No. 25-1019

In the Supreme Court of the United States

WARREN PETERSEN, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE ARIZONA STATE SENATE, ET AL.,

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

REPLY BRIEF OF PETITIONERS

Kory Langhofer
Counsel of Record
Thomas Basile
STATECRAFT PLLC
649 North Fourth Avenue
1st Floor
Phoenix, AZ 85003
(602) 382-4078
kory@statecraftlaw.com

Attorneys for Petitioners

JUNE MMXXVI

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INTRODUCTION

The Ninth Circuit's opinion defies the Respondents' attempt to whitewash it as merely a discrete disposition of questions unique to Arizona law. MFV Opp. 13. To the contrary, it "ignored" this Court's precedents and "mangle[d]" National Voter Registration Act (NVRA) case law in consequential respects that will impede Arizona and other states from enacting commonsense safeguards against unlawful voter registrations and regulating voting methods and mechanics. App. 556 (Nelson, J., dissenting from denial of rehearing en banc).

Section 9 of the NVRA allows the States to require on their state-specific registration forms, as a condition of registering to vote in federal elections, 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). That authorization recognizes the States' "flexibility" to require on the state form simple corroboration of substantive voting qualifications, such as "proof-of-citizenship," *Arizona* v. *Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 12 (2013) ("*ITCA*"), and residence. By demanding that Arizona demonstrate that its proof of citizenship and residence requirements are *not* preempted by its artificially stringent construction of the term "necessary," the Ninth Circuit flouted *ITCA* and the allocation of federal-state authority that the NVRA secures. And by holding that the Arizona Legislature remains bound by a years-old consent decree to which it is not a party (the "LULAC Decree"), the Ninth Circuit ignored this Court's directive that

federal consent decrees cannot "improperly deprive future officials of their designated legislative and executive powers." *Frew ex rel. Frew* v. *Hawkins*, 540 U.S. 431, 441 (2004).

The Ninth Circuit's unprecedented enlargement of the NVRA's preemptive scope to reach post-registration methods of voting is equally consequential. Section 6 of the NVRA requires the States to "accept and use" the federal form promulgated by the Election Assistance Commission (EAC) "for the registration of voters in" federal elections. 52 U.S.C. § 20505(a)(1). Arizona undisputedly does exactly that. All voters, including those who registered using the federal form and have not provided proof of citizenship, may cast ballots for federal office. But Arizona limits the privilege of mail-in voting only to registrants who (regardless of the form they used to register) have proof of citizenship on file. Ariz. Rev. Stat. § 16-127(A)(2). In holding that Section 6 precludes this sovereign policy decision, the Ninth Circuit upended three decades of NVRA case law that consistently confined the statute to the registration process—not voting mechanics. Indeed, even Respondents cast the Ninth Circuit's ruling as vindicating a newfound federal guarantee of "equal access to a state's methods of voting." AANHPI Opp. 32.

The Ninth Circuit's reversal of the district court's finding that the Arizona Legislature did not act with discriminatory intent in enacting H.B. 2243, a voter list maintenance law, likewise warrants review, albeit for different reasons. Its disregard of the legislative presumption of good faith, resort to the discredited "cat's paw" theory of discerning legislative intent, and

lack of meaningful deference to the district court's factual findings are "fundamental errors that this Court has repeatedly admonished courts to avoid." *Sexton* v. *Beaudreaux*, 585 U.S. 961, 967 (2018); see also *Brnovich* v. *Democratic Nat'l Comm.*, 594 U.S. 647 (2021). Summary reversal accordingly is appropriate.

DISCUSSION

I. The States' Authority Under the NVRA to Determine the Contents of Their Registration Forms and To Regulate Methods of Voting Are Important Questions that Necessitate Immediate Review

The Ninth Circuit's opinion derogates the States' constitutional and statutory authority over election administration. Respondents' insistence that the case does not warrant certiorari because it features "only idiosyncratic requirements of Arizona law," AANHPI Opp. 13, is not persuasive. Neither of this Court's major NVRA precedents were precipitated by a circuit split; both featured statutory provisions that were unique to the relevant states. See *ITCA*, 570 U.S. 1; *Husted* v. *A. Philip Randolph Institute*, 584 U.S. 756 (2018). Indeed, *ITCA* arose out of the same Arizona statutory scheme and public policy concept (*i.e.*, proof of citizenship as a prerequisite to registering to vote in federal elections) that is the genesis of this case.

The Court undoubtedly granted certiorari in *ITCA* and *Husted* for the same reason it should do here: States possess a constitutionally and functionally vital interest in preserving the integrity of their voter rolls and elections infrastructure. See generally *ITCA*,

570 U.S. at 17 (recognizing a State's constitutional authority to prescribe and "enforce its voter qualifications"); *Timmons* v. *Twin Cities Area New Party*, 520 U.S. 351, 364 (1997) (commenting that "States certainly have an interest in protecting the integrity, fairness, and efficiency of their ballots and election processes."); *Moore* v. *Harper*, 600 U.S. 1, 10 (2023) (observing that the Constitution "'imposes' on the state legislatures the 'duty' to prescribe rules governing federal elections"). Although Congress can displace certain facets of this authority, see U.S. Const. art. I, §4, a federal court's wrongful abrogation—via a significant misinterpretation of federal law—of the States' presumptive power to regulate registration and voting in federal elections is *per se* a consequential error. And the questions at stake carry greater practical import than they did when *ITCA* was decided thirteen years ago. As *amici* have explained, several other States have since enacted their own documentary proof of citizenship laws, and "[c]larification on the preemptive scope of the NVRA is urgently needed." Br. of Kansas, et al. at 3.

In repudiating *ITCA*'s affirmation that Arizona may permissibly require proof of citizenship on its state form, see 570 U.S. at 12, and in announcing that the NVRA can preempt state laws that govern the methods of obtaining and casting ballots, the Ninth Circuit capsized Congress's ordained distribution of power between federal and state governments on matters of voter registration and election administration. This Court's review is needed to vindicate and clarify the States' ability under the NVRA to design state-specific voter registration forms that go above and beyond the

federal form's "backstop," *ITCA*, 570 U.S. at 12, and to prescribe prerequisites for the privilege of voting by mail.

II. Respondents' Efforts to Obscure the Conflict Between the Decision Below and ITCA Are Unpersuasive

A. The NVRA Does Not Preempt State Laws Regulating the Means of Casting a Ballot

An unbridged textual and conceptual chasm separates the NVRA's modest directive that the States must "accept and use" the federal form "for the registration of voters in federal office," 52 U.S.C. § 20505(a)(1), from Respondents' vision of a federally protected prerogative "to not be discriminated against in their voting access based on their choice of registration method." AANHPI Opp. 29; see also DNC Opp. 22 (arguing that the NVRA guarantees federal form registrants "all the same voting rights for federal elections that state law provides to those who register in any other way state law allows"). Taking a different route, the MFV Respondents obliterate any distinction between registration and all other aspects of voting, theorizing that Arizona's withdrawal of mail-in voting privileges from individuals who do not have proof of citizenship on file is "a regulation of registration itself." MFV Opp. 32. These arguments—all of which strain to expand the NVRA's preemptive ambit beyond the statute's stated domain of voter registration—all suffer from three primary problems.

First, Respondents rely heavily on a false dichotomy. Arizona law makes mail-in voting privileges

contingent upon providing documentary proof of citizenship—not the type of registration form used. Although the federal form itself does not require proof of citizenship, Arizona elections officials will attempt to locate such documentation on file for federal form applicants; if it can be found, they may vote by mail. See Ariz. Rev. Stat. §16-121.01(D)-(E). Conversely, state form applicants who lack proof of citizenship have in recent years been registered as "federal only" voters pursuant to the LULAC Decree, but (if the injunction is vacated) would be unable to vote by mail.

Second, Section 6's plain meaning resists Respondents' "non-discrimination" mandate. It requires only that the States "accept and use" the federal form to effectuate the act of *registration*. In other words, an individual who timely submits a facially accurate and complete federal form submission must be permitted to vote in subsequent federal elections. "But the NVRA doesn't prescribe the way in which those voters must cast their vote—either in person, by mail, or some other method." App. 116 (Bumatay, J., dissenting).

Respondents spill much ink battling the strawman of an individual who is nominally registered but denied "any (or most) means of casting a ballot." AANHPI Opp. 29. But federal form registrants who lack proof of citizenship undisputedly may vote for federal offices on Election Day or in-person during an early voting period that extends for more than three weeks. See Ariz. Rev. Stat. §§16-542(A), 16-127(A)(2). Although mail-in voting is common in Arizona, in-person options remain widely available and freely accessible. And there is nothing oppressive about casting a

ballot in-person; to the contrary, "traveling to an assigned polling place . . . falls squarely within the heartland of the 'usual burdens of voting.'" *Brnovich*, 594 U.S. at 683 (citation omitted). It is one thing to posit that Section 6 implicitly protects a right of federal form registrants to vote in federal elections. But Section 6's narrow mandate, which merely ensures that "a simple means of registering to vote in federal elections will be available," *ITCA*, 570 U.S. at 12, does not impart a new federal guarantee of "equal access to . . . voting options." AANHPI Opp. 30.

Third, Congress' modest and discrete stated objectives are incongruent with the sweeping preemptive scope that the Respondents try to engraft onto them. "Implied preemption analysis does not justify a 'free-wheeling judicial inquiry into whether a state statute is in tension with federal objectives'; such an endeavor 'would undercut the principle that it is Congress rather than the courts that pre-empts state law." *Chamber of Commerce of U.S.* v. *Whiting*, 563 U.S. 582, 607 (2011) (citation omitted). A finding of preemptive intent must be well-grounded "'in the text and structure of the statute at issue,'" and the Court cannot "pil[e] inference upon inference about hidden legislative wishes." *Va. Uranium, Inc.* v. *Warren*, 587 U.S. 761, 778 (2019) (plurality op.) (citation omitted).

The NVRA sought to "increase the number of eligible citizens who register to vote in elections for Federal office." 52 U.S.C. § 20501(b)(1). But Arizona law inarguably permits federal form applicants to register for—and vote in—elections for federal office, as Section 6 demands. More broadly, the district court found there was no evidence that the proof of citizenship

requirement "impede[s] any qualified voter from registering to vote or staying on the voter rolls." App. 327. Congress also aspired "to make it possible for Federal, State, and local governments to implement this chapter in a manner that enhances the participation of eligible citizens as voters in elections for Federal office." 52 U.S.C. § 20501(b)(2). But, if anything, this language connotes state discretion and flexibility in deciding how best to integrate the NVRA into their voting laws. It certainly does not embody a preemptive mandate that displaces the States' traditional "broad powers to determine the conditions under which the right of suffrage may be exercised." *Shelby Cnty.* v. *Holder*, 570 U.S. 529, 543 (2013).

Although Respondents downplay the significance of the Ninth Circuit's ruling, they themselves describe it in capacious terms as securing a federal guarantee of "equal access to voting methods." AANHPI Opp. 32. This novel preemptive principle, however, is detached from the NVRA's text and *ITCA*'s interpretation of it.

B. Arizona Does Not Have the Burden of Proving the "Necessity" of the Fields on Its State-Specific Voter Registration Form

Because documentary proof of citizenship and residence inherently verify the substantive qualifications to which they correspond, Arizona may include them on its state-specific form as prerequisites to voting in federal elections. See *ITCA*, 570 U.S. at 12. Respondents defend the Ninth Circuit's ruling to the contrary on the grounds that Arizona never affirmatively proved that documentary proof of citizenship and residence are "necessary" to enable verification of a

registrant's eligibility, within the meaning of NVRA Section 9. To buttress this position, they cite the EAC's rejection of Arizona's petition to add to the federal form state-specific instructions incorporating Arizona's documentary proof of citizenship requirement. AANHPI Opp. 21–22; MFV Opp. 22. But this reasoning conflates apples (*i.e.*, the EAC's administrative process for amending the federal form) and oranges (*i.e.*, a State's independent exercise of its legislative authority).

The EAC's decisions regarding the federal form's parameters are discretionary and governed by the Administrative Procedure Act. See *Kobach* v. *U.S. Election Assistance Comm'n*, 772 F. 3d. 1183, 1196–97 (10th Cir. 2014). By contrast, changes to the state-specific form are made by state legislatures pursuant to their sovereign lawmaking authority. Although these determinations are not subject to a "presumption" against preemption, *ITCA*, 570 U.S. at 13–15, this Court has never ratified the extraordinary proposition that a State bears the burden of affirmatively proving, by adducing some unspecified quantum of factual evidence, that its duly enacted laws are *not* preempted.

The Ninth Circuit's inversion of the burden of proof, coupled with its adoption of an unduly narrow understanding of Section 9's "necessity" rubric, are irreconcilable with *ITCA*.

C. The LULAC Decree Is Not a Procedural or Substantive Bar to This Court's Review of the NVRA Issue

As non-parties to the LULAC Decree, Petitioners may collaterally challenge its validity in this litigation. See *Martin* v. *Wilks*, 490 U.S. 755, 762 (1989). Respondents argue that Petitioners should have sought to intervene in the LULAC proceedings and then moved to obtain relief pursuant to Federal Rule of Civil Procedure 60(b). AANHPI Opp. 13; MFV Opp. 31.[1] Rejecting exactly that proposition, this Court has held that "[t]he law does not impose upon any person absolutely entitled to a hearing the burden of voluntary intervention in a suit to which he is a stranger . . . Unless duly summoned to appear in a legal proceeding, a person not a privy may rest assured that a judgment recovered therein will not affect his legal rights." *Martin*, 490 U.S. at 763 (citation omitted); see also *id.* at 765 (holding that "the attribution of preclusive effect to a failure to intervene" is "quite inconsistent with Rule 19 and Rule 24"). Petitioners were not required to run a contrived and circuitous procedural gauntlet through Rules 24 and 60(b) to contest the LULAC Decree's continued binding force when it was invoked to block a subsequently enacted state law.

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[1] Advancing a similar but somewhat contradictory variant of this point, the MFV Respondents contend that the Legislature could not have been named as a defendant in the LULAC action. MFV Opp. at 30. Petitioners agree, and MFV's argument is at odds with itself. That the Legislature could not have been properly named as a defendant only underscores the constitutional impropriety of effectively binding the Legislature perpetually to the decree's terms.

More substantively, that the LULAC Decree was predicated on a federal statute (to wit, the NVRA) does not encase Arizona state law in amber unless and until Congress amends it. Federal consent decrees "often raise sensitive federalism concerns" because "overbroad or outdated" edicts can debilitate state officials' "ability to respond to the priorities and concerns of their constituents." *Horne* v. *Flores*, 557 U.S. 433, 449 (2009) (citation omitted). This case aptly illustrates that peril. NVRA Section 9 contemplates that States' judgments concerning what informational items may or may not be "necessary" to verify registrants' eligibility are contextual and may evolve over time. Although *Horne* came to the Court in the context of a Rule 60(b) motion, the principle it encapsulates—namely, that federal consent decrees cannot "eliminat[e] a condition that does not violate federal law or does not flow from such a violation" or "improperly deprive future officials or their designated legislative and executive powers," 557 U.S. at 450 (citations omitted)—applies in equal force to collateral challenges, such as this one.

III. The Ninth Circuit's Ruling on Discriminatory Intent Was So Palpably Erroneous That Summary Reversal Is Warranted

The Ninth Circuit disregarded this Court's recent precedents when it vacated the district court's finding that the Arizona Legislature did not act with discriminatory intent in enacting H.B. 2243, which requires elections officials to check various databases of government records to verify the citizenship and residence of registered voters. The Promise Arizona

Respondents and the United States urge the Court to forgo review because the decision is "interlocutory." AANHPI Opp. 35; U.S. Opp. 28. To be sure, when a lower court opinion hinges on novel or unsettled questions, allowing a remand and subsequent appellate review to proceed can helpfully crystallize or narrow the issues before they reach this Court.

This is not, however, such a case. The Ninth Circuit's analysis did not even purport to honor the "presumption of legislative good faith." *Alexander* v. *S.C. State Conference of the NAACP*, 602 U.S. 1, 10 (2024). Its emphasis on a single statement by an outside advocacy organization as a proxy for the Arizona Legislature's collective intent, see App. 78-82, revives the "cat's paw" mode of discerning legislative intent that this Court repudiated in *Brnovich,* see 594 U.S. at 689. And its nebulous critiques of the district court's weighing of competing circumstantial evidence flouted its obligation of deference to the district court's "plausible" factual conclusions. *Id.* at 687. The Court already provided answers to the questions at the crux of the discriminatory intent claim; the Ninth Circuit just refused to heed them. In such circumstances, summary reversal is appropriate. *E.g.*, *Caetano* v. *Massachusetts*, 577 U.S. 411 (2018); *Am. Tradition P'ship, Inc.* v. *Bullock*, 567 U.S. 516 (2012); *Maryland* v. *Kulbicki*, 577 U.S. 1, 2 (2015).

CONCLUSION

The Court should grant the petition for a writ of certiorari.

June 2, 2026

Respectfully submitted,

Kory Langhofer
Counsel of Record
Thomas Basile
STATECRAFT PLLC
649 North Fourth Avenue
1st Floor
Phoenix, AZ 85003
(602) 382-4078
kory@statecraftlaw.com

Counsel for Petitioners