all, since they never had "the qualifications necessary for voting." *Voter*, *Black's Law Dictionary* (7th ed. 1999). Although "voter" sometimes refers to someone "who engages in the act of voting," *id.*, that usage makes little sense in the NVRA—a voter-registration statute that governs the *pre*-voting process. Respondents dodge the point by emphasizing the adjective "ineligible" to overshadow what it modifies: "voter." *See* DNC.Opp.12-16.

Respondents criticize the RNC for going "outside the provision" at issue. DNC.Opp.13-14. And they criticize Judge Bumatay for taking "five pages" to show his work. DNC.Opp.13-14. But it should be unsurprising that employing "the 'traditional tools' of construction" requires some explaining, *see Kisor v. Wilkie*, 588 U.S. 558, 575 (2019), especially for a "complex superstructure" like the NVRA, *Inter Tribal Council*, 570 U.S. at 5. That Respondents, for example, read "registrant" to mean different things shows that their "simple reading" is not the defense they think it is. DNC.Opp.13-14.

Respondents' policy argument that the 90-day provision is supposed to guard against accidently removing eligible voters is no answer to the text. *See* DNC.Opp.16. The NVRA's protection extends only to programs to "systematically remove … ineligible voters." 52 U.S.C. §20507(c)(2)(A). Adding noncitizens undermines the NVRA's objectives to "protect the integrity of the electoral process," ensure "accurate and current voter registration rolls," and increase the number of "eligible citizens" registered to vote. *Id.* §20501(b). Any doubts should be construed in favor of

state authority to prescribe and enforce voter qualifications, which "forms no part of the power to be conferred upon the national government." *Inter Tribal Council*, 570 U.S. at 17.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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