

No. 25-1017

In the
Supreme Court of the United States

REPUBLICAN NATIONAL COMMITTEE,
Petitioner,

v.

MI FAMILIA VOTA, ET AL.,
Respondents.

*On Writ of Certiorari to the United States Court of
Appeals for the Ninth Circuit*

**BRIEF FOR RESPONDENTS STATE OF
ARIZONA AND ITS ATTORNEY GENERAL IN
PARTIAL SUPPORT OF PETITIONER**

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August 28, 2026

QUESTIONS PRESENTED

The RNC's petition raised two questions:

1) Does the National Voter Registration Act or a federal consent decree prohibit Arizona from requiring voter-registration applicants to produce "satisfactory evidence" of U.S. citizenship when registering with a state registration form?

2) Does the National Voter Registration Act prohibit Arizona from implementing a program within 90 days of a federal election to cancel the registrations of voters who are not U.S. citizens?

The present brief discusses the first question only.

PARTIES TO THE PROCEEDING

This Court granted the petition for writ of certiorari in No. 25-1017 and has not acted on the petitions in Nos. 25-1019 and 25-1022.

In No. 25-1017, Petitioner is the RNC, and Respondents are:

- the United States;
- Mi Familia Vota and Voto Latino;
- Living United for Change in Arizona, League of United Latin American Citizens Arizona, Arizona Students' Association, ADRC Action, Inter Tribal Council of Arizona Inc., the San Carlos Apache Tribe, and Arizona Coalition for Change;
- Poder Latinx, Chicanos Por La Causa Inc., and Chicanos Por La Causa Action Fund;
- the DNC and the Arizona Democratic Party;
- Arizona Asian American Native Hawaiian and Pacific Islander for Equity Coalition;
- Promise Arizona and Southwest Voter Registration Education Project;
- the Tohono O'odham Nation, the Gila River Indian Community, Keanu Stevens, Alanna Siquieros, and LaDonna Jacket;
- the State of Arizona and Arizona Attorney General Kristin K. Mayes;
- Arizona Senate President Warrant Petersen and Arizona House Speaker Steve Montenegro;
- Arizona Secretary of State Adrian Fontes;

- Arizona Department of Transportation Director Jennifer Toth; and
- the Records of all fifteen of Arizona's counties.

TABLE OF CONTENTS

QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDING	ii
TABLE OF AUTHORITIES.....	vi
INTRODUCTION.....	1
STATEMENT OF THE CASE	2
A. From 2013 to 2018, Arizona officials rejected State Forms unaccompanied by proof of citizenship, but not Federal Forms.....	2
B. In 2018, Arizona officials agreed to a consent decree to treat Federal and State Forms the same.	4
C. In 2022, an Arizona law required rejection of State Forms unaccompanied by proof of citizenship, contrary to the consent decree.....	6
D. The district court declared that “Arizona must abide by” the consent decree and then entered an injunction.....	8
E. This Court stayed the district court’s injunction.....	10
F. The Ninth Circuit affirmed the district court’s injunction, citing the consent decree and the National Voter Registration Act.....	11
SUMMARY OF ARGUMENT.....	12

ARGUMENT.....	13
I. The National Voter Registration Act does not prohibit Arizona from requiring proof of citizenship for State Form users.....	13
A. In Arizona, proof of citizenship is “necessary to enable the appropriate State election official” to assess eligibility of State Form users.	14
B. Arizona may require proof of citizenship for State Form users regardless of whether the State Form is “equivalent” to the Federal Form.....	17
II. The consent decree remains binding, but parties and perhaps affected non-parties may seek to vacate or modify it.	20
A. The consent decree remains binding unless and until it is vacated, even though it prohibits what Arizona law now requires.	21
B. Parties to the consent decree and perhaps affected non-parties may seek to vacate or modify the decree.....	24
CONCLUSION	27

TABLE OF AUTHORITIES

Cases

<i>Agostini v. Felton</i> , 521 U.S. 203 (1997)	23
<i>Arizona v. Inter Tribal Council of Arizona, Inc.</i> , 570 U.S. 1 (2013)	2, 3, 13, 14 ,15, 16, 18, 19, 20
<i>Ayestas v. Davis</i> , 584 U.S. 28 (2018)	16
<i>Celotex Corp. v. Edwards</i> , 514 U.S. 300 (1995)	22, 23, 27
<i>Foster v. Stanek</i> , 689 F. Supp. 3d 975 (D. Kan. 2023)	25
<i>Frew ex rel. Frew v. Hawkins</i> , 540 U.S. 431 (2004)	22, 23
<i>Gonzalez v. Arizona</i> , D. Ariz. No. CV-06-1268-PHX-ROS, 2013 WL 7767705 (Sept. 11, 2013)	19
<i>GTE Sylvania, Inc. v. Consumers Union of U.S., Inc.</i> , 445 U.S. 375 (1980)	22
<i>Horne v. Flores</i> , 557 U.S. 433 (2009)	23, 26
<i>League of United Latin American Citizens of Arizona et al. v. Reagan et al.</i> , D. Ariz. No. 17-cv-4102	4

<i>O’Sullivan v. City of Chicago</i> , 396 F.3d 843 (7th Cir. 2005)	22
<i>Roberts v. St. Regis Paper Co.</i> , 653 F.2d 166 (5th Cir. 1981)	24
<i>Rufo v. Inmates of Suffolk Cnty. Jail</i> , 502 U.S. 367 (1992)	21, 22
<i>Sys. Fed’n No. 91 v. Wright</i> , 364 U.S. 642 (1961)	22
<i>Thompson v. HUD</i> , 404 F.3d 821 (4th Cir. 2005)	24
<i>United States v. Swift & Co.</i> , 286 U.S. 106 (1932)	22
<i>Young v. Fordice</i> , 520 U.S. 273 (1997)	2

Constitution and Statutes

Ariz. Const. art. 7, § 2(A)	2
52 U.S.C. § 20504(c)(2)(B)(ii)	16
52 U.S.C. § 20505(a)(1)	14, 19
52 U.S.C. § 20505(a)(2)	14
52 U.S.C. § 20506	19
52 U.S.C. § 20506(a)(6)(A)	12, 13, 18, 19
52 U.S.C. § 20508(b)	14

52 U.S.C. § 20508(b)(1).....	12, 13, 14
A.R.S. § 16-101(A).....	7, 15, 17
A.R.S. § 16-121(A).....	7, 15, 17
A.R.S. § 16-121.01.....	7, 15, 17, 25
A.R.S. § 16-166(F).....	2, 15, 17
A.R.S. § 16-452.....	5

Rules

Fed. R. Civ. P. 24	26
Fed. R. Civ. P. 60(b).....	10, 12, 20, 23, 25, 26, 27

Other Authorities

2019 Ariz. Elections Procedures Manual	5
2025 Ariz. Elections Procedures Manual	11
Ariz. Op. Att’y Gen. No. I13-011, available at 2013 WL 5676943	3
Ariz. Op. Att’y Gen. No. I24-015, available at 2024 WL 4357383	10
House Bill 2492 (2022)	6, 7, 8, 25
<i>League of United Latin American Citizens et al. v. Hobbs et al.</i> , D. Ariz. No. 22-cv-519, Dkt. #6 (Apr. 5, 2022); Dkt. #19 (Apr. 13, 2022)	8, 9

<i>League of United Latin American Citizens of Arizona et al. v. Reagan et al.</i> , D. Ariz. No. 17-cv-4102, Dkt. #57 (Apr. 5, 2022); Dkt. #68 (Apr. 13, 2022)	8, 9
<i>Mi Familia Vota et al. v. Fontes et al.</i> , D. Ariz. No. 22-cv-509, Dkt. #364 (May 8, 2023), Dkt. #367 and #369 (May 15, 2023); Dkt. #390, 391, 393, 394, 395, 396, 397, 399, and 400 (June 5, 2023).....	9
<i>Necessary</i> , <i>Black’s Law Dictionary</i> (6th ed. 1990)....	16

INTRODUCTION

The State of Arizona and its Attorney General file this brief to defend Arizona’s authority to require that a person who seeks to register to vote using Arizona’s form prove that he or she is a citizen of the United States. The State and Attorney General also write to address how federal consent decrees should be modified when underlying state law changes.

Below, the Ninth Circuit held that the National Voter Registration Act “does not let Arizona require” proof of citizenship when registering voters for federal elections with state-created registration forms. RNC App.50a–52a.¹ This holding misinterprets the Act. This Court should reverse the Ninth Circuit on this point.

The Ninth Circuit also held that a 2018 consent decree “limits the ability of executive officers in Arizona to enforce” a state law enacted in 2022, which requires rejecting state registration forms when proof of citizenship is absent. RNC App.47a–49a. This holding is correct, at least for now. The consent decree is a binding injunction, and parties to the decree (and affected non-parties when appropriate) may seek to vacate or modify it given the subsequent change in Arizona’s law.

¹ This brief relies on the appendix to the RNC’s petition.

STATEMENT OF THE CASE

A. From 2013 to 2018, Arizona officials rejected State Forms unaccompanied by proof of citizenship, but not Federal Forms.

Arizona’s Constitution provides that only U.S. citizens may vote. Ariz. Const. art. 7, § 2(A). Arizona’s Constitution also directs lawmakers to enact laws to “secure the purity of elections” and “guard against abuses” of the right to vote. *Id.* art. 7, § 12.

In 2004, Arizona enacted Proposition 200, requiring people who register to vote in Arizona to provide “satisfactory evidence of United States citizenship.” A.R.S. § 16-166(F).²

But in 2013, this Court held that the National Voter Registration Act partially preempted Arizona’s proof-of-citizenship requirement. Because of the Act, people who register to vote in Arizona using the federal mail registration form (the “Federal Form”) need not satisfy Arizona’s proof-of-citizenship requirement to vote in federal elections. *See Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 9–20 (2013).

The Court’s ruling did not, however, preclude Arizona from requiring proof of citizenship to vote in *state* elections. This is because the National Voter Registration Act governs registration for “*federal* elections.” *Id.* at 5 (quoting *Young v. Fordice*, 520 U.S. 273, 275 (1997)).

² This brief uses the shorthand term “proof of citizenship,” but the more precise term is “satisfactory evidence of citizenship.”

Nor did the Court's ruling preclude Arizona from requiring proof of citizenship for applicants using *Arizona's* voter registration form (the "State Form"). Rather, the Court specified that "state-developed forms may require information the Federal Form does not" and "can be used to register voters in both state and federal elections." *Id.* at 12.

After the Court's ruling, Arizona's Attorney General issued guidance on how to apply Arizona's proof-of-citizenship requirement. *See* Ariz. Op. Att'y Gen. No. I13-011, available at 2013 WL 5676943. As a result, election officials in Arizona adopted the following voter registration practice:

- Applicants with proof of citizenship were registered for federal and state elections (assuming they were otherwise eligible), regardless of whether they used the Federal or State Form.
- Applicants who used the *Federal* Form without proof of citizenship were registered only for federal elections.
- Applicants who used the *State* Form without proof of citizenship were not registered for any elections.

See RNC App.193a. The following chart summarizes this practice:

Practice after Supreme Court decision (2013)

	<i>Applicant used Federal Form:</i>	<i>Applicant used State Form:</i>
<i>Proof of citizenship:</i>	Registered for federal and state elections	Registered for federal and state elections
<i>No proof of citizenship:</i>	Registered for federal elections only	Not registered at all

B. In 2018, Arizona officials agreed to a consent decree to treat Federal and State Forms the same.

In 2018, Arizona’s Secretary of State and Maricopa County’s Recorder agreed to a consent decree in *League of United Latin American Citizens of Arizona et al. v. Reagan et al.*, D. Ariz. No. 17-cv-4102. RNC App.193a, 474a–494a. The consent decree settled allegations that Arizona officials were violating the U.S. Constitution by treating applicants who used State Forms differently from those who used Federal Forms. RNC App.474a–475a.

Arizona’s Secretary of State denied that Arizona’s voter registration practices were unconstitutional or otherwise illegal. RNC App.476a. Nevertheless, the Secretary and Maricopa County’s Recorder agreed to a consent decree to “treat[] Federal Form and State Form applications the same,” believing that doing so was “consistent with the provisions of Arizona law” that existed at the time. RNC App.476a.

Arizona’s Secretary of State also agreed to revise Arizona’s Elections Procedures Manual in accordance with the consent decree. RNC App.483a–484a.³ Thus, the 2019 Manual followed the consent decree. *See* 2019 Ariz. Elections Procedures Manual at 6–8.⁴ In a section named “Continuing Jurisdiction,” the consent decree specified: “The Court shall retain jurisdiction over this action until December 31, 2020 to enter such further relief as may be necessary for the effectuation of the terms of this Consent Decree.” RNC App.494a.

As a result of the consent decree, Arizona officials began treating Federal Form users and State Form users the same. For all applicants who did not submit proof of citizenship, election officials consulted motor vehicle data, and the results determined next steps:

- If proof of citizenship was found, the person was registered for federal and state elections.
- If evidence of *non*-citizenship was found, the person was not registered for any elections (absent proof of citizenship).
- If nothing was found, the person was registered only for federal elections.

³ In Arizona, the Secretary of State issues an Elections Procedures Manual every two years upon approval of the Governor and Attorney General. A.R.S. § 16-452. Current and prior Manuals are available at <https://azsos.gov/elections/about-elections/elections-procedures/epm>.

⁴ The 2019 Manual is specifically available at https://apps.azsos.gov/election/files/epm/2019_elections_procedures_manual_approved.pdf.

See RNC App.193a–194a, 484a–492a. The following chart summarizes this practice:

Practice after consent decree (2018)

	<i>Applicant used Federal Form:</i>	<i>Applicant used State Form:</i>
<i>Proof of citizenship:</i>	Registered for federal and state elections	Registered for federal and state elections
<i>Evidence of non-citizenship:</i>	Not registered at all (absent contrary proof)	Not registered at all (absent contrary proof)
<i>No proof either way:</i>	Registered for federal elections only	Registered for federal elections only

C. In 2022, an Arizona law required rejection of State Forms unaccompanied by proof of citizenship, contrary to the consent decree.

Arizona lawmakers enacted House Bill 2492 in 2022. RNC App.234a–236a. As a result, a legal premise underlying the 2018 consent decree became untrue. Whereas Arizona’s Secretary of State and Maricopa County’s Recorder had agreed to the consent decree on the understanding that it was “consistent with the provisions of Arizona law,” RNC App.476a, House Bill 2492 created unmistakable conflict between the consent decree and Arizona law.

Among other things, House Bill 2492:

- Lists proof of citizenship as a voter eligibility requirement and a registration requirement in A.R.S. §§ 16-101(A) and 16-121(A);
- Requires election officials to reject State Forms when proof of citizenship is absent (and criminalizes the knowing failure to do so) in A.R.S. § 16-121.01(C); and
- Requires election officials to verify citizenship for applicants using Federal Forms when proof of citizenship is absent as set forth in A.R.S. § 16-121.01(D)–(G).

See RNC App.194a–197a, 457a–461a.⁵

According to the sponsor of House Bill 2492, the law was enacted largely as a response to the 2018 consent decree, because the consent decree had allowed more voters to register for federal elections without proof of citizenship. RNC App.234a–235a.

It is clear that House Bill 2492 would require Arizona officials to depart from the 2018 consent decree when evaluating applicants who use the State Form without proof of citizenship. Indeed, as explained below, Arizona officials have in fact been departing from the consent decree since this Court partially stayed the injunction in this case. The following chart identifies this departure in the bottom-right box:

⁵ The RNC's appendix appears not to contain A.R.S. § 16-121(A) even though it was amended in relevant part by House Bill 2492.

Practice after Supreme Court stay (2024)

	<i>Applicant used Federal Form:</i>	<i>Applicant used State Form:</i>
<i>Proof of citizenship:</i>	Registered for federal and state elections	Registered for federal and state elections
<i>Evidence of non-citizenship:</i>	Not registered at all (absent contrary proof)	Not registered at all (absent contrary proof)
<i>No proof either way:</i>	Registered for federal elections only ⁶	<i>Not registered at all</i>

D. The district court declared that “Arizona must abide by” the consent decree and then entered an injunction.

In the litigation below, a group of plaintiffs moved to transfer their lawsuit to the judge who entered the 2018 consent decree (Judge Campbell). *See League of United Latin American Citizens of Arizona et al. v. Reagan et al.*, D. Ariz. No. 17-cv-4102, Dkt. #57 (Apr. 5, 2022); *League of United Latin American Citizens et al. v. Hobbs et al.*, D. Ariz. No. 22-cv-519, Dkt. #6 (Apr. 5, 2022). They explained that their new lawsuit was closely related to the prior case underlying the consent

⁶ Under House Bill 2492 as enacted, Federal Form users who fall within this box (no citizenship proof either way) would be not only limited to federal elections, but also prevented from voting for President and voting by mail. But those two additional limits were enjoined and are not the subject of the RNC’s petition.

decree. In their words, the new lawsuit “involves the same parties,” “directly raises the same claims,” and “necessarily requires consideration of the underlying consent decree.” *Id.*

Judge Campbell declined the transfer. He reasoned that, although he “approved the consent decree” in the prior case, he “did not otherwise address the merits” and the case “has long been closed.” *League of United Latin American Citizens of Arizona et al. v. Reagan et al.*, D. Ariz. No. 17-cv-4102, Dkt. #68 (Apr. 13, 2022); *League of United Latin American Citizens et al. v. Hobbs et al.*, D. Ariz. No. 22-cv-519, Dkt. #19 (Apr. 13, 2022). In his view, the judge who had been assigned the new lawsuit (Judge Bolton) would be the one to consider “the relationship between the terms of the consent decree and the challenged statute.” *Id.*

Judge Bolton consolidated multiple lawsuits and heard cross-motions for partial summary judgment. *See Mi Familia Vota et al. v. Fontes et al.*, D. Ariz. No. 22-cv-509, Dkt. #364 (May 8, 2023), Dkt. #367 and #369 (May 15, 2023); Dkt. #390, 391, 393, 394, 395, 396, 397, 399, and 400 (June 5, 2023). None of these motions, however, asked the court to settle the relationship between the 2018 consent decree and Arizona’s new law requiring proof of citizenship for State Form users. Yet the court decided the issue in its summary judgment ruling. RNC App.365a–366a, 381a, 383a.

Specifically, the court ruled that the 2018 consent decree “precludes Arizona from enforcing” its new law requiring proof of citizenship for State Form users. RNC App.381a. The court reasoned that, although

federal courts generally may set aside consent decrees under Rule 60(b), the 2018 consent decree was “never set aside” by “Judge Campbell.” RNC App.365a–366a. Thus, the court declared that “Arizona must abide by” the consent decree and “register otherwise eligible State Form users” for federal elections, even when proof of citizenship is absent. RNC App.383a.

In a footnote, the district court suggested that the National Voter Registration Act would lead to the same result. *See* RNC App.366a–367a.

Accordingly, the district court permanently enjoined Arizona officials from enforcing the new state law that requires rejecting State Forms when proof of citizenship is absent. RNC App.428a–429a.

E. This Court stayed the district court’s injunction.

A Ninth Circuit motions panel stayed the district court’s injunction in part, thus allowing Arizona officials to implement the new state law that requires proof of citizenship for State Form users. RNC App.387a. But then a Ninth Circuit merits panel vacated the stay. RNC App.393a–394a.

This Court sided with the Ninth Circuit motions panel and restored the partial stay of the injunction. RNC App.426a. As a result, Arizona officials have been implementing the new state law by rejecting State Forms when proof of citizenship is absent. For example, Arizona’s Attorney General issued guidance on how to apply the law. *See, e.g.,* Ariz. Op. Att’y Gen. No. I24-015, available at 2024 WL 4357383 (answering questions from Secretary of State).

Arizona’s Secretary of State issued similar guidance in the most recent Elections Procedures Manual. *See* 2025 Ariz. Elections Procedures Manual at 4 & n.5.⁷

F. The Ninth Circuit affirmed the district court’s injunction, citing the consent decree and the National Voter Registration Act.

After this Court partially stayed the injunction, the Ninth Circuit merits panel affirmed the injunction in relevant part. The panel majority reasoned that the 2018 consent decree “limits the ability of executive officers in Arizona to enforce” the new state law that requires rejecting State Forms unaccompanied by proof of citizenship. RNC App.47a–49a. Like the district court, the majority reasoned that the consent decree “has never been set aside.” RNC App.48a. The majority thus concluded that the consent decree “remains an enforceable, binding final judgment” that “bars Arizona election officials from enforcing” the contrary state law. RNC App.48a–49a.

The panel majority also reasoned that, alternatively, the National Voter Registration Act “does not let Arizona require” proof of citizenship for people who use State Forms to register for federal elections. RNC App.50a–52a. The majority cited two parts of the Act to support this view. First, according to the majority, proof of citizenship is not “necessary to enable the appropriate State election official to assess the eligibility of the applicant.” RNC App.50a

⁷ The 2025 Manual is specifically available at <https://apps.azsos.gov/election/files/epm/2025/Election-Procedures-Manual-2025--FINAL-12-22-25.pdf>.

(quoting 52 U.S.C. § 20508(b)(1)). Second, according to the majority, requiring proof of citizenship for State Form users would render the State Form not “equivalent” to the Federal Form. RNC App.51a (quoting 52 U.S.C. § 20506(a)(6)(A)(ii)).

Judge Bumatay dissented. RNC App.103a–116a. In his view, interpreting the 2018 consent decree to preclude enforcement of Arizona’s subsequent law “raises alarming separation-of-powers concerns.” RNC App.104a. He also concluded that a motion to vacate or modify the consent decree under Rule 60(b) was not required. RNC App.108a–109a.

Judge Bumatay also disagreed with the majority’s reading of the National Voter Registration Act. In his view, Arizona permissibly determined that proof of citizenship is “necessary to enable the appropriate State election official to assess the eligibility of the applicant.” RNC App.110a–114a (quoting 52 U.S.C. § 20508(b)(1)). And, in his view, the State Form is sufficiently “equivalent” to the Federal Form despite the proof-of-citizenship requirement. RNC App.114a–116a (quoting 52 U.S.C. § 20506(a)(6)(A)(ii)). He also reasoned that, even if the State Form were not “equivalent” to the Federal Form, that would not justify the sweeping injunction that the district court entered. RNC App.116a.

Eleven judges dissented from the denial of rehearing en banc. RNC App.155a–187a.

SUMMARY OF ARGUMENT

The National Voter Registration Act does not prohibit Arizona from requiring proof of citizenship for

State Form applicants. The Ninth Circuit panel majority erred in holding otherwise. In Arizona, proof of citizenship is “necessary to enable” election officials to “assess the eligibility” of State Form applicants. 52 U.S.C. § 20508(b)(1). And even if State Forms are not “equivalent” to Federal Forms for purposes of public assistance agencies’ duties to distribute registration forms under 52 U.S.C. § 20506(a)(6)(A), Arizona could still require proof of citizenship for State Form applicants.

Unlike the National Voter Registration Act, the 2018 consent decree *does* limit the ability of election officials in Arizona to require proof of citizenship for State Form applicants. The Ninth Circuit panel majority was correct on this point. The consent decree binds the defendants in that case until it is vacated or modified. The separation-of-powers concern raised by the Ninth Circuit panel dissent is misplaced because parties to the consent decree (and affected non-parties when appropriate) may seek to vacate or modify the decree given the subsequent change in Arizona’s law.

ARGUMENT

I. The National Voter Registration Act does not prohibit Arizona from requiring proof of citizenship for State Form users.

As this Court previously explained, State Forms “may require information the Federal Form does not” and “can be used to register voters in both state and federal elections.” *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 12 (2013).

Contrary to that explanation, the Ninth Circuit misread the National Voter Registration Act to

prohibit Arizona from requiring proof of citizenship for State Form applicants for federal elections. This Court should correct the misreading.

A. In Arizona, proof of citizenship is “necessary to enable the appropriate State election official” to assess eligibility of State Form users.

1. Under the National Voter Registration Act, States must “accept and use” the mail voter registration form prescribed by the Federal Election Commission (known as the Federal Form) for federal elections. 52 U.S.C. § 20505(a)(1). In addition, States may “develop and use” their own mail voter registration form for federal elections if it meets the criteria in § 20508(b). 52 U.S.C. § 20505(a)(2). These criteria include requiring “only” such information as is “necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process.” 52 U.S.C. § 20508(b)(1).

When evaluating whether information is “necessary to enable” State election officials to “assess the eligibility” of registration applicants, 52 U.S.C. § 20508(b)(1), federal courts must remember a basic truth: States define eligibility. The Elections Clause “empowers Congress to regulate *how* federal elections are held, but not *who* may vote in them.” *Inter Tribal Council of Arizona*, 570 U.S. at 16.

Here, Arizona has defined eligibility in a way that makes clear: proof of citizenship is “necessary to enable” election officials to “assess the eligibility” of State Form applicants. In 2004, Arizona required

election officials to reject all voter registration forms that lack proof of citizenship. A.R.S. § 16-166(F). And in 2022, after this Court’s intervening decision in *Inter Tribal Council of Arizona*, Arizona took additional steps including:

- Specifying that proof of citizenship is, itself, a requirement for a resident to be qualified to register to vote in A.R.S. § 16-101(A);
- Specifying that proof of citizenship is, itself, a component of being a qualified elector in A.R.S. § 16-121(A); and
- Reiterating that State Forms must be accompanied by proof of citizenship and that election officials must “reject” State Forms that lack such proof (and criminalizing the knowing failure of election officials to do so) in A.R.S. § 16-121.01(C).

Given these statutes, an election official in Arizona who receives a State Form needs proof of citizenship to assess eligibility. Absent such proof, the applicant is, by law, ineligible to register to vote.

2. The Ninth Circuit panel majority took a puzzling route to the opposite conclusion. The majority first defined “necessary” as “essential,” a word that appears nowhere in the National Voter Registration Act. RNC App.50a. The majority then stated that proof of citizenship is not “essential” to assess eligibility of State Form applicants because such applicants already must check a box attesting to citizenship. RNC App.50a. This logic is wrong at every turn.

For starters, the word “necessary” may sometimes mean “essential,” but it may also mean “merely important or strongly desired.” *Ayestas v. Davis*, 584 U.S. 28, 44 (2018). When the National Voter Registration Act was enacted, Black’s Law Dictionary explained that “necessary” could, depending on context, simply mean “useful, appropriate, suitable, proper, or conducive to the end sought.” *Necessary*, *Black’s Law Dictionary* (6th ed. 1990).

That more flexible definition fits here for two reasons. First, interpreting the Act strictly to prevent Arizona from obtaining information it needs to enforce its voter qualifications would “raise serious constitutional doubts.” *Inter Tribal Council of Arizona*, 570 U.S. at 17–18. The more flexible definition of “necessary” helps avoid such doubts. Second, another part of the Act suggests that Congress had a more flexible definition in mind. The Act specifies that, when someone seeks to register to vote as part of a driver’s license application, the State may require “only the minimum amount of information necessary” to enable officials to assess eligibility. 52 U.S.C. § 20504(c)(2)(B)(ii). If Congress thought that the word “necessary,” by itself, was already limited to essential information, there would have been no need to add the qualification “only the minimum amount.”

Regardless, even if “necessary” means “essential,” proof of citizenship *is essential* to enable election officials in Arizona to assess eligibility of State Form applicants. This is because Arizona law makes it essential. The Ninth Circuit panel majority ignored basic features of Arizona law on this point, including that (1) Arizona has long required election officials to

reject voter registration forms that lack proof of citizenship, (2) Arizona has now specified that proof of citizenship is both a voter eligibility requirement and a registration requirement, and (3) Arizona has now criminalized the knowing failure to reject State Forms that lack proof of citizenship. A.R.S. §§ 16-101(A), 16-121(A), 16-121.01(C), 16-166(F).

The Ninth Circuit panel majority decided instead that a checkbox and attestation suffice to ensure that State Form users are citizens. *See* RNC App.50a. But Arizona’s lawmakers reasonably decided otherwise as a policy matter. Indeed, Arizona long ago specified six acceptable forms of proof of citizenship—and none is a checkbox and attestation. A.R.S. § 16-166(F).

More fundamentally, the Ninth Circuit panel majority asked the wrong question. The question is not just whether proof of citizenship is necessary to enable officials to assess whether State Form applicants *are citizens*. The question is whether proof of citizenship is necessary to enable officials to assess whether State Form applicants *are eligible* as defined by state law. Here, Arizona law specifies that proof of citizenship is itself an eligibility requirement. A.R.S. §§ 16-101(A), 16-121(A). The panel majority thus failed to account for Arizona’s authority to define eligibility.

B. Arizona may require proof of citizenship for State Form users regardless of whether the State Form is “equivalent” to the Federal Form.

1. Under the National Voter Registration Act, if a voter registration agency is also “an office that provides service or assistance,” then the agency must

“distribute” a voter registration form along with each application for service or assistance. 52 U.S.C. § 20506(a)(6)(A). That form must be (1) the Federal Form or (2) “the office’s own form if it is equivalent to” the Federal Form. *Id.*

Below, Ninth Circuit judges debated whether Arizona’s State Form is “equivalent” to the Federal Form for purposes of public assistance agencies’ duties. RNC App.51a–52a, 114a–116a. Other parties debate the question here.

2. Truth be told, the question does not matter here. Neither answer justifies the injunction below, which broadly prohibited Arizona from rejecting State Forms unaccompanied by proof of citizenship. *See* RNC App.428a–429a. The National Voter Registration Act simply does not say that States may use State Forms only if they are equivalent to the Federal Form. After all, this Court has already recognized that State Forms “may require information the Federal Form does not,” *Inter Tribal Council of Arizona*, 570 U.S. at 12, which presumably would make them not “equivalent” in at least some cases. And by its terms, the “equivalent” clause in § 20506(a)(6)(A) is not a restriction on use; it imposes a positive obligation on state public assistance agencies to “distribute” voter registration forms, which may be either the Federal Form or an “equivalent” state-created form. So if Arizona’s State Form is not “equivalent” to the Federal Form, the consequence under the Act is that Arizona public assistance agencies would have to distribute the Federal Form (or some other equivalent form).

Indeed, that mirrors existing practice: Arizona and county officials already must make the Federal Form available through all channels they use to make the State Form available. This is because of an injunction entered following this Court's decision in *Inter Tribal Council of Arizona*. See *Gonzalez v. Arizona*, D. Ariz. No. CV-06-1268-PHX-ROS, 2013 WL 7767705, at *1 (Sept. 11, 2013).

But whether Arizona's State Form is "equivalent" to the Federal Form for purposes of a public assistance agency's duty to distribute registration forms does *not* determine whether Arizona can require proof of citizenship for State Form users. Congress knows how to require States to "accept" specific registration forms when it wants—as it did for the Federal Form. See 52 U.S.C. § 20505(a)(1). But no such language appears in § 20506, entitled "Voter registration agencies." Moreover, the duty to distribute certain registration forms is limited to public assistance agencies, not Arizona as a whole. See 52 U.S.C. § 20506(a)(6)(A). Again, Congress knows how to impose duties on the "State" as a whole—as it did for the Federal Form. See 52 U.S.C. § 20505(a)(1).

3. The Ninth Circuit panel majority decided that Arizona's State Form is not "equivalent" to the Federal Form, since it requires proof of citizenship. RNC App.51a–52a. From that premise, the panel majority concluded that Arizona's proof-of-citizenship requirement for State Forms "violates" the National Voter Registration Act. RNC App.52a.

Even assuming that the panel majority is correct that the State Form is not "equivalent" to the Federal Form, its conclusion does not follow. To conclude that

Arizona’s proof-of-citizenship requirement for State Forms *violates* the National Voter Registration Act, the panel majority must have assumed that the Act *prohibits* States from using registration forms that are not equivalent to the Federal Form. But the Act does no such thing. Rather, “States retain the flexibility to design and use their own registration forms.” *Inter Tribal Council of Arizona*, 570 U.S. at 12. The Act simply makes the Federal Form “a backstop” that “guarantees that a simple means of registering to vote in federal elections will be available.” *Id.*

II. The consent decree remains binding, but parties and perhaps affected non-parties may seek to vacate or modify it.

The Ninth Circuit panel majority was on stronger footing when it held that a 2018 consent decree limits the ability of officials in Arizona to require proof of citizenship for State Form users. The consent decree has not yet been vacated and therefore remains a binding injunction on the defendants against whom it was issued, even though Arizona law has materially changed since then.

The Ninth Circuit panel dissent raised concerns about the tension between the consent decree and current Arizona law. The answer to those concerns is not to undermine the validity of consent decrees, but to use a simple and existing procedural tool: a motion for relief under Federal Rule of Civil Procedure 60(b). Accordingly, the Court should affirm the binding nature of the consent decree while also making clear that the parties to the decree (and, as appropriate, non-parties affected by it) retain the ability to seek to vacate or modify it.

A. The consent decree remains binding unless and until it is vacated, even though it prohibits what Arizona law now requires.

1. As explained, in 2018 Arizona’s Secretary of State and Maricopa County’s Recorder agreed to a consent decree to treat Federal Forms and State Forms the same. *See* Statement of the Case §§ A and B above. The Secretary and Recorder concluded that doing so was “consistent with the provisions of Arizona law” that existed at the time. RNC App.476a.

But in 2022, Arizona law changed. Arizona’s lawmakers specified that proof of citizenship is a voter eligibility qualification and a registration requirement and that officials must (on pain of criminal penalty) reject State Forms unaccompanied by proof of citizenship even though they have a different duty for Federal Forms. *See* Statement of the Case § C above.

So now the consent decree is no longer consistent with Arizona law. But it is still a federal court injunction and “a final judgment.” *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 391 (1992). So the defendants whom it binds cannot simply ignore it.

The Ninth Circuit panel majority got this point right. The panel majority explained that the 2018 consent decree “remains an enforceable, binding final judgment.” RNC App.48a. This was correct, as the consent decree has not been vacated or modified.⁸

⁸ Since this Court partially stayed the district court’s injunction below (which was based on the consent decree), Arizona officials

A federal consent decree is “subject to the rules generally applicable to other judgments and decrees.” *Rufo*, 502 U.S. at 378; *see also Sys. Fed’n No. 91 v. Wright*, 364 U.S. 642, 650 (1961) (“The result is all one whether the decree has been entered after litigation or by consent.” (quoting *United States v. Swift & Co.*, 286 U.S. 106, 114 (1932))). Thus, if a party does not establish reason to modify the decree, “the decree should be enforced according to its terms.” *Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 441–42 (2004). Changes to a consent decree’s legal or factual predicates do not justify “ignoring or defying the decree.” *O’Sullivan v. City of Chicago*, 396 F.3d 843, 865 (7th Cir. 2005). Until the decree has been vacated or modified, it remains binding. *Frew*, 540 U.S. at 441–42; *see also Celotex Corp. v. Edwards*, 514 U.S. 300, 306 (1995) (“[P]ersons subject to an injunctive order issued by a court with jurisdiction are expected to obey that decree until it is modified or reversed, even if they have proper grounds to object to the order.” (quoting *GTE Sylvania, Inc. v. Consumers Union of U.S., Inc.*, 445 U.S. 375, 386 (1980))).

2. The RNC argues that the consent decree must “yield” to changed state law through review in a collateral proceeding. RNC Cert. Reply at 10–11. But while a decree is effective, it must be enforced according to its terms unless a party persuades the court to modify it. *Frew*, 540 U.S. at 442. Generally,

have been following Arizona law and rejecting State Forms unaccompanied by proof of citizenship, despite the consent decree. *See* Statement of the Case §§ D and E above. But if this Court were to clarify that the consent decree remains binding, Arizona officials would change course.

such modification should be sought through Federal Rule of Civil Procedure 60(b)(5), which “encompasses the traditional power of a court of equity to modify its decree in light of changed circumstances.” *Id.* at 441. This Court’s precedents indicate that “Rule 60(b)(5) provides the vehicle” for such arguments. *Horne v. Flores*, 557 U.S. 433, 439 (2009); *see also Agostini v. Felton*, 521 U.S. 203, 215 (1997) (citing previous precedents).

Allowing a federal consent decree to “yield” to later-enacted state law in a collateral proceeding, without undertaking the analysis required by Rule 60(b), risks “seriously undercutting the orderly process of the law.” *Celotex Corp.*, 514 U.S. at 313. This Court has emphasized that “Rule 60(b)(5) serves a particularly important function in what we have termed ‘institutional reform litigation.’” *Horne*, 557 U.S. at 447 (citation omitted). And this Court has developed a body of law regarding Rule 60(b)(5) motions based on changed circumstances. For example, “[t]he party seeking relief bears the burden of establishing that changed circumstances warrant relief,” but courts must take a “flexible approach” which “ensure[s] that responsibility for discharging the State’s obligations is returned promptly to the State and its officials when the circumstances warrant.” *Id.* at 447, 450 (citation and quotation marks omitted). Allowing courts to adjudicate the continued viability of consent decrees outside of the developed framework of Rule 60(b)(5) invites error and inconsistency in the law. It could also encourage forum-shopping and inconsistent decrees, if the plaintiff seeks to enforce an injunction in the issuing

court and the defendant seeks to have it declared void in another court (or vice versa).

3. The 2018 consent decree stated that the “Court shall retain jurisdiction over this action until December 31, 2020 to enter such further relief as may be necessary for the effectuation of the terms of this Consent Decree.” RNC App.494a. The RNC cites this clause as a reason why the consent decree must yield to the change in Arizona law. *See* RNC Pet. at 32. But the clause limits the district court’s ability to grant *further* relief based on the decree; it does not limit “the life of the decree itself.” *Roberts v. St. Regis Paper Co.*, 653 F.2d 166, 171 (5th Cir. 1981); *see also Thompson v. HUD*, 404 F.3d 821, 833 (4th Cir. 2005) (“As HUD concedes, it has obligations under the Consent Decree that extend well beyond the date that the court’s jurisdiction over HUD originally was to expire.”).

The consent decree imposes duties on the parties and does not state that those duties have an expiration date. *See* RNC App.483a–94a. Thus, despite not having jurisdiction to enter *further* relief, “the court retains jurisdiction to determine whether the parties are fulfilling their obligations under the decree.” *Roberts*, 653 F.2d at 172. The consent decree remains in force until it is modified or vacated.

B. Parties to the consent decree and perhaps affected non-parties may seek to vacate or modify the decree.

1. The Ninth Circuit panel dissent reasoned that “consent decrees cannot be used to handcuff governments in perpetuity.” RNC App.105a. The State and its Attorney General agree with this

principle. For this reason, there must be a way to seek vacatur or modification of the 2018 consent decree, especially given the change in Arizona law.

And there is. The clearest option is for one of the governmental parties to the consent decree—Arizona’s Secretary of State or Maricopa County’s Recorder—to seek relief from the decree under Federal Rule of Civil Procedure 60(b). Either party would have a strong case for relief. Now that Arizona law requires them to do something the consent decree prohibits, they are between a rock and a hard place. Indeed, a key premise of the consent decree was that its terms were consistent with Arizona law. RNC App.476a. This premise is no longer true, given the enactment of House Bill 2492. Continuing to apply the decree may well be “no longer equitable,” and the new state law may well be a “reason that justifies relief.” Fed. R. Civ. P. 60(b)(5), (6); *see, e.g., Foster v. Stanek*, 689 F. Supp. 3d 975, 983–89 (D. Kan. 2023) (granting relief from consent judgment based on change in state law).

The subsequent change in Arizona law is not the only consideration, however. After all, the consent decree settled allegations that treating State Forms and Federal Forms differently was unconstitutional. RNC App.474a–475a. And now Arizona law expressly requires treating State Forms and Federal Forms differently. A.R.S. § 16-121.01(C)–(F). So a court that decides whether to modify or vacate the decree may also need to consider whether doing so would create constitutional problems.

2. The Ninth Circuit panel dissent pointed out that a Rule 60(b) motion for relief is generally available only to parties in the underlying case. RNC

App.108a. But non-parties who are affected by a judgment may *become* parties by intervening under Federal Rule of Civil Procedure 24. For example, if Arizona’s Legislative Leaders believe that the 2018 consent decree is thwarting current Arizona law, they may be able to intervene if they meet the requirements of Rule 24 (and any other applicable requirements).

By analogy, consider *Horne v. Flores*, 557 U.S. 433 (2009). The district court in that case entered injunctions against Arizona officials when Arizona’s Legislature was “not then a party.” *Id.* at 441–42. The principal defendants were “siding with the plaintiffs” in ways that affected Arizona’s Legislature, so Arizona’s Senate President and House Speaker moved to intervene “as representatives of their respective legislative bodies.” *Id.* at 443. After intervening, they sought relief under Rule 60(b). *Id.* Although the district court denied their motion (and the Ninth Circuit affirmed), this Court reversed. *Id.* at 443–45.

3. Here, no one has sought Rule 60(b) relief from the 2018 consent decree. This omission was understandable given the procedural history below. But the absence of Rule 60(b) analysis renders vacatur or modification of the decree premature.

As explained, some plaintiffs moved to transfer their lawsuit to the judge who entered the 2018 consent decree, because their lawsuit involved the same parties and the same claims that led to the consent decree and would require consideration of the decree. *See* Statement of the Case § D above. The judge declined the transfer, reasoning that another judge would consider the relationship between the consent decree and the new Arizona law. *Id.*

Then the other judge decided the issue at a time no one asked. None of the motions for summary judgment asked the court to settle the relationship between the 2018 consent decree and Arizona's new law requiring proof of citizenship for State Form users. *See* Statement of the Case § D above. But the court decided the issue on summary judgment. *Id.*

In these circumstances, it is understandable why parties did not seek relief from the 2018 consent decree under Rule 60(b). The judge who entered the decree seemed to suggest that he was not the right judge to ask. And the judge who then decided the relationship between the consent decree and Arizona's new law did so at a time no one asked, without the benefit of briefing that might have explained the importance of Rule 60(b) analysis.

Even so, the absence of Rule 60(b) analysis means that the 2018 consent decree remains binding for now. As explained, the Rule 60(b) procedure exists for good reason, and ignoring it risks "seriously undercutting the orderly process of the law." *Celotex Corp.*, 514 U.S. at 313. The Court should affirm that the 2018 consent decree remains binding so that parties (and affected non-parties as appropriate) will know to pursue Rule 60(b) relief if they wish.

CONCLUSION

The Court should reverse the judgment of the court of appeals in part.

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