

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 *AMICI CURIAE* NAACP LEGAL
DEFENSE AND EDUCATIONAL FUND, INC.,
NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE,
& LAWYERS' COMMITTEE FOR CIVIL
RIGHTS UNDER LAW
IN SUPPORT OF RESPONDENTS**

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	iii
INTERESTS OF AMICI CURIAE	1
INTRODUCTION AND SUMMARY OF THE ARGUMENT.....	5
I. The NVRA Was Enacted to Foster Participation by Reducing Barriers to Voter Registration and to Ban Harmful Voter Purges.	6
A. Before the NVRA, Registration Requirements and Voter Purges Discriminated Against Black Voters and Other Voters of Color.	8
B. Congress Sought in the NVRA to Increase Political Participation by Expanding Registration Opportuni- ties, Removing Barriers to Registration, and Banning All Systematic Voter Purges Near Federal Elections.	16
C. Requiring Documentary Proof of Citizenship to Register Contravenes the Text of the NVRA and Congress’s Purpose in Adopting It.	20
D. Purges Purportedly Targeting Non- Citizens During the Quiet Period Before an Election Inaccurately Flag or Remove Black Voters in Violation of the NVRA and in Derogation of Its Purpose.	24

TABLE OF CONTENTS—Continued

	Page
II. Principles of Comity Required the Courts Below to Give Effect to a Federal Consent Decree That Binds Arizona Unless and Until Vacated or Modified by the Issuing Court.....	26
A. Consent Decrees Are a Crucial Tool to Protect Civil Rights.	27
B. A Mere Change in State Law Does Not Nullify or Require Modification of an Institutional Reform Consent Decree.	30
C. The Appropriate Venue for Seeking Modification of the <i>LULAC</i> Decree Is the Issuing Court.....	34
CONCLUSION	36

TABLE OF AUTHORITIES

CASES	Page(s)
<i>Agostini v. Felton</i> , 521 U.S. 203 (1997).....	33
<i>Alexander v. South Carolina State Conf. of the NAACP</i> , 602 U.S. 1 (2024).....	2
<i>Allen v. Milligan</i> , 599 U.S. 1 (2023).....	2
<i>Allen v. State Bd. of Elections</i> , 393 U.S. 544 (1969).....	2
<i>Arcia v. Florida Sec'y of State</i> , 772 F.3d 1335 (11th Cir. 2014).....	25
<i>Arizona v. Inter Tribal Council of Arizona, Inc.</i> , 570 U.S. 1 (2013).....	3-4, 21
<i>Bell v. Wolfish</i> , 441 U.S. 520 (1979).....	33
<i>Braxton v. Stokes</i> , No. 2:23-CV-00127 (S.D. Ala.).....	29
<i>Braxton v. Town of Newbern</i> , No. 2:23-CV-00127-KD-N, 2024 WL 3519193 (S.D. Ala. July 23, 2024)	30
<i>Brown v. Bd. of Educ. of Topeka</i> , 347 U.S. 483 (1954).....	2, 8, 9
<i>Brown v. McCormick</i> , 608 F.2d 410 (10th Cir. 1979).....	35
<i>Buck v. Davis</i> , 580 U.S. 100 (2017).....	2
<i>Chisom v. Roemer</i> , 501 U.S. 380 (1991).....	2

TABLE OF AUTHORITIES—Continued

	Page(s)
<i>City of Mobile v. Bolden</i> , 446 U.S. 55 (1980).....	2
<i>Clark v. Roemer</i> , 500 U.S. 646 (1991).....	4
<i>Common Cause Rhode Island v. Gorbea</i> , No. 1:20-cv-00318, 2020 WL 4460914 (D.R.I. July 30, 2020).....	28
<i>Cooper v. Aaron</i> , 358 U.S. 1 (1958).....	33, 34
<i>Crowe v. Lucas</i> , 472 F. Supp. 937 (N.D. Miss. 1979).....	14
<i>Dillard v. Crenshaw Cnty.</i> , 640 F. Supp. 1347 (M.D. Ala. 1986)	28, 29
<i>Dillard v. Crenshaw Cnty.</i> , No. CIV.A.2:85CV1332-MHT, 2006 WL 3392071 (M.D. Ala. July 31, 2006).....	29
<i>Dillard v. Town of Cuba</i> , 708 F. Supp. 1244 (M.D. Ala. 1988)	28, 29
<i>Frew ex rel. Frew v. Hawkins</i> , 540 U.S. 431 (2004).....	31-35
<i>League of Women Voters of Virginia v.</i> <i>Virginia State Bd. of Elections</i> , 458 F. Supp. 3d 442 (W.D. Va. 2020)	28
<i>Louisiana v. Callais</i> , 608 U.S. 85 (2026).....	2
<i>Louisiana v. United States</i> , 380 U.S. 145 (1965).....	9

TABLE OF AUTHORITIES—Continued

	Page(s)
<i>Martin v. Wilks</i> , 490 U.S. 755 (1989).....	35, 36
<i>Miss. St. Chapter, Operation Push v. Allain</i> , 674 F. Supp. 1245 (N.D. Miss. 1987), <i>aff'd</i> , 932 F.2d 400 (5th Cir. 1991).....	11
<i>NAACP, Dekalb Cnty. v. Georgia</i> , 494 F.Supp. 668 (N.D. Ga. 1980).....	12
<i>Nw. Austin Mun. Dist. No. 1 v. Holder</i> , 557 U.S. 193 (2009).....	1-2
<i>O’Sullivan v. City of Chicago</i> , 396 F.3d 843 (7th Cir. 2005).....	34
<i>Republican Nat’l Comm. v. Common Cause Rhode Island</i> , 591 U.S. 1074 (2020).....	28
<i>Rufo v. Inmates of Suffolk Cnty. Jail</i> , 502 U.S. 367 (1992).....	30-33, 35
<i>Shelby Cnty. v. Holder</i> , 570 U.S. 529 (2013).....	2, 3
<i>Sys. Fed. No. 91, Ry. Emps.’ v. Wright</i> , 364 U.S. 642 (1961).....	33
<i>Texas LULAC v. Whitley</i> , No. SA-19-CA-074-FB (W.D. Tex. Apr. 26, 2019)	26
<i>Thornburg v. Gingles</i> , 478 U.S. 30 (1986).....	2
<i>Toney v. White</i> , 488 F.2d 310 (5th Cir. 1973).....	14

TABLE OF AUTHORITIES—Continued

	Page(s)
<i>United States v. Ass’n of Citizens Councils of La., Inc., 196 F. Supp. 908 (W.D. La. 1961)</i>	9, 10
<i>United States v. Dallas Cnty. Comm’n, 739 F.2d 1529 (11th Cir. 1984).....</i>	11
<i>United States v. Kellum, 523 F.2d 1284 (5th Cir. 1975).....</i>	30
<i>United States v. Lucky, 239 F. Supp. 233 (W.D. La. 1965)</i>	9
<i>United States v. Marengo Cnty. Comm’n, 731 F.2d 1546 (11th Cir. 1984).....</i>	10-11
<i>United States v. McElveen, 180 F. Supp. 10 (E.D. La. 1960)</i>	9
<i>United States v. Peters, 9 U.S. 115 (1809).....</i>	33
<i>United States v. Thomas, 362 U.S. 58 (1960)</i>	9
<i>Virginia Coal. for Immigrant Rts. v. Beals, No. 1:24-cv-01778, 2024 WL 4577983 (E.D. Va. Oct. 25, 2024), stayed, 2024 WL 4608863</i>	25
<i>Washington v. Penwell, 700 F.2d 570 (9th Cir. 1983).....</i>	30
<i>Young v. Fordice, 520 U.S. 273 (1997).....</i>	4
 CONSTITUTION	
U.S. Const. art. I, § 4.....	5, 7

TABLE OF AUTHORITIES—Continued

	Page(s)
U.S. Const. art. VI, cl. 2	6, 27, 34
U.S. Const. amend. I	32
U.S. Const. amend. XIV	32
 STATUTES	
52 U.S.C. § 20501	5, 7
52 U.S.C. § 20501(a)	16
52 U.S.C. § 20505(a)(2).....	20
52 U.S.C. § 20508(b)(1).....	20
52 U.S.C. § 20508(b)(2).....	21
52 U.S.C. § 21083(b)	21
52 U.S.C. § 21083(b)(4).....	22
Ala. Code § 11-3-1(c) (2008)	29
Ala. Code § 11-80-12 (2006)	29
Alabama Act No. 2006–252.....	29
H.B. 2492, 2022 Ariz. Sess. Laws, ch. 99	22, 26, 33, 34, 36
 RULES	
Fed. R. Civ. P. 60(b).....	27, 34, 35
Fed. R. Civ. P. 60(b)(5)	31, 35, 36

TABLE OF AUTHORITIES—Continued

COURT FILINGS	Page(s)
<i>Ala. Coal. for Immigrant Just. v. Allen</i> , No. 2:24-cv-01254 (N.D. Ala. Oct. 11, 2024), ECF No. 74-1	24
<i>Arcia v. Detzner</i> , No. 1:12-cv-22282 (S.D. Fla. Sep. 24, 2012), ECF No. 76-1	25-26
Consent Decree, <i>League of United Latin American Citizens of Arizona v. Reagan</i> , No. 2:17-cv-4102 (D. Ariz. June 18, 2018), ECF No. 37	6, 26, 27, 30, 32-36
Mot. Hr’g Tr. 10/15 Doc. 92, <i>Ala. Coal. for Immigrant Just. v. Allen</i> , No. 2:24-cv-01254 (N.D. Ala. Oct. 16, 2024), ECF No. 90	24
Mot. Hr’g Tr. 10/16, Doc. 91, <i>Ala. Coal. for Immigrant Just. v. Allen</i> , No. 2:24-cv-01254 (N.D. Ala. Oct. 16, 2024), ECF No. 90	24
LEGISLATIVE MATERIALS	
85th Cong. 1st Sess. (July 26, 1957), https://www.congress.gov/85/crecb/1957/07/26/GPO-CRECB-1957-pt10-1-1.pdf	10
H.R. 2 - National Voter Registration Act of 1993, 103rd Cong., 1st Sess. (1993) ...	17, 19, 20
H.R. Conf. Rep. No. 103-66, 1st Sess. (1993), 1993 WL 235764	21
H.R. Rep. No. 103-9, 1st Sess. (1993), 1993 WL 27395	18

TABLE OF AUTHORITIES—Continued

	Page(s)
Hearings Before the Subcomm. on Civ. and Const. Rights of the House Comm. on the Judiciary, Ser. No. 24, 97th Cong., 1st Sess. (1981)	13, 14
House Comm. on the Judiciary, Voting Rights Act Extension, H.R. Rep. No. 227, 97th Cong., 1st Sess. (1981)	13
S. Rep. 101-140, 101st Cong., 1st Sess. 1989, HeinOnline	17
S. Rep. No. 103-6, 103rd Cong., 1st Sess. (1993), 1993 WL 54278	7, 18, 19
Voting Rights Act: Runoff Primaries and Registration Barriers: Hearings on the 1982 Amendment of the Voting Rights Act of 1965 Before the Subcomm. on Civ. and Const. Rights of the House Comm. on the Judiciary, 98th Cong., 2d Sess. 136 (1985).....	15

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Alaizah Koorji, Defending Consent Decrees in the Wake of <i>Horne v. Flores</i> , Harv. L. Rev. Blog (Nov. 13, 2024)	30
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TABLE OF AUTHORITIES—Continued

	Page(s)
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Bureau of the Census, Dep't of Com., Stat. Abstract of the U.S., 1987.....	16
Danya L. Cunningham, <i>Who Are to Be the Electors?</i> , 9 Yale Law & Policy Rev. 370 (1991)	8, 14, 15, 17
James Blacksher et. al., Voting Rights in Alabama: 1982-2006, 17 S. CAL. REV. L. & Soc. Just. 249 (2008)	29
Letter from Deval L. Patrick, Assistant Att'y Gen., DOJ Civ. Rts. Div., to Dennis R. Dunn, Senior Assistant Att'y Gen., Ga. (Oct. 24, 1994), https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/GA-2570.Pdf	14
Letter from John R. Dunne, Assistant Att'y Gen., DOJ Civ. Rts. Div., to Debbie Barnes, Chairperson, Dallas Cnty. Bd. of Registrars, Ala. (June 22, 1990) https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/AL-1800.pdf	12

TABLE OF AUTHORITIES—Continued

	Page(s)
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Letter from Wm. Bradford Reynolds, Assistant Att’y Gen., DOJ Civ. Rts. Div., to Lynda K. Oswald, Assistant Att’y Gen., Ala. (Dec. 11, 1984), https://www. justice.gov/sites/default/files/crt/legacy/2 014/05/30/AL-1640.pdf	12
7 Moore's Fed. Pract. (3d ed. 2015)	35
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TABLE OF AUTHORITIES—Continued

	Page(s)
Susan J. Pearson, Ph.D., Comment to the U.S. Election Assistance Commission (2025).....	23

INTEREST OF AMICI CURIAE¹

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”) is the nation’s first and foremost civil rights organization. Since its founding in 1940, LDF has fought to secure equal justice under the law for all Americans, and to break down barriers that prevent Black Americans from realizing their basic civil and human rights.

Through litigation, advocacy, and public education, LDF strives to enforce the United States Constitution’s promise of equal protection and due process for all. LDF has participated as counsel of record in numerous significant cases before this Court to defend voting rights and challenge racial discrimination in all its forms. *See, e.g., Louisiana v. Callais*, 608 U.S. 85 (2026); *Alexander v. South Carolina State Conf. of the NAACP*, 602 U.S. 1 (2024); *Allen v. Milligan*, 599 U.S. 1 (2023); *Buck v. Davis*, 580 U.S. 100 (2017); *Shelby Cnty. v. Holder*, 570 U.S. 529

¹ Pursuant to Supreme Court Rule 37.6, counsel for amici curiae state that no counsel for a party before this Court authored this brief in whole or in part and that no person other than amici curiae, their members, or their counsel made a monetary contribution to the preparation or submission of this brief. Amicus the Lawyers’ Committee for Civil Rights under Law states that it represents Native-American tribes and members in the District Court proceedings in this case on an issue—documentary proof of location of residence requirements—not presented in the Petitions. The Lawyers’ Committee’s clients prevailed in the District Court, and there was no appeal from the relief on their claims. The Lawyers’ Committee has not participated in the appellate proceedings in this case, including before this Court.

(2013); *Nw. Austin Mun. Dist. No. 1 v. Holder*, 557 U.S. 193 (2009); *Chisom v. Roemer*, 501 U.S. 380 (1991); *Thornburg v. Gingles*, 478 U.S. 30 (1986); *City of Mobile v. Bolden*, 446 U.S. 55 (1980); *Allen v. State Bd. of Elections*, 393 U.S. 544 (1969); *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483 (1954). LDF has also resolved litigation demonstrating violations of constitutional and federal law on behalf of Black Americans in binding judicial consent decrees. *See, e.g., Chisom*, 501 U.S. 380.

LDF is committed to ensuring a faithful interpretation of federal voting laws and protecting the right of every eligible Black American to cast a ballot that counts on Election Day. LDF also has extensive experience with judicial consent decrees, which have resolved needless litigation and ensured compliance with federal anti-discrimination laws.

The National Association for the Advancement of Colored People (“NAACP”) is the oldest and largest civil rights organization in the United States. Founded in 1909 by pioneers of racial justice, the NAACP’s core mission has long been to ensure political, educational, social, and economic equality.

In furtherance of its mission, the NAACP has worked to protect the fundamental rights of its members and all Black people and other people of color, offering a unique slate of programs that provide education, community-based advocacy, and general

assistance to voters seeking to make their voices heard. For example, the NAACP develops and executes programs that promote civic participation by helping its members and other citizens register to vote and aiding voters in casting their ballots. It also supports its thousands of state, regional, and local units working to advance the organization's goals at every level.

The NAACP's efforts to advance its mission and protect voters' fundamental rights are undermined by government actions that heighten barriers to voting.

The Lawyers' Committee for Civil Rights Under Law is a nonpartisan, nonprofit civil rights organization, formed at the request of President John F. Kennedy in 1963, that uses legal advocacy to achieve racial justice. For more than 60 years, the Lawyers' Committee has advocated inside and outside the courts to ensure that Black people and other people of color have the voice, opportunity, and power to make the promises of democracy real. This includes being able to gain unencumbered access to the ballot and to remain on the ballot without being unfairly purged. The Lawyers' Committee litigates voting rights cases across the country.

Many of these cases have given Black voters and their communities the equal opportunity previously denied them to participate in the political process. The Lawyers' Committee has litigated some of these voting rights cases before this Court, including *Shelby*

County, 570 U.S. 529, *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013) (“*ITCA*”), *Young v. Fordice*, 520 U.S. 273 (1997), and *Clark v. Roemer*, 500 U.S. 646 (1991).

Through this litigation and other advocacy, the Lawyers’ Committee has challenged discriminatory barriers to voter registration that have disenfranchised Black people and other people of color, as well as efforts to purge voters of color once they have surmounted those barriers and made it onto the voter rolls. Amici Curiae LDF, NAACP, and the Lawyers’ Committee have a strong interest in the fair application of the United States Constitution and federal and state antidiscrimination laws. They submit that their experience and knowledge will assist the Court in this case.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Congress enacted the National Voter Registration Act of 1993 (“NVRA” or “Act”) under its Elections Clause authority to “establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office,” promote voter registration procedures that “enhance[] the participation of eligible citizens as voters” in federal elections, ensure the maintenance of “accurate and current voter registration rolls,” and broadly “protect the integrity of the electoral process.” 52 U.S.C. § 20501. Decades of evidence showed that voter registration practices as well as periodic purge and reregistration requirements often had the purpose and effect of disenfranchising eligible Black voters and other voters of color. Congress thus prescribed precise requirements for voter registration forms and prohibited all systematic purging of voter rolls within 90 days of any federal election.

Today, despite Congress’s effort to curb onerous voter registration requirements and voter purges so they would not disenfranchise eligible voters, states continue to implement error-prone and discriminatory programs that do just that. Numerous federal courts have found that states’ attempts to institute documentary proof of citizenship requirements and to remove alleged non-citizens from the voter rolls yield

unfair and inaccurate results, thereby threatening the integrity of elections. Further, they disenfranchise an inordinate number of eligible Black voters and voters of color. This was precisely what the NVRA is designed to prevent.

Moreover, a federal consent decree here requires Arizona to register eligible voters for federal elections regardless of whether such voters use the state's own registration form or the form prescribed by the United States Election Assistance Commission—even when unaccompanied by documentary proof of citizenship. That decree is a final judgment that binds the parties. A State cannot evade or unilaterally nullify such a decree by enacting an allegedly conflicting statute. U.S. Const. Art. VI, cl. 2. Because the *LULAC* Decree remains in force, principles of comity require the courts below to give it effect. If the Petitioner wishes to seek modification or vacatur of the decree, the appropriate forum is the issuing court. This Court should therefore affirm the decision below.

I. The NVRA Was Enacted to Foster Participation by Reducing Barriers to Voter Registration and to Ban Harmful Voter Purges.

Prior to the enactment of the NVRA, restrictive registration requirements and aggressive voter purges—particularly purges implemented shortly before an election—frequently disenfranchised eligible voters. Often by design, such practices

disproportionately excluded Black voters and other voters of color, especially in jurisdictions with a history of intentional discrimination. To remedy unequal treatment and foster broad participation in the democratic process, the NVRA bars states from imposing registration requirements for federal elections beyond the minimum amount necessary to determine eligibility. With respect to voter purges, among other restrictions, the NVRA prohibits systematic removal of voters from the rolls within 90 days of a federal election and bans non-uniform or discriminatory voter removal programs. S. Rep. No. 103-6, 103rd Cong., 1st Sess. (1993), 1993 WL 54278.

In enacting this legislation, Congress was acutely aware that “discriminatory and unfair registration laws ... disproportionately harm voter participation by various groups, including racial minorities.” 52 U.S.C. § 20501; *see also* S. Rep. No. 103-6, 1993 WL 54278, at *2. Congress enacted the NVRA under its Elections Clause authority to prevent restrictive registration practices and regulate the timing and procedures for removing ineligible voters from the registration rolls. Today, burdensome registration procedures and indiscriminate, inaccurate voter purges—under the guise of preventing registration and voting by alleged non-citizens—mirror the historical practices the NVRA prohibits, disenfranchising eligible voters. These burdens, including documentary proof of citizenship and systematic purges within 90 days of a

federal election, violate the NVRA and subvert its statutory purpose.

A. Before the NVRA, Registration Requirements and Voter Purges Discriminated Against Black Voters and Other Voters of Color.

Voter registration requirements were instituted in the late 1800s in the South to disenfranchise Black people and in the North and Midwest to disenfranchise new immigrants. Steve Barber et al., *The Purging of Empowerment: Voter Purge Laws and the Voting Rights Act*, 23 Harv. C.R.-C.L. L. Rev. 483 (1988); Danya L. Cunningham, *Who Are to Be the Electors?*, 9 Yale Law & Policy Rev. 370, 373-74 (1991) (noting in the South, the movement to shift registration burdens to the electorate was an “explicitly white supremacist drive to return the antebellum slavocracy to power”). Among the voter registration practices used to disenfranchise Black voters, the “discretion granted to local officials to implement the various statutory requirements and exemptions became the South’s most powerful disfranchising tool.” Cunningham, 9 Yale Law & Policy Rev. at 380.

Even in the mid-twentieth century, particularly after this Court’s decision in *Brown*, 347 U.S. 483, onerous registration requirements kept Black people off the voting rolls across the South, with voter purges and mass challenges ejecting those who succeeded in registering. In the mid-1950s, many parishes in Louisiana amplified their use of the interpretation

test, requiring prospective Black registrants to interpret a constitutional provision to the registrar's satisfaction. *Louisiana v. United States*, 380 U.S. 145, 149 (1965). In response to *Brown*, the Louisiana Legislature launched a joint legislative committee called the "Segregation Committee." *Id.* Among other things, the Committee initiated programs for parish registrars to promote "white supremacy" and advocated for "wholesale challeng[es to] Negro names already on the voting rolls, with the result that thousands of Negroes, but virtually no whites, were purged from the rolls of voters." *Id.* Voter purges thus were a critical mechanism to prevent Black people from exercising electoral influence and influencing policy in the Southern states. Barber, 23 Harv. C.R.-C.L. L. Rev. at 487.

Using voter purges and mass challenges, Louisiana disenfranchised almost the entire Black population in some parishes. Citizen council groups challenged the registration of Black voters under Louisiana law that imposed identification requirements and required voters to accurately complete unnecessarily complex registration forms, resulting in mass purges from voting lists. *See, e.g., United States v. Lucky*, 239 F. Supp. 233, 236-37 (W.D. La. 1965) (enjoining a racially discriminatory voter purge program); *United States v. Ass'n of Citizens Councils of La., Inc.*, 196 F. Supp. 908, 910-12 (W.D. La. 1961) (three-judge court) (same); *United States v. McElveen*, 180 F. Supp. 10, 14 (E.D. La. 1960) (three-judge court), *aff'd in part sub nom.*

United States v. Thomas, 362 U.S. 58 (1960) (same). Many of these Black voters were challenged in the weeks immediately preceding an election. For example, in Grant Parish in 1956, where less than 800 Black voters were initially registered, “more than 700” Black people were “purged 2 weeks before the November general election,” and only “399 had cleared the challenges a week before the deadline.” 85th Cong. 1st Sess. (July 26, 1957), at 12794 <https://www.congress.gov/85/crecb/1957/07/26/GPO-CRECB-1957-pt10-1-1.pdf>.

Similarly, Ouachita Parish had some 4,000 registered Black voters in the early fall of 1956, but a purge in October prevented more than 3,000 of them from voting in the general election on November 6. *Id.* In 1956 and 1957, purges ousted around 11,000 Black voters in just 12 parishes, with some parishes purging ninety-nine percent of their Black voters. Barber, 23 Harv. C.R.-C.L. L. Rev. at 487; *see also Assn. of Citizens Councils of La., Inc.*, 196 F. Supp. at 910 (purging “approximately 95%” of all registered Black voters and “less than 1%” of White voters in Bienville Parish for the same registration errors).

The VRA did not eliminate this problem. In Alabama, the Linden County registrar registered voters only in the County Seat and for only two days a month. The Eleventh Circuit held that the obstacles to registration created by these policies “unquestionably discriminated against blacks.” *United States v. Marengo Cnty. Comm’n*, 731 F.2d

1546, 1570 (11th Cir. 1984). Likewise, in Dallas County, the Eleventh Circuit determined that evidence of ongoing discrimination against Black voters supported a vote dilution claim, citing the county registrar's "limited hours, failure to go to the beats to register voters, and refusal to appoint deputy registrars." *United States v. Dallas Cnty. Comm'n*, 739 F.2d 1529, 1538-39 (11th Cir. 1984).

During the same period, Mississippi employed a dual registration system that made registration unnecessarily cumbersome, particularly for rural voters. *Miss. St. Chapter, Operation Push v. Allain*, 674 F. Supp. 1245, 1249 (N.D. Miss. 1987), *aff'd*, 932 F.2d 400 (5th Cir. 1991). In some municipalities, residents wishing to vote in county, state, and federal elections, had to first register with the county registrar or a deputy. *Id.* Without such prior registration at the inconvenient county offices, the more accessible municipal clerks could only register voters for municipal elections. *Id.* Further impeding registration, the State eliminated "satellite registration" around each county, thus requiring voters to register in person at the office of the county registrar. *Id.* at 1251-52. These labyrinthine procedures disadvantaged Black residents so much that Black voter registration dropped by nearly half after their enactment and continued to be suppressed well after the passage of the VRA. *Id.* at 1252-55.

Likewise in Georgia, a federal court in 1980 faulted voter registration procedures for enabling arbitrary decision-making on voter eligibility. *See NAACP, Dekalb Cnty. v. Georgia*, 494 F.Supp. 668, 672 (N.D. Ga. 1980) (policy of Dekalb County Board of Registrars “concerning registration drive requests from community groups may fairly be characterized as erratic”).

As for purges, the Justice Department objected repeatedly to voter purges throughout the 1980s. *See, e.g.*, Letter from Wm. Bradford Reynolds, Assistant Att’y Gen., DOJ Civ. Rts. Div., to Floyd R. Cook, Chairman, Perry Cnty. Comm’n, Ala. (Sep. 25, 1981), <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/AL-1450.pdf> (objecting to purge and reidentification of voters as “dilut[ing] the voting strength of the black electorate in Perry County”); Letter from Wm. Bradford Reynolds, Assistant Att’y Gen., DOJ Civ. Rts. Div., to Lynda K. Oswald, Assistant Att’y Gen., Ala. (Dec. 11, 1984), <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/AL-1640.pdf> (objecting to purge and reidentification of voters and noting “black voters ... may be particularly affected by the reidentification process and the resulting voter purge”); Letter from John R. Dunne, Assistant Att’y Gen., DOJ Civ. Rts. Div., to Debbie Barnes, Chairperson, Dallas Cnty. Bd. of Registrars, Ala. (June 22, 1990) <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/AL-1800.pdf> (objecting to implementation of

Alabama's statewide voter reidentification and purge law for causing "many black voters [to] believe[] they were not qualified to vote in the June 5, 1990, primary election").

In 1982, Alabama law targeted only counties in the state's Black Belt for a total purge and reregistration requirement. House Comm. on the Judiciary, Voting Rights Act Extension, H.R. Rep. No. 227, 97th Cong., 1st Sess. 16 (1981); Hearings Before the Subcomm. on Civ. and Const. Rights of the House Comm. on the Judiciary, Ser. No. 24, 97th Cong., 1st Sess. 830 (1981). Testifying before the House Judiciary Committee, one Alabama Judge, Eddie Hardaway, explained:

"[I]t is no accident that five of the seven counties designated for re-registration in 1981 [were] in the 'black belt.' These re-registration bills [were] passed by the legislature as local legislation under 'Gentlemen's Agreements.' The State Representative of Perry County [Alabama], in the black belt, won his last election by 82 votes. The sponsor of the Wilcox and Lowndes Counties' bill exempted the predominantly white counties in his district from compliance with the registration bill."

House Comm. on the Judiciary, H.R. Rep. No. 227, 97th Cong., 1st Sess. 16; Hearings Before the

Subcomm. on Civ. and Const. Rts. of the House Comm. on the Judiciary, Ser. No. 24, 97th Cong., 1st Sess. 830.

Other states similarly used voter purges and mass challenges to eliminate Black voters from the rolls. Subdivisions in Mississippi instituted voter purges combined with re-registration requirements to disadvantaged Black citizens. *E.g.*, *Crowe v. Lucas*, 472 F. Supp. 937 (N.D. Miss. 1979). Georgia's practice of removing registered voters from the registration list when they missed elections faced a preclearance objection for being "likely to have a disproportionate adverse effect on minority voters in the state." Letter from Deval L. Patrick, Assistant Att'y Gen., DOJ Civ. Rts. Div., to Dennis R. Dunn, Senior Assistant Att'y Gen., Ga. (Oct. 24, 1994), <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/GA-2570.pdf>. And in South Carolina, local registrars required voters to re-register each time they moved and purged all voters who moved. Cunningham, 9 Yale Law & Policy Rev. at 377 (citing Steven F. Lawson, *Black Ballots: Voting Rights in the South, 1944-1969*, at 6 (1976)). The Fifth Circuit sitting *en banc* overturned a Louisiana city's primary election results where the registrar had selectively "purg[ed] the voter rolls in a manner directed at black voters but not at white voters." *Toney v. White*, 488 F.2d 310, 312 (5th Cir. 1973) (*en banc*).

Unequal treatment of Black and other voters of color extended beyond the South. For example,

Chicago's voter purge system in the 1980s identified Black voters and other voters of color as ineligible and wrongfully purged them at twice the rate of White voters. Barber, 23 Harv. C.R.-C.L. L. Rev. at 492-94.

In 1984, civil rights groups like LDF testified in Congress about the significant barriers faced by Black voters seeking to re-register once purged in Southern states like Georgia. LDF attorney Lani Guinier testified that around 1.5 million people, one third of them Black, were not registered to vote in Georgia in 1984. Voting Rights Act: Runoff Primaries and Registration Barriers: Hearings on the 1982 Amendment of the Voting Rights Act of 1965 Before the Subcomm. on Civ. and Const. Rights of the House Comm. on the Judiciary, 98th Cong., 2d Sess. 136 (1985), at 121 (testimony of Lani Guinier).

Thus, in considering the NVRA, Congress had a wealth of testimony and information showing that discriminatory registration requirements and systematic voter purges disproportionately kept Black citizens and other citizens of color from voting. *See supra* I.A. pp. 8-15; *see generally* Cunningham, 9 Yale Law & Policy Rev. 370.

B. Congress Sought in the NVRA to Increase Political Participation by Expanding Registration Opportunities, Removing Barriers to Registration, and Banning All Systematic Voter Purges Near Federal Elections.

When it enacted the NVRA, Congress found that “discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionately harm voter participation by various groups, including racial minorities.” 52 U.S.C § 20501(a). This finding—which was a crucial reason for the NVRA’s adoption—is well supported by the historical evidence.

Despite the passage of the VRA, Black voter participation in 1980 was 7% below what it was in 1964, in large part because of voter purges and burdensome re-registration requirements. Barber, 23 Harv. C.R.-C.L. L. Rev. at 489-90 n.36, 36 (*citing* Bureau of the Census, Dep’t of Com., Stat. Abstract of the U.S., 1987, at 244). In 1984, Black voter registration nationally was 3.3% lower than registration for White voters. *Id.* at 490 n.36. In Mississippi, Black voter registration was approximately 20% lower than White voter registration. *Id.* In 1988, Congress was particularly worried about the steadily declining participation

rate, noting that in the 1988 Presidential election, voter turnout was just 50.15 percent. *Id.*²

Unsurprisingly, when Congress began to formulate national legislation in the 1980s to address these issues, racial disparities were center stage. For example, a 1989 report from the Senate Committee on Rules and Administration on a predecessor bill to the NVRA emphasized testimony from Dr. Allan J. Lichtman, a scholar in the field of electoral analysis, that “a registered voter in a predominantly minority election district has a 35 percent greater chance of being purged than a registered voter in a predominantly white district.” S. Rep. 101-140, 101st Cong., 1st Sess. 1989, HeinOnline. In this early iteration of the NVRA, the Committee emphasized that in requiring state programs to confirm lawful registration “be uniform and non-discriminatory,” the proposed statutory language was “intended to include in the meaning that the procedure shall not disproportionately remove minority or disabled voters from the official list of registered voters.” *Id.*

In the Committee on House Administration’s 1993 report on H.R. 2, which ultimately became the NVRA, the legislative findings explained that “restrictive registration laws and administrative procedures were

² Even in 1991, some 47% of eligible voters nationally were unregistered, and that percentage was substantially higher for Black voters and other voters of color. Cunningham, 9 Yale Law & Policy Rev. at 385.

introduced in the United States in the late nineteenth and early twentieth centuries to keep certain groups of citizens from voting; in the North,” it was “the wave of immigrants pouring into the industrial cities; in the South, blacks and the rural poor.” H.R. Rep. No. 103-9, 1st Sess. (1993), 1993 WL 27395, at *2. These restrictions were remarkably effective: “between 1896 and 1924, the voter turnout for Presidential elections dropped from 79 percent to 49 percent.” *Id.* In the South, the turnout dropped from 57 percent to 19 percent, with Black voter participation dropping from 44 percent to essentially zero. *Id.* These findings noted that “the poll tax, literacy tests, residency requirements, selective purges, elaborate administrative procedures and annual reregistration requirements were some of the techniques developed to discourage participation.” *Id.*

The Senate emphasized the balance the legislation intended to strike between addressing potential voter fraud and preventing the large-scale removal of eligible Black voters and other voters of color from the rolls under the guise of addressing fraud. The Senate Rules Committee Report stated that while “[t]he maintenance of accurate and up-to-date voter registration lists is the hallmark of a national system seeking to prevent voter fraud ... [s]uch processes must be structured to prevent abuse which has a disparate impact on minority communities.” S. Rep. No. 103-6, 1993 WL 54278, at *18.

By instituting requirements that purge programs be “uniform, non-discriminatory” and completed at least 90 days before a federal election, the NVRA sought to increase federal election turnout and prevent further discriminatory or inaccurate voter removal. Specifically, with respect to the 90-day and “uniform, non-discriminatory” provisions of the Act, the Senate Rules Committee Report notes that the NVRA was designed “to prevent the discriminatory nature of periodic voter purges, which ... appear to affect blacks and minorities more than others.” *Id.* at *18, 20.

Congress was aware that mass voter roll purges were instituted to disenfranchise immigrants, Black people, and the rural poor, while also recognizing that routine list maintenance is a hallmark of a fair electoral system that guards against fraud. The 90-day provision and the requirement that, outside of that window, purge programs be uniform and non-discriminatory, were crucial to the balance Congress struck to advance these dual goals of the NVRA.

Lastly, the NVRA’s legislative history is clear that Congress intended to eliminate systematic barriers to registration for eligible citizens. To paraphrase Senator Wendell Ford, the sponsor of the legislation, whether someone votes Republican, Democratic, or Independent “is not the point.” 103rd Congress, 1st Sess. (Mar. 4, 1993), at 4210. What matters is that all

people “find it easy to register to vote”—and that they stay registered so long as they stay eligible. *Id.*

The NVRA sought to protect voting as a fundamental right—“not a prize reserved for those who demonstrate the stamina and endurance to overcome obstacles to register.” *Id.* at 4203. Documentary proof of citizenship requirements and purges aimed at removing alleged non-citizens before a federal election raise exactly the kind of barriers to registration and voting that Congress sought to eliminate with the NVRA—unnecessary, unduly restrictive, and disproportionately harmful to voters of color.

C. Requiring Documentary Proof of Citizenship to Register Contravenes the Text of the NVRA and Congress’s Purpose in Adopting It.

The NVRA prescribes a Federal Form for registration to vote in federal elections, but allows states to devise their own registration forms, 52 U.S.C. § 20505(a)(2), to promote equal access to voter registration and thus, the ballot box. However, the NVRA mandates that when States “develop and use” their own voter registration forms, *id.*, for federal elections, those forms “may require only such identifying information ... as is necessary to enable the appropriate State election official to assess the eligibility of the applicant.” 52 U.S.C. § 20508(b)(1).

Regarding the requirement of United States citizenship, the NVRA spells out the information

Congress deems necessary: The Act requires voter registration forms for federal elections to include an attestation under penalty of perjury that the applicant is a citizen. *Id.* § 20508(b)(2). The NVRA treats this attestation as sufficient to verify the registrant's citizenship. Documentary proof of citizenship thus goes beyond what is "necessary to ... assess [] eligibility" to vote in federal elections, a conclusion that this Court has affirmed. *See ITCA*, 570 U.S. at 2. In fact, Congress considered allowing States to require DPOC for all registrations to vote in federal elections. The Senate version of the bill included such a provision. The House bill did not. The Conference Committee sided with the House, finding that the provision allowing states to demand DPOC is "not necessary or consistent with the purpose of this Act." H.R. Conf. Rep. No. 103-66, 1st Sess. (1993), 1993 WL 235764, at *23. Congress thus made a considered judgment that the attestation under penalty of perjury suffices to verify citizenship. To nevertheless require proof of citizenship thwarts the NVRA's stated objectives by erecting needless barriers to registering for and voting in federal elections and by making participation more difficult for eligible citizens.

The Help America Vote Act ("HAVA"), enacted in 2002, imposed new proof of address and identification requirements for voters registering by mail, but did not require documentary proof of citizenship. 52 U.S.C. § 21083(b). Rather, Congress particularized the requirements of the NVRA, requiring mail

registration forms to include specific language and requiring registrants to affirm their citizenship simply by checking a box. *Id.* § 21083(b)(4). HAVA thus reaffirms that Congress understood an affirmation of citizenship under penalty of perjury to be all that was necessary for a voter to prove citizenship. Yet under laws like Arizona’s H.B. 2492, eligible citizens who are unable to obtain documentary proof of citizenship will be denied access to the democratic process. 2022 Ariz. Sess. Laws, ch. 99 (“H.B. 2942”).

According to a national survey published in 2024, 21.3 million voting-age American citizens lack access to a birth certificate, U.S. passport, or naturalization papers. See Brennan Ctr., *Millions of Americans Don’t Have Documents Proving Their Citizenship Readily Available* (June 11, 2024), <https://www.brennancenter.org/our-work/analysis-opinion/millions-americans-dont-have-documents-proving-their-citizenship-readily>. Another 3.8 million voting-age American citizens of voting age lack any documents proving citizenship. *Id.* And this access gap is particularly stark for, and disproportionately affects, Black Americans and other people of color. *Id.*

Moreover, Black Americans and other Americans of color are less likely than White Americans to possess proof of citizenship documents. Two-thirds of Black Americans do not have a passport. Brennan Ctr., *House Bill Would Hurt American Voters* (Jan. 14, 2025), [www.brennancenter.org/our-work/analysis-](https://www.brennancenter.org/our-work/analysis-opinion/house-bill-would-hurt-american-voters)

opinion/house-bill-would-hurt-american-voters. Non-White Americans also are less likely than White Americans to have birth certificates, in part due to historical discrimination. At the time of the 1940 U.S. Census, 92% of White births were registered, whereas 82% of non-White births were registered. *See* Susan J. Pearson, Ph.D., Comment to the U.S. Election Assistance Commission, (“Pearson EAC Comment”) at 3 (2025) (citing Sam Shapiro, *Recent Testing of Birth Registration Completeness in the United States*, 8 Population Stud. 15-16 (1954)). In 1950, non-White birth registration was 93.5%, compared to 98.6% for White births. *Id.* A major predictor of birth registration was whether the baby was born in a hospital or at home. *Id.* In 1940-1950, states could, and did, bar Black Americans from accessing private or public hospitals, leading to more at-home births for Black Americans and thus fewer birth registrations. *Id.* Applicants seeking a delayed birth certificate face extensive documentation, fees that are up to double or triple the amount of an original certificate, and discretionary denials if the evidence is deemed unsatisfactory. *See* Susan Pearson, Ph.D., *The Birth Certificate: An American History*, UNC Press (2021), at 251–54; *see also* Pearson EAC Comment, at 5. For those unregistered or with delayed registration, requiring documentary proof of citizenship to register could deny them the right to vote.

*D. Purges Purportedly Targeting Non-Citizens
During the Quiet Period Before an Election
Inaccurately Flag or Remove Black Voters in
Violation of the NVRA and in Derogation of Its
Purpose.*

Today, despite Congress’s determination that voter purges require regulation to prevent their discriminatory impact, states continue to implement error-prone programs that disproportionately disenfranchise Black voters and other voters of color.

For example, in 2024, the State of Alabama admitted, and a federal court found, that Alabama wrongly labeled over 2,000 voters as ineligible noncitizens (out of just 3,251 identified voters). Not only had Alabama erroneously declared these citizens ineligible to vote, but based on its mislabeling of them as non-citizens, it referred them for criminal investigation. *See* Mot. Hr’g Tr. 10/15 Doc. 92 at 134:12-137:17; Mot. Hr’g Tr. 10/16, Doc. 91 at 12:15-14:13; *Ala. Coal. for Immigrant Just. v. Allen*, No. 2:24-cv-01254 (N.D. Ala. Oct. 16, 2024), ECF No. 90. In that case, expert evidence demonstrated that Alabama’s citizenship-based voter purge effort “incorrectly and disproportionately identifies racial and ethnic minorities who are naturalized.” *Ala. Coal. for Immigrant Just. v. Allen*, No. 2:24-cv-01254 (N.D. Ala. Oct. 11, 2024), ECF No. 74-1 ¶ 118. In a similar case, the Eastern District of Virginia enjoined Virginia’s parallel overly expansive attempt to purge purported non-citizens from their voter rolls within 90

days of the 2024 election. *Virginia Coal. for Immigrant Rts. v. Beals*, No. 1:24-cv-01788, 2024 WL 4577983 (E.D. Va. Oct. 25, 2024), *stayed*, 2024 WL 4608863 (Mem).

And just two months ago, well within 90 days of the upcoming 2026 federal elections, the Department of Homeland Security claimed to have identified nearly 16,000 non-citizens on the voter rolls in Nevada through unspecified database matching. *See* Nick Corasanti, “From 16,000 to 185 to Zero: Trump’s Claims of Illegal Voting in Nevada Fizzle,” *New York Times* (Sep. 24, 2026). Of those alleged non-citizens, the Department was able to provide Nevada election officials with details on only 185 individuals. *Id.* After the State investigated, all 185 proved to be eligible citizens who would have been denied the right to vote this year had Nevada acted on the Department’s demands. *Id.*

And in 2012, a similar program in Florida disproportionately flagged eligible Black voters as noncitizens for removal from the voting rolls within 90 days of a federal election. *Arcia v. Florida Sec’y of State*, 772 F.3d 1335, 1348 (11th Cir. 2014). In *Arcia*, one expert found that both the 180,000 voters initially identified as “potential noncitizens” and the final list of 2,625 registered voters targeted by the Florida Secretary of State were largely eligible voters who were disproportionately more likely to be racial and ethnic minorities—with Black voters particularly

overrepresented. *Arcia v. Detzner*, No. 1:12-cv-22282 (S.D. Fla. Sep. 24, 2012), ECF No. 76-1. And the State of Texas reached a settlement agreement with private civil rights groups after its similar purge program targeted tens of thousands of naturalized citizens, a disproportionate share of whom were voters of color. *Texas LULAC v. Whitley*, No. SA-19-CA-074-FB (W.D. Tex. Apr. 26, 2019).

These examples highlight the unreliability of systematic voter purge programs, whether based on citizenship or some other disqualifying characteristic, which pose a particular risk to lawfully registered Black voters and other voters of color. Congress enacted the 90-day provision to avoid precisely these results.

II. Principles of Comity Required the Courts Below to Give Effect to a Federal Consent Decree That Binds Arizona Unless and Until Vacated or Modified by the Issuing Court.

Petitioner and the United States ask this Court to reverse the Ninth Circuit's ruling that the consent decree entered in *League of United Latin American Citizens of Arizona v. Reagan* bars county clerks from rejecting state form applicants who lack documentary evidence of citizenship. RNC Br. at 34-39; U.S. Br. at 24-30; *see* No. 2:17-cv-4102 (D. Ariz. June 18, 2018), ECF No. 37 ("*LULAC* Decree" or "Decree"). They do not contest the Ninth Circuit's conclusion that the

DPOC provisions of H.B. 2492 conflict with the *LULAC* Decree. Instead, they urge various equitable grounds for disregarding the Decree. None of their arguments would permit the courts below to nullify the final judgment of another federal court. And in any event, the appropriate course for addressing any inequity in the ongoing enforcement of the *LULAC* Decree would be to seek relief from the judgment in the original court. *See* Fed. R. Civ. P. 60(b).

The *LULAC* Decree, which instructs county recorders to register eligible voters using the state form for federal elections—even when unaccompanied by documentary proof of citizenship—is a final judgment that binds its parties. The State cannot evade or unilaterally nullify that decree merely by enacting a state statute that conflicts with it. U.S. Const. Art. VI, cl. 2. Neither the State’s assertion that the Decree was consistent with state law nor the absence of explicit findings of a violation of federal law alters the analysis. Because the Decree remains in force, principles of comity required the courts below to give it effect and preclude a collateral attack on it. The appropriate forum in which to seek modification or vacatur of the decree is the issuing court.

A. Consent Decrees Are a Crucial Tool to Protect Civil Rights.

Consent decrees commonly override state law or practice, especially when states are alleged to have violated federal civil rights protections. Such decrees

are often the only practical avenue for Black people and other people of color to vindicate their rights.

In the voting rights context, consent decrees have routinely displaced state laws in the interest of protecting federally guaranteed rights. For example, during the COVID-19 pandemic, multiple states agreed to consent decrees suspending state-law requirements governing mail balloting and other matters. Thus, in pandemic-era Rhode Island, a federal district court approved a consent decree under which the Secretary of State and other state officials agreed to suspend the two-witness or notary attestation rule for voting by mail. *Common Cause Rhode Island v. Gorbea*, No. 1:20-cv-00318, 2020 WL 4460914, at *4 (D.R.I. July 30, 2020). This Court declined to stay that injunction, noting that where state officials “support the challenged decree,” third parties “lack a cognizable interest in the State’s ability to enforce its duly enacted laws.” *Republican Nat’l Comm. v. Common Cause Rhode Island*, 591 U.S. 1074 (2020) (Mem) (cleaned up); see also *League of Women Voters of Virginia v. Virginia State Bd. of Elections*, 458 F. Supp. 3d 442, 446 (W.D. Va. 2020) (similar).

In an earlier era, the *Dillard* litigation of the 1980s produced consent decrees that displaced existing election systems throughout Alabama. Twenty years after the enactment of the Voting Rights Act, dozens of Alabama municipalities, county commissions, and school boards throughout the state’s Black Belt

maintained at-large systems of election and other discriminatory devices for the express purpose of keeping political power out of the hands of the Black citizens who made up a majority of their populations. James Blacksher et. al., Voting Rights in Alabama: 1982-2006, 17 S. CAL. REV. L. & Soc. Just. 249, 260 (2008) (collecting cases); *see also Dillard v. Crenshaw Cnty.*, 640 F. Supp. 1347, 1357 (M.D. Ala. 1986) (citing statements defending numbered place laws and other rules “to protect the white people of Alabama” from Black voters’ purported illiteracy, “criminal records, [and] criminal attitudes”). Litigation throughout the region resulted in consent decrees that altered these systems in ways not contemplated by state law. *E.g.*, *Dillard v. Town of Cuba*, 708 F. Supp. 1244, 1245 (M.D. Ala. 1988) (approving consent decree adopting a “limited voting” system for city council elections). Ultimately, after these alternative systems of election were codified in state law and precleared by the Attorney General, many were dissolved. *E.g.*, *Dillard v. Crenshaw Cnty.*, No. CIV.A.2:85CV1332-MHT, 2006 WL 3392071 (M.D. Ala. July 31, 2006) (dissolving the *Dillard* consent decree pertaining to Calhoun County citing Alabama Act No. 2006–252, known as the Dillard Act, codified at Ala. Code § 11-80-12 (2006); *see also* Ala. Code § 11-3-1(c) (2008) (broadening the Dillard Act)).

Consent decrees remain a powerful tool to vindicate federally protected civil rights. In 2024, a consent decree settled the *Braxton v. Stokes* litigation

simply by requiring an Alabama city to hold mayoral elections and provide the public notice of them. *Braxton v. Town of Newbern*, No. 2:23-CV-00127-KD-N, 2024 WL 3519193, at *1 (S.D. Ala. July 23, 2024). Before entering into the consent agreement, the City of Newbern had not held a mayoral election since 1965. Instead, it had passed down the role of mayor for decades, almost exclusively to White residents and without public input or consent. Alaizah Koorji, *Defending Consent Decrees in the Wake of Horne v. Flores*, Harv. L. Rev. Blog (Nov. 13, 2024).

B. A Mere Change in State Law Does Not Nullify or Require Modification of an Institutional Reform Consent Decree.

The *LULAC* Decree is a final judgment and “an agreement that the parties desire and expect will be reflected in, and be enforceable as, a judicial decree that is subject to the rules generally applicable to other judgments and decrees.” *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 378, 391 (1992). Lower courts have long recognized consent decrees as enforceable and final. *See, e.g., Washington v. Penwell*, 700 F.2d 570, 574 (9th Cir. 1983) (“That compliance with a decree enforcing federal law will have an ancillary effect on the state treasury is the inevitable and permissible consequence of *Ex parte Young*-type suits.”); *United States v. Kellum*, 523 F.2d 1284, 1287 (5th Cir. 1975) (collecting cases).

Like other judgments, consent decrees are subject to modification or vacatur under Rule 60(b)(5). Modification or vacatur of a final judgment is the exception, not the rule. Such relief may be appropriate where “a significant change in circumstances” renders continued enforcement inequitable, *Rufo*, 502 U.S. at 383, or “when the objects of the decree have been attained,” *Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 442 (2004). Courts consider modifying or vacating a consent decree “only to the extent that equity requires.” *Rufo*, 502 U.S. at 391. Where circumstances have changed sufficiently to warrant relief under Rule 60(b)(5), any modification must be “suitably tailored to the changed circumstance.” *Id.*

A significant change in facts or in law may justify revision of a consent decree. Thus, a “consent decree must of course be modified if, as it later turns out, one or more of the obligations placed upon the parties has become impermissible under *federal* law.” *Id.* at 388 (emphasis added). In an institutional reform case, however, a mere clarification of federal law may not warrant modifying a consent decree so long as its obligations remain permissible and consistent with the underlying federal rights. *Id.* at 389 (“[A] clarification in the law [does not] automatically open[] the door for relitigation of the merits of every affected consent decree”). In *Rufo*, for example, this Court held that a prison reform consent decree need not be modified merely because a later decision clarified that

its obligations exceeded the constitutional minimum. *Id.* at 388-89.

That is especially true where, as here, the claims underlying a consent decree are not at issue in the subsequent dispute. The *LULAC* Decree rested on claims under the First and Fourteenth Amendments to the U.S. Constitution, not the NVRA. Consent Decree at 1-2. Thus, any clarification concerning the State's obligations under the NVRA would have no bearing on the basis for the consent decree. Moreover, even if this Court were to hold that the Constitution and the NVRA permit states to require documentary evidence of citizenship, registering federal voters *without* such evidence would remain lawful under federal law. Indeed, the majority of states implement the mandates of the NVRA without imposing a DPOC requirement.³ Treating state-form registrations the same as federal-form registrants, as the *LULAC* Decree requires, is thus a reasonable means of complying with NVRA. In other words, “[t]he decree reflects a choice among various ways that a State could implement the [NVRA].” *Frew*, 540 U.S. at 439. Accordingly, no decision from this Court could *require*

³ Nor can it be argued that there was any “misunderstanding” as to what federal law required at the time the *LULAC* Decree was negotiated, as Petitioner contends. RNC Br. at 36. In the *LULAC* Decree, the Secretary maintained her position that the state's DPOC requirement was permissible under the Constitution, even as applied to state-form registrants registering to vote in federal elections. *LULAC* Decree, at 4. She simply chose to compromise that position.

a modification of the *LULAC* Decree. *Id.* at 438-39 (rejecting the argument that enforcement of a consent decree requires a showing that the violation of the decree also violates the underlying federal law).

Arizona's adoption of H.B. 2492 does not amount to a change in circumstance that fatally undermines the Decree. Petitioner's contrary argument relies on instances in which a change in federal—not state—law substantially altered the circumstances that justified an earlier decree. *See Rufo*, 502 U.S. at 388-89 (examining whether this Court's decision in *Bell v. Wolfish*, 441 U.S. 520 (1979) required re-examination of a prison conditions consent decree); *Sys. Fed. No. 91, Ry. Emps.' v. Wright*, 364 U.S. 642, 650-51 (1961) (holding that a change to the federal Railway Labor Act required modification of a consent decree); *Agostini v. Felton*, 521 U.S. 203, 222 (1997) (overturning this Court's precedent established in the same case and vacating permanent injunction).

Standing alone, a change in state law does not and cannot supersede a federal consent decree. Since the time of Chief Justice John Marshall, it has been axiomatic that a state's legislature may not “annul the judgments of the courts of the United States, and destroy the rights acquired under those judgments.” *Cooper v. Aaron*, 358 U.S. 1, 18 (1958) (quoting *United States v. Peters*, 9 U.S. 115, 136 (1809)). The Supremacy Clause requires a state to comply with judgments and orders of the federal judiciary—in this

case, the *LULAC* Decree—and any state law to the contrary must give way. *See* U.S. Const. Art VI, cl. 2; *Cooper*, 358 U.S. at 18-19.

It makes no difference to the enforceability of the *LULAC* court’s final judgment that state law now prohibits what was allegedly permitted at the time the Decree was entered. Indeed, the express purpose of H.B. 2492 to thwart the *LULAC* Decree is a compelling reason *not* to modify it. *Frew*, 540 U.S. at 442 (modification or dissolution of a consent decree appropriate “when the objects of the decree have been attained”); *see also O’Sullivan v. City of Chicago*, 396 F.3d 843, 865 (7th Cir. 2005) (changes to a consent decree’s legal or factual premises do not justify “ignoring or defying the decree”). Nor is it of any moment that the Secretary’s consent rested on the premise that the actions required by the *LULAC* Decree were purportedly permissible under state law. Once that consent was transformed into a final judgment, it bound the parties to its terms.

*C. The Appropriate Venue for Seeking
Modification of the LULAC Decree Is the
Issuing Court.*

Even if the enactment of H.B. 2492 were grounds for seeking a modification of the *LULAC* Decree, the suggestion that the lower courts should have disregarded the Decree is misplaced. Rule 60(b) provides the mechanism by which a party or interested non-party may seek relief from a judgment. Fed. R.

Civ. P. 60(b); *Horne v Flores*, 557 U.S. 433 (2009) (permitting intervention of state legislative leaders for the purpose of seeking relief under Rule 60(b)(5)). Under that rule, a court may modify its own decree when equity so requires. *Frew*, 540 U.S. at 441; *Rufo*, 502 U.S. at 383. That relief must be sought in the proceeding in which the judgment was entered. 12 Moore's Fed. Prac. § 60.02 (3d ed. 2024); 7 Moore's Fed. Pract. § 60.19 (3d ed. 2015); *see also Brown v. McCormick*, 608 F.2d 410, 413 (10th Cir. 1979). Indeed, Petitioner RNC seems to concede as much. RNC Br. at 35 (“the *issuing court* must consider ‘changing circumstances’”).

Petitioner and the United States suggest that the Respondents inappropriately commandeered these collateral proceedings to enforce the consent decree. RNC Br. 40-41; U.S. Br. 25. This argument turns Rule 60(b)(5) on its head. It is the party seeking relief from a judgment that bears the burden of establishing changed circumstances. In this case, it is Petitioner who seeks modification or vacatur of the *LULAC* Decree. As such, it was incumbent upon them to seek that relief in the appropriate venue.

The United States erroneously relies on this Court’s decision in *Martin v. Wilks*, 490 U.S. 755, 768-69 (1989), to argue that Petitioner’s collateral attack on the *LULAC* Decree in this proceeding is proper. *Wilks* is inapposite. *Wilks* did not address whether collateral litigation could be used to undo or modify an

existing consent decree. It addressed only whether the existence of a consent decree procedurally barred claims that could have been resolved in the original proceeding. Here, there is no argument that the existence of the *LULAC* Decree bars Petitioner from defending H.B. 2492 on the merits against an NVRA challenge. Indeed, it has done so. But *Wilks* provides no support for the argument that federal courts are free to ignore or unilaterally modify a final judgment entered by another court in another case.

If Petitioner or the United States believe H.B. 2492 provides grounds to modify or vacate the *LULAC* Decree, the appropriate course of action is to seek relief under Rule 60(b)(5) in the *LULAC* litigation.

CONCLUSION

The decision below should be affirmed.

Respectfully submitted,

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