No. _____

In the Supreme Court of the United States

WARREN PETERSEN, IN HIS OFFICIAL CAPACITY AS THE PRESIDENT OF THE ARIZONA SENATE, AND STEVE MONTENEGRO, IN HIS OFFICIAL CAPACITY AS THE SPEAKER OF THE ARIZONA HOUSE OF REPRESENTATIVES
Petitioners,

v.

MI FAMILIA VOTA, ET AL.,
Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Arizona's state voter registration form requires applicants to provide proof of citizenship and proof of residence. Registrants who have not provided proof of citizenship may not vote by mail. The district court found that the mail-in voting restriction and the proof of citizenship and residence requirements for the state form are preempted by the National Voter Registration Act (NVRA) and, in the case of citizenship, by a consent decree. This Court stayed the district court's injunction against the proof of citizenship requirement. A divided Ninth Circuit panel affirmed the injunction. It also reversed the district court's conclusion that H.B. 2243, a related law that requires elections officials to check various databases to identify non-citizen or non-resident voters, was not intentionally discriminatory. Over 11 dissents, the Ninth Circuit denied rehearing en banc. The questions presented are:

1. Whether the NVRA or a prior consent decree precludes Arizona from requiring documentary proof of citizenship and residence when applicants use its state-specific form to register to vote in federal elections.

2. Whether the NVRA preempts Arizona's prohibition on mail-in voting by registrants who have not provided proof of citizenship.

3. Whether the district court clearly erred in concluding that H.B. 2243 was not motivated by discriminatory animus.

PARTIES TO THE PROCEEDINGS

The petitioners are Warren Petersen, in his official capacity as the President of the Arizona Senate, and Steve Montenegro, in his official capacity as the Speaker of the Arizona House of Representatives. The petitioners were intervenor-defendants in the consolidated district court proceedings and appellants in the court of appeals proceedings.

The respondents are: the United States of America, Mi Familia Vota, Voto Latino, Living United for Change in Arizona, League of United Latin American Citizens, Arizona Students' Association, ADRC Action, Inter Tribal Council of Arizona, Inc., San Carlos Apache Tribe, Arizona Coalition for Change, Poder Latinx, Chicanos Por La Causa, Chicanos Por La Causa Action Fund, Democratic National Committee, Arizona Democratic Party, Arizona Asian American Native Hawaiian and Pacific Islander For Equity Coalition, Promise Arizona, Southwest Voter Registration Education Project, Tohono O'odham Nation, Gila River Indian Community, Keanu Stevens, Alanna Siquieros, and LaDonna Jacket. The respondents were plaintiffs in the consolidated district court proceedings and appellees in the court of appeals proceedings. Promise Arizona, Southwest Voter Registration Education Project were cross-appellants in the court of appeals proceedings.

The Republican National Committee, the State of Arizona, the Arizona Secretary of State, the Attorney General of Arizona, Arizona Department of Transportation Director Jennifer Toth, the Apache County Recorder, the Cochise County Recorder, the Coconino County Recorder, the Gila County Recorder, the

Graham County Recorder, the Greenlee County Recorder, the La Paz County Recorder, the Maricopa County Recorder, the Mohave County Recorder, the Navajo County Recorder, the Pima County Recorder, the Pinal County Recorder, the Santa Cruz County Recorder, the Yavapai County Recorder, and the Yuma County Recorder were defendants in the consolidated district court proceedings.

RELATED PROCEEDINGS

United States District Court (D. Ariz.):

Mi Familia Vota v. *Fontes*, No. 2:22-cv-0509 (consolidated) (May 2, 2024) (judgment entered)

United States Court of Appeals (9th Cir.):

Mi Familia Vota v. *Petersen*, No. 24-3188 (Feb. 25, 2025) (judgment entered)

Mi Familia Vota v. *Mayes*, No. 24-3559 (Feb. 25, 2025) (judgment entered)

Promise Arizona v. *Petersen*, No. 24-4029 (Feb. 25, 2025) (judgment entered)

Mi Familia Vota, et al. v. *Adrian Fontes, et al.*, No. 24-3188, No. 24-3559, No. 24-4029 (Sep. 22, 2025) (rehearing denied)

Supreme Court of the United States:

Republican National Committee v. *Mi Familia Vota*, No. 24A164 (Aug. 22, 2024) (partial stay entered)

Republican National Committee v. Mi Famila Vota, et al., No. 25A673 (Dec. 9, 2025) (application granted by Justice Kagan extending the time to file until February 19, 2026)

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INTRODUCTION

In the words of one of the eleven Ninth Circuit judges who dissented from its refusal to rehear this case en banc, the panel opinion "is profoundly wrong," "ignores Supreme Court precedent," and "does a grave injustice to republican government." App. 581 (Nelson, J., dissenting from denial of rehearing en banc).

This Court's review is warranted for two reasons:

First, the Ninth Circuit's decision reinvents the National Voter Registration Act of 1993, 52 U.S.C. §20501, *et seq*. (NVRA), into a sweeping federal election administration code that subsumes state-specific modes of registration and dictates methods of ballot distribution and casting. This regulatory colossus bears no resemblance to the text that Congress adopted, the objectives that Congress articulated, or this Court's modest conception of the NVRA as simply providing a "backstop" for registering to vote in federal elections.

For more than two decades, Arizona has required "satisfactory evidence of United States citizenship" to register to vote in state elections. Ariz. Rev. Stat. §16-166(F). A set of reforms adopted in 2022 required local elections officials to "reject" any state-specific voter registration form that lacks proof of citizenship. *Id.* §16-121.01(C). The 2022 law also added a proof of residence mandate. *Id.* §16-123. And it denied the privilege of voting by mail to registrants who have not provided proof of citizenship. *Id.* §16-127(A)(2). App. 663–83. The Ninth Circuit invalidated these provisions of the 2022 reforms.

This Court already signaled to the Ninth Circuit that it was embarking on a dubious path. In August 2024, it stayed the district court's injunction against Ariz. Rev. Stat. §16-121.01(C)—which requires elections officials to "reject" any Arizona state registration form submission that lacks documentary proof of citizenship. App. 583. The Ninth Circuit "should have taken the hint." App. 122 (Bumatay, J., dissenting). Instead, two judges proceeded to hold that the NVRA precludes Arizona from requiring on its own registration form proof of citizenship and residence to register to vote in federal elections. App. 60–62. And with respect to proof of citizenship, the panel majority proclaimed the Arizona Legislature bound by a 2018 consent decree approved by the then-Secretary of State, which prohibits rejecting state form submissions that lack proof of citizenship. App. 57–60.

In imputing to the NVRA such expansive preemptive breadth, the panel majority "mangle[d]" the relevant case law and "ignored" this Court's explicit admonition that "state-developed [registration] forms may require information" such as "proof-of-citizenship," *Arizona* v. *Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 12 (2013). App. 556 (Nelson, J., dissenting from denial of rehearing en banc). And in perpetually subordinating the Arizona Legislature—the locus of sovereignty in Arizona state government—to the dead hand of a third party's long-ago litigation decisions, the panel majority "defac[ed] the carefully constructed separation of powers designed by our eminent forebearers." App. 568 (Nelson, J., dissenting from denial of rehearing en banc).

The Ninth Circuit's creative rendering of the NVRA's preemptive scope did not stop there. The court became the first to hold—some three decades after the statute's adoption—that it is not confined to the discrete matter of voter registration. According to the Ninth Circuit, the NVRA also constrains the States in regulating methods of distributing and returning ballots. This remarkable reallocation of power over election administration finds no sustenance in the NVRA's text, and reengineers the NVRA into a cudgel for displacing States' reasonable limitations on voting procedures.

Second, the Ninth Circuit's appraisal of the Arizona Legislature's intent in enacting H.B. 2243—a related law that requires elections officials to check databases for potential non-citizen and non-resident voters—resurrected the same reasoning that this Court repudiated in *Brnovich* v. *Democratic National Committee*, 594 U.S. 647 (2021). As in *Brnovich*, the district court here presided over a lengthy trial, carefully assessed the credibility of multiple expert witnesses, and exhaustively analyzed the factors that this Court in *Arlington Heights* v. *Metropolitan Housing Development Corp.*, distilled as indicia of legislative intent. 429 U.S. 252 (1977). As in *Brnovich*, the district court concluded that the plaintiffs had failed to discharge their burden of proving an invidious legislative motive—a finding that "had ample support in the record." *Brnovich*, 594 U.S. at 687. And then, as in *Brnovich*, the Ninth Circuit went its own way. Disregarding "the presumption of legislative good faith," *Abbott* v. *Perez*, 585 U.S. 579, 607 (2018), that anchors the plaintiffs' evidentiary burden, the panel supplanted the district

court's reasoned assessment of the evidence with its own. Its deviation from the analytical framework set forth in *Brnovich* was so pervasive and palpable that summary reversal is appropriate.

OPINIONS BELOW

The Ninth Circuit's panel opinion is reported at 129 F.4th 691 and is reproduced in the Appendix at App. 1–181. The Ninth Circuit's order denying a rehearing en banc is reported at 152 F.4th 1153, and is reproduced in the Appendix at App. 546–582. The District of Arizona's findings and conclusions are reported at 719 F. Supp. 3d 929, and is reproduced in the Appendix at App. 182–354.

JURISDICTION

The Ninth Circuit's judgment was entered on February 25, 2025. The Ninth Circuit denied en banc rehearing on September 22, 2025. Justice Kagan extended the time to petition for certiorari until February 19, 2026. This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., Amdt. XIV, §1 states:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United

> States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Relevant parts of U.S. Const., Arts. I and II, 52 U.S.C. §§10101, 20501, 20505, 20506, 20507, 20508, Ariz. Rev. Stat. §§16-121.01, 16-123, 16-127, 16-565, 16-566, and 12-1841 are reproduced in the Appendix at App. 585–683.

STATEMENT OF THE CASE

I. Factual Background

An eligible person can register to vote in Arizona by using the federal form promulgated by the U.S. Election Assistance Commission (EAC) or the state form prescribed by Arizona law. In 2004, the Arizona electorate adopted a statute requiring "satisfactory evidence of United States citizenship" to register to vote. Ariz. Rev. Stat. §16-166(F). Arizona has since 1996 required proof of lawful presence to obtain a driver's license or other state-issued ID. *Id.* §41-1080. Voter registration applicants can satisfy the proof of citizenship requirement by providing their license or ID number, which is cross-checked against data maintained by the Arizona Department of Transportation (ADOT). *Id.* §16-166(F)(1). Other acceptable forms of proof of citizenship include a birth certificate, "pertinent pages" of a U.S. passport, a naturalization certificate or number, and certain tribal documents. *Id.* §16-166(F)(2)-(6).

In 2013, this Court held that the NVRA prohibited Arizona from requiring federal form applicants to provide proof of citizenship when registering to vote in federal elections. *Inter Tribal Council*, 570 U.S. at 20. Since *Inter Tribal Council*, Arizona has registered federal form applicants who do not supply proof of citizenship as "federal-only" voters; they are eligible to vote only in federal races. See Ariz. Att'y. Gen. Op. I13-011. As of July 2023, Arizona had 19,439 active registered federal-only voters. App. 24.

In 2018, the then–Secretary of State entered into a consent decree in *League of United Latin American Citizens of Arizona* v. *Reagan*, No. 2:17-cv-4102 (D. Ariz. 2018) (LULAC Consent Decree). The LULAC Consent Decree provides that when a state form submission is not accompanied by proof of citizenship, the county recorder must search ADOT records. If citizenship can be confirmed, the applicant is registered as a full-ballot voter; if it cannot be confirmed, the applicant is registered as a "federal-only" voter. App. 522–545.

Since 1991, Arizona has permitted no-excuse absentee voting. The early voting period begins 27 days prior to the election. Ariz. Rev. Stat. §16-542(C). Early ballots are distributed by mail and may be returned (either by mail or by personal delivery to a designated location by the voter or legally authorized third party) until 7:00 P.M. on Election Day. *Id.* §§16-548(A), 16-1005(H)-(I). In-person early voting is available through the Friday prior to the election, with additional availability in the ensuing three days for voters facing emergencies. *Id.* §16-542(A), (E), (H).

In 2022, the Legislature passed, and the Governor signed, H.B. 2492, which included the following changes to Arizona's voter registration laws:

- Applicants who have not provided proof of citizenship may not vote for president or by mail;
- State form submissions that lack proof of citizenship must be rejected;
- State form applicants must provide proof of residence, disclose their birthplace, and check a box confirming their citizenship.

App. 663–683.

A related bill adopted during the same session, H.B. 2243, provides that the county recorders, who are responsible for maintaining voter registrations, must:

- check the Systematic Alien Verification for Entitlements (SAVE) program maintained by the U.S. Citizenship and Immigration Services if a voter is registered as federal-only or if they have "reason to believe" a voter is not a citizen;
- periodically check available databases, including SAVE, ADOT, the Social Security Administration, and the National Association for Public Health Statistics and Information Systems, to research the citizenship status of federal-only voters and, if appropriate, cancel their registrations; and
- periodically check ADOT records and juror questionnaire responses to identify registrants who may not reside in Arizona and, if appropriate, cancel their registrations.

App. 646–662.

II. Procedural History

Various plaintiffs immediately challenged H.B. 2492 and H.B. 2243 under the NVRA, the Fourteenth and Fifteenth Amendments, the Civil Rights Act of 1964, and the Voting Rights Act of 1965. The district court consolidated the actions. The district court resolved some of the claims on cross-motions for summary judgment in September 2023. App. 466–521. After a nine-day bench trial in late 2023, the district court issued rulings in February 2024 that resolved the remaining claims, and entered a final judgment in May 2024. App. 182–361. The district court concluded that:

- Section 6 of the NVRA, which requires States to "accept and use" either the federal form or a compliant state form to register in federal elections, preempted the provisions of H.B. 2492 prohibiting federal-only voters from voting for president or by mail;
- State form submissions without proof of citizenship must be processed in accordance with the LULAC Consent Decree, and state form registrants without proof of residence likewise must be registered as "federal-only" voters;
- The state form's mandatory birthplace field and citizenship confirmation checkbox violate the Materiality Provision of the Civil Rights Act, 52 U.S.C. §10101(a)(2)(B), because they are not "material" in determining a voter's qualifications;

- The use of SAVE if a recorder has "reason to believe" a voter is a non-citizen violates 52 U.S.C. §10101(a)(1), which prohibits discriminatory voting-related "standards, practices, or procedures," and Section 8(b) of the NVRA, which requires list maintenance programs to be "uniform, [and] nondiscriminatory," 52 U.S.C. §20507(b)(1);
- H.B. 2243's list maintenance programs violate Section 8(c) of the NVRA to the extent they authorize "systematic[]" registration cancelations within 90 days preceding a federal election, see 52 U.S.C. §20507(c)(2); and
- The Arizona Legislature was not motivated by an intent to discriminate on the basis of national origin when it adopted H.B. 2243.

App. 182–354. The district court enjoined the enforcement of the provisions of H.B. 2492 and H.B. 2243 that are inconsistent with the foregoing findings. App. 355–361.

The petitioners, the Republican National Committee, and the Attorney General filed timely notices of appeal. Certain plaintiffs filed a cross-appeal on their intentional discrimination claim. On July 18, 2024, a Ninth Circuit motions panel unanimously granted a stay of the district court's injunction to the extent it blocked enforcement of Ariz. Rev. Stat. §16-121.01(C), which requires county recorders to "reject" state form applications without proof of citizenship. App. 362–65. Days later, a different panel lifted the stay on a 2-1 vote. App. 366–408. This Court then stayed the injunction against §16-121.01(C) on August 22, 2024.

App. 583. Three Justices also would have permitted enforcement of H.B. 2492's provisions that prohibit registrants who lack proof of citizenship from voting for presidential electors or voting by mail. *Id.*

On February 25, 2025, the Ninth Circuit reversed the district court's finding that H.B. 2243 was not motivated by discriminatory animus, but otherwise affirmed the judgment. Judge Bumatay agreed with the majority's invalidation of the checkbox requirement and the "reason to believe" provision, but otherwise dissented. App. 1–181. On September 22, 2025, the Ninth Circuit denied the petitioners' motion for a rehearing en banc; eleven judges dissented. App. 546–582.

REASONS FOR GRANTING THE PETITION

The stark and substantial fissures that this case catalyzed in the Ninth Circuit—eleven judges supported, often in forceful and impassioned terms, a rehearing en banc—bespeak its importance. In blocking Arizona from requiring proof of citizenship and residence for those who use its state-specific registration form to register to vote in federal elections, the lower courts distended the NVRA's plain text, disregarded *Inter Tribal Council*, and displaced the Arizona Legislature's sovereign authority in state government. In holding that the NVRA's preemptive ambit is not limited to voter registration but also threatens State laws regulating methods of voting, the Ninth Circuit upended the balance of federal-state authority over elections. And in imputing clear error to the district court's careful conclusions on questions of legislative intent, the Ninth Circuit "essentially flip[ped] the strong presumption of good faith . . . and require[d]

the State to *disprove* any discriminatory motive." App. 162 (Bumatay, J., dissenting).

This case, which comes to the Court on a non-expedited basis and underpinned by a comprehensive evidentiary record, offers an ideal vehicle for clarifying the NVRA's preemptive scope, affirming that federal consent decrees cannot perpetually paralyze state legislative bodies, and vindicating the presumption of legislative good faith.

I. The Decision Below Is Irreconcilable with *Inter Tribal Council* and Unconstitutionally Subordinates State Legislatures to Federal Consent Decrees

Arizona's constitutional government, like that of virtually every State, is constructed on the premise that only "citizen[s] of the United States" and *bona fide* residents may participate in its elections. Ariz. Const. art. VII, §2(A). To ensure that this parchment guarantee is realized in election administration, Arizona requires elections officials to reject any state form submission that lacks documentary proof of citizenship or documentary proof of Arizona residence. Ariz. Rev. Stat. §§16-121.01(C), 16-123.

According to the Ninth Circuit, proof of citizenship and residence are not "necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process" under Section 9 of the NVRA, 52 U.S.C. §20508(b)(1), and hence cannot be prerequisites to registering to vote in federal elections. In the case of proof of citizenship, the Ninth Circuit added that Ariz. Rev. Stat. §16-121.01(C) is

superseded by the LULAC Consent Decree, which requires county recorders to accept state forms that lack proof of citizenship and register the applicants as "federal-only" voters.

The Ninth Circuit derogated the NVRA's careful dispersion of authority between federal and state actors, and countenanced the constriction of core state legislative powers through third parties' litigation settlement agreements. If left uncorrected, these errors will carry repercussions far beyond the confines of this case.

A. Documentary Proof of Citizenship and Residence Are Necessary to Determine a Prospective Voter's Eligibility

Citing Arizona's proof of citizenship mandate as an example, this Court has recognized that "state-developed [registration] forms may require information" beyond that demanded by the federal form. *Inter Tribal Council*, 570 U.S. at 12. The NVRA "erected a complex superstructure of federal regulation atop state voter-registration systems." *Id.* at 5. To that end, the NVRA contemplates two species of mail-in registration forms. The first is the so-called "federal form" promulgated by the EAC, which the States must "accept and use" to register voters in federal elections. 52 U.S.C. §§20505(a)(1), 20508(a)(2). Section 9 of the NVRA enumerates certain basic informational items that the federal form "shall include"—among them, a sworn affirmation of citizenship. 52 U.S.C. §20508(b). The EAC also may incorporate into the federal form any additional informational elements that are "necessary to enable the appropriate State election official to assess the eligibility of the applicant and to

administer voter registration and other parts of the election process." *Id*. The States cannot unilaterally append onto the federal form their own bespoke mandates or supplements. *Inter Tribal Council*, 570 U.S. at 20.

The NVRA also authorizes a second variant of a mail registration form—to wit, that "develop[ed] and use[d]" by a State to register voters in federal elections. 52 U.S.C. §20505(a)(2). A state form is NVRA-compliant if it "meets all of the criteria stated in [Section 9(b)]." *Id.* In other words, the same rubric in Section 9(b) governs the permissible parameters of both the federal form and the state forms. But their specific content is determined by different actors—*i.e.*, the EAC and state legislatures, respectively. The NVRA thus tempers a nationwide voter registration regime with deference to federalism and regulatory latitude to adapt state forms to evolving policy needs. Under this bifurcated system, "States retain the flexibility to design and use their own registration forms, but the Federal Form provides a backstop." *Inter Tribal Council*, 570 U.S. at 12.

1.

Documentary proof of citizenship and residence are, almost by definition, "necessary" to verify the eligibility criteria to which they correspond. Only United States citizens may lawfully register to vote in federal elections. 18 U.S.C. §§611, 1815(f). And States undisputedly may limit the franchise in federal and state elections to their *bona fide* residents. *Dunn* v. *Blumstein*, 405 U.S. 330, 343–44 (1972). It requires no great exegetical or logical feats to conclude that (for example) a birth certificate or U.S. passport may be "necessary" to validate a registrant's assertion of citizenship. That undoubtedly is why this Court cited Arizona's "proof-of-citizenship requirement" as an "example" of how Section 9 allows "state-developed forms [to] require information the Federal Form does not." *Inter Tribal Council*, 570 U.S. at 12. It also is why a different panel of the Ninth Circuit previously had no trouble agreeing that Section 9 "plainly allow[s] states, at least to some extent, to require their citizens to present evidence of citizenship when registering to vote." *Gonzalez* v. *Arizona*, 485 F.3d 1041, 1050–51 (9th Cir. 2007).

Avoiding any substantive engagement with *Inter Tribal Council* on this point, the Ninth Circuit decreed documentary proof of citizenship and residence to be "not 'essential'" to determining voting eligibility because registrants already provide sworn attestations of their qualifications. App. 46, 60–61. To begin with, the Ninth Circuit's conclusory equation of "necessary" with "essential" is unpersuasive. "The word 'necessary' . . . has not a fixed character, peculiar to itself. . . . A thing may be necessary, very necessary,

absolutely or indispensably necessary. To no mind would the same idea be conveyed by these several phrases." *M'Culloch* v. *State of Maryland*, 17 U.S. 316, 414 (1819). Indeed, in some settings, "necessary" means "merely helpful and appropriate." *Ayestas* v. *Davis*, 584 U.S. 28, 44 (2018).

A contextual assessment of the word "necessary" further corrodes the Ninth Circuit's "essentiality" construction. See generally *Esteras* v. *United States*, 606 U.S. 185, 195 (2025) (analyzing "[t]he statutory structure" and "[n]eighboring provisions" in interpretive inquiry). Section 5 of the NVRA confines forms used at States' motor vehicle authorities to register voters for federal elections to "only the minimum amount of information necessary" to ascertain an applicant's eligibility. 52 U.S.C. §20504(c)(2)(B). The addition of the qualifier "minimum" imbues "necessary" as it is used in Section 5 with a different (and more stringent) complexion than "necessary" as it is used in Section 9. *Fish* v. *Kobach*, 840 F.3d 710, 733 (10th Cir. 2016) (acknowledging that "Section 5 establishes a stricter principle than that applied in *Inter Tribal* . . . under section 9."); see also *Yates* v. *United States*, 574 U.S. 528, 537 (2015) (noting that "[t]he same words, placed in different contexts, sometimes mean different things").

Finally, the Ninth Circuit's "essentiality" criterion is incompatible with *Inter Tribal Council*. This Court easily recognized Arizona's proof of citizenship requirement as an obvious "example" of Section 9's proper application. 570 U.S. at 12. It did not tarry over evidentiary showings or advert to notions of means-end fit. Consistent with its conception of the NVRA as

securing a dualist, federal-state voter registration "superstructure," *id.* at 5, the Court implicitly but clearly embraced the more flexible and functionalist connotation of "necessary."

A holistic assessment of Section 9's text, the NVRA's structure, and *Inter Tribal Council* thus corroborates Judge Bumatay's conclusion that "there's no reason to read 'necessary' information as meaning only the bare minimum amount of information." App. 131. Because documentary evidence of citizenship and residence are "necessary" to verifying those qualifications, the NVRA allows Arizona to mandate them on its state-specific registration form.

2.

A corollary of the Arizona state form's compliance with Section 9 is that it may be distributed in public assistance agencies because it is "equivalent" to the federal form. Section 7 of the NVRA provides that public assistance agencies must make available either the federal form or "the office's own form if it is equivalent to" the federal form. 52 U.S.C. §20506(a)(6)(A)(ii).

The Ninth Circuit erred in construing "equivalent" to mean "virtually identical." App. 61–62. Because the NVRA does not define "equivalent," courts should interpret the word "according to its 'ordinary, contemporary, common meaning.'" *Sw. Airlines Co.* v. *Saxon*, 596 U.S. 450, 455 (2022) (cleaned up). In both common and legal usage, "equivalent" can carry two distinct valences. It can mean "equal in value, force, amount, effect, or significance." BLACK'S LAW DICTIONARY (12th ed. 2024) (defining "equivalent"). Or it can denote

parity in a strict and literal sense. *Id.* (secondary definition of "nearly equal; virtually identical"); see also MERRIAM-WEBSTER DICTIONARY (offering multiple definitions of "equivalent," including "like in signification or import" and "corresponding or virtually identical especially in effect or function").

The question of which variation aligns with Congress' intent is "clarified by the remainder of the statutory scheme . . . because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law." *Util. Air Regulatory Grp.* v. *EPA*, 573 U.S. 302, 321 (2014) (cleaned up). As discussed *supra*, the NVRA contemplates two types of forms for registering voters in federal elections: the federal form promulgated by the EAC and the bespoke state form devised by each State through its respective legislative and administrative processes. 52 U.S.C. §20505(a)(1)-(2). But Section 9 furnishes a common denominator for both forms' permissible content. *Id.* §§20505(2), 20508(b). The NVRA thus accords equal status to both forms in virtually every registration-related context. Either form "shall be accepted and used for notification of a registrant's change of address." *Id.* §20505(a)(3). And States must make either or both forms "available for distribution through governmental and private entities." *Id.* §20505(b). The unmistakable import is that, while the federal form and the state forms are (by definition) not identical, they are legally and functionally equivalent to each other.

The Ninth Circuit's literalist interpretation hence is dissonant with the NVRA's overall structure, as well as common sense. As Judge Bumatay observed, it

would "be odd if Congress gave States the flexibility to create their own form in §20505(a) but then took away all that freedom through the 'public assistance agencies' provision of §20506(a)(6)(A)" unless the state form is identical to the federal form in all respects except (perhaps) formatting. App. 137. It is similarly inexplicable that Congress would generally mandate the availability and distribution of both federal and state forms, especially "for organized voter registration programs," 52 U.S.C. §20505(b), yet confine public assistance agencies to only the federal form (or a state-produced carbon copy of it).

In sum, the Court should opt for the construction of "equivalent" that renders the NVRA "a symmetrical and coherent regulatory scheme." *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (cleaned up). A state form that complies with Section 9, as Arizona's state form does, is "equivalent" to the federal form.

3.

The Ninth Circuit's "mangl[ing]" of the NVRA undermines Arizona's ability to safeguard its elections from illegal voting by non-citizens and non-residents. App. 556 (Nelson, J., dissenting from denial of rehearing en banc). More broadly, it distorts the dichotomous voter registration structure that Congress envisioned, and diminishes the principles of federalism that animated it. Congress' objective was not to displace the States in prescribing the means and methods of registering to vote in federal elections. Rather, it sought only to create "a backstop: No matter what procedural hurdles a State's own form imposes, the Federal Form guarantees that a simple means of registering to vote

in federal elections will be available." *Inter Tribal Council*, 570 U.S. at 12. The Ninth Circuit's opinion bulldozes this carefully wrought "superstructure." *Id.* at 5. In its place, the Ninth Circuit reinvented the federal form as a Procrustean monolith to which every state form must rigidly conform, if it is to be used to register voters in federal elections.

This is a serious error. Section 9 guarantees that "States retain the flexibility to design and use their own registration forms." *Id.* at 12. To that end, States may reasonably conclude, as Arizona did, that a boilerplate attestation of eligibility is an inadequate cordon to protect its elections, and that documentary corroboration of an applicant's citizenship and residence is "necessary to enable" an assessment of the applicant's eligibility. 52 U.S.C. §20508(b)(1). In mandating that Arizona must accept defective state form submissions that lack proof of citizenship or residence and register such applicants to vote in federal elections, the Ninth Circuit's decision is "incorrect and consequential." App. 582 (Bress, J., dissenting from denial of rehearing en banc).

B. State Legislatures' Lawmaking Powers Cannot Be Bargained Away in Federal Consent Decrees

The Ninth Circuit blocked Arizona's proof of citizenship requirement for state form registrants on the alternative grounds that it violated the LULAC Consent Decree, which required that state form applicants who lack documentary proof of citizenship be registered to vote in federal elections. App. 57–60. In holding that a former Secretary of State's litigation decisions shackle the Arizona Legislature's constitutional

authority to make laws regulating elections in the State, the Ninth Circuit acted "extrajudicially" and inflicted "great[] damage to the separation of powers." App. 568 (Nelson, J., dissenting from denial of rehearing en banc).

1.

The crux of the Ninth Circuit's (sparse) reasoning was that there is "no authority suggesting that Arizona's state legislature may permissibly nullify a final judgment entered by an Article III court." App. 59. In enacting Ariz. Rev. Stat. §16-121.01(C), however, the Arizona Legislature did not retroactively "nullify" any Article III court's adjudication of a question of federal law. Rather, it prospectively changed a state statute to codify a policy that no court had ever found inconsistent with federal law.

That distinction, which the Ninth Circuit confounded, demarcates the perimeter separating the judicial sphere from the legislative. A "retroactive command that federal courts reopen final judgments" contravenes Article III. *Miller* v. *French*, 530 U.S. 327, 344 (2000) (citing *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211, 218–19 (1995)). Thus, Arizona likely could not retroactively revoke voter registrations that had been accepted and effectuated under the LULAC Consent Decree's provisions. See *Plaut*, 514 U.S. at 227 (observing that a legislature "may not declare by retroactive legislation that the law applicable *to that very case* was something other than what the courts said it was").

By contrast, when a legislative body "changes the law underlying a judgment awarding prospective

relief, that relief is no longer enforceable to the extent it is inconsistent with the new law." *Miller*, 530 U.S. at 347; see also *Rufo* v. *Inmates of the Suffolk Cnty. Jail*, 502 U.S. 367, 388 (1992) (agreeing that "modification of a consent decree may be warranted when the statutory or decisional law has changed to make legal what the decree was designed to prevent"). That is because prospective remedies ordained by a consent decree are subordinate to the statutes on which they are predicated. See *Sys. Fed'n No. 91, Ry. Emp. Dept., AFL-CIO* v. *Wright*, 364 U.S. 642, 651 (1961) (recognizing that "parties cannot, by giving each other consideration, purchase from a court of equity a continuing injunction"). When those statutes are changed, the consent decree's prospective force is extinguished, to the extent it is inconsistent with the new law. The Ninth Circuit's position that litigants can calcify a specific legal status quo that trumps future amendments to the underlying statutes contradicts this Court's precedents and "poses serious constitutional concerns." App. 563 (Nelson, J., dissenting from denial of rehearing en banc).

That the operative change in the law here was precipitated by the Arizona Legislature and not Congress is immaterial. If anything, it only amplifies the constitutional perils of the Ninth Circuit's decision by compounding a separation of powers violation with a corrosion of federalism. To begin with, the NVRA itself allows States to revise and update their mail registration forms to mandate any information "necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election

process." 52 U.S.C. §20508(b)(1). This open-ended language contemplates contextual and variable policy judgments; that a given item of information (such as proof of citizenship) may be deemed not "necessary" at one point in time does not foreclose a State from reaching a different determination at another time and in other circumstances.

More generally, federal courts "have only the most limited role when determining whether a state has surrendered [in a consent decree] some inherent authority, such as its authority to modify state statutory law." *Doe* v. *Pataki*, 481 F.3d 69, 78 (2d Cir. 2007). Under Arizona's constitution, "the legislature 'has all power not expressly prohibited or granted to another branch of the government." *State ex rel. Napolitano* v. *Brown*, 982 P. 2d 815, 817 (Ariz. 1999) (cleaned up). By contrast, the Secretary of State possesses only those powers affirmatively conferred by law. Ariz. Const. art. V, §9. Even if the Secretary could permissibly approve the LULAC Consent Decree to resolve discrete claims brought by particular parties, the Secretary did not—and could not—bargain away the Arizona Legislature's sovereign authority to prospectively change the statutes governing its state-specific voter registration form. See *Keith* v. *Volpe*, 118 F.3d 1386, 1393 (9th Cir. 1997) (holding that parties to a consent decree "could not agree to terms which would exceed their authority and supplant state law"); *St. Charles Tower, Inc.* v. *Kurtz*, 643 F.3d 264, 268 (8th Cir. 2011) ("While parties can settle their litigation with consent decrees, they cannot agree to 'disregard valid state laws.'" (cleaned up)). No federal consent decree can reorder a State government's constitutional

structure; the Ninth Circuit erred consequentially in holding otherwise.[1]

2.

The Ninth Circuit's decision reifies the constitutional hazards that occur when a consent decree is converted from an adjudication of particular parties' legal rights at a specific moment in time into a quasi-permanent public policy diktat. This Court has long recognized those dangers, especially in the context of so-called "institutional reform litigation," in which consent decrees can "reach beyond the parties involved directly in the suit and impact on the public's right to the sound and efficient operation of its institutions." *Rufo*, 502 U.S. at 381 (cleaned up). By effectively codifying a specific policy disposition that may—or may not—be mandated by federal law, such consent decrees risk enervating democratic accountability. See *Horne* v. *Flores*, 557 U.S. 433, 449 (2009) ("'Where 'state and local officials inherit overbroad or outdated consent decrees . . . they are constrained in their ability to fulfill their duties as democratically-elected officials." (cleaned-up)).

Relatedly, consent decrees that dictate state policies on matters of broad public interest "often raise sensitive federalism concerns." *Id.* at 448. Elected representatives in a State "must be presumed to have a high degree of competence in deciding how best to discharge their governmental responsibilities," and their

[1] The Ninth Circuit's rationalization that the Arizona Legislature is still free to enact effectively unenforceable statutes "neuter[s] the Arizona Legislature by sophistry." App. 128 (Bumatay, J., dissenting).

familiarity with local exigencies can beget "new insights and solutions." *Frew ex rel. Frew* v. *Hawkins*, 540 U.S. 431, 442 (2004). Consent decrees that impair State officials' latitude to innovate and adapt policy solutions disrupt the constitutional equilibrium between federal and state governments.

Two attributes of the LULAC Consent Decree magnify these problems. First, it constricts authority that the federal Constitution expressly reserves to the Arizona Legislature. Article I, §4 "'imposes' on state legislatures the 'duty' to prescribe rules governing federal elections." *Moore* v. *Harper*, 600 U.S. 1, 9 (2023) (quoting *Inter Tribal Council*, 570 U.S. at 8). And state legislatures prescribe the "qualifications" requisite to voting in congressional elections. U.S. Const., Art. I, §2; *cf. Inter Tribal Council*, 570 U.S. at 17 n. 9 (declining to decide whether "registration" could itself constitute a "qualification"). In this vein, the NVRA preserves state legislatures' prerogative to require any information "necessary" to verifying eligibility to register to vote in federal elections. 52 U.S.C. §20508(b)(1). And the *LULAC* court never adjudicated Arizona's proof of citizenship mandate for state form registrants to be inconsistent with the NVRA or any other federal law. See *Milliken* v. *Bradley*, 433 U.S. 267, 282 (1977) ("[F]ederal-court decrees exceed appropriate limits if they are aimed at eliminating a condition that does not violate the Constitution or does not flow from such a violation"). The Ninth Circuit's holding that litigants in a single case can, via a contractual agreement, indefinitely curtail a legislative body's constitutional power is as untenable as it is novel.

Second, the Arizona Legislature is not, and never was, a party to the LULAC Consent Decree. It is problematic enough when a federal consent decree purports to "bind state and local officials to the policy preferences of their predecessors." *Horne*, 557 U.S. at 449. But here, the Ninth Circuit held that a former Secretary of State could also bind coordinate branches of Arizona state government that never participated in the consent decree's negotiation or agreed to its terms. When "different state actors" disagree concerning a consent decree's validity, "federalism concerns are elevated." *Id.* at 452. And, as a non-party, the Arizona Legislature lacks any procedural vehicle to challenge the LULAC Consent Decree in that proceeding. See Fed. R. Civ. P. 60(b) (permitting only "a party or its legal representative" to seek relief from a judgment).

In short, the Ninth Circuit's conclusion that the Arizona Secretary of State can unilaterally abrogate the Arizona Legislature's constitutional authority to regulate voter registration in the State is irreconcilable with principles of federalism, separation of powers, and democratic accountability.

II. The NVRA Does Not Preempt State Laws That Regulate Voting Methods

As its title conveys, the NVRA establishes methods for eligible individuals to *register* to vote in federal elections. It does not—and in its 33-year existence never previously had been understood to—limit the States' authority over *voting* methods and procedures. Arizona does not permit "federal-only" voters—*i.e.*, voters who have not provided documentary proof of citizenship—to receive early ballots by mail. Ariz. Rev.

Stat. §16-127(A)(2). These individuals may still vote early ballots in-person at sites designated by the county recorder, and likewise may cast ballots (for federal offices only) at polling locations on Election Day. In holding that §16-127(A)(2) conflicts with the NVRA and obstructs Congress' purposes, the Ninth Circuit went astray, and its error erodes the States' authority over their elections in ways that Congress never intended.[2]

1.

Arizona's limitation on mail-in voting does not conflict with Section 6 of the NVRA, which requires the States to "accept and use" the federal form created by the EAC when registering voters for federal elections. 52 U.S.C. §20505(a)(1). When Congress exercises its power under Article I, §4 to "alter" the States' regulations of the "Times, Places, and Manner of holding" federal elections, the Court's customary presumption against preemption does not apply. *Inter Tribal Council*, 570 U.S. at 13–14. But even in this context, courts will not divine an unarticulated preemptive intent. "Elections Clause legislation [is read] simply to mean what it says," and any displacement of state laws must be apparent from "the fairest reading of the statute." *Id.* at 15.

There is no "actual conflict" between any fair reading of Section 6 and Ariz. Rev. Stat. §16-127(A)(2).

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[2] This Court has described obstacle preemption as a species of conflict preemption; they are not conceptually independent of each other. *Oneok, Inc.* v. *Learjet, Inc.*, 575 U.S. 373, 377 (2015). Because the Ninth Circuit treated conflict preemption as distinct from obstacle preemption, however, this Petition will follow suit. App. 39.

Geier v. *Am. Honda Motor Co., Inc.*, 529 U.S. 861, 884 (2000) (citation omitted). Section 6 requires the States to "accept and use" the federal form "for the registration of voters in elections for Federal office." 52 U.S.C. §20505(a)(1). Arizona law is wholly congruent with that directive. Eligible individuals who submit a completed federal form are registered to vote for federal elections in Arizona, even if they lack proof of citizenship. Ariz. Rev. Stat. §16-121.01(A), (E).

The Ninth Circuit contrived a conflict with Section 6 on the grounds that individuals "seeking to cast their ballots by mail [must] provide more information than what the federal form requires." App. 39. But Section 6 does not say that States must "use" the federal form to enable "cast[ing] . . . ballots by mail." Rather, it ensures only that eligible individuals may "use" the federal form to effectuate their "registration." Courts "are obliged to give effect, if possible, to every word Congress used." *Carcieri* v. *Salazar*, 555 U.S. 379, 391 (2009) (citation omitted). A corollary is that courts "are reluctant to treat statutory terms as surplusage in any setting." *Bufkin* v. *Collins*, 604 U.S. 369, 386 (2025) (citation omitted). In directing the States to "accept and use" the federal form for "registration," Congress meant just that. A properly completed and timely submitted federal form permits the applicant to *register*. See *Inter Tribal Council*, 570 U.S. at 12 (describing the federal form as a "backstop" that provides "a simple means of registering"). It does not entitle him to utilize any particular means of receiving a ballot, and it does not confer any rights or immunities with respect to state laws governing post-registration facets of the election process.

The Ninth Circuit then resorted to slippery-slope reasoning, imagining the specter of a State that adds federal form applicants to the voter rolls but does not allow them to actually vote. App. 41. Preliminarily, the Ninth Circuit ordered an extra-textual solution to a non-existent problem. Federal form registrants in Arizona who do not have proof of citizenship undisputedly can vote (for federal offices) in-person on Election Day. Ariz. Rev. Stat. §16-121.01(A), (E). They also may avail themselves of Arizona's generous in-person early voting period, which extends for more than three weeks. See *id.* §16-542(A), (E). Even assuming *arguendo* that the ability to cast *a* vote (in some way, shape or form) is implicit in the word "registration," it does not follow that Congress embedded into the NVRA an affirmative right to enjoy any and every mode of obtaining and returning a ballot that a State may make available. "Being in for a dime doesn't mean we have to be in for a dollar." *Va. Uranium, Inc.* v. *Warren*, 587 U.S. 761, 773 (2019) (plurality op.) (declining to adopt an expansive interpretation of Congress' preemptive intent).

The Ninth Circuit's labors to ascribe federal statutory protection specifically to mail-in voting are particularly tenuous. During almost the entirety of our nation's history, absentee voting has been the exception, not the rule. See generally John C. Fortier & Norman J. Ornstein, *The Absentee Ballot and the Secret Ballot: Challenges for Election Reform*, 36 UNIV. MICH. J. L. REF. 483, 510 (2003) (absentee ballots accounted for approximately 2%–14% of total votes cast in presidential elections between 1936 and 2000). Far from considering absentee voting to be integral to the

"fundamental right" to vote, this Court has explicitly denominated it a discretionary "privilege[]." *McDonald* v. *Bd. of Election Comm'rs. of Chicago*, 394 U.S. 802, 807, 809 (1969). Indeed, travel to a polling location is, if anything, part and parcel of "the usual burdens of voting." *Crawford* v. *Marion Cnty. Election Bd.*, 553 U.S. 181, 198 (2008) (plurality op.).

In short, Arizona law aligns fully with Section 6's requirement that States "accept and use" the federal form "for the registration of voters" in federal elections. 52 U.S.C. §20505(a)(1). Individuals who submit a compliant federal form (with or without proof of citizenship) are registered to vote. And they can, in fact, actually vote for federal offices in Arizona. Even if the phrase "for the registration of voters" in Section 6 meant "for the purpose of voting," there is no semantic, textual, or historical support for the novel proposition that the NVRA secures federal rights to vote *by mail*. There accordingly is no conflict between Section 6 and Ariz. Rev. Stat. §16-127(A)(2).

2.

In enacting the NVRA, Congress did not aspire to protect access to mail-in voting. Arizona's ban on mail-in voting by registrants who have not proved their citizenship accordingly does not "stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Sprietsma* v. *Mercury Marine, a Div. of Brunswick Corp.*, 537 U.S. 51, 64 (2002) (cleaned up). "Evidence of pre-emptive purpose is sought in the text and structure of the statute at issue." *CSX Transp., Inc.* v. *Easterwood*, 507 U.S. 658, 664 (1993).

The NVRA's text and structure evince no preoccupation with protecting particular methods of voting. Its operative clauses comprise a self-contained "superstructure" governing the discrete and distinct matter of "voter-registration systems." *Inter Tribal Council*, 570 U.S. at 5. Section 4 directs States to "establish procedures to register to vote in elections for Federal office" through certain specified means. 52 U.S.C. §20503(a). Sections 5 through 7 delineate registration processes at motor vehicles divisions, through mail-in forms, and at certain government agencies, respectively. *Id.* §§20504–20506. Section 8 mandates "the maintenance of an accurate and current voter registration roll" for federal elections and prescribes certain procedures to that end. *Id.* §20507. And Sections 9 through 13 address the implementation and enforcement of the foregoing provisions. *Id.* §§20508–20511.

The NVRA's sole substantive reference to mail-in voting is found in Section 6(c), which provides that (subject to certain exceptions) "a State may by law require a person to vote in person if" he registered to vote by mail and had not previously voted in the jurisdiction. 52 U.S.C. §20505(c).[3] But "if anything," this provision "might be described as a *non-preemption* clause." *Warren*, 587 U.S. at 769. Far from ordaining affirmative federal protection for mail-in voting, Section 6(c) is "an anti-fraud provision" that simply buttressed the States' extant authority to structure the post-registration facets of election administration, such as distributing and returning ballots. App. 119

[3] Section 8(e) alludes to in-person Election Day voting, but it does so in the specific context of updating a voter's address information in her registration record. 52 U.S.C. §20507(e).

(Bumatay, J., dissenting). To excogitate out of Section 6(c) a proscriptive *ban* on States' withdrawal of mail-in voting privileges for federal form voters "nearly turns the provision on its head." *Warren*, 587 U.S. at 770.

Propping up its supposition of Congress' objectives, the Ninth Circuit cherrypicked from the NVRA's "findings and purposes" clause, which reference a desire to "increase" registration rates and to "enhance[] the participation of eligible citizens as voters in elections for Federal office." 52 U.S.C. §20501(b)(1)–(2). Preliminarily, while "purpose" clauses can sometimes illuminate congressional intent, they cannot expand or contract "the plain meaning of the operative clause[s]." *Kingdomware Techs., Inc.* v. *United States*, 579 U.S. 162, 173 (2016). As discussed above, the NVRA's operative clauses do not regulate mail-in voting. More to the point, "[t]he NVRA had multiple statutory purposes," to include "preventing voter fraud." App. 120–21 (Bumatay, J., dissenting (citing 52 U.S.C. §20501(b)(3)–(4))). And closely overseeing ballot casting by voters who have not documented their citizenship is consistent with the NVRA's anti-fraud aims. The Ninth Circuit's myopic fixation on increasing voting rates underscores the "danger of invoking obstacle pre-emption based on the arbitrary selection of one purpose to the exclusion of others." *Pharm. Research and Mfrs. of Am.* v. *Walsh*, 538 U.S. 644, 678 (2003) (Thomas, J., concurring in the judgment).

In sum, a semantic and structural chasm separates Congress' generic paeans to voter participation from the Ninth Circuit's vision of prescriptive federal authority over States' ballot casting procedures. "The

[NVRA] has two main objectives: increasing voter registration and removing ineligible persons from the States' voter registration rolls." *Husted* v. *A. Philip Randolph Inst.*, 584 U.S. 756, 761 (2018). It does not—and never previously had been construed to—regulate the post-registration aspects of elections. The Ninth Circuit's reconceptualization of the NVRA as a mail-in voting statute contravenes the separation of powers as "a significant judicial intrusion into Congress's authority to delimit the preemptive effect of its laws." *Warren*, 587 U.S. at 773. And its reasoning gratuitously endangers "*all* state limitations on absentee and mail voting." App. 119 (Bumatay, J., dissenting). The Court should grant certiorari to correct this serious and inauspicious error.

III. The Ninth Circuit Disregarded the Presumption of Legislative Good Faith, Resurrected the Discredited "Cat's Paw" Theory of Legislative Intent, and Failed to Defer to the District Court's Well-Supported Findings

When a court proclaims that an elected legislative body acted out of animus against a protected class, "it is declaring that the legislature engaged in 'offensive and demeaning' conduct." *Alexander* v. *South Carolina State Conf. of the NAACP*, 602 U.S. 1, 11 (2024) (citation omitted). Due regard for the separation of powers and the sanctity of the democratic process teaches that courts "should not be quick to hurl such accusations at the political branches." *Id.* Declining to heed this admonition, the Ninth Circuit cast aside the district court's careful and detailed findings that the Arizona Legislature had not acted with an intent to

discriminate on the basis of national origin when it enacted H.B. 2243. That facially neutral law requires Arizona's county recorders to periodically search various official records, including databases maintained by federal and state government agencies, to identify ineligible voters on the rolls. App. 646–62. In upending the district court's ruling, the Ninth Circuit disregarded at least three pillars of this Court's Fourteenth Amendment jurisprudence.

1.

Any plaintiff alleging that a facially neutral law was propelled by racial or national origin animus must overcome a "presumption of good faith" by the legislative body. *Abbott*, 585 U.S. at 641. In practice, that means a court must "draw the inference that cuts in the legislature's favor when confronted with evidence that could plausibly support multiple conclusions." *Alexander*, 602 U.S. at 10. The Ninth Circuit insisted on conjuring out of "[t]he political climate in Arizona" in the aftermath of the contested 2020 presidential election "circumstantial evidence of discriminatory intent," and harped on a post-election audit conducted by the Arizona Senate, which had found no widespread voter fraud. App. 76–78. But that is precisely the inferential leap that this Court has repeatedly warned against.

The district court, by contrast, had it right. It noted that "[n]othing in the legislative hearings evince a motive to discriminate against voters based on race or national origin." App. 343. And it properly refused to extrude a nefarious subtext from legislative debates about election security, recognizing that "partisan" passions and political dynamics are not proxies for

discriminatory animus. *Brnovich*, 594 U.S. at 689; see also *Alexander*, 602 U.S. at 9–10 (holding in redistricting context that, to defeat the presumption, a plaintiff must "rul[e] out the competing explanation that political considerations dominated the legislature's" actions).

Perhaps most importantly, the district court knew that a law's objective necessity is not a metric of its subjective intent. Even if the court believed that concerns about non-citizen voting were factually tenuous, a "sincere, though mistaken, non-race-based belief" that election misconduct occurred does not manifest discriminatory intent. *Brnovich*, 594 U.S. at 689; App. 344–45. And even if the Arizona Legislature had actually believed that non-citizen voting was not an extant problem, it still had every right to "take action to prevent [it] without waiting for it to occur and be detected within its borders." *Brnovich*, 594 U.S. at 686.

In short, the Ninth Circuit not only eschewed even rhetorical fealty to the presumption of legislative good faith; it "flipp[ed]" it and "essentially requir[ed] the State to disprove any discriminatory motive." App. 162 (Bumatay, J., dissenting).

2.

The Ninth Circuit revived—in an even more egregious form—the so-called "cat's paw" theory that the Court banished in *Brnovich*. This mode of analysis posits that one or a few rogue legislators may "dupe" a voting majority into advancing their malign objectives. 594 U.S. at 689. But "[t]he 'cat's paw' theory has no application to legislative bodies" because "legislators who vote to adopt a bill are not the agents of the bill's sponsor or proponents." *Id.*

Lacking any plausible "cat" in the Arizona Legislature itself, the Ninth Circuit turned its gaze outward, and fixated on the Arizona Free Enterprise Club, a nonprofit organization that was involved in drafting and advocating for H.B. 2243. Seizing on the Free Enterprise Club's isolated use of the term "illegals" in a single lobbying email to legislators, the Ninth Circuit pronounced that it "supports a conclusion that" H.B. 2243 was "the product of intentional discrimination." App. 79–80.

Preliminarily, the word "illegal" is not a racial slur. A person's unlawful immigration status is an objective legal fact that endures irrespective of race or ethnicity. See *Texas* v. *United States*, 809 F.3d 134, 148 n. 14 (5th Cir. 2015) ("*Illegal alien* is not an opprobrious epithet; it describes one present in a country in violation of the immigration laws (hence 'illegal')"). More fundamentally, if a fellow legislator is not the "cat's paw" of the body, then an outside private organization certainly cannot personify a legislature's intentions. See *City of S. Miami* v. *Governor*, 65 F.4th 631, 647 (11th Cir. 2023) (Mizelle, J., concurring) (district court's reliance on legislature's use of outside group's data to

infer animus was "ad-hominem reasoning and compounding of attenuated inferences"). And, in any case, the district court found "no persuasive evidence that the Legislature relied on the" email. App. 346.

3.

The Ninth Circuit supplanted the district court's reasoned weighting of the evidence with its own. Because "the district court's view of the evidence is plausible in light of the entire record," the Ninth Circuit was duty-bound to affirm. *Brnovich*, 594 U.S. at 687. In "grasp[ing] at straws" to find some error" in the district court's ruling, however, the Ninth Circuit "settle[d] on some odd notion that . . . the district court should have been more pliable to 'circumstantial' evidence." App. 174 (Bumatay, J., dissenting).

But that critique finds easy refutation in the district court's exhaustive assessment of the *Arlington* factors. The district court duly considered circumstantial historical evidence—namely, past voting-related discrimination and historical experts' testimony—but correctly recognized that "[p]ast discrimination cannot, in the manner of original sin, condemn governmental action that is not itself unlawful." *Abbott*, 585 U.S. at 603 (citation omitted). And the district court discounted plaintiffs' experts' opinions not because it adopted an overly stringent standard of proof, but because it deemed them not credible. It found one expert's analysis "incomplete or misleading," and "question[ed] the reliability of" the other expert's "testimony regarding Arizona history" and current election laws. App. 231–32.

Similarly, the district court's conclusion that there was "no persuasive evidence of procedural departures" in the legislative process was buttressed by the sworn testimony of the Speaker of the Arizona House of Representatives. App. 350–52. And its finding that "any disparate impact" emanating from H.B. 2243's voter list maintenance checks "is markedly small" was grounded in expert testimony and official voter rolls, which established that less than 1% of both white and minority voters in Arizona lack proof of citizenship on file. App. 318; see also *Brnovich*, 594 U.S. at 680 (finding no material disparate impact in "[a] policy that appears to work for 98% or more of voters to whom it applies—minority and non-minority alike"). In short, the district court did, in fact, consider all the "circumstantial" evidence that the plaintiffs proffered; "it just found it *unconvincing*." App. 174 (Bumatay, J., dissenting). The Ninth Circuit was obligated to affirm, even if it "would have weighed the evidence differently in the first instance." *Brnovich*, 594 U.S. at 687.

In discarding the district court's meticulous parsing of the evidence and carefully reasoned factual findings on legislative intent, "[t]he Ninth Circuit's opinion was not just wrong. It also committed fundamental errors that this Court has repeatedly admonished courts to avoid." *Sexton* v. *Beaudreaux*, 585 U.S. 961, 967 (2018). When, as here, a "decision [is] obviously wrong and squarely foreclosed by our precedent," summary reversal is appropriate. *Shoop* v. *Casanno*, 142 S. Ct. 2051, 2057 (Mem.) (2022) (Thomas, J., dissenting from denial of certiorari).

CONCLUSION

The Court should grant certiorari.

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