

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 *AMICUS CURIAE* FORMER
MARICOPA COUNTY RECORDER STEPHEN
RICHER IN SUPPORT OF RESPONDENTS
AND DISMISSAL OF THE WRIT AS
IMPROVIDENTLY GRANTED**

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	iii
INTEREST OF <i>AMICUS CURIAE</i>	1
SUMMARY OF ARGUMENT	1
ARGUMENT	3
I. This case is an unsuitable vehicle for resolving the important question of when Arizona, and by implication every state, may require documentary proof of citizenship on state-developed mail voter registration forms under the NVRA.....	3
A. The question of whether, and under what circumstances, the NVRA permits documentary proof of citizenship on State Forms remains important and warrants consideration in a case that squarely presents it	3
B. Resolving the State Form DPOC question may require courts to determine whether the NVRA’s necessity inquiry is a pure question of law or is fact-bound.....	5
C. The unusual procedural history of this case prevented the lower courts from directly resolving the potentially fact-bound question of whether DPOC is necessary in Arizona’s actual registration system	9

D.	Better vehicles for deciding the State Form DPOC question are likely to arise and may already be percolating in the lower courts	14
II.	The Court should dismiss the writ as improvidently granted rather than establish a nationwide rule concerning State Form DPOC requirements on this record	16
A.	The Court has dismissed writs as improvidently granted when important questions arise in cases that cannot adequately resolve them.....	16
B.	The instant matter bears the hallmarks of a case in which the writ of certiorari should be dismissed as improvidently granted.....	17
C.	The national importance of the State Form DPOC question further justifies permitting additional lower court consideration of this issue	20
III.	Alternatively, if the Court determines that applying the NVRA’s necessity inquiry calls for additional factfinding, it should vacate and remand for further proceedings	21
	CONCLUSION	24

TABLE OF AUTHORITIES

Cases	Page
<i>Arizona v. City and County of San Francisco</i> , 596 U.S. 763 (2022).....	16, 17
<i>Arizona v. Inter Tribal Council of Ariz., Inc.</i> , 570 U.S. 1 (2013)	1–2, 3, 4, 9
<i>Belcher v. Stengel</i> , 429 U.S. 118 (1976).....	17
<i>CRST Van Expedited, Inc. v. E.E.O.C.</i> , 578 U.S. 419 (2016).....	22
<i>Cutter v. Wilkinson</i> , 544 U.S. 709 (2005).....	21
<i>Democratic Nat’l Comm. v. Hobbs</i> , No. 2:22-cv-01369 (D. Ariz. Aug. 24, 2022)	11
<i>Fish v. Kobach (Fish I)</i> , 840 F.3d 710 (10th Cir. 2016)	7, 8
<i>Fish v. Schwab</i> , 957 F.3d 1105 (10th Cir. 2020)	7, 8
<i>Hodges v. United States</i> , 368 U.S. 139 (1961).....	17
<i>Int’l Primate Prot. League v.</i> <i>Adm’rs of Tulane Educ. Fund</i> , 500 U.S. 72 (1991)	22
<i>Johnson v. Massachusetts</i> , 390 U.S. 511 (1968).....	17, 19
<i>Living United for Change in Ariz. v. Hobbs</i> , No. 2:22-cv-00519 (D. Ariz. Mar. 31, 2022)	11
<i>Mi Familia Vota v. Fontes</i> , No. 2:22-cv-00509 (D. Ariz. May 17, 2022).....	11

<i>Mi Familia Vota v. Fontes</i> , 129 F.4th 691 (9th Cir. 2025)	5, 6, 10, 13, 23
<i>Mi Familia Vota v. Fontes</i> , 691 F. Supp. 3d 1077 (D. Ariz. 2023)	11, 12
<i>Mi Familia Vota v. Fontes</i> , 719 F. Supp. 3d 929 (D. Ariz. 2024)	12, 22
<i>Ross v. Day</i> , 232 U.S. 110 (1914)	6
<i>The Monrosa v. Carbon Black Export, Inc.</i> , 359 U.S. 180 (1959)	9, 16

Statutes and Rules

52 U.S.C. § 20504(c)(2)(B)	8
52 U.S.C. § 20505(a)(2)	4, 8
52 U.S.C. § 20508(b)	4, 15
52 U.S.C. § 20508(b)(1)	4, 5, 8, 15, 17, 18, 20, 24
52 U.S.C. § 20508(b)(2)	4
Act of Apr. 1, 2026, Ch. 2026-26, § 4, 2026 Fla. Laws ____ (amending Fla. Stat. § 97.053 (2025))	15
Ariz. Rev. Stat. Ann. § 16-121.01(A)	10
Ariz. Rev. Stat. Ann. § 16-121.01(C)	10
Sup. Ct. R. 37.6	1

Other Authorities

Am. Compl., <i>Fla. State Conf. of Branches & Youth Units of the NAACP v. Byrd</i> , No. 1:26-cv-22257-JB (S.D. Fla. filed July 22, 2026)	15
Br. for Pet'r, <i>Republican Nat'l Comm. v. Mi Familia Vota</i> , No. 25-1017 (filed Aug. 28, 2026)	18
Br. for Resp'ts AZ AANHPI for Equity, et al., <i>Mi Familia Vota</i> , No. 25-1017 (filed Oct. 13, 2026)	18
Br. for Resp'ts Democratic Nat'l Comm. & Ariz. Democratic Party, <i>Mi Familia Vota</i> , No. 25-1017 (filed Oct. 13, 2026)	18
Br. for Resp'ts Mi Familia Vota and Voto Latino, <i>Mi Familia Vota</i> , No. 25-1017 (filed Oct. 13, 2026)	18
Br. for Resp'ts State of Ariz. & Its Att'y Gen. in Partial Support of Pet'r, <i>Mi Familia Vota</i> , No. 25-1017 (filed Aug. 28, 2026)	18–19
Br. for Resp'ts Warren Petersen, President of the Ariz. Senate et al., <i>Mi Familia Vota</i> , No. 25-1017 (filed Aug. 28, 2026)	18
Br. for the U.S. as Resp'ts Supporting Pet'r, <i>Mi Familia Vota</i> , No. 25-1017 (filed Aug. 28, 2026)	18
Br. of Amici Curiae Professor Michael T. Morley & Florida State University Election Law Center in Support of Neither Party, <i>Republican Nat'l Comm. v. Mi Familia Vota</i> , No. 25-1017 (filed Sept. 4, 2026)	6, 23

Compl., <i>Black Voters Matter Fund v. Byrd</i> , No. 1:26-cv-26047 (S.D. Fla. filed Sept. 1, 2026).....	15
Compl., <i>League of United Latin Am. Citizens Ariz. v. Reagan</i> , No. 2:17-cv-04102 (D. Ariz. Nov. 7, 2017)	10
LUCHA Pls.’ Resp. to Defs.’ Mot. for Summ. J. & Cross-Mot. for Partial Summ. J., <i>Mi Familia Vota v. Fontes</i> , No. 2:22-cv-00509 (D. Ariz. June 5, 2023).....	11
Maricopa Cnty. Att’y’s Off., <i>September 28th Press Conference Investigation on Noncitizen Voters</i> , (YouTube, Sept. 28, 2026), https://www.youtube.com/watch?v=N8F0ys10H2g	23–24
Stephen M. Shapiro et al., <i>Supreme Court Practice</i> ch. 5, § 15 (11th ed. 2019).....	17

INTEREST OF *AMICUS CURIAE*¹

Amicus curiae Stephen Richer was the elected Maricopa County Recorder from 2021 to 2025. In this role, he was responsible for voter registration, early voting administration, and public records in Maricopa County, Arizona. He is currently a legal fellow with the Cato Institute’s Robert A. Levy Center for Constitutional Studies and a senior fellow at Harvard Kennedy School’s Ash Center for Democratic Governance and Innovation. Amicus has an interest in the proper application of federal law to state and local election administration.

SUMMARY OF ARGUMENT

The first Question Presented asks whether Arizona may require documentary proof of citizenship (“DPOC”) from applicants using its state-developed mail voter registration form, or whether such a requirement is prohibited by either a federal consent decree or the National Voter Registration Act (“NVRA”). This case is an unsuitable vehicle for resolving the important NVRA issue left open by this Court in *Arizona v. Inter Tribal Council of Arizona*,

¹ Pursuant to Supreme Court Rule 37.6, counsel for *amicus* certify that no party’s counsel authored this brief in whole or in part; no party or party’s counsel contributed money that was intended to fund the preparation or submission of the brief; and no person other than *amicus*, their members, or their counsel contributed money intended to fund the preparation or submission of the brief.

Inc. (“ITCA”), 570 U.S. 1 (2013): whether, and under what circumstances, the NVRA permits States to require DPOC from applicants using state-developed mail registration forms to register for federal elections.

Resolution of that question may depend on the application of the NVRA’s necessity requirement to the particular circumstances of a State’s voter registration system. Yet the unusual procedural history of this case prevented the lower courts from fully examining that potentially fact-bound inquiry. Deciding the question on this record therefore risks establishing a nationwide rule governing state voter registration requirements without the factual and legal development necessary to resolve an issue of such consequence. *Amicus* takes no position on the consent-decree portion of the first Question Presented, nor the second Question Presented.

Accordingly, *amicus* urges the Court to dismiss petitioner’s writ as improvidently granted insofar as it concerns the NVRA portion of the first Question Presented, allowing this important issue to develop further in the lower courts. Alternatively, if the Court wishes to reach the NVRA preemption question, it should vacate and remand for further factual and legal development.

ARGUMENT

I. This case is an unsuitable vehicle for resolving the important question of when Arizona, and by implication every state, may require documentary proof of citizenship on state-developed mail voter registration forms under the NVRA.

A. The question of whether, and under what circumstances, the NVRA permits documentary proof of citizenship on State Forms remains important and warrants consideration in a case that squarely presents it.

Although this Court has addressed documentary proof of citizenship requirements imposed on applicants using the National Mail Voter Registration Form (“Federal Form”), it has not resolved the corresponding question for applicants using a State’s own mail voter registration form (“State Form”) to register for federal elections. In *ITCA*, this Court held that, notwithstanding the state DPOC law, Arizona must still permit voters who submit the Federal Form without DPOC to vote in federal elections. *ITCA*, 570 U.S. at 12–13, 20. At the same time, the Court recognized that States possess authority to determine voter qualifications for federal elections. *Id.* at 17. The Court also recognized that the

NVRA permits states to develop their own voter registration forms to register voters in state and federal elections, which need not be identical to the Federal Form, though the Federal Form “provides a backstop.” *Id.* at 12.

ITCA did not decide, however, when a State may require additional documentary proof of citizenship as a condition of registering to vote in federal elections through its own state mail registration forms. Section 6 of the National Voter Registration Act permits a State to “develop and use a mail voter registration form” to register voters for federal elections, so long as the State Form “meets all of the criteria stated in section 20508(b).” 52 U.S.C. § 20505(a)(2). Those criteria include Section 9’s direction that a form “may require *only* such identifying information” and “other 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) (emphasis added) (“the NVRA necessity inquiry”).² It separately requires an attestation that the applicant meets each eligibility requirement, including citizenship, signed under penalty of perjury. *Id.* § 20508(b)(2). The question left open by *ITCA*, then, is when DPOC, in addition to that sworn attestation, is

² This brief refers to the NVRA’s necessity inquiry using various formulations, including the “Section 9 necessity inquiry” and the necessity inquiry under 52 U.S.C. § 20508(b)(1), all of which refer to the same statutory inquiry.

“necessary” within the meaning of § 20508(b)(1) (“the State Form DPOC question”).

B. Resolving the State Form DPOC question may require courts to determine whether the NVRA’s necessity inquiry is a pure question of law or is fact-bound.

Resolving whether the NVRA permits States to require documentary proof of citizenship on state-developed mail voter registration forms may require the Court to determine whether the necessity inquiry is a pure question of law or depends at least in part on factual questions concerning the State’s need for documentary proof.

The proper interpretation of the NVRA’s necessity requirement remains contested. Having already concluded that the LULAC Consent Decree barred Arizona election officials from enforcing H.B. 2492’s DPOC requirement for State Form applicants, the Ninth Circuit addressed the NVRA question only as an alternative ground for its decision. *Mi Familia Vota v. Fontes*, 129 F.4th 691, 717–20 (9th Cir. 2025). In a brief analysis, the court interpreted “necessary” under 52 U.S.C. § 20508(b)(1) to mean “essential” and concluded that Arizona could not require DPOC from State Form applicants registering to vote only in federal elections because the citizenship checkbox already provided proof of citizenship through an

attestation. *Id.* at 719–20. In contrast, Professor Michael Morley argues that “necessary” may mean “convenient” or “useful,” rather than strictly “essential.” Br. of Amici Curiae Professor Michael T. Morley & Florida State University Election Law Center in Support of Neither Party at 23–24, *Republican Nat’l Comm. v. Mi Familia Vota*, No. 25-1017 (filed Sept. 4, 2026) [hereinafter Morley Amicus Br.].

However, even assuming *arguendo* the Ninth Circuit’s interpretation of “necessary” as “essential,” the legal meaning of that term is distinct from the fact-bound question of whether DPOC is “essential” under the circumstances of a particular State’s registration system. Determining whether DPOC is necessary to enable state election officials to assess eligibility and administer mail voter registration may depend on evidence concerning the State’s actual need for additional documentary proof. Such evidence could include the State’s existing citizenship-verification capabilities, the availability and reliability of alternative sources of citizenship information, and the practical consequences of relying on an attestation alone. The State may also need to prove that there is a particular factual reason in the state to be concerned about noncitizen voting. Whether DPOC is necessary under the particular circumstances of Arizona’s mail registration system may therefore depend on inferences drawn from competing evidence. *See Ross v. Day*, 232 U.S. 110, 116 (1914) (noting the meaning

of a term in a statute is “a question of law,” but “the drawing of correct inferences from the evidence” regarding the statutory term is “a question of fact”).

The Tenth Circuit’s interpretation of an analogous NVRA provision illustrates why the necessity inquiry may involve both legal and factual questions. In *Fish v. Kobach* (*Fish I*), the court considered whether Kansas could require DPOC from applicants registering through the NVRA’s motor voter process. 840 F.3d 710, 715–16 (10th Cir. 2016). The court held that a citizenship attestation under penalty of perjury is presumptively sufficient under the NVRA’s motor voter provisions, but that a State may rebut that presumption through an adequate factual showing. *Id.* at 737–39. To “rebut the presumptive sufficiency,” *id.* at 738, the court required the State to demonstrate that “a substantial number of noncitizens have successfully registered to vote under the attestation requirement,” *id.* at 739. The Tenth Circuit thus recognized that whether an attestation adequately enables election officials to assess citizenship eligibility may depend on evidence of an actual problem with noncitizen registration in the State, rather than speculation about the possibility of such registration.

In *Fish v. Schwab*, the Tenth Circuit reaffirmed the distinction between interpreting the statutory requirement and determining whether it is satisfied in practice made by *Fish I*. 957 F.3d 1105, 1141–44

(10th Cir. 2020). As that court explained, “whether the attestation requirement actually satisfies the minimum-information principle in a given case *turns on the factual question* of whether the attestation requirement is sufficient for a state to carry out these duties.” *Id.* at 1114 (quoting *Fish I*, 840 F.3d at 738) (emphasis added).

Although the *Fish* decisions concerned Section 5 of the NVRA’s motor voter requirements, 52 U.S.C. § 20504(c)(2)(B), rather than the State Form provisions governed by Sections 6 and 9, *id.* §§ 20505(a)(2), 20508(b)(1), the decisions illustrate the distinction between interpreting a statutory necessity requirement and determining whether that requirement is satisfied under a particular State’s circumstances. Whether Section 9 requires precisely the evidentiary showing articulated in *Fish I* remains an open question. But the *Fish* decisions demonstrate why a court considering whether DPOC is necessary may need to examine evidence of noncitizen registration notwithstanding existing attestations, alongside the effectiveness of alternative verification procedures, before determining whether additional documentation is justified.

Ultimately, this Court should not use this case to resolve the competing interpretations of “necessary,” nor determine whether the NVRA’s necessity inquiry is purely legal or depends in part on factual questions. Whether, and under what

circumstances, the NVRA permits States to require DPOC on State Forms is an important question that warrants eventual resolution. But the importance of that question counsels in favor of addressing it in a case that squarely presents the issue and permits consideration of the factual circumstances that may bear on its application. *See The Monrosa v. Carbon Black Export, Inc.*, 359 U.S. 180, 184 (1959) (stating that resolution of an important legal question could “await a day when the issue is posed less abstractly.”). As explained in the next section, the unusual procedural history of this litigation and the absence of findings directed toward the State Form necessity inquiry make this case an unsuitable vehicle for establishing a nationwide rule.

C. The unusual procedural history of this case prevented the lower courts from directly resolving the potentially fact-bound question of whether DPOC is necessary in Arizona’s actual registration system.

The State Form DPOC dispute arises against the backdrop of a preexisting consent decree that independently governs Arizona’s voter registration procedures. Arizona has long required voters to provide DPOC to register to vote in state and local elections. *See ITCA*, 570 U.S. at 6. Following this Court’s decision in *ITCA*, Arizona maintained a two-

track registration system under which applicants submitting the Federal Form without DPOC could register to vote in federal elections, while applicants submitting the State Form without DPOC were rejected. *See Mi Familia Vota*, 129 F.4th at 703.

In 2017, the League of United Latin American Citizens Arizona (“LULAC”) and Arizona Students’ Association (“ASA”) challenged this two-track regime as unconstitutional. *See* Compl. ¶¶ 78–88, *League of United Latin Am. Citizens Ariz. v. Reagan*, No. 2:17-cv-04102 (D. Ariz. Nov. 7, 2017), ECF No. 1. The parties agreed to the entry of a consent decree (the “LULAC Consent Decree”), Pet. App. 474a, which required, among other things, that the Secretary “provide guidance to the County Recorders to accept State Form applications submitted without DPOC,” Pet. App. 484a. The Secretary of State of Arizona (the “Secretary”) also agreed “to treat State Form applications exactly as they treat Federal Form applications.” Pet. App. 476a. In 2022, the Arizona legislature passed House Bill 2492, which, as relevant here, required registrars to reject State Form applications that lacked DPOC, even if the applicant would be federally eligible using the Federal Form. Ariz. Rev. Stat. Ann. § 16-121.01(A), (C); *see also Mi Familia Vota*, 129 F.4th at 704–05. H.B. 2492 thus directs the Secretary to violate the LULAC Consent Decree. Multiple plaintiff groups filed suit. Specifically, the LULAC, ASA, and Living United for Change in Arizona (collectively, the LUCHA Plaintiffs)

challenged the law in *Living United for Change in Ariz. v. Hobbs*, No. 2:22-cv-00519 (D. Ariz. Mar. 31, 2022). That action was consolidated with *Mi Familia Vota v. Fontes*, No. 2:22-cv-00509 (D. Ariz. May 17, 2022), ECF No. 39. These cases named the Arizona Secretary of State and Attorney General as defendants. The Republican National Committee (“RNC”) subsequently intervened in another challenge that was consolidated into the same proceedings. *See Democratic Nat’l Comm. v. Hobbs*, No. 2:22-cv-01369 (D. Ariz. Aug. 24, 2022), ECF No. 18; *Mi Familia Vota v. Fontes*, No. 2:22-cv-00509 (D. Ariz. Aug. 24, 2022), ECF No. 91.

The consolidated cases proceeded to motions for partial summary judgment as part of the initial proceedings. The RNC moved for partial summary judgment on the NVRA claims; however, the LUCHA Plaintiffs opposed, including on the ground that the NVRA claims related to DPOC required further factual development. *See* LUCHA Pls.’ Resp. to Defs.’ Mot. for Summ. J. & Cross-Mot. for Partial Summ. J. at 1 n.2, 2, 13–14, *Mi Familia Vota v. Fontes*, No. 2:22-cv-00509 (D. Ariz. June 5, 2023), ECF No. 394. The district court nevertheless granted summary judgment for plaintiffs on the NVRA claims related to State Form DPOC on a ground no party had briefed: that the claim “is resolved by the existing LULAC Consent Decree” because the decree “reflects that Arizona agreed to refrain from precisely the conduct that the RNC would have Arizona participate in.” *Mi Familia*

Vota v. Fontes, 691 F. Supp. 3d 1077, 1096 (D. Ariz. 2023). The court held that the decree “precludes Arizona from enforcing H.B. 2492’s mandate to reject any State Form without accompanying DPOC,” entered declaratory judgment to that effect, and issued a permanent injunction. *Id.* at 1103–04. Only in a footnote did the court reach the theory that the parties had actually briefed, holding in the alternative that H.B. 2492’s State Form DPOC requirement also violated Section 6 of the NVRA. *Id.* at 1096 n.13. Although the district court later more fully considered the NVRA necessity inquiry following a bench trial, it addressed that inquiry’s application only to the requirement that State Form users submit proof-of-residency, not State Form DPOC requirements. See *Mi Familia Vota v. Fontes*, 719 F. Supp. 3d 929, 950 n.10, 996 (D. Ariz. 2024).

The district court thus resolved the State Form DPOC challenge without separately determining, on a record developed for that purpose, whether DPOC was *necessary*, under Section 9 of the NVRA, to assess eligibility under Arizona’s actual registration procedures. Its disposition rested principally on the consent decree, which provided an independent ground for prohibiting rejection of otherwise eligible State Form applicants without DPOC. Although the court briefly addressed the NVRA in the alternative, it did not make findings specifically directed toward whether Arizona’s existing citizenship attestations, verification systems, and alternative sources of

citizenship information were sufficient to assess eligibility without additional documentary proof. Nor did it make findings directed toward whether noncitizen registration notwithstanding those safeguards established a particularized need for DPOC. The potentially fact-bound application of Section 9's necessity requirement therefore remained unresolved in the district court.

The Ninth Circuit likewise treated the NVRA necessity inquiry as a purely legal question, without separately examining whether DPOC was necessary under the circumstances of Arizona's voter registration system. The court affirmed the district court's conclusion that the LULAC Consent Decree barred Arizona election officials from enforcing H.B. 2492's requirement that State Form applicants provide DPOC. *Mi Familia Vota*, 129 F.4th at 717–19. It then held, in the alternative, that the NVRA, through the Section 9 necessity inquiry, as incorporated by reference in Section 6, independently prohibited Arizona from requiring DPOC from State Form applicants registering to vote only in federal elections. *Id.* at 719–20. As discussed above, the court treated the issue as a purely legal question, concluding that “[o]ur inquiry ends here because the text of the NVRA is unambiguous.” *Id.* It therefore did not separately consider whether evidence concerning Arizona's existing registration procedures, the effectiveness of citizenship attestations, or the State's ability to verify citizenship through other means might bear on whether DPOC was necessary.

Consequently, neither lower court resolved, through findings directed toward the NVRA necessity inquiry as applied to State Form DPOC requirements, whether additional documentary proof was necessary under the circumstances presented. Whatever the correct ultimate interpretation of the NVRA, the absence of lower-court consideration of these factual questions makes this case an unsuitable vehicle for establishing a nationwide rule governing DPOC requirements on state-developed mail voter registration forms.

D. Better vehicles for deciding the State Form DPOC question are likely to arise and may already be percolating in the lower courts.

The statutory question underlying the necessity inquiry in Section 9 of the NVRA warrants resolution in a case that permits the Court to consider both the governing legal standard and, if relevant, the factual circumstances necessary to apply it. Ideally, such a case would involve a direct legal analysis of the NVRA's necessity inquiry and direct application of that inquiry to State Form DPOC requirements in the lower courts. This type of vehicle would allow the Court to draw on the lower courts' full merits decisions in resolving the statutory questions at hand and, if the NVRA's necessity inquiry is indeed fact-bound, to rely on a fully developed factual record in applying the governing standard.

Cases of this kind are already percolating in the lower courts. In April 2026, Florida enacted H.B. 991, which will require documentary proof of citizenship from certain registrants and voters whose citizenship cannot be verified through state records. *See* Act of Apr. 1, 2026, Ch. 2026-26, § 4, 2026 Fla. Laws ____ (amending Fla. Stat. § 97.053 (2025)). Several plaintiffs have since challenged this law under Section 9 of the NVRA, alleging that H.B. 991 violates § 20508(b) because “additional proof of citizenship is not ‘necessary’ to assess prospective voters’ eligibility.” Am. Compl. ¶ 161, *Fla. State Conf. of Branches & Youth Units of the NAACP v. Byrd*, No. 1:26-cv-22257-JB (S.D. Fla. filed July 22, 2026), ECF No. 90 (quoting 52 U.S.C. § 20508(b)); *see also* Compl. ¶ 123, *Black Voters Matter Fund v. Byrd*, No. 1:26-cv-26047 (S.D. Fla. filed Sept. 1, 2026). Unlike the instant case, these cases do not arise against the backdrop of a preexisting consent decree and therefore may permit direct consideration of the “necessity” inquiry required under § 20508(b)(1) and the statutory limits on additional documentation required for State Form registration.

Although the Florida litigation remains at an early stage and may not ultimately prove to be a suitable vehicle for review, it illustrates a key point: The instant case is not the only avenue for addressing the scope and meaning of the NVRA as applied to State Form DPOC requirements. Given the significance of this issue, litigation that presents the

NVRA question more directly and in a more suitable procedural posture is likely to arise.

II. The Court should dismiss the writ as improvidently granted rather than establish a nationwide rule concerning State Form DPOC requirements on this record.

A. The Court has dismissed writs as improvidently granted when important questions arise in cases that cannot adequately resolve them.

The Court has long exercised its authority to dismiss a writ as improvidently granted when a “mare’s nest could stand in the way of [it] reaching the question presented on which [it] granted certiorari, or at the very least, complicate [its] resolution of that question.” *See Arizona v. City and County of San Francisco*, 596 U.S. 763, 766 (2022) (Roberts, C.J., concurring); *accord The Monrosa*, 359 U.S. at 183 (noting that the Court dismisses cases as improvidently granted when there are “circumstances” that were “not . . . fully apprehended at the time certiorari was granted”).

Among the recurring “mare’s nest[s],” *Arizona*, 596 U.S. at 766, that prompt the Court to dismiss a writ as improvidently granted is the discovery that “[a]n important issue [is] found not to be presented by

the record.” Stephen M. Shapiro et al., Supreme Court Practice ch. 5, § 15 (11th ed. 2019). In *Johnson v. Massachusetts*, for example, the Court dismissed a writ as improvidently granted because the “record relevant to the constitutional claims . . . asserted [was] insufficient to permit decision of those claims.” 390 U.S. 511, 511 (1968). The Court did likewise in *Belcher v. Stengel*, noting that “the question framed in the petition for certiorari [was] not in fact presented by the record.” 429 U.S. 118, 119 (1976).

Dismissal of a case as improvidently granted does not constitute a decision on the merits or imply approval or disapproval of the lower court’s reasoning. *See Hodges v. United States*, 368 U.S. 139, 140 (1961). Rather, the lower court decision in the matter simply remains in place.

B. The instant matter bears the hallmarks of a case in which the writ of certiorari should be dismissed as improvidently granted.

A “mare’s nest,” *Arizona*, 596 U.S. at 766, stands in the way of the Court reaching the question of whether the NVRA preempts State Form DPOC requirements via the instant case. As explained in Part I, the unusual procedural posture of this case has left the lower-court opinions without findings specifically directed to the NVRA’s necessity inquiry, *see* 52 U.S.C. § 20508(b)(1), as applied to State Form

DPOC requirements. *See supra* Part I.C. The district court’s analysis rested almost entirely on the LULAC consent decree and the Ninth Circuit treated the necessity inquiry, which it only reached in the alternative to the Consent Decree question, as a question of pure law rather than one of mixed fact and law. *Id.*

The parties’ briefing reflects the same gap: nearly all the briefs filed by petitioner and respondents treat the NVRA’s necessity inquiry as a question of law requiring the Court to formulate a categorical legal rule, giving no consideration to whether § 20508(b)(1) calls for a fact-bound inquiry. *See* Br. for Pet’r at 18–27, *Republican Nat’l Comm. v. Mi Familia Vota*, No. 25-1017 (filed Aug. 28, 2026); Br. for the U.S. as Resp’ts Supporting Pet’r at 16–22, *Mi Familia Vota*, No. 25-1017 (filed Aug. 28, 2026); Br. for Resp’ts Warren Petersen, President of the Ariz. Senate et al. at 12–13, *Mi Familia Vota*, No. 25-1017 (filed Aug. 28, 2026); Br. for Resp’ts AZ AANHPI for Equity, et al. at 19–21, *Mi Familia Vota*, No. 25-1017 (filed Oct. 13, 2026); Br. for Resp’ts Mi Familia Vota and Voto Latino at 14–19, *Mi Familia Vota*, No. 25-1017 (filed Oct. 13, 2026); *see also* Br. for Resp’ts Democratic Nat’l Comm. & Ariz. Democratic Party, *Mi Familia Vota*, No. 25-1017 (filed Oct. 13, 2026) (failing to address the meaning of “necessary” altogether). *But see* Br. for Resp’ts State of Ariz. & Its Att’y Gen. in Partial Support of Pet’r at 15–17, *Mi Familia Vota*, No. 25-1017 (filed Aug. 28, 2026)

(granting implicitly that the NVRA’s necessity inquiry may be fact-bound because it incorporates Arizona state law).

The resulting gaps are consequential. Insofar as the Court must authoritatively interpret the NVRA necessity inquiry, it has little reasoning from lower courts and little briefing to draw on to decide whether that inquiry is purely legal or fact-bound. And if the inquiry is fact-bound, the record likewise provides no adequate basis for determining the evidentiary showing a State must make to establish that documentary proof is necessary to assess voter eligibility. As in *Johnson v. Massachusetts*, the “record relevant to the” question at hand may therefore be “insufficient to permit decision of [that question].” 390 U.S. at 511.

In light of the insufficiency of the record, *amicus* urges the Court to dismiss as improvidently granted insofar as it concerns the question of whether the NVRA preempts State Form DPOC requirements.³ Although this course of action would leave the Ninth Circuit’s interpretation of the NVRA’s necessity inquiry intact, its effect would go no further: The interpretation would remain binding only within the Ninth Circuit. The Court would not have to establish a nationwide rule concerning the NVRA and

³ *Amicus* asserts no view on whether the Court should dismiss as improvidently granted the questions presented involving the LULAC Consent Decree and the NVRA’s quiet-period provision.

State Form DPOC requirements without the benefit of lower-court analysis, a developed evidentiary record, or full adversarial briefing on important aspects of that question.

C. The national importance of the State Form DPOC question further justifies permitting additional lower court consideration of this issue.

The case for dismissing the NVRA portion of the first question presented in the instant case as improvidently granted is particularly strong given the national significance of the question presented: The Court's decision could affect voter registration practices in every State. Given these stakes, it would be prudent for the Court to allow lower courts to percolate on the necessity inquiry in § 20508(b)(1) before laying down a rule itself. The lower courts could explore, for example, whether the necessity inquiry calls for a categorical legal rule, an evidentiary showing, or factual development that accounts for differences among States' registration systems and relevant facts about evidence of problems with noncitizen voting. *See supra* Part I.B. The Court could then draw on the reasoning in these decisions when ultimately resolving this nationally significant question in a more appropriate vehicle.

At bottom, the question presented need not be resolved now as a binary choice between permitting

every State to require DPOC and categorically prohibiting such requirements. Further litigation could clarify whether the NVRA's necessity inquiry instead calls for a more nuanced standard. Dismissing part of petitioner's writ as improvidently granted would allow the lower courts to develop the jurisprudence without foreclosing the possibility that DPOC may be necessary in particular circumstances, or that States may indeed possess unrestricted authority to impose such requirements. The Court would thus preserve its ability to resolve the question with the benefit of further judicial consideration.

III. Alternatively, if the Court determines that applying the NVRA's necessity inquiry calls for additional factfinding, it should vacate and remand for further proceedings.

While *amicus* urges the Court to dismiss part of petitioner's writ as improvidently granted, if the Court instead concludes that the NVRA's necessity inquiry is fact-bound, it should vacate and remand for further proceedings, rather than reach a conclusion on the existing record.

The Court has long emphasized that it is a "court of review, not of first view." *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005). Accordingly, the Court avoids applying law to facts in the first instance, especially when the factual record is underdeveloped.

See, e.g., Int’l Primate Prot. League v. Adm’rs of Tulane Educ. Fund, 500 U.S. 72, 89 (1991) (“This mixed question of law and fact should not be resolved in the first instance by this Court, least of all without an appropriate record.”); *CRST Van Expedited, Inc. v. E.E.O.C.*, 578 U.S. 419, 435 (2016) (“It is not the Court’s usual practice to adjudicate either legal or predicate factual questions in the first instance.”).

If the Court determines that the NVRA necessity inquiry is fact-bound, deciding whether the NVRA preempts Arizona’s State Form DPOC requirement would require the Court to resolve a mixed question of law and fact in the first instance. Although the district court, following a bench trial, made factual findings concerning Arizona’s voter registration procedures and the rarity of noncitizen voting in the state, *see Mi Familia Vota*, 719 F. Supp. 3d at 953–67 (noting that “non-citizens voting in Arizona is quite rare, and non-citizen voter fraud in Arizona is rarer still,” *id.* at 967), it did not apply those findings to determine whether the NVRA requires or permits Arizona’s State Form DPOC requirements under the circumstances of its registration system. *See supra* Part I.C. Instead, the court’s disposition of the DPOC challenge rested principally on the LULAC Consent Decree, while its separate analysis of the necessity requirement concerned proof of residency. *See Mi Familia Vota*, 719 F. Supp. 3d at 996. Nor did the district court consider whether additional fact-finding was needed to conduct the necessity inquiry

that Section 9 of the NVRA potentially requires. The Ninth Circuit likewise treated the NVRA necessity inquiry as a pure question of statutory interpretation, with no fact-bound component. *See Mi Familia Vota*, 129 F.4th at 719–20. Neither court, therefore, specifically determined whether, in light of existing citizenship attestations and verification procedures, Arizona’s State Form DPOC requirement was “necessary” under the circumstances of the State’s registration system and databases. If the Court has to decide that question, it would be doing so in the first instance.

Consequently, if the Court finds that Section 9 of the NVRA requires resolution of a mixed question of law and fact, it should vacate the Ninth Circuit’s judgment and remand for the district court to determine, in the first instance, whether DPOC is necessary to enable Arizona election officials to assess voter eligibility and administer registration. On remand, the parties could develop evidence concerning the effectiveness of citizenship attestations, existing methods of independently verifying citizenship, the structure of the State’s DPOC requirement, and whether additional documentation is needed to assess voter eligibility. They could also adduce evidence of any existing problems with noncitizen registration. *Compare* Morley Amicus Br. at 4–11 (collecting reporting on voter registration by alleged noncitizens in half a dozen states, not including Arizona), *with* MARICOPA CNTY. ATT’Y’S OFF., *September 28th Press*

Conference | Investigation on Noncitizen Voters, at 12:51–13:09 (YouTube, Sept. 28, 2026), <https://www.youtube.com/watch?v=N8Foys10H2g> (reporting that only eight of 60 suspected noncitizen voters investigated in Maricopa County were determined to be noncitizens). The district court, followed by the Ninth Circuit on review, could then apply § 20508(b)(1)’s statutory standard—as articulated by the Court before remand—to the evidentiary record. This approach would preserve the distinction between the legal meaning of “necessary” and the fact-bound question of whether DPOC is necessary in the context of Arizona’s actual registration system.

In sum, if the Court concludes that application of the necessity provision requires factual findings not made below, it should vacate and remand for further proceedings. *Amicus* nevertheless maintains that dismissal as improvidently granted is the preferable disposition because it would preserve the opportunity to resolve the important statutory question in a case that squarely presents it on a more suitable record.

CONCLUSION

For the foregoing reasons, this Court should dismiss the writ of certiorari as improvidently granted insofar as it concerns the NVRA portion of the first Question Presented. In the alternative, if the Court reaches that question, it should vacate the judgment

below and remand for further factual and legal development.

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Respectfully submitted,

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