No. 25-1017

In the Supreme Court of the United States

REPUBLICAN NATIONAL COMMITTEE, PETITIONER

v.

MI FAMILIA VOTA, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

REPLY BRIEF FOR THE UNITED STATES AS RESPONDENT IN SUPPORT OF PETITIONER

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The National Voter Registration Act of 1993 (NVRA), 52 U.S.C. 20501 *et seq.*, permits the modest election-integrity measures that Arizona adopted here in order to address the risk of noncitizen voting. Respondents' contrary arguments repeatedly construe the Act's text in a manner divorced from its context, while dismissing this Court's precedent.

Arizona's H.B. 2492 requires that individuals provide documentary proof of citizenship (DPOC) to register to vote using the State's mail-in voter-registration form, rather than just allowing people to check a box attesting that they really are American. Respondents primarily contend that DPOC is not "necessary" under Section 9 of the NVRA. On their view, "necessary" means something like "essential," and it is possible to have a registration form that uses attestations rather than DPOC, as the current federal form does.

That rationale repeats the Ninth Circuit's fundamental disregard of the NVRA's structure. The Act grants States "flexibility to design and use their own registration forms" that build on the "backstop" provided by the federal form—including by "requir[ing] information the Federal Form does not," such as a "proof-of-citizenship requirement." *Arizona* v. *Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 12 (2013) (*ITCA*). Reading "necessary" to mean "essential" is irreconcilable with that plan; adopting the word's more common legal meaning of "useful" and "appropriate" faithfully implements it. Respondents have no answer to *ITCA*, and their other points all flow from the same basic mistake.

Respondents fare no better in invoking the LULAC consent decree to bar the DPOC requirement. They agree that a significant change in law can render continued enforcement of a consent decree inequitable, and they barely dispute that this substantive standard is satisfied here. Rightly so: H.B. 2492 now compels what the decree prohibits—and thus vitiates the State's consent, which was premised on the decree's consistency with state law. Respondents instead rely almost entirely on a procedural objection. They maintain, as the Ninth Circuit did, that Rule 60(b) is the exclusive means to obtain relief from enforcement of the decree. But the district court enforced the decree by entering a new injunction, and it erred because such relief violated traditional equitable principles given the changed circumstances. Indeed, our opening brief cited cases from this Court making clear that, even absent a Rule 60(b) motion, a district court cannot prospectively enforce an injunctive order that has been undermined by a significant legal change. Yet respondents do not even mention those cases, much less successfully distinguish them.

Arizona's H.B. 2243 requires that state officials regularly check the voter rolls against available databases to remove noncitizens. Respondents claim that this law is preempted by Section 8 of the NVRA, which bars systematic programs to remove "ineligible voters from the official lists of eligible voters" within 90 days of federal elections. 52 U.S.C. 20507(c)(2)(A). Like the Ninth Circuit, respondents' basic point is that the plain meaning of "ineligible voters," in isolation, covers noncitizens.

Yet unlike the Ninth Circuit, respondents now admit that words can carry implied modifiers based on context, and that Section 8 itself reflects that principle in a parallel provision. For the general-removal provision—which permanently bars removal of a "registrant" except for specified reasons that do not include noncitizenship, see 52 U.S.C. 20507(a)(3) and (4)—respondents recognize that "registrant" cannot be construed to include noncitizens, lest they be immunized from removal if improperly registered. So respondents all agree that, in context, "registrant" means a "properly registered registrant." And to justify that implied limitation, respondents all point to the NVRA's structure—namely, that a "registrant" under Section 20507(a)(3) is supposed to be an "eligible applicant" who supplied a "valid voter registration form" under Section 20507(a)(1). But the same implied limitation applies to the 90-day bar in Section 20507(c)(2) for the same reason: "the official lists of eligible voters" are supposed to be the lists of registrants, and thus the "ineligible voters" who are shielded from removal within the meaning of this provision are properly registered registrants who later became ineligible. Respondents offer no coherent justification for their mix-and-match approach—reading "ineligible voter" in isolation, yet "registrant" in context.

I. H.B. 2492's DPOC REQUIREMENT IS LAWFUL

A. The NVRA Does Not Preempt H.B. 2492

1. Section 9

Section 9 of the NVRA provides that a state mail-in voter-registration form "may require only such identifying information * * * as is *necessary* to enable the appropriate State election official to assess the eligibility of the applicant and to administer * * * the election process." 52 U.S.C. 20508(b)(1) (emphasis added). As our brief explained (at 16-22), although the word "necessary" can carry a range of meanings, context makes clear that, in Section 9, the word has its ordinary legal meaning of "useful" and "appropriate." That reading was the premise of this Court's conclusion in *ITCA* that "States retain the flexibility to design and use their own registration forms," while the "Federal Form provides a backstop." *ITCA*, 570 U.S. at 12.

a. Respondents have no answer to *ITCA* and barely discuss it. Instead, they insist that "necessary" means "essential," and thus that Section 9 prohibits Arizona from requiring DPOC because others view the "attestation" of citizenship as "sufficient." See Mi Familia Br. 14-15, 23-24; see also AANHPI Br. 27-28. That one-size-fits-all mandate, however, is the very opposite of the flexibility that *ITCA* promised.

If "necessary" meant anything like "essential," "indispensable," or "absolutely required," Mi Familia Br. 15, then the state form would "cease[] to perform any meaningful function" distinct from the federal form, *ITCA*, 570 U.S. at 13. The Election Assistance Commission (EAC) has a nondiscretionary duty to require all essential information on the federal form. See *id.* at 19-20; see also Mi Familia Br. 21. So if any non-essential information that is not required to be on the federal

form is barred from being required on the state form, then the federal form would no longer be a "backstop." *ITCA*, 570 U.S. at 12. Rather, it would reflect a ceiling that *prevents* States from "requir[ing] information the Federal Form does not." *Ibid.* That view, of course, is contrary to "what the Court recognized as possible" in *ITCA*, Pet. App. 416a (Bumatay, J., dissenting from vacatur of stay), when it said that the NVRA allows States (in fact, Arizona) to "include[]" a "proof-of-citizenship requirement" on their forms. 570 U.S. at 12.

Respondents miss the point in observing that States retain the discretion to "decide[] what is 'necessary' in the first instance," subject "to judicial review." *E.g.*, Mi Familia Br. 20. If "necessary" meant "essential," then any variance between the requirements of the two forms would reflect either that the EAC was requiring too little or that a State was requiring too much. Either way, the NVRA would compel uniformity, not "flexibility," in mandating substantively identical forms, rather than forms that each "perform [a] meaningful function" as a distinct option that "may require information the [other] does not." *ITCA*, 570 U.S. at 12-13.

Respondents dismiss *ITCA* as only talking about the permissible requirements on state forms for purposes of "*state* elections." *E.g.*, Mi Familia Br. 20. That is baseless. *ITCA* framed the forms as "work[ing] in tandem," which makes sense only for purposes of *federal* elections. 570 U.S. at 12. When Justice Scalia described the "flexibility" that Section 9 provides States to impose additional "procedural hurdles" in "us[ing] their own registration forms," *ibid.*, he obviously was not referring solely to state elections. After all, state forms "can be used to register voters in both state and federal elections," while the federal form is a required "backstop"

only when registering for federal elections, as registering for non-federal elections is the exclusive province of the States. *Ibid.* In other words, the entire point of this discussion in *ITCA* is that the federal form serves as a baseline for a common purpose (federal registration), and that Section 9 allows States to build on that foundation as they deem useful and appropriate. See *id.* at 12-13. Indeed, as Justice Alito emphasized twice (without objection), this was settled ground among the Justices in *ITCA*. See *id.* at 39, 45 (dissenting).

b. For similar reasons, respondents' reliance on dictionaries and cases is misplaced. See Mi Familia Br. 15-16; AANHPI Br. 20-21. Nobody disputes that "necessary" *sometimes* means "essential" (or some synonym). But "in ordinary speech, the term is often used more loosely to refer to something that is merely important or strongly desired." *Ayestas* v. *Davis*, 584 U.S. 28, 44 (2018). And in "legal contexts," the term typically means, at most, "appropriate and well adapted." *Cellular Telecommunications & Internet Ass'n* v. *FCC*, 330 F.3d 502, 509 (D.C. Cir. 2003) (*CTIA*); see, *e.g.*, *McCulloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316, 414 (1819); *Price* v. *Johnston*, 334 U.S. 266, 279 (1948); *CIR* v. *Teller*, 383 U.S. 687, 689 (1966). Because the term is "susceptible of various meanings," *Black's Law Dictionary* 1029 (6th ed. 1990), "context" is "crucial" in deciding which spot along the spectrum is most apt, *CTIA*, 330 F.3d at 510.

Respondents' cases merely apply that principle in contexts different from this one. For example, in *AT&T Corp.* v. *Iowa Utilities Board*, 525 U.S. 366 (1999), this Court considered a statute governing when it was "necessary" for phone carriers to receive access to certain network elements, *id.* at 388, and it held only that

"giving some substance" to that requirement precluded treating "*any* 'increased cost or decreased service quality' as establishing a 'necessity,'" *id.* at 390-392. *AT&T* did not "suggest that 'necessary' has precisely the *same* meaning in every statutory context." *CTIA*, 330 F.3d at 510-511. Likewise, in *Cinnamon Hills Youth Crisis Center, Inc.* v. *Saint George City*, 685 F.3d 917 (10th Cir. 2012), then-Judge Gorsuch noted that a reasonable-accommodation statute's "necessity requirement doesn't appear in a statutory vacuum," and relied on context to conclude that accommodations are necessary only if essential to achieving "'equal opportunity.'" *Id.* at 923. Here, in contrast, because the state form by "design" "may require information the Federal Form does not," *ITCA*, 570 U.S. at 12, this is a paradigmatic example of a situation where there are many "viable solutions" available "to achieve the desired goal" (verifying citizenship), any of which may be "selected [as] necessary," *CTIA*, 330 F.3d at 510.

Respondents try to distinguish between provisions limiting and granting authority, suggesting that "necessary" has a restrictive meaning in the former while retaining a flexible meaning in the latter. See, *e.g.*, Mi Familia Br. 18. But that would often be an unworkable standard: where an entity otherwise lacks authority to act, there is no principled way to determine whether the provision of "necessary" powers should be classified as a grant or a limit. Regardless, this Court's precedents do not make the meaning of "necessary" turn on such an artificial categorization. While *McCulloch* did rely on the Necessary and Proper Clause's placement among Congress's affirmative powers as one of several factors supporting a broad construction of "necessary," 17 U.S. at 419, respondents identify no decision of this

Court adopting a narrow construction of "necessary" merely because the provision could be characterized as a limitation instead. To the contrary, even in the context of a limitation, this Court has *declined* to read "'necessary' in the highly restrictive sense of 'indispensable,' 'essential,' and 'vital,'" where the statutory "context" counseled against such "unwarranted rigidity." *Armour & Co.* v. *Wantock*, 323 U.S. 126, 129-130 (1944) (interpreting scope of limitation on employee rights).

c. Turning to Section 9's context, respondents contend that "necessary" should mean "essential" because it lacks a loosening-modifier like "reasonably." See, *e.g.*, Mi Familia Br. 16. But while the inclusion or omission of modifiers is an important contextual tool when construing a word like "necessary," that factor cuts strongly in the opposite direction here. In the NVRA's motor-voter provision, the Act states that a government may ask for "only the *minimum amount* of information *necessary*" to decide eligibility when registering voters at the DMV. 52 U.S.C. 20504(c)(2)(B)(ii) (emphases added). That qualifier would be superfluous if "necessary" meant "essential" within the Act. U.S. Br. 18-19. Respondents assert that this provision is "very similarly worded" to Section 9, Mi Familia Br. 20, or at least not "as different" as it seems, AANHPI Br. 28-29. But saying that does not make it so. Congress inserted a cumbersome *tightening* modifier in the motor-voter provision, which makes sense only if "necessary" retains its more flexible, and (in legal contexts) more common, definition where unqualified in the Act. See *Ayestas*, 584 U.S. at 44.

Respondents also emphasize that Section 9 says that any state form may require "only such" information as is necessary, 52 U.S.C. 20508(b)(1). See, *e.g.*, Mi

Familia Br. 18-19. But it is perfectly natural to instruct a decisionmaker to require "only" what is useful and appropriate. See, *e.g.*, 18 U.S.C. 926(a) ("The Attorney General may prescribe only such rules and regulations as are necessary to carry out the provisions of this chapter"). As respondents note in passing, Mi Familia Br. 19 n.2, this broad reading of "necessary" information would mean that Section 9 prohibits much the same thing as an earlier provision in the Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241, which prohibits States from denying an individual's right to vote based on an "omission" from a voter registration form that "is not material in determining" the individual's eligibility to vote, see 52 U.S.C. 10101(a)(2)(B). That overlap, however, is neither surprising nor problematic. "[R]edundancy is 'hardly unusual' in statutes," especially where the provisions are "not part" of "the same statutory scheme." *Marx* v. *General Revenue Corp.*, 568 U.S. 371, 385-386 (2013). When the Congress that enacted the NVRA in 1993 sought to prohibit States only from requiring such information that falls below the ordinary legal meaning of necessary, the natural way to do so was to use the word "necessary" in Section 9—not to cross-reference or repeat a similar standard from another statute enacted three decades earlier.

Respondents further contend that because Section 9's "same statutory standard applies to what information both [the federal and state] forms may request," the information deemed "necessary" for the federal form must be "necessary" for state forms too. *E.g.*, Mi Familia Br. 13. But that just repeats respondents' fundamental error: While both forms may require only "necessary" information, the NVRA allows States and the federal government to reach different judgments

about what information is useful and appropriate in practice. That is a feature, not a bug, of a scheme where "States retain the flexibility to design and use their own registration forms, [while] the Federal Form provides a backstop." *ITCA*, 570 U.S. at 12.

d. Finally, respondents contend that there is insufficient record evidence to conclude that DPOC is "necessary" in Arizona despite various other means of verifying the citizenship of applicants. See Mi Familia Br. 23-25; AANHPI Br. 23-25. But that factual objection is entirely derivative of their erroneous legal view that a state form may require only "essential" information. H.B. 2492's demand for *verifiable proof* of citizenship is, on its face, "plainly adapted" to the objective of verifying eligibility to vote, whether or not other "solutions" (such as accepting attestations under penalty of perjury or searching for separate evidence) may be "viable." See *CTIA*, 330 F.3d at 509-510. And that is so regardless of how few or many noncitizens may try to register and vote. See *Brnovich* v. *Democratic National Committee*, 594 U.S. 647, 686 (2021) ("[A] State may take action to prevent election fraud without waiting for it to occur and be detected within its own borders."); see also Morley Amici Br. 2, 12-15.

Nor are respondents correct that Congress itself decided that DPOC is not "necessary," by rejecting a proposed amendment that would have expressly recognized the right of States to require DPOC while registering voters. See, *e.g.*, AANHPI Br. 22-23. On top of the well-worn problems with using this type of legislative history as an interpretive tool at all, the failed amendment here is particularly unilluminating. Although respondents highlight various statements suggesting that the defeat of the amendment meant that

States would be barred under the bill from requiring DPOC, they disregard statements by other "drafters and key proponents of the NVRA" that the amendment was unnecessary because the bill did not bar States from requiring DPOC to begin with. See House Amicus Br. 16 (collecting quotes). Moreover, other legislators may have rejected the amendment because it would have permitted States to require DPOC even for those registering using the federal form, contrary to the interpretation of the NVRA adopted by this Court in *ITCA*. See 570 U.S. at 15. Accordingly, this legislative history does not remotely suggest that Congress atextually concluded that the NVRA prohibits States from requiring DPOC for their state forms.

2. Section 7

Section 7 of the NVRA provides that designated voter-registration agencies must distribute either the federal mail-in voter-registration form or "the office's own form if it is *equivalent* to the [federal] form." 52 U.S.C. 20506(a)(6)(A) (emphasis added). As our brief explained (at 22-24), an "equivalent" form is one that satisfies the corresponding function and criteria under the Act. It cannot mean an "identical" form, because States would have little reason "to design and use their own registration forms" under Section 6, *ITCA*, 570 U.S. at 12, if those forms' additional requirements caused them to not satisfy Section 7, such that States would still need to also distribute either the federal form or a carbon copy at voter-registration agencies.

The Mi Familia respondents' sole rejoinder is to insist that equivalent in this context must mean something more than "identical *in effect*," given that using "*any* voter registration form" has the effect of applying to register to vote. Br. 30-31. That ignores our entire

point. Again, in order for a state or agency-specific form to be "equivalent" to the federal form under Section 7, it must correspond not just in effect or function, but also in the substantive criteria: it must contain all of the information required, and it cannot contain any of the requirements prohibited, under Section 9 for the federal form. That gives the word "equivalent" ample work to do in Section 7 without stripping the state form of "any meaningful function" to perform under Section 6. See *ITCA*, 570 U.S. at 13.

The AANHPI respondents contend that the federal and state forms cannot be "equivalent" or "corresponding" if they have differences that are "outcome determinative for identically situated applicants." Br. 31. By definition, however, any extra requirement will be dispositive for any applicant who fails to comply. So that cannot be the correct reading of "equivalent" in this context, given *ITCA*'s recognition that "state-developed forms may *require* information the Federal Form does not," and thereby impose additional "procedural *hurdles*" on those who choose to use them. See 570 U.S. at 12-13 (emphases added). For the same reason, it is immaterial that, on respondents' view of forms that comply with Section 7, States at least could include "optional requests for information." See AANHPI Br. 32. That would still nullify the "flexibility" that the NVRA provides States to "use their own registration forms," with "the Federal Form provid[ing] a backstop," not a ceiling or a mirror. See *ITCA*, 570 U.S. at 12.

B. The LULAC Consent Decree Does Not Bar H.B. 2492

When there is "a significant change * * * in law," the "continued enforcement" of a consent decree may become "no longer equitable." *Horne* v. *Flores*, 557 U.S. 433, 447 (2009). As our brief explained (at 24-28),

substantively, that is the case here. The sole basis for the LULAC consent decree was the State's consent; and that consent was expressly premised on the decree's consistency with then-existing state law. That premise, however, was overtaken by H.B. 2492, which now compels what the decree forbids. The decree thus can no longer be enforced, because without common consent to vindicate, or an adjudicated federal-law violation to remedy, it is plainly inequitable to enjoin a duly enacted state law. And as our brief further explained (at 28-30), procedurally, petitioner was entitled to raise that equitable defense to the district court's new injunction without filing a motion to vacate the old decree under Federal Rule of Civil Procedure 60(b)(5).

1. Respondents barely dispute that *Horne*'s substantive standard is satisfied here. The State all but admits that it is. Arizona Br. 25. The Mi Familia respondents say nothing on the issue. And while the AANHPI respondents raise two passing objections to the existence of changed circumstances, neither succeeds.

First, the AANHPI respondents assert that "there has been no meaningful change" in state law, because H.B. 2492 is worded similarly to its predecessor. Br. 17. That is misleading. Despite the similar wording, Arizona's Secretary of State at the time of the consent decree loosely construed H.B. 2492's predecessor to allow consideration of DPOC submitted separately from the state form, see Pet. App. 476a-479a, which is why she agreed to the decree as "consistent with," *id.* at 476a, and "continuing to comply with," that law, *id.* at 478a. The point of the statutory revision in H.B. 2492 was to reject that reading and strictly require the submission of DPOC as part of the state form, see 25-1019 Pet. App. 671—which is why these respondents immediately

challenged that aspect of H.B. 2492, rather than treating it as a ratification of the status quo, see 22-cv-519 D. Ct. Doc. 1, at 29-36 (Mar. 31, 2022). As the State confirms: a "key premise of the consent decree was that its terms were consistent with Arizona law," but "[t]his premise is no longer true, given the enactment of [H.B.] 2492." Arizona Br. 25; see *System Federation No. 91* v. *Wright*, 364 U.S. 642, 651 (1961) ("The consent is to be read as directed towards events as they then were.").

Second, the AANHPI respondents contend that the consent decree still has "an underlying federal-law basis," because it settled a claim that treating federal and state registration forms differently "violated the First and Fourteenth Amendments." Br. 17-18. But when the decree was entered, the State denied that claim, Pet. App. 476a, and the district court did not credit it, *id.* at 483a. So now that the state-law premise of the State's consent has been vitiated, the federal-law claim alone cannot sustain the decree, unless the district court actually accepts it on the merits. The district court, however, *rejected* respondents' renewed claims against H.B. 2492 under the First and Fourteenth Amendments. See Pet. App. 308a-319a. In short, the decree lacks any constitutional basis; its sole foundation was the State's consent, which has since been vitiated.

2. Unable to substantively justify continued enforcement of the consent decree, respondents rely almost entirely on a procedural point. They contend that a motion under Rule 60(b) provides the "exclusive path" for petitioner to seek relief from the decree. AANHPI Br. 11; see *id.* at 12-16; Mi Familia Br. 32-35; Arizona Br. 22-25. Of course, they insist that this procedure must be followed while conspicuously failing to defend the district court's procedural irregularity in invoking

the decree *sua sponte* without identifying any (still-unidentified) cause of action to enforce it. See U.S. Br. 29. Even setting aside respondents' procedural hypocrisy, they are fundamentally mistaken.

While Rule 60(b) authorizes a party to file a "motion" seeking relief from a decree whose prospective application "is no longer equitable," the rule does not say that it is the *only* available method for opposing continued enforcement of such a decree. See Fed. R. Civ. P. 60(b)(5). Rather, Rule 60(b)(5) simply codifies "the traditional power of a court of equity" to consider "changed circumstances." *Frew ex rel. Frew* v. *Hawkins*, 540 U.S. 431, 441 (2004); see *Brown* v. *Plata*, 563 U.S. 493, 542 (2011). Indeed, Rule 60 makes clear that it "does *not* limit a court's power" to "entertain an independent action to relieve a party from a judgment." Fed. R. Civ. P. 60(d)(1) (emphasis added). *A fortiori*, here, it does not limit this Court's power to consider petitioner's equitable *defense* to the district court's attempt to enforce the consent decree (*sua sponte*) by issuing a *new* injunction in an independent action.

That is what occurred, for instance, in *Salazar* v. *Buono*, 559 U.S. 700 (2010). There, after a district court had ordered the federal government to stop displaying a large cross on federal property, that court sought to enforce its injunction by issuing a second one barring the government from transferring the underlying land to a private party pursuant to an intervening act of Congress. *Id.* at 714 (plurality opinion). Although the government "d[id] not—and could not—ask this Court to reconsider the propriety of the [first] injunction," it could and did challenge the second injunction. *Ibid.* And the controlling opinion concluded that "[t]he land-transfer statute was a substantial change in

circumstances bearing on the propriety of the requested relief," which the district court "did not acknowledge." *Id.* at 715; see *id.* at 718 ("Where legislative action has undermined the basis upon which relief has previously been granted, a court must consider whether" any relief "continues to [be] justif[ied].").

Another example is *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) 421 (1856). In that case, after this Court had previously "ordered that [a] bridge be raised or permanently removed" because it was unlawfully obstructing navigation, the plaintiff "sued to enjoin the bridge's reconstruction" after it "was destroyed in a storm." *Miller* v. *French*, 530 U.S. 327, 345 (2000). But "[b]ecause [an] intervening statute [had] altered the underlying law such that the bridge was no longer an unlawful obstruction, [this Court] held that it was quite plain the decree of the court cannot be enforced." *Ibid.* (quotation marks omitted).

Although we cited *Salazar* and *Wheeling Bridge*, U.S. Br. 29, none of the respondents even addresses those cases, let alone distinguishes them. Conversely, the cases that respondents cite requiring invocation of Rule 60(b) are inapposite. Some did not involve prospective enforcement of an injunction at all. See, *e.g.*, *BLOM Bank SAL* v. *Honickman*, 605 U.S. 204, 206, 214 (2025) (reopening of dismissed case); *Deposit Bank of Frankfort* v. *Board of Councilmen*, 191 U.S. 499, 508-509, 512-513 (1903) (res judicata effect of declaratory judgment). Others involved improper claims that injunctions could be unilaterally disregarded merely because they were erroneously issued from the outset. See, *e.g.*, *Celotex Corp.* v. *Edwards*, 514 U.S. 300, 306-307 (1995) (party attempted to execute on a bond in violation of an injunction against execution issued by

bankruptcy court); *GTE Sylvania, Inc.* v. *Consumers Union of the United States, Inc.*, 445 U.S. 375, 386-387 (1980) (party wrongly objected to an agency's failure to comply with a FOIA request due to an injunction barring compliance). Likewise, while *Frew* said that a "decree should be enforced according to its terms" "where [the defendant] has not" "establishe[d] reason[s] to modify the decree," 540 U.S. at 442, it never said that Rule 60(b)(5) modification is the *sole* means of relief where the defendant *has* established the "changed circumstances" that trigger "the traditional power of a court of equity" to cease prospective enforcement of an injunctive order, *id.* at 441.

In sum, there is no basis in law or logic to deem Rule 60(b)(5) the exclusive procedural option in this unusual posture. As the district court sought to enforce the consent decree by issuing a new injunction, petitioner had every right to defend on the ground that enforcement against H.B. 2492 would "improperly deprive[] [state] officials of their designated legislative and executive powers." *Horne*, 557 U.S. at 450.

II. H.B. 2243's REMOVAL PROGRAM IS LAWFUL

Section 8 of the NVRA prohibits States from implementing "any program the purpose of which is to systemically remove the names of ineligible voters from the official lists of eligible voters" within "90 days" of a federal election. 52 U.S.C. 20507(c)(2)(A). As our brief explained (at 31-44), Section 8 creates a reticulated, multistep scheme that first regulates when an eligible individual is registered as a voter, and then regulates when the State may later remove a registered voter from the rolls. Construed in context, the "ineligible voters" who cannot be removed from the list of registered voters during the 90-day window are *properly registered*

registrants who have become ineligible. The 90-day bar does not shield persons *improperly registered* in the first place—such as the noncitizens targeted by H.B. 2243.

1. Respondents' central rejoinder is that the "plain text" meaning of the term "ineligible voters" in isolation covers noncitizens, and that our narrower reading based on the NVRA's surrounding text is "atextual" and "convoluted." DNC Br. 20, 22; see *id.* at 20-28; AANHPI Br. 40-42; Mi Familia Br. 42-46. But that is the sort of wooden "literalis[m]" that is anathema to "the good textualist." Antonin Scalia, *A Matter of Interpretation* 24 (1997).

After all, respondents concede that, as a matter of ordinary speech, "a general term can carry an unstated limitation." DNC Br. 26; see U.S. Br. 32-33 (citing cases where this Court has read terms to carry implied modifiers based on statutory context). Indeed, respondents themselves rely on this principle to avoid an absurd interpretation of Section 8's general-removal provision. Because that provision permanently bars States from removing a "registrant" from the voter rolls except on five enumerated grounds, 52 U.S.C. 20507(a)(3) and (4), yet none of those grounds includes noncitizenship, *ibid.*, respondents all agree that "registrant" must be construed to mean only "*properly registered* registrants." DNC Br. 26; see Mi Familia Br. 42 (provision governs removal only of "eligible voters who became ineligible"); AANHPI Br. 48 (same). The DNC suggests that this is a purely textual interpretation because the word "registrant" can be limited to "the genuine instances of the status the word names," Br. 26-27, but that suggestion is irreconcilable with the word's plain-text definition ("one that registers or is registered," see AANHPI Br. in Opp. 27-28). Respondents thus defend their

narrowing construction of "registrant" based on Section 8's structure: because Section 20507(a)(1) explicitly requires a State to "ensure that any *eligible* applicant is registered to vote" after timely filing a "*valid* voter registration form," the word "registrant" in Section 20507(a)(3) implicitly excludes those whom the State should never have registered. *E.g.*, DNC Br. 27.

That structural analysis, however, equally applies to Section 20507(c)(2). Because Section 20507(a)(3) explicitly requires "the official list of eligible voters" to be limited to properly registered "registrant[s]," the term "ineligible voters" in Section 20507(c)(2) implicitly excludes those whom the State should never have included on those lists. While respondents claim that there is no "link" in Section 20507(c)(2) between the phrases "ineligible voters" and "registrant," *e.g.*, DNC Br. 28, the connection is far tighter than the link between the phrase "registrant" in Section 20507(a)(3) and the phrases "eligible applicant" and "valid voter registration form" in Section 20507(a)(1). Rather than invoking phrases two paragraphs earlier, our argument relies on the very next phrase in the same provision: the names of "ineligible voters" cannot be removed "from the official lists of eligible voters," 52 U.S.C. 20507(c)(2), which is just a synonym for the lists of "registrants," which all now agree is limited to properly registered registrants.

Indeed, that connection is even clearer in the first spot where Section 20507 uses the phrase "ineligible voters." Section 20507(a)(4) requires States to have a program for removing "ineligible voters from the official lists of eligible voters" based on "the death of the *registrant*" or "a change in the residence of the *registrant*" (emphases added). As in Section 20507(c)(2), that clearly presumes that the "ineligible voters" being

removed from the lists of registrants are themselves "registrants" who have merely become ineligible. Respondents' contrary reading is exceedingly strange. They claim that Congress restricted States from removing from the list of "registrants" "ineligible voters" who are not "registrants" at all. But when Congress bans the removal of Group "X" from Group "Y," the ordinary inference is that "X" is a subset of "Y." Here, that supports the straightforward structural inference that the NVRA creates a funnel, such that the "ineligible voters" whose names cannot be removed from the list of registrants within the 90-day window are only those registrants who have become ineligible, rather than persons who were never properly registrants to begin with.

2. Respondents offer a few other counterarguments. None of them is persuasive.

First, respondents note that "some noncitizens—those who were denaturalized or renounced their U.S. citizenship—were once eligible to vote." DNC Br. 20. As a result, they claim that it would create "administrability problems for States" if the 90-day bar's applicability turned on whether noncitizens are "newly ineligible versus never-eligible." Mi Familia Br. 45. But that concern is illusory because the 90-day bar covers only "program[s] the *purpose* of which is to systemically remove the names of ineligible voters." 52 U.S.C. 20507(c)(2)(A) (emphasis added). Thus, a program like H.B. 2492 that is intended to target the overwhelming majority of noncitizens who were never proper registrants is valid, even if it incidentally captures the tiny number of denaturalized or citizenship-renouncing persons—*i.e.*, proper registrants who became ineligible but are outside the program's "purpose" (all of whom presumably no longer remain in the country anyway).

Conversely, during the 90-day window, a State cannot "systematically remove voters whom it thinks may reside elsewhere," Mi Familia Br. 45, because it obviously is not intending to target the tiny subset who somehow managed to register despite never residing in-state, rather than the typical registrant who simply later moved out-of-state.

Second, respondents reprise the point that, under our reading, the 90-day bar's exceptions cover all but one of the categories of registrants who may be removed under the general-removal provision—thus leaving the bar to apply only to programs targeting changes in residence. See, *e.g.*, DNC Br. 24. But as our brief explained (at 40-41), the 90-day bar was a product of compromise, with its carveouts added later; that Congress whittled rather than rewrote sheds little light, especially since it made sense for Congress to have wanted to retain a baseline rule applicable to any future grounds for removal. Respondents object that there is no evidence that Congress drafted the provision that way for those reasons, see, *e.g.*, DNC Br. 24-25, but they offer no contrary evidence that Congress intended to permit systematic purges targeting most registrants who have become ineligible while shielding noncitizens who were never eligible to be registrants at all.

Finally, respondents emphasize that a "purpose[]" of the 90-day bar is to ensure that *eligible* voters are not "wrongly remov[ed]" from the rolls "too close to an election" to correct the error. See, *e.g.*, DNC Br. 34-35. But as they concede, the provision does not pursue that purpose "at all costs"; even within the 90-day window, the provision permits systematic purges on all but one of the grounds for removing registrants as well as individualized removals on any valid ground. See, *e.g.*, *id.* at

37. And while they assert that systematic purges of noncitizens are especially likely to be inaccurate, see, *e.g.*, *id.* at 35-37, they give short shrift to the competing concern that failure to remove improperly registered foreigners is uniquely harmful to American elections, see U.S. Br. 42. To be sure, they suggest that, if there is a surge of registrations within the 90-day window by noncitizens' exploiting the lax federal form, States could "verify eligibility * * * at the front end, before [the applicants] are added to the voter rolls." AANHPI Br. 47; see *ITCA*, 570 U.S. at 15 (noting that States may deny registration "based on information in their possession establishing the applicant's ineligibility"). But if so, then respondents' position would seem to do little to eliminate the risk of erroneous, last-minute disenfranchisement of eligible voters. And respondents also ignore the other ways in which the NVRA regulates and remedies state programs that seek to systematically purge noncitizens from the voter rolls within the 90 days before federal elections. See U.S. Br. 43.

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The judgment of the court of appeals should be reversed.

Respectfully submitted.

HASHIM M. MOOPPAN
*Acting Solicitor General**

NOVEMBER 2026

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* The Solicitor General is recused in this case.