

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 CENTER FOR ELECTION
CONFIDENCE, INC., RESTORING INTEGRITY
AND TRUST IN ELECTIONS, INC., AND
HONEST ELECTIONS PROJECT
AS *AMICI CURIAE* IN SUPPORT
OF PETITIONER**

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INTEREST OF *AMICI CURIAE*

Center for Election Confidence, Inc., is a non-profit organization that promotes ethics, integrity, and professionalism in the electoral process. CEC works to ensure that all eligible citizens can vote freely within an election system of reasonable procedures that promote election integrity, prevent vote dilution and disenfranchisement, and instill public confidence in election systems and outcomes.

Restoring Integrity and Trust in Elections, Inc., is a non-profit organization with the mission of protecting the rule of law in American elections—in voter qualifications, in election administration, and in the tabulation of ballots. RITE supports laws and policies that promote secure elections and enhance voter confidence in the electoral process.

The Honest Elections Project is a nonpartisan organization devoted to supporting the right of every lawful voter to participate in free and honest elections. Through public engagement, advocacy, and public-interest litigation, the Project defends the fair, reasonable measures that legislatures put in place to protect the integrity of the voting process.

Amici have a significant interest in this case, which implicates the States' roles in setting election rules. The decision below leaves States unable to distinguish who may lawfully vote from who may not.*

* No counsel for a party authored this brief in whole or in part, and no person other than *amici curiae* or their counsel made a monetary contribution to its preparation or submission.

SUMMARY OF THE ARGUMENT

The Ninth Circuit’s misreading of the National Voter Registration Act of 1993 (NVRA) departs from this Court’s precedents and strips States of the authority to enforce the voter qualifications they alone may set.

First, the Ninth Circuit held that the NVRA forbids Arizona from requiring documentary proof of citizenship on its own mail voter registration form. That holding cannot be squared with the statute or with this Court’s precedent. The NVRA created a new federal voter registration track and recognizes the States’ sovereignty to “develop and use” forms of their own. Under the NVRA, every State must “accept and use” the Federal Form, but this does not disrupt a State’s ability to “develop and use” a form of its own. 52 U.S.C. § 20505(a)(1)–(2). This Court has already explained that “state-developed forms may require information the Federal Form does not”—and it offered Arizona’s proof-of-citizenship requirement as the example. *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 12 (2013).

The panel escaped that instruction by reworking two words: “necessary” and “equivalent.” Section 20508(b)(1) lets a State Form require information “necessary to enable the appropriate State election official to assess the eligibility of the applicant.” The statute fixes the vantage point: what a State election official needs to decide whether an applicant qualifies. Both halves of that inquiry belong to state law, because the Elections Clause empowers Congress “to regulate *how* federal elections are held, but not *who* may vote in them.” *Inter Tribal Council*, 570 U.S. at

16.¹ The power to determine who may vote in federal elections is reserved generally to the States. U.S. Const. art. I, § 2; *id.* art. II, § 1; *id.* amend. XVII; cf. *id.* amends. XIV, XV, XIX, and XXVI. And Arizona law is explicit. A county recorder “shall reject any application for registration that is not accompanied by satisfactory evidence of citizenship.” Ariz. Rev. Stat. § 16-121.01(C). Such “satisfactory evidence” requires documentation like a birth certificate, passport, or naturalization document. *Id.* § 16-166(F). An official without that evidence cannot say whether the applicant may register. The proof is “necessary” in the only sense the NVRA makes relevant. The panel asked a different question—whether documentary proof is dispensable in the abstract because the form already contains a citizenship checkbox. Pet. 50a. Section 20508(b)(1) poses no such question, and answering it as the panel did lets the attestation required by § 20508(b)(2) swallow the authority granted by § 20508(b)(1).

As for “equivalent,” that word appears in a section titled “Voter registration agencies,” in a subsection describing what a public-assistance office must hand an applicant for benefits: the Federal Form or “the office’s own form if it is equivalent to” it. 52 U.S.C. § 20506(a)(6)(A)(ii). That is a rule about distribution. It does not change the substantive requirements of

¹ This congressional power is neither primary nor absolute. See The Federalist No. 59 (Hamilton); Vox Populi, Mass. Gaz., Oct. 30, 1787, reprinted in 4 *The Documentary History of the Ratification of the Constitution Digital Edition* 168–71 (John P. Kaminski et al. eds., 2009).

State Forms—§§ 20505(a)(2) and 20508(b) provide those, and Arizona’s form satisfies them. The panel nonetheless read this ancillary instruction to impose a freestanding command that the State Form be “virtually identical” to the Federal Form. Pet. 51a–52a. But “Congress does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions.” *King v. Burwell*, 576 U.S. 473, 497 (2015) (citation modified).

Together, these errors collapse the distinction between the Federal Form and the State Form, and with it a State’s ability to enforce the qualifications it alone may set. The reading below thus raises the “serious constitutional doubts” this Court identified but avoided in *Inter Tribal Council*. 570 U.S. at 17.

Second, the Ninth Circuit erred in invalidating Arizona’s provision allowing for removal of noncitizens from voter rolls. The Ninth Circuit focused on the NVRA’s bar on removal programs within 90 days of an election. But its logic reaches further. Every removal ground the statute lists describes something that happens after a valid registration, so reading that list as exclusive would leave improperly registered persons on the rolls permanently. So on the Ninth Circuit’s reasoning, States could never remove from the voting rolls anyone who was included there improperly by virtue of being ineligible to register in the first place—noncitizens, minors, and fictitious persons alike. For instance, even though New Jersey recently discovered that it wrongly added thousands of noncitizens to its voter rolls, under this logic it could not now remove them despite the registrants’ clear ineligibility at the time of registration. That absurd

result shows that the Ninth Circuit did not read the statute as a coherent whole.

However far the holding below sweeps, the damage to American elections would be severe. An illegal vote cancels out a lawful vote. Once a ballot is cast, eligible voters generally have no recourse for the unlawful dilution of their votes. And nothing can remedy the resulting damage to American political self-definition during the corresponding term in office. Voting by eligible voters qualified under State law is the core mechanism to protect our federal self-government, and the decision below threatens that mechanism.

Arizona's effort to protect the integrity of the ballot box accords with the Elections Clause, the Electors Clause, its power to set voter qualifications for federal elections, and federal law. This Court should reverse.

ARGUMENT

I. The NVRA does not prohibit Arizona's proof-of-citizenship requirement for its State Form.

The NVRA requires that States accept a standard Federal Form for registering by mail to vote in federal elections. 52 U.S.C. § 20505(a)(1). “In addition,” it recognizes States’ sovereign authority to “develop and use a mail voter registration” form of their own “for the registration of voters in elections for Federal office.” *Id.* § 20505(a)(2). With respect to federal elections, the NVRA limits the reach of the State Form, permitting such forms to “require only such identifying information . . . as is necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration.” *Id.* § 20508(b)(1). And State voter

registration agencies may provide users with the Federal Form “or” “the office’s own form if it is equivalent to the” Federal Form. *Id.* § 20506(a)(6)(A).

The NVRA thus recognizes the States’ sovereign authority to “create their own, state-specific voter-registration forms,” which “may require information the Federal Form does not,” and to use such forms for registration for federal elections. *Inter Tribal Council*, 570 U.S. at 12. “For example,” this Court said, “unlike the Federal Form, Arizona’s registration form includes [a] proof-of-citizenship requirement.” *Ibid.* States thereby “retain the flexibility to design and use their own registration forms,” especially since the Federal Form will always “be available.” *Ibid.*

The decision below cannot be reconciled with this Court’s analysis in *Inter Tribal Council*. Contrary to what this Court said, the Ninth Circuit held that States may *not* require information that the Federal Form does not. According to the Ninth Circuit, the NVRA specifically *forbids* any such requirement. But this Court’s prior analysis is most consistent with the statutory text in context. And the contrary decision below would limit States’ constitutional ability to enforce voter qualifications and protect federal elections based on local needs.

A. The Ninth Circuit erased the distinction between the Federal and State Forms.

To depart from this Court’s understanding of the NVRA as requiring States to use a Federal Form but recognizing their authority also to provide a State Form, the Ninth Circuit plucked two words out of different NVRA provisions: “necessary” and

“equivalent.” As noted, States on their State Forms (when used for registration for federal elections) “may require only such identifying information . . . as is *necessary* . . . to assess the eligibility of the applicant and to administer voter registration.” 52 U.S.C. § 20508(b)(1) (emphasis added). And State agencies must provide users with the Federal Form “or” “the office’s own form if it is *equivalent* to the” Federal Form. *Id.* § 20506(a)(6)(A) (emphasis added). Neither term bears the weight placed by the decision below. What matters, as in all statutory interpretation questions, is the text’s “fairest reading,” in context. *Inter Tribal Council*, 570 U.S. at 15; see generally *id.* at 9–15.

1. The Ninth Circuit misread “necessary.”

Start with whether Arizona’s proof-of-citizenship requirement is “necessary.” The Ninth Circuit agreed that “citizenship is ‘necessary to enable the appropriate State election official to assess the eligibility of the applicant’ to vote in federal elections.” Pet. 50a. Indeed, under Arizona law, new voter-registration applicants must provide “satisfactory evidence of citizenship.” Ariz. Rev. Stat. § 16-121.01(C). Such evidence includes certain driver’s license or tribal identification numbers, a birth certificate, a passport, or naturalization documents. *Id.* § 16-166(F). So no matter what definition of “necessary” one uses, it *is* necessary under Arizona law for a State Form applicant to provide such evidence of citizenship. Otherwise, Arizona officials—who need to see evidence of citizenship—cannot “assess the eligibility of the applicant.” 52 U.S.C. § 20508(b)(1).

A simple reading of Arizona law should have easily answered in the negative any question about whether 52 U.S.C. § 20508(b)(1) prevents Arizona from requiring proof of citizenship from State Form applicants. But the Ninth Circuit panel majority believed that this proof is not actually “necessary” because “the state form’s checkbox requirement supplies proof of citizenship by an attestation.” Pet. 50a (citing Ariz. Rev. Stat. § 16-121.01(A)).

No doubt, checking the box for citizenship leads to a presumption of citizenship under Arizona law—but that law goes on to say that “the county recorder or other officer in charge of elections shall reject any application for registration that is not accompanied by satisfactory evidence of citizenship.” Ariz. Rev. Stat. § 16-121.01(C). Mere attestation is not enough. See *id.* § 16-166(F) (listing acceptable forms of satisfactory evidence of citizenship, including citizenship documents and identification numbers that enable officials to verify citizenship).

The NVRA does not suggest that the question of necessity turns on federal judicial judgments about the values and trade-offs of various election provisions. The only relevant question is whether proof of citizenship is “necessary” under Arizona law for voter-registration applicants. It is: Arizona conditions registration on evidence of citizenship, so an official who lacks that evidence cannot determine whether the applicant qualifies to register. So evidence of citizenship beyond attestation is “necessary,” on any meaning of that term.

That “necessary” focuses on what is necessary *under State law*—not on some law as imagined by the

federal judiciary—is confirmed by the statutory context. The NVRA recognizes States’ authority to require information on their forms “as is necessary to enable the appropriate State election official to assess the eligibility of the applicant.” 52 U.S.C. § 20508(b)(1). The relevant eligibility question from the view of the State official is whether the applicant is eligible under State law. So in Arizona, the State official wants to see if the applicant has shown eligibility under Arizona law—including its proof-of-citizenship requirement. If not, even the panel admitted that the applicant “will not be registered.” Pet. 51a.

Reading “necessary” to refer to necessity in some broader way—in an alternate universe, *should* the information be necessary?—makes no sense in this context. The relevant question before the State official is whether the applicant provided the information required by State law. Because the NVRA recognizes State authority to ask for just that information, it does not supersede a State law requiring that information from State Form applicants.

The logical endpoint of the Ninth Circuit’s reasoning confirms this conclusion. Recall that the Ninth Circuit held that information is not “necessary” under § 20508(b)(1) if the voter can provide an “attestation” about the underlying information—even if the attestation option exists only in other contexts. Pet. 50a; see Pet. 37a (finding the documentary proof of residency requirement for *new* voters not “necessary” because *existing* voters may provide an attestation about the issue).

On that logic, though, “states could never collect *any* information under (b)(1) because (b)(2) mandates that state forms include provisions in which applicants attest that they are eligible.” Pet. 178a (Nelson, J., dissenting from denial of rehearing en banc). Subsection (b)(2) requires that the State Form “include a statement that” “specifies each eligibility requirement (including citizenship)” and “contains an attestation that the applicant meets each such requirement.” 52 U.S.C. § 20508(b)(2). So “[a]n attestation under (b)(2) theoretically covers all eligibility information, rendering any information collected under (b)(1) inessential” on the panel’s view. Pet. 178a (Nelson, J., dissenting from denial of rehearing en banc). “By giving ‘necessary’ in the NVRA this meaning, the [Ninth Circuit] reads out § 20508(b)(1)” from the statute. *Ibid.*

“[T]hat kind of superfluity, in and of itself, refutes [the Ninth Circuit’s] reading.” *Pulsifer v. United States*, 601 U.S. 124, 143 (2024). That reading “would negate” “the very paragraph [it] is trying to interpret.” *Ibid.* And “[w]hen a statutory construction thus renders an entire subparagraph meaningless,” “the canon against surplusage applies with special force.” *Ibid.* (citation modified).

The Ninth Circuit’s interpretation of “necessary” is thus inconsistent with the statutory context and settled rules of interpretation.

2. The Ninth Circuit misread “equivalent.”

The Ninth Circuit’s reliance on the term “equivalent” fares even worse. Section 7 of the NVRA requires that State voter registration agencies

distribute either the Federal Form or “the office’s own form if it is equivalent to the” Federal Form. 52 U.S.C. § 20506(a)(6)(A). The Ninth Circuit never explained how this provision could reach the proof-of-citizenship requirement on Arizona’s State Form in the first place. At most, any absence of equivalence would require the State voter registration agency to distribute the Federal Form with its materials—not to abandon the State Form entirely.

What’s more, a distribution requirement is a strange place to hide a new *substantive* limit on State Forms. Again, “a State may develop and use a mail voter registration form that meets all of the criteria stated in section 20508(b).” *Id.* § 20505(a)(2). As discussed above, Arizona’s State Form proof-of-citizenship requirement is permissible under § 20508(b). That provision also governs the contents of the Federal Form. See *id.* § 20508(b). So if the State Form complies with the same substantive standards that apply to the Federal Form, those forms are “equivalent.”

On the Ninth Circuit’s reading, a State Form could satisfy these substantive standards yet still be undistributable unless it also met a freestanding equivalence requirement. That supposed requirement would be found in a provision titled “Voter registration agencies,” in a subsection governing the distribution of forms. 52 U.S.C. § 20506(a)(6)(A)(ii). But “Congress does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions.” *King*, 576 U.S. at 497 (citation modified). Distribution by State agencies deals with ancillary issues, not the substance of the State or Federal Forms.

Beyond those problems, the Ninth Circuit erred in holding that “equivalent” means “virtually identical”—such that a form requiring proof of citizenship is not “virtually identical” to a form requiring attestation of citizenship and thus not “equivalent.” See Pet. 51a–52a. Reading the word “equivalent” in “context and with a view to [its] place in the overall statutory scheme,” *King*, 576 U.S. at 486, the most natural reading of “the office’s own form if it is equivalent to the form described in section 20508(a)(2) of this title” is that it refers to the State Form. 52 U.S.C. § 20506(a)(6)(A)(ii). Put simply, the voter registration agency must distribute the Federal Form or the State Form.

These two forms will be “equivalent” in the relevant sense because each must comply with § 20508(b). See *id.* § 20505(a). Section 6 of the NVRA recognizes a State’s ability to use for registration for federal elections a form that “meets all of the criteria stated in section 20508(b),” and Section 9 sets out those criteria for the Federal Form as well. *Id.* §§ 20505(a)(2), 20508(b). A State Form built to that specification is equivalent to the Federal Form in the only sense Section 7 could need. Section 7 then tells an agency which form to hand a benefits applicant, and the answer is the Federal Form or a form meeting the same criteria.

The reading adopted below—that “equivalent” imposes an independent requirement that the State Form be “virtually identical”—makes a hash of the NVRA. The panel accepted that “Sections 6 and 9 read together let states develop ‘a mail voter registration form’ that meets the criteria stated in 52 U.S.C.

§ 20508(b) and let states include information necessary to determine voter eligibility that is not otherwise on the federal form.” Pet. 39a. It then declared that “Section 7 does not do so.” *Ibid.*; see Pet. 51a. On the panel’s own account, Congress, in a single Act, recognized an authority in two provisions only to reject it in a third—one that governs nothing but what a public-assistance office places in an applicant’s hands. The panel offered no reason why Congress would legislate that way. Reading Section 7 in the overall statutory scheme, it provides a distribution rule, not a hidden ceiling on every State’s registration form.

Last, the Ninth Circuit’s starting assumption that “equivalent” means “virtually identical” is dubious in this context. Congress in the NVRA knew how to demand material “that is identical.” 52 U.S.C. § 20508(b)(4). But it did not demand that the “office’s own form” be identical to the Federal Form. *Id.* § 20506(a)(6). That demand would contradict the rest of the NVRA. “Words that can have more than one meaning are given content . . . by their surroundings.” *Inter Tribal Council*, 570 U.S. at 10.

The better contextual understanding of “equivalent” as “substantially comparable” accords with contemporaneous dictionaries, other legal uses, and ordinary meaning. The most relevant definition around the time the NVRA was enacted in 1993 was “having equal or corresponding import, meaning or significance.” *Equivalent*, *Black’s Law Dictionary* (6th ed. 1990). Cases decided around the same time the NVRA was enacted interpreted “reasonably equivalent” to mean “substantially comparable.” *BFP*

v. *Resol. Tr. Corp.*, 511 U.S. 531, 548 (1994); see also *Miss. Poultry Ass’n, Inc. v. Madigan*, 31 F.3d 293, 305 (CA5 1994) (noting that “‘the same’ is language of identity,” “as distinguished from the language of equivalency, whether it be ‘at least equal to’ or ‘equivalent to’”). And “[i]n common parlance, one might say that” a Honda rental minivan is equivalent to a Toyota rental minivan, even though they are not identical. Cf. *Inter Tribal Council*, 570 U.S. at 10.

Combined with the statutory context, these indicators of the meaning of “equivalent” confirm that this innocuous term buried in a form distribution section does not upend the NVRA’s allowance for separate Federal and State Forms. The Ninth Circuit’s reading departs from the best understanding of the statute in context by collapsing the distinction between the Federal Form and the State Form—thereby practically eliminating a State’s authority to use its own Form.

B. The Ninth Circuit’s interpretation raises significant constitutional doubts.

Even if the permissibility of Arizona’s requirement were not clear from the statutory terms in context, the Ninth Circuit ignored the constitutional difficulties posed by its interpretation. The Constitution “empowers Congress to regulate *how* federal elections are held, but not *who* may vote in them.” *Inter Tribal Council*, 570 U.S. at 16; see *supra* note 1. That allocation is textual, and it appears in three places. The Qualifications Clause provides that electors for the House “shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.” U.S. Const. art. I, § 2, cl. 1. The

Seventeenth Amendment “adopts the same criterion for senatorial elections.” *Inter Tribal Council*, 570 U.S. at 16. And the Electors Clause leaves each State to appoint presidential electors “in such Manner as the Legislature thereof may direct.” U.S. Const. art. II, § 1, cl. 2; accord *Inter Tribal Council*, 570 U.S. at 16.

Each of these provisions commits the composition of the federal electorate to the States. Despite the suggestion below that the NVRA controls *all* aspects of voter registration for federal elections, its constitutional fount of authority, the Elections Clause, permits Congress only to alter the “Times, Places, and Manner of holding” federal elections but not to set voter qualifications. U.S. Const. art. I, § 4, cl. 1; see also *id.* art. II, § 1, cl. 2 (concerning similar state authority with respect to election of presidential and vice-presidential electors). The NVRA cannot withdraw by implication what these provisions confer expressly: “One cannot read the Elections Clause as treating implicitly what these other constitutional provisions regulate explicitly.” *Inter Tribal Council*, 570 U.S. at 16.

“Prescribing voting qualifications, therefore,” is reserved to the States, an “allocation of authority [that] sprang from the Framers’ aversion to concentrated power.” *Id.* at 17. “A Congress empowered to regulate the qualifications of its own electorate, Madison warned, could ‘by degrees subvert the Constitution.’” *Ibid.* (quoting 2 *Records of the Federal Convention of 1787*, p. 250 (M. Farrand rev. 1966)).

“Since the power to establish voting requirements is of little value without the power to enforce those

requirements,” “it would raise serious constitutional doubts if a federal statute precluded a State from obtaining the information necessary to enforce its voter qualifications.” *Ibid.* So any “possible” interpretation of the NVRA would have to be selected to avoid “preclud[ing]” a State “from obtaining information necessary for enforcement.” *Id.* at 17–18.

Inter Tribal Council involved whether Arizona could obtain proof of citizenship from Federal Form applicants. The Court avoided constitutional problems there because the statute “provide[d] another means by which Arizona may obtain information needed for enforcement” of its citizenship requirement—the State could ask for the Federal Form “to include information the State deems necessary to determine eligibility.” *Id.* at 18–19; see also *id.* at 19 n.10.

But that route would not work here. The escape hatch in *Inter Tribal Council* ran through the Federal Form: a State needing more information could ask the Election Assistance Commission to add it, see 52 U.S.C. § 20508(a)(2), and could seek review under the Administrative Procedure Act if the Commission refused. 570 U.S. at 18–19. Yet if, as the Ninth Circuit held, the NVRA independently forbids documentary proof on the State Form, it would be *impossible* for Arizona to obtain information it deems necessary to determine eligibility on the State Form. The condition on which this Court previously avoided the constitutional question thus fails here.

“It matters not whether the [Ninth Circuit] has specified one way in which *it* believes Arizona might be able to verify citizenship; Arizona has the independent constitutional authority to verify

citizenship in the way it deems necessary.” *Id.* at 36 (Thomas, J., dissenting). Avoiding the constitutional pitfall of stripping a State of the ability to enforce its qualifications for voters requires adopting Petitioner’s reading, which is at least “fairly possible.” *United States v. Hansen*, 599 U.S. 762, 781 (2023). The decision below disregarded this constitutional problem.

Arizona and other States have a profound responsibility to ensure that only U.S. citizens vote in their elections. “Arizona has had a citizenship requirement for voting since it became a State in 1912.” *Inter Tribal Council*, 570 U.S. at 24 (Thomas, J., dissenting). States “indisputably [have] a compelling interest in preserving the integrity of [their] election process.” *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam). Laws designed to protect the integrity of the election fulfill a critical policy goal: instilling public confidence in the electoral process, which “encourages citizen participation in the democratic process.” *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 197 (2008).

And a “State may take action to prevent election fraud without waiting for it to occur and be detected within its own borders.” *Brnovich v. Democratic Nat’l Comm.*, 594 U.S. 647, 686 (2021). “The risk of fraud and other malfeasance may depend on local conditions and thus differ from state to state.” *Gonzalez v. Arizona*, 677 F.3d 383, 440 (CA9 2012) (Kozinski, C.J., concurring). “States with a tradition of electoral chicanery, or with large transient populations, may need to impose stricter controls to ensure the integrity of their voting processes.” *Ibid.* Voter fraud and

election fraud remain problems States have a duty to prevent. Arizona’s rule furthers the State’s vital interest in protecting the integrity of its elections, including elections for federal office that it administers. The decision below threatens this interest and the constitutional authority of States to meaningfully enforce voting qualifications.

II. The Ninth Circuit’s decision would prevent States from removing noncitizens, minors, and fictitious persons from voter rolls.

The Ninth Circuit also erred in invalidating Arizona’s inspections of its voter rolls to determine whether any person is not a U.S. citizen, at least when those inspections are within 90 days of an election. The court relied on the NVRA’s provision that “[a] State shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters.” 52 U.S.C. § 20507(c)(2)(A). But as Judge Bumatay explained below—with no response from the panel majority—“foreign citizens aren’t included in the protection of ‘ineligible voters’ in the 90-Day Provision,” so their removal does not implicate this provision. Pet. 125a (dissenting opinion). Judge Bumatay was right: individuals who were never eligible to vote but who were nevertheless included on a State’s voter rolls—whether foreign citizens, minors, or other categorically ineligible persons—could not be “eligible” applicants in the first place. That puts them outside the 90-day provision’s “eligible voter”/“ineligible voter” dichotomy. Pet. 124a–25a.

As Judge Bumatay also observed, reading the 90-day provision as the Ninth Circuit majority did “would lead to absurd results and raise serious constitutional concerns” by transforming the NVRA into “a congressional ban on removing foreign citizens for voting in American elections.” Pet. 125a–26a. In fact, the reading adopted below would seem to prevent States from *ever* removing noncitizens, minors, or others not qualified to vote from voter rolls. The Ninth Circuit’s decision would severely undermine state sovereignty, voters’ confidence in elections, and Americans’ right to govern themselves.

A. The NVRA does not require States to permanently maintain on voter rolls noncitizens and others never qualified to vote at the time of registration.

The 90-day provision must be read with the sections that surround it. “[S]imilar language contained within the same section of a statute must be accorded a consistent meaning.” *Nat’l Credit Union Admin. v. First Nat’l Bank & Tr. Co.*, 522 U.S. 479, 501 (1998). Courts interpret statutes to provide “a symmetrical and coherent regulatory scheme.” *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (citation modified).

Here and in similar cases, challengers have tried to divorce the “program” prohibited in the 90-day period before an election from the “general program” that the statute obligates States to run—and that provides the only permissible mechanism to remove voters, apart from the person’s own request, criminal conviction, or mental incapacity. The *reason* they try to avoid the statutory context is apparent: applied

across the statute, their reading would mean that the NVRA prohibits States from removing a wide swath of individuals who cannot legally vote from the voter rolls, including noncitizens, minors, and others—*ever*. But this artificial siloing of the 90-day provision contradicts basic statutory interpretation principles—and renders the interpretation adopted below absurd (and unconstitutional).

Subsection (a)(3) of 52 U.S.C. § 20507 requires States to “provide that the name of a registrant may not be removed from the official list of eligible voters except—(A) at the request of the registrant; (B) as provided by State law, by reason of criminal conviction or mental incapacity; or (C) as provided under paragraph (4).” Paragraph (4), in turn, requires States to “conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of—(A) the death of the registrant; or (B) a change in the residence of the registrant, in accordance with subsections (b), (c), and (d).” *Id.* § 20507(a)(4).

Putting together only these subsections, States would not be permitted to remove a “registrant” from a voter roll except at the registrant’s request, for criminal conviction or mental incapacity, or via a “general program” that identifies individuals who have died or changed residences.

Subsection (c), meanwhile, is titled “Voter removal programs.” It first describes how a State “may meet the requirement of subsection (a)(4) by establishing a program” with certain parameters. *Id.* § 20507(c)(1). Right from the start, then, the statute links the “program” discussed in subsection (c) with the

“general program” discussed in subsection (a)(4). Subsection (c) goes on to require States to “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.” *Id.* § 20507(c)(2)(A). This provision, however, “shall not be construed to preclude” “the removal of names from official lists of voters on a basis described in paragraph (3)(A) or (B) or (4)(A) of subsection (a)” —which are at the registrant’s request, criminal conviction, mental incapacity, and death. *Id.* § 20507(c)(2)(B). Only one basis for removal from subsection (a) remains to be prohibited during the 90-day period: “a change in the residence of the registrant,” *id.* § 20507(a)(4)(B), which is addressed by subsection (d).

Nothing in these provisions speaks to noncitizens—or others whose registrations were void *ab initio*, such as minors, fictitious persons, or individuals who misrepresent their residence. So if the Ninth Circuit is right that the 90-day limitation on programs prohibits removal on these bases—because the statute has listed exceptions (Pet. 44a)—States could *never* remove improperly registered individuals who fall within these categories, no matter when the removal happens or whether it is after a systematic inquiry. On that reading, the NVRA would “prohibit a state from ever removing from its voting list a noncitizen”—or a minor or fictitious person—“even though the [person] should never have been registered in the first place.” *United States v. Florida*, 870 F. Supp. 2d 1346, 1349 (N.D. Fla. 2012).

Thus, as Judge Hinkle has explained, the “conclusion is inescapable”: subsection (a)(3)’s “prohibition on removing a registrant except on specific grounds simply does not apply to an improperly registered noncitizen” (or minor, etc.). *Id.* at 1349–50. And if subsection (a)(3) “does not prohibit a state from removing an improperly registered noncitizen, then [subsection (c)(2)] does not prohibit a state from systematically removing improperly registered noncitizens during the quiet period.” *Id.* at 1350. “[N]ot only does paragraph (c)(2) incorporate by reference paragraphs (a)(3) and (a)(4) in setting forth those removals excepted from the 90-day period, but the language of each of the two provisions tracks the other,” making these provisions “inextricably linked.” *Arcia v. Detzner*, 908 F. Supp. 2d 1276, 1282–83 (S.D. Fla. 2012), *rev’d and remanded sub nom. Arcia v. Fla. Sec’y of State*, 772 F.3d 1335 (CA11 2014); see *Arcia*, 772 F.3d at 1348 (Suhreheinrich, J., dissenting) (agreeing with this reasoning).

Trying to get around this problem, some have argued that “[s]ection 8(a)(3) refers to ‘registrant[s]’ while the [90-Day] Provision refers to ‘ineligible voters.’”² But this does not address the statutory problem. “[T]here is no reason to believe the reference to removing a ‘registrant’ in [subsection (a)(3)] means something different than removing ‘ineligible voters’ in [subsection (c)(2)].” *Florida*, 870 F. Supp. 2d at 1350. “[B]y definition, someone who is being ‘removed’

² United States’ Reply in Support of its Motion for Preliminary Injunction 2 n.1, *Virginia Coal. for Immigrant Rts. v. Beals*, No. 24-cv-1778, Dkt. 100, 2024 WL 6048999 (E.D. Va. Oct. 23, 2024).

has already registered, so an ‘ineligible voter’ is a ‘registrant.’” *Ibid.*; see Pet. 185a (Nelson, J., dissenting from denial of rehearing en banc) (“ineligible voters” is “a subset of registrants”).

Thus, the Ninth Circuit’s reading “produce[s] an absurd result”: a State cannot “remove from its voting rolls minors, fictitious individuals, individuals who misrepresent their residence in the state, and non-citizens.” *Arcia*, 908 F. Supp. 2d at 1282. An example helps illustrate the point. Say a fluke within a State’s internal motor-vehicle voter processes leads it to add 15-year-olds to the voter rolls. Under the reading below, within 90 days of an election, the State could not simply reverse the automatic addition of minors not qualified to vote. That result is odd (and constitutionally deficient) enough. Odder still is that the reading below would prohibit the State from *ever* removing these minors from the voter rolls.

Nor is this type of scenario far-fetched, especially with the rise of automatic voter registration. Recently, New Jersey discovered that at least “6,600 noncitizens were erroneously registered to vote” in 2023–2024—and that hundreds had cast ballots.³ “[E]lection officials and campaign consultants from both parties believe that the number of noncitizens being added to the voter rolls is significantly higher . . . because the state has been automatically registering drivers since

³ K. Thomas & L. Radnofsky, *New Jersey Removes Thousands of Noncitizens From Voter Rolls*, Wall St. J. (July 21, 2026), <https://bit.ly/3ROpFQg>.

2018, and [the initial] figure covers only June 2023 to June 2024.”⁴

Likewise, “Illinois experienced a similar glitch in late 2019 when an estimated 545 noncitizens were mistakenly entered as registered voters due to a glitch in the automatic voter registration system.”⁵ And over a thousand noncitizens were apparently registered to vote in Oregon.⁶

Yet under the reading adopted below, these States could not remove noncitizens from the voter rolls within 90 days of an election—so New Jersey could not correct its errors now, before the November 2026 election. Not just that, but these States could *never* remove these noncitizens who were never eligible to vote. Not only would this result of Respondents’ reading be absurd, but it would also be inconsistent with Congress’s statutory intent. See *Pub. Citizen v. U.S. Dep’t of Just.*, 491 U.S. 440, 471 (1989) (Kennedy, J., concurring in judgment) (noting the proper application of the absurdity canon where “it is quite impossible that Congress could have intended the result, and where the alleged absurdity is so clear as to be obvious to most anyone” (citation omitted)).

⁴ M. Friedman, *‘It’s the Honor System’: New Jersey’s Noncitizen Voter Registration Brings Private Worries into the Open*, Politico (July 30, 2026), <https://bit.ly/3UbMwWy>.

⁵ P. Hancock, *Here’s How Illinois Election Authorities Guard Against Noncitizen Voting*, Rockford News First (July 24, 2026), <https://bit.ly/4ceFFBR>.

⁶ D. VanderHart, *Updated Findings Show Nearly 1,260 Possible Noncitizens were Registered to Vote in Oregon Since 2021*, Or. Pub. Broad. (Sept. 23, 2024), <https://bit.ly/4bZH67a>.

The NVRA’s first statutory finding is that “the right of *citizens* of the United States to vote is a fundamental right.” 52 U.S.C. § 20501(a)(1) (emphasis added). And its statutory purposes all relate to the right of “eligible citizens” to participate in elections held with integrity and accuracy. *Id.* § 20501(b). Prohibiting States from removing self-identified noncitizens, minors, and fictitious persons from voter rolls would be an exceedingly strange way of effectuating these purposes.

The statutory language reinforces this conclusion. The listed exceptions—death, incapacity, conviction, and a change in residence—“indicate[] that what Congress had in mind when it drafted these sections was removing a person on grounds that typically arise after an initial proper registration.” *Florida*, 870 F. Supp. 2d at 1350. But “Congress was not addressing the revocation of an improperly granted registration of a noncitizen.” *Ibid.* Unlike residency changes, a rejection of citizenship occurs very rarely: the year the NVRA was enacted, about 697 citizens (out of about 260 million) renounced their citizenship.⁷ Likewise, persons of age do not become minors, and real persons do not become fictitious ones. So it is much more reasonable to think that Congress’s limitations in the NVRA were geared toward the listed categories, which can and often do change, rather than categories that could make a registration void *ab initio* like age and citizenship. Otherwise, “non-citizens, who were never

⁷ Joint Comm. on Taxation, *Issues Presented by Proposals to Modify the Tax Treatment of Expatriation* 7 (June 1, 1995), <https://perma.cc/W5WP-Z9JM>.

eligible to vote in the first instance, will remain on the voting rolls within 90 days of a Federal election, and there is nothing practical [any] State” “can do about it.” *Arcia v. Detzner*, 2015 WL 11198230, at *1 (S.D. Fla. Feb. 12, 2015).

Once again, interpreting the NVRA as the Ninth Circuit did would raise serious constitutional doubts about its validity because “the Elections Clause empowers Congress to regulate *how* federal elections are held, but not *who* may vote in them.” *Inter Tribal Council*, 570 U.S. at 16.⁸ Given that the reading below would “preclude[]” States from enforcing their voting qualifications as applied to federal elections via the Qualifications Clause and the Electors Clause, Petitioner’s “possible” reading of the NVRA should control. *Id.* at 17–18.

Tellingly, other courts confronted with these problems have glossed over them, declining to “decide today whether” “the General Removal Provision . . . allow[s] for removals of non-citizens.” *Arcia*, 772 F.3d at 1346; see *Virginia Coal. for Immigrant Rts. v. Beals*, 2024 WL 4601052, at *2 (CA4 Oct. 27, 2024) (“leaving questions about other provisions for another day”).

But courts must read a statute to fit “all parts into an harmonious whole.” *Brown & Williamson*, 529 U.S. at 133. “Whatever the virtues of judicial minimalism, it cannot justify judicial incoherence.” *Nat’l Aeronautics & Space Admin. v. Nelson*, 562 U.S. 134,

⁸ Of course, Federalist No. 59 circumscribes this federal fail-safe to a guard against “extraordinary circumstances” in the States.

166 (2011) (Scalia, J., concurring in judgment). What matters is “the text of the whole statute.” *Maracich v. Spears*, 570 U.S. 48, 65 (2013). And the Ninth Circuit’s reading of the 90-day provision cannot provide a sensible, coherent regime.

B. The decision below threatens citizens’ right to have their vote count at full value.

The decision below preventing removal of noncitizens from Arizona’s voter rolls would undermine the right of American citizens to have their votes counted fairly and at full value in accurate elections.

Most obviously, States and American citizens are grievously harmed when a noncitizen (or minor or other person not qualified to vote) votes. Each illegal vote cancels out a proper one—and could even provide the margin of victory for a candidate who would not otherwise have been elected. And the illegal vote generally cannot be remedied once the ballot is cast and tabulated. Later prosecution is necessary but insufficient—and it is no comfort to the eligible voter who relied on the election to reflect the will of the people.

As this Court has said, “[t]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.” *Purcell*, 549 U.S. at 4 (quoting *Reynolds v. Sims*, 377 U.S. 533, 555 (1964)). “To the extent that a citizen’s right to vote is debased, he is that much less a citizen.” *Reynolds*, 377 U.S. at 567. Excluding noncitizens “from basic governmental processes is not a deficiency in the democratic system but a necessary consequence of the

community’s process of political self-definition.” *Cabell v. Chavez-Salido*, 454 U.S. 432, 439 (1982). “States can prevent non-citizens from serving as probation officers, or teaching in public schools.” *OPAWL-Bldg. AAPI Feminist Leadership v. Yost*, 118 F.4th 770, 777 (CA6 2024) (citations omitted). “Why? Because the ‘distinction between citizens and aliens, though ordinarily irrelevant to private activity, is fundamental to the definition and government of a State.’” *Ibid.* (quoting *Ambach v. Norwick*, 441 U.S. 68, 75 (1979)).

The Ninth Circuit expressed concern about “inaccurate removal” and “[e]ligible voters” not being “able to correct the State’s errors in time to vote.” Pet. 46a. But a hypothetical citizen wrongly removed from the rolls can generally cast a provisional ballot and provide proof of citizenship later.⁹

The decision below threatens more than the accuracy of the count. It threatens the integrity of self-government itself.

CONCLUSION

For these reasons, the Court should reverse.

⁹ See National Conference of State Legislatures, *Provisional Ballots* (Apr. 16, 2025), <https://perma.cc/W575-RJ3A>.

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