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 OF CONSTITUTIONAL ACCOUNTABILITY CENTER AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICUS CURIAE*[1]

Constitutional Accountability Center (CAC) is a think tank and public interest law firm dedicated to fulfilling the progressive promise of the Constitution's text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and preserve the rights and freedoms it guarantees. CAC has a strong interest in ensuring that the Elections Clause is interpreted in a manner consistent with its text and history and accordingly has an interest in this case.

SUMMARY OF ARGUMENT

Exercising its authority under the Elections Clause, Congress passed the National Voter Registration Act (NVRA) in 1993 to increase political participation by eligible citizens and simplify voter registration processes across the nation. To further these goals, the NVRA directed the Elections Assistance Commission (EAC) to create a federal "mail voter registration application form" that states must "accept and use" to register voters. 52 U.S.C. § 20505(a)(1); *see also id.* § 20508(a), (b) (detailing EAC's obligation to "develop a mail voter registration application form for elections for Federal office" and prescribing its contents). The NVRA also authorized states to "develop and use a mail voter registration form that meets all of the criteria" applicable to the federal form. *Id.* § 20505(a)(2); *see also id.* § 20506(6)(A)(ii) (requiring a

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[1] Under Rule 37.6 of the Rules of this Court, *amicus* states that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus* or its counsel made a monetary contribution to its preparation or submission.

state voter registration agency to distribute a form "equivalent" to the federal form).

Under the NVRA, both the federal form and any state-developed federal voter registration form (1) "may 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 and other parts of the election process"; (2) "shall include a statement that . . . specifies each eligibility requirement (including citizenship)"; "contains an attestation that the applicant meets each such requirement"; and "requires the signature of the applicant, under penalty of perjury"; and (3) "may not include any requirement for notarization or other formal authentication." *Id.* § 20508(b)(1), (2), (3); *id.* § 20505(a)(2). Congress insisted on these strictures to "increase the number of eligible citizens who register to vote in elections for Federal office," while also "protect[ing] the integrity of the electoral process." *Id.* § 20501(b)(1), (3).[2]

In *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013), this Court held that the NVRA preempted Arizona's documentary proof of citizenship requirement, holding that "the fairest reading of the statute is that a state-imposed requirement of evidence of citizenship not required by the Federal Form is 'inconsistent with' the NVRA's mandate that States

[2] The Act also contains limits on removing voters from registration rolls, including by providing 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." *Id.* § 20507(c)(2)(A). This brief does not address the parties' dispute over the meaning of this provision.

'accept and use' the Federal Form." *Id.* at 15 (quoting *Ex parte Siebold*, 100 U.S. 371, 397 (1879)). Because the NVRA requires that any state form used to register voters for federal elections comply with the requirements applicable to the federal form, *see* 52 U.S.C. § 20505(a)(2) (requiring state form to comply with requirements for the federal form in § 20508(b)), Arizona may not require that eligible citizens provide documentary proof of citizenship when registering to vote in federal elections using the state form.

Petitioner and its *amici*, however, assert that despite what the NVRA says, states may refuse to register qualified voters who fill out Arizona's state voter registration form unless they submit documentary proof of citizenship. According to Petitioner, even though the statute requires only "an attestation that the applicant meets each such requirement" and prohibits demands for "formal authentication," *id.* § 20508(b)(2), (3), the NVRA must be interpreted to allow Arizona and other states to require documentary proof of citizenship to avoid raising doubts about its constitutionality. In its view, Congress lacks the power to override the state's considered view about how to enforce its voter qualifications in elections for federal office. Pet'r Br. 32-33; Miss. et al. Br. 4-12; Claremont Br. 5-13; Center for Election Confidence Br. 14-18; Judicial Watch et al. Br. 9-21; ACLJ et al. Br. 4-10. This argument cannot be squared with the text and history of the Elections Clause.

More than two centuries ago, the Constitution's Framers concluded that Congress must have the final say over the mechanics of federal elections. After lengthy debates over the Elections Clause—beginning at the Constitutional Convention in Philadelphia and continuing in the state ratifying conventions and through the debates over the amendments to the

Constitution proposed in 1789—the Framers conferred on Congress the power to "make or alter" state election law in order to protect the right to vote in federal elections and allow Congress to set uniform rules for the time, place, and manner of those elections. U.S. Const. art. I § 4, cl. 1. Where Congress invokes its power to "make or alter" state law, federal law expressly preempts state time, place, and manner regulations, ensuring that states do not interfere with the people's right to vote for their federal representatives. While voter qualifications in federal elections are tied to those used in state legislative elections, Congress has the final word over the mechanics of federal elections, including voter registration. Nothing in the Constitution leaves regulation of federal elections to "the unfettered discretion of state legislatures," *Inter Tribal Council*, 570 U.S. at 17, and that is true even with respect to the enforcement of voter qualifications. To the contrary, whatever power states enjoy to regulate federal elections is subject to Congress's paramount, supervisory power. Congress was, as one court put it, "given the whip hand." *Ass'n of Cmty. Orgs. for Reform Now v. Edgar*, 56 F.3d 791, 794 (7th Cir. 1995).

As this Court has recognized, the Elections Clause "was the Framers' insurance against the possibility that a State would refuse to provide for the election of representatives to the Federal Congress," *Inter Tribal Council*, 570 U.S. at 8, and it provides a "safeguard against manipulation of electoral rules by politicians and factions in the States to entrench themselves or place their interests over those of the electorate," *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 815 (2015); *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 808 (1995) (Elections Clause was a necessary "safeguard against state abuse"). The Framers wrote the Elections Clause using "words of

great latitude," because "[i]t was impossible to foresee all the abuses that might be made of the [States'] discretionary power." 2 *The Records of the Federal Convention of 1787*, at 240 (Max Farrand ed., 1911) [hereinafter Farrand's Records]. As this Court has repeatedly held, "[t]he Clause's substantive scope is broad. 'Times, Places, and Manner' . . . are 'comprehensive words,' which 'embrace authority to provide a complete code for congressional elections,' including . . . regulations relating to 'registration.'" *Inter Tribal Council*, 570 U.S. at 8-9 (quoting *Smiley v. Holm*, 285 U.S. 355, 366 (1932)). "As Alexander Hamilton put it, the Constitution lodges power over congressional elections in state legislatures 'primarily' and in Congress 'ultimately.'" *Watson v. Republican Nat'l Comm.*, 146 S. Ct. 2165, 2170 (2026) (quoting *The Federalist No. 59*, at 362 (Alexander Hamilton) (Clinton Rossiter ed., 1961)).

In passing the NVRA, Congress used this express authority to curb "the steady decline in citizen participation in Federal elections" and make the "registration process for Federal elections as accessible as possible while maintaining the integrity of the electoral processes." H.R. Rep. No. 103-9, at 3 (1993). It did so by establishing new legal safeguards to make voter registration widely accessible to voters possessing the necessary qualifications. During deliberations about the Act, Congress considered whether to include a carve-out that would permit states to require documentary proof of citizenship. It refused to permit such measures, concluding that such a loophole was not "necessary or consistent with the purposes of" the NVRA and "could be interpreted by States to permit registration requirements that could effectively eliminate, or seriously interfere with, the mail registration program of the Act." H.R. Rep. No. 103-66, at 23 (1993)

(Conf. Rep.). Instead, Congress adopted language that only requires "an attestation that the applicant meets [eligibility] requirement[s]," signed under penalty of perjury, and prohibits demands for "formal authentication." 52 U.S.C. § 20508(b)(2), (3).

Exercising its power under the Elections Clause, Congress determined that more intrusive voter registration rules, such as demands for documentary proof of citizenship, were an unjustifiable barrier to the right to vote in federal elections. Arizona plainly disagrees, but "the Constitution explicitly gives Congress the final say" on that question. *Foster v. Love*, 522 U.S. 67, 72 (1997). Because Arizona's documentary proof of citizenship requirement cannot be squared with the command of the NVRA, the judgment of the court of appeals should be affirmed.

ARGUMENT

I. The Text and History of the Elections Clause Make Clear that the Elections Clause Gives Congress Broad Power to Override State Law in Order to Protect the Right to Vote in Federal Elections.

1. The Elections Clause provides that "[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators." U.S. Const. art. I, § 4, cl. 1. The plain text of the Elections Clause serves "two functions. Upon the States it imposes the duty ('*shall* be prescribed') to prescribe the time, place, and manner of electing Representatives and Senators; upon Congress it confers the power to alter those regulations or supplant them altogether." *Inter Tribal*

Council, 570 U.S. at 8; *see* 4 *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 62 (Jonathan Elliot ed., 1836) [hereinafter "*Elliot's Debates*"] ("[I]n the first part of the clause, th[e] power over elections is given to the states, and in the latter part the same power is given to Congress."); *id.* at 68 (explaining that the Elections Clause "enables Congress to alter such regulations as the states shall have made with respect to elections"). Thus, even though voting qualifications in federal elections were explicitly tied in the Constitution to those "requisite for Electors of the most numerous branch of the State Legislature," U.S. Const. art. I, § 2, cl. 1, Congress would possess a veto over all state regulation of the mechanics of federal elections.

The Framers gave Congress this "final say," *Foster*, 522 U.S. at 72, over the broad mechanics of federal elections in order to empower Congress to "intervene against acts of injustice within the states," Jack N. Rakove, *Original Meanings: Politics and Ideas in the Making of the Constitution* 224 (1996), and to establish uniform rules that fulfilled the Constitution's promise of popular sovereignty by "We the People," *The Federalist No. 57*, *supra*, at 351 (James Madison) ("Who are to be the electors of the federal representatives? Not the rich, more than the poor; not the learned, more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscure and unpropitious fortune. The electors are to be the great body of the people of the United States.").

The Framers were concerned that if Congress did not have the express power to "make or alter" state election law, states would use their power to regulate the time, place, and manner of federal elections to deny or abridge the right of eligible voters to freely select federal representatives of their choice. "The

dominant purpose of the Elections Clause, the historical record bears out, was to empower Congress to override state election rules," *Ariz. State Legislature*, 576 U.S. at 814-15, a reflection of "the Framers' distrust of the States regarding elections," *U.S. Term Limits*, 514 U.S. at 811 n.21; Eliza Sweren-Becker & Michael Waldman, *The Meaning, History, and Importance of the Elections Clause*, 96 Wash. L. Rev. 997, 999 (2021) ("[S]uspicion of those very legislators suffuses the purpose and history of the Clause."); *id.* at 1010 (the Founding generation feared that giving unbounded power to state legislatures would enable "powerful factions within states . . . to gerrymander districts and entrench their power").

As James Madison put it, the grant of power to Congress to override state regulation of the time, place, and manner of federal elections was necessary because "State Legislatures will sometimes fail or refuse to consult the common interest at the expense of their local conveniency or prejudices." 2 *Farrand's Records*, *supra*, at 240; *see* Franita Tolson, *Reinventing Sovereignty?: Federalism as a Constraint on the Voting Rights Act*, 65 Vand. L. Rev. 1195, 1226 (2012) (discussing "the delegates' fear that the states, had they been in complete control of elections, could have used this power to the detriment of their citizens, who would have little recourse"). Madison explained that "the Legislatures of the States ought not to have the uncontrouled right of regulating the times places & manner of holding elections." 2 *Farrand's Records*, *supra*, at 240. To prevent abuses by the states, it was necessary to give "a controuling power to the Natl. Legislature." *Id.* at 241.

Madison was particularly concerned that states would use their power to regulate elections to skew the outcomes of federal elections. "Whenever the State

Legislatures had a favorite measure to carry, they would take care so to mould their regulations as to favor the candidates they wished to succeed." *Id.* Along similar lines, Gouverneur Morris observed that "the States might make false returns and then make no provisions for new elections." *Id.*; *see The Federalist No. 59*, *supra*, at 363 (Alexander Hamilton) (arguing that, without the Elections Clause, states "could at any moment annihilate [the Union] by neglecting to provide for the choice of persons to administer its affairs").

The Elections Clause was the "Framers' insurance against th[is] possibility." *Inter Tribal Council*, 570 U.S. at 8. By the close of debate, the Convention's overwhelming consensus was that the Constitution should "give the Natl. legislature a power not only to alter the provisions of the States, but [also] to make regulations in case the States should fail or refuse altogether." 2 *Farrand's Records*, *supra*, at 242. As one influential delegate to the Pennsylvania Convention explained, in case "the State governments *may* abuse their power, and regulate these elections in such manner as would be highly inconvenient to the people," the Elections Clause gave Congress the express "*constitutional* power of correcting them." Letter from Timothy Pickering, Delegate, Pa. Ratifying Convention, to Charles Tillinghast (Dec. 24, 1787), *quoted in* Charles W. Upham, 2 *The Life of Timothy Pickering* 357 (1873).

2. At the Founding, the breadth of Congress's express power to "make or alter" state regulation of federal elections was understood by supporters and detractors alike. The plain text of the Elections Clause, as James Madison explained at the Constitutional Convention, uses "words of great latitude," recognizing that "[i]t was impossible to foresee all the abuses that might be made of the [states'] discretionary power." 2 *Farrand's Records*, *supra*, at 240. As Madison

explained, "[w]hether the electors should vote by ballot or vivâ voce, should assemble at this place or that place; should be divided into districts or all meet at one place, shd all vote for all the representatives; or all in a district vote for a number allotted to the district; these & many other points would depend on the Legislatures[] and might materially affect the appointments." *Id.* at 240-41.

Thus, the Framers' understanding was that Congress would have the final say over questions of balloting, location of polling places, districting, and other of "the numerous requirements as to procedure and safeguards which experience shows are necessary in order to enforce the fundamental right involved." *Smiley*, 285 U.S. at 366. That includes voter registration, as this Court has held. *See Inter Tribal Council*, 570 U.S. at 9; U.S. Br. 5 ("The power to regulate the 'Manner' of an election includes the power to regulate the registration of voters."); *see also* Rob Natelson, *The Original Scope of the Congressional Power to Regulate Elections*, 13 U. Pa. J. Const. L. 1, 12 (2010) (noting that in the Founding-era "English, Scottish, and Irish sources used the phrase 'manner of election'" to include "provisions for registration lists" and that "Americans ascribed the same general content to the phrase").

Opponents of the Elections Clause, too, understood that the Clause gave Congress sweeping power to regulate the time, place, and manner of federal elections, explaining that their "great difficulty" was that "the power given by the 4th section was unlimited," 2 *Elliot's Debates*, *supra*, at 25, and "admits of the most dangerous latitude," 3 *id.* at 175; 4 *id.* at 55 ("[T]hey are words of very great extent. This clause provides that a Congress may at any time alter such regulations, except as to the places of choosing senators.").

3. In the ensuing debates over ratification of the Constitution, the Elections Clause was vigorously debated, but both sides understood the breadth of power the Clause gave Congress over elections.

Anti-Federalists argued that the Elections Clause "strike[s] at the state legislatures, and . . . take[s] away that power of [elections] which reason dictates they ought to have among themselves." 4 *id.* at 51. In their view, "Congress ought not to have the power to control elections." 2 *id.* at 23.

Pressed to persuade their fellow Americans that the Elections Clause should be included in the Constitution, the Constitution's supporters justified "Congress's power over elections as a way of correcting unjust state voting systems and defending the people's right to equal voting power." Pauline Maier, *Ratification: The People Debate the Constitution, 1787-1788*, at 210 (2010). In other words, they did not disagree that the Clause gave great power to Congress; they simply argued that it was appropriate for the Constitution to do so.

For example, in the Virginia ratifying convention, James Madison stressed that Congress ought to have a role in securing equal voting rights. "Some states might regulate the elections on the principles of equality, and others might regulate them otherwise. This diversity would be obviously unjust. . . . Should the people of any state by any means be deprived of the right of suffrage, it was judged proper that it should be remedied by the general government." 3 *Elliot's Debates*, *supra*, at 367. Others worried that states would simply not hold elections for federal office, preventing the popular vote demanded by the Constitution. *Id.* at 10 ("If the state legislature . . . would not appoint a place for holding elections, then there might be no election . . . ."). These abuses "could only be guarded

against by giving this discretionary power, to the Congress, of altering the time, place, and manner of holding the elections." *Id.*

Likewise, in the Massachusetts Convention, Theophilus Parsons argued that the Elections Clause was necessary to "secur[e] to the people their equal rights of election," 2 *id.* at 26, observing that the grant of power to Congress provided a check against partisan manipulation of the electoral process. "[W]hen faction and party spirit run high," Parsons worried, states might "introduce such regulations as would render the rights of the people insecure and of little value. They might make an unequal and partial division of the states into districts for the election of representatives, or they might even disqualify one third of the electors." *Id.* at 27. "Without these powers in Congress, the people can have no remedy; but the 4th section provides a remedy, a controlling power in a legislature . . . who will hear impartially, and preserve and restore to the people their equal and sacred rights of election." *Id.*; *see id.* at 25-26 (Mr. Cabot) (arguing that the Elections Clause was "as highly prized as any [section] in the Constitution" because "the *right* of electing persons to represent the *people* in the federal government" is "an important and sacred right" (quotation marks omitted)); *id.* at 51 (arguing that, because of inequality of representation in South Carolina, "representatives . . . from that state, will not be chosen *by the people*, but will be the representatives of a faction of that state. If the general government cannot control in this case, how are the people secure?").[3]

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[3] Similar arguments in favor of federal power over federal elections were made in other state ratifying conventions as well. *See* 2 *Elliot's Debates*, *supra*, at 441 (arguing that, in the event a state legislature should order a state-wide election to be held in one city, "ought not the general government to have the power to alter

Madison and others also stressed the importance of establishing uniform ground rules in federal elections. At the Virginia ratifying convention, Madison argued that "the regulation of time, place, and manner, of electing the representatives, should be uniform throughout the continent." 3 *id.* at 367. In other states, too, the Constitution's supporters argued that such regulations "ought to be uniform, and the elections held on the same day throughout the United States, to prevent corruption or undue influence." 2 *id.* at 535; *see* 4 *id.* at 60 ("Uniformity in matters of election is also of the greatest consequence. They ought all to be judged by the same law and the same principles, and not to be different in one state from what they are in another. . . . It will be more convenient to have the manner uniform in all the states."); Letter from Timothy Pickering to Charles Tillinghast (Dec. 24, 1787), *supra*, at 357 ("[I]f any particular State government should be refractory, and . . . either make no such regulations or improper ones, then the Congress will have power to make such regulations as will ensure to the *people* their rights of election and establish a *uniformity in the mode of constituting the members of the Senate and House of Representatives*.").

Thus, throughout the ratifying debates, supporters of the Constitution made the case that a congressional veto over state regulation of the time, place, and

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such improper election of one of its own constituent parts?"); 4 *id.* at 53-54 (recognizing the need for an "ultimate power in Congress" in case "a few powerful states should combine, and make regulations concerning elections which might deprive many of the electors of a fair exercise of their rights"); *id.* at 303 ("it is absolutely necessary that Congress should have this superintending power, lest, by the intrigues of a ruling faction in a state, the members of the House of Representatives should not really represent the people of the state").

manner of holding elections was necessary because state legislatures could not be trusted to "secur[e] to the people their equal rights of election." 2 *Elliot's Debates*, *supra*, at 26. These arguments carried the day, establishing the constitutional framework for federal regulation of federal elections that still governs more than two centuries later.

4. The First Congress reaffirmed the need for broad federal veto power over state regulation of the time, place, and manner of federal elections. The members of the First Congress, many of whom had played a critical role in the framing of the Constitution, rejected a proposed amendment to the Elections Clause, which would have permitted Congress to regulate the time, place, and manner of federal elections only when a "State shall refuse or neglect, or be unable . . . to make such election." 1 Annals of Cong. 797 (1789) (Joseph Gales ed., 1834).

In the debates over the proposal to eliminate Congress's power to "alter" state regulation, Madison argued that "the constitution stands very well as it is" and that the proposed amendment would "tend to destroy the principles and the efficacy of the constitution." *Id.* at 798, 800. The Elections Clause was "one of the most justifiable of all the powers of Congress; it was essential to a body representing the whole community, that they should have power to regulate their own elections, in order to secure a representation from every part, and prevent any improper regulations." *Id.* at 797.

5. And in the years since, this Court has repeatedly confirmed what the Constitution's text and history make clear: the Constitution provides for broad congressional power to regulate the time, place, and manner of federal elections in order to "override state election rules," and "act as a safeguard against

manipulation of electoral rules by politicians and factions in the States to entrench themselves or place their interests over those of the electorate." *Ariz. State Legislature*, 576 U.S. at 814-15; *Inter Tribal Council*, 570 U.S. at 8-9; *U.S. Term Limits*, 514 U.S. at 808-09; *see also Rucho v. Common Cause*, 588 U.S. 684, 697-98 (2019).

And for more than a century, this Court has recognized the Clause's preemptive force, holding that "when Congress legislates with respect to the 'Times, Places and Manner' of holding congressional elections, it *necessarily* displaces some element of a pre-existing legal regime erected by the States." *Inter Tribal Council*, 570 U.S. at 14; *see also Siebold*, 100 U.S. at 384 ("[T]he power of Congress over the subject [of federal elections] is paramount. . . . When exercised, the action of Congress, so far as it extends and conflicts with the regulations of the State, necessarily supersedes them. This is implied in the power to 'make or *alter*.'"); *Smiley*, 285 U.S. at 366-67 ("Congress may supplement . . . state regulations or may substitute its own. It may impose additional penalties . . . or provide independent sanctions. It 'has a general supervisory power over the whole subject.'" (quoting *Siebold*, 100 U.S. at 387)).

In sum, "the power the Elections Clause confers is none other than the power to pre-empt." *Inter Tribal Council*, 570 U.S. at 14; *see also* Franita Tolson, *Election Law "Federalism" and the Limits of the Antidiscrimination Framework*, 59 Wm. & Mary L. Rev. 2211, 2217 (2018) ("The breadth of congressional power under the Clause lies in Congress's ability to veto state law at will, a feature that is at odds with most of the prevailing views of federalism.").

II. The National Voter Registration Act's Guarantees Designed to Increase Voter Registration in Federal Elections Fall Squarely Within Congress's Express Power to Alter State Regulation of the Time, Place, and Manner of Federal Elections.

In enacting the NVRA, Congress used its express constitutional authority to "alter" state voter registration rules applicable to federal elections, preempting laws, like Arizona's, that make it more difficult for eligible citizens to register to vote in federal elections. Indeed, during the debates over its passage, the NVRA's supporters considered and rejected the argument that states should be able to demand that eligible voters provide documentary proof of citizenship in order to register to vote in federal elections. Refusing to permit states to impose burdensome obstacles to registering to vote in federal elections, Congress required that registration forms "include a statement that . . . specifies each eligibility requirement (including citizenship)," "contains an attestation that the applicant meets each such requirement," and "requires the signature of the applicant, under penalty of perjury," 52 U.S.C. § 20508(b)(2), while also prohibiting "any requirement for notarization or other formal authentication," *id.* § 20508(b)(3). As this statutory text reflects, Congress concluded that state documentary proof of citizenship requirements went beyond what is "necessary to enable the appropriate State election official to assess the eligibility of the applicant," *id.* § 20508(b)(1).

Members of Congress repeatedly emphasized the importance of the NVRA's reforms to protecting the right to vote of all eligible citizens. *See, e.g.*, 139 Cong. Rec. 2427 (1993) (Rep. Rush) ("The right to vote is a fundamental right in America. It is the duty of the

Federal Government to protect this right. The [NVRA] provides simple and effective means to ensure this right for all Americans."); *id.* at 2431 (Rep. Hilliard) (the NVRA "will extend democracy to everyone"); *id.* at 5223 (Sen. Kennedy) ("The right to vote is the cornerstone of our democracy. Without it, all our other rights are in danger."). They also underscored that "[d]eclining voter participation jeopardizes the very roots of our democratic system." *Id.* at 5227 (Sen. Rockefeller). As Senator Rockefeller explained, "[c]onfusing registration forms, lack of convenient access to registration offices, and demanding registration requirements have led to the ineffectiveness of our current registration system." *Id.* Another congressman put it succinctly: "If we care about a healthy, participatory democracy in its fullest sense, it's imperative that we facilitate voter registration." *Id.* at 2435 (Rep. Becerra); *see also id.* at 9222 (Rep. Kleczka) ("Congress has the responsibility to make the registration process as easy as possible.").

Not all members of Congress, however, supported the NVRA's measures to increase voter registration. Some voiced concerns that easing voter registration procedures would open the door to noncitizens voting in federal elections. *See, e.g.*, *id.* at 2450 (Rep. Canaday) (asserting that "millions of illegal aliens and other noncitizens will flood into the American electoral system"); *id.* at 2443 (Rep. Bachus) (arguing that the NVRA "will result in the registration of . . . illegal aliens"). The Act's champions, however, believed that the bill's measures protecting against noncitizen registration were sufficient and that worries about noncitizen voting were exaggerated. *See id.* at 5224 (Sen. Kennedy) ("The contention that the bill will encourage voter fraud or voting by noncitizens is simply wrong. The bill requires everyone who applies to register to vote to attest that they are U.S. citizens and are

eligible to vote."); *id.* at 9224 (Rep. Swift) ("The fact is that this legislation contains for the first time in the history of the U.S. [f]ederal law that will provide criminal penalties for fraudulently registering to vote.").

Questions about permissible citizenship verification measures came to a head in the Senate. After the NVRA passed the House, the Senate passed a version of the bill that included a "rule of construction" providing that "[n]othing in this Act shall be construed to preclude a State from requiring presentation of documentary evidence of the citizenship of an applicant for voter registration." *Id.* at 5098; *see id.* at 5099 (amendment agreed to). Some Senators expressed concerns about this provision and pressed the Conference Committee to address it. *See id.* at 5232 (Sen. Simon) ("This bill safeguards against the potential problem and the provision permitting States to require documentary evidence of citizenship at registration time is at best unnecessary and at worst may be implemented in a discriminatory fashion that may violate the Voting Rights Act. Accordingly, it is my hope the conferees look at this provision closely and seriously reconsider it.").

The House and Senate versions of the bills were subsequently conferenced, and the Conference Committee deleted this amendment. As the Committee explained, the amendment was "not necessary or consistent with the purposes of" the NVRA and "could be interpreted by States to permit registration requirements that could effectively eliminate, or seriously interfere with, the mail registration program of the Act." H.R. Rep. No. 103-66, at 23 (Conf. Rep). In its final form, the NVRA demanded states use registration forms that required voters to attest to their eligibility under penalty of perjury, but did not permit more

burdensome demands for proof such as those contained in the Arizona law at issue here.

Petitioner and its *amici*, however, contend that the decision below, which reads the NVRA in a manner consistent with its text and history, "runs headlong into Arizona's power over voter qualifications." Pet'r Br. 32. This is wrong.

First, the NVRA does not in any manner regulate voter qualifications established by the states. It "regulate[s] *how* federal elections are held, . . . not who may vote in them." *Inter Tribal Council*, 570 U.S. at 16. The NVRA leaves the setting of voter qualifications to the states and operates on the assumption that citizenship—the qualification at issue here—is a necessary qualification for suffrage. *See* 52 U.S.C. § 20508(b)(2). And its statutory scheme leaves states with ample tools to enforce their chosen voter qualifications. *See Inter Tribal Council*, 570 U.S. at 15. To be sure, the NVRA may have an impact on how states enforce their voter qualifications, but that is a natural consequence of the fact that the Constitution gives Congress—not the states, and not this Court—the final say over the mechanics of federal elections, including voter registration. *See Watson*, 146 S. Ct. at 2181.

Second, the Constitution does not contain any free-standing grant of power to the states to enforce voter qualifications in elections for federal office. Of course, the Constitution's Voter Qualification Clause "t[ies] the federal franchise to the state franchise," *Inter Tribal Council*, 570 U.S. at 17, but it does not grant any additional powers to states to regulate federal elections. Whatever power states enjoy to enforce their chosen voter qualifications—whether through voter registration rules or otherwise—comes from the Elections Clause and is subject to Congress's paramount, supervisory "make or alter" power. Nothing in

the Constitution leaves regulation of federal elections to "the unfettered discretion of state legislatures." *Id.*

Petitioner's constitutional attack on the NVRA thus turns a blind eye to the text and history of the Elections Clause. As discussed above, the "substantive scope" of that text is "broad" and plainly includes "regulations relating to 'registration.'" *Id.* at 8-9 (quoting *Smiley*, 285 U.S. at 366). And its history reflects the Framers' judgment that "it was essential to a body representing the whole community, that they should have the power to regulate their own elections, in order to secure a representation from every part, and prevent any improper regulations." 1 Annals of Cong., *supra*, at 797. That is why the Framers rejected proposed amendments that would have stripped from the Elections Clause the power to "alter" state time, place, and manner regulation of federal elections. Petitioner and its *amici* simply cannot come to grips with the veto power the Constitution confers on Congress.

For good reason, this Court has long held that the "power of Congress . . . 'is paramount, and may be exercised at any time, and to any extent which it deems expedient; and so far as it is exercised, and no farther, the regulations effected supersede those of the State which are inconsistent therewith.'" *Inter Tribal Council*, 570 U.S. at 9 (quoting *Siebold*, 100 U.S. at 392). Far from being limited in purpose or narrow in scope, the Elections Clause gives Congress a sweeping power to "secur[e] to the people their equal rights of election," 2 *Elliot's Debates*, *supra*, at 26, in choosing federal representatives. Congress sought to protect this right in the NVRA, requiring states to utilize simple, easily understandable voter registration forms to increase the number of eligible citizens registered to vote and preempting state measures, like the Arizona law at

issue here, that imposed additional burdens on the electorate.

In sum, the arguments offered by Petitioner and its *amici* to make an end-run around the NVRA's guarantees are manifestly inconsistent with both the text and history of the statute and the Elections Clause. The Elections Clause gives Congress the last word on the mechanics of federal elections and thus "requires that Arizona's rule give way." *Inter Tribal Council*, 570 U.S. at 15.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

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