Nos. 25-1017, 25-1019, 25-1022

IN THE

Supreme Court of the United States

REPUBLICAN NATIONAL COMMITTEE,

Petitioner,

v.

MI FAMILIA VOTA, *et al.*,

Respondents.

[Additional Captions Listed On Inside Cover]

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

BRIEF OF *AMICI CURIAE* ARIZONA FREE ENTERPRISE CLUB AND ARIZONA LIBERTY NETWORK IN SUPPORT OF PETITIONERS

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March 26, 2026

WARREN PETERSEN, PRESIDENT
OF THE ARIZONA SENATE, *et al.*,

Petitioners,

v.

MI FAMILIA VOTA, *et al.*,

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ARIZONA, *et al.*,

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PROMISE ARIZONA, *et al.*,

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INTEREST OF AMICI CURIAE[1]

The Arizona Free Enterprise Club ("AZFEC") is a public policy think tank and advocacy organization dedicated to free markets, limited government, and the rule of law. It was instrumental in the drafting and adoption of the statutes at issue in this case, as the district court noted. AZFEC is therefore invested in the outcome of this litigation and brings a unique perspective on the sole motivation behind the laws' adoption: ensuring election integrity and restoring voters' confidence in Arizona elections.

AZ Liberty Network ("AZLN") seeks to increase public knowledge and civic participation with respect to social, cultural, and economic issues affecting Arizona. AZLN's Grand Canyon Legal Center was established to champion constitutional rights and structural limitations on government power.

1. No party or party's counsel authored this brief in whole or part, nor did anyone other than Amici and their members contribute any money to fund the preparation of this brief. Sup. Ct. R. 37.6.

INTRODUCTION

In *Arizona* v. *Inter Tribal Council of Ariz.*, 570 U.S. 1 (2013), this Court found a narrow instance of preemption: States must "accept and use" a federal form for registering voters to vote in elections for the U.S. House of Representatives and U.S. Senate. The Court noted, however, that "States retain the flexibility to design and use their own registration forms," just as they are generally empowered under the Elections Clause to administer elections. *Id.* at 12. Arizona accepted the Court's invitation and designed a state form that requires proof of citizenship. It also required individuals using the federal form to present identification, a prophylactic step this Court has already upheld. *Crawford* v. *Marion Cnty. Election Bd.*, 553 U.S. 181 (2008). Doing so requires that they vote in person rather than by mail, but Congress has done nothing to mandate mail-in voting or to require it be available on certain terms. In short, Arizona took this Court at its word in *Inter Tribal Council* and adopted laws that regulate elections without encroaching on the question of federal registration.

Two judges on the Ninth Circuit made a different policy choice and forced it on Arizona under the guise of enforcing federal law. The panel majority's approach is so far afield that parts of it warrant summary reversal (specifically, a finding of discriminatory intent that underrules this Court's decision in *Brnovich* v. *Democratic Nat'l Comm.*, 594 U.S. 647 (2021)); all of it warrants certiorari. The three petitions seeking this Court's review identify a variety of issues that depart from this Court's precedent, break with other circuits, and arrogate to the judiciary a power expressly assigned to state legislatures. If the list of questions presented seems daunting, it is only because

the Ninth Circuit erred from the start. Correcting its foundational error over the States' authority to regulate elections solves each of the mistaken holdings that follow from it. This Court should grant certiorari to confine the strong medicine of federal preemption to its proper scope and allow the States to exercise their constitutional power to prescribe "The Times, Places and Manner of holding Elections for Senators and Representatives." U.S. Const. art. I, §4, cl. 1.

BACKGROUND

After this Court decided *Arizona* v. *Inter Tribal Council of Ariz.*, 570 U.S. 1 (2013), policymakers in Arizona set about recalibrating how the State would improve confidence in the electoral process. Those measures included federal-only ballots that allowed individuals to vote in elections for the U.S. House of Representatives and Senate without providing proof of citizenship. The vast majority of voters, who demonstrated their citizenship when registering to vote, obtained full ballots, including state races. That is exactly what this Court authorized in *Inter Tribal Council*. 570 U.S. at 12.

Five years later, the then-Arizona Secretary of State entered a consent decree agreeing to register anyone whose state application lacked proof of citizenship as a federal-only voter. That decree did not bind anyone else in the Arizona government, including the people's representatives in the legislature. In 2022, the legislature adopted and the governor signed a pair of bills (the "Voting Laws"). Very simply, as explained in more detail in the petitions for certiorari, the Voting Laws:

- Require the rejection of state voter registration forms submitted without documentary proof of citizenship;

- Require election officials to access various databases with pertinent citizenship information to attempt to procure proof of citizenship for registrants using the federal form who did not submit it themselves;

- Require registering federal-form registrants for whom election officials obtain proof of citizenship as full-ballot voters;

- Continue registering federal-form registrants for whom election officials cannot obtain proof of citizenship as federal-only voters;

- Require the rejection of federal voter registration forms if the election official obtains evidence that the registrant is not a U.S. citizen;

- Require federal-only voters to vote in-person (during the 27 days that Arizona makes in-person voting available); and

- Prohibit federal-only voters from casting votes for presidential electors.

These Voting Laws essentially restore and reaffirm the proof-of-citizenship rules that existed both before and after *Inter Tribal Council*. And importantly, these laws also added further protections to ensure that individuals who had already established their citizenship through

another means (*e.g.*, when applying for a driver's license) and those for whom county recorders obtained evidence of citizenship on their behalf, would be fully registered to vote in all elections.

Following the enactment of the Voting Laws, certain private parties and organizations brought several suits challenging their legality. The cases were consolidated in the District of Arizona. The court resolved motions to dismiss (on Feb. 16, 2023), granted partial summary judgment (on Sept. 14, 2023), conducted a bench trial (in late 2023), issued post-trial rulings (Feb. 29, 2024), and entered final judgment (May 2, 2024).

In its final ruling, although the district court accurately identified the State's prerogative to adopt constitutional voter qualifications, it enjoined several provisions of the Voting laws. It held NVRA Section 6 preempted limits on presidential and mail voting for registrants lacking proof of citizenship. It required processing of state-form applications lacking proof of citizenship consistent with the now-expired 2018 consent decree and treated those lacking proof of residence as federal-only registrants. It invalidated the birthplace field and citizenship checkbox under the Civil Rights Act, and it set aside SAVE "reason to believe" and list-maintenance measures under NVRA Sections 8(b) and 8(c). Importantly, however, it found no discriminatory intent behind H.B. 2243—rejecting Plaintiffs' baseless theory of racial animus that would indict every State in the nation based on long-past misdeeds in which the current legislature and policy advocates like Amici had no part.

Defendants and intervenors noticed appeals which were consolidated before the Ninth Circuit. Although a

unanimous motions panel stayed the injunction as to the state-form proof-of-citizenship requirement on July 18, 2024, a merits panel vacated that stay on August 1, 2024. This Court then granted a partial stay on August 22, 2024, reinstating enforcement of the state-form proof-of-citizenship requirement pending further proceedings.

On February 25, 2025, the Ninth Circuit merits panel largely affirmed the district court's rulings. It held that the NVRA and the 2018 consent decree preclude Arizona from enforcing documentary proof-of-citizenship and proof-of-residence requirements on the state form. It concluded that the NVRA preempts Arizona's prohibition on mail voting by registrants lacking proof of citizenship, and that the NVRA's 90-day program bar applies to Arizona's noncitizen-removal practices. Perplexingly, it also reweighed evidence of discriminatory purpose and reversed the district court's finding of no discriminatory intent as to H.B. 2243.

Rehearing en banc was denied on September 22, 2025, with eleven judges dissenting. Most recently, three certiorari petitions have been filed, which are now before the Court—and which include numerous questions presented.

Though this litigation appears complex, it is actually a straightforward case about simple laws addressing simple questions. The Voting Laws provide that Arizona will use its own state voter registration form. The Voting Laws address whether Arizona can assess the eligibility of applicants and reject those who are not qualified. They require voters who have never provided proof of their

citizenship, and for whom evidence cannot be obtained independently, to vote in person. And they exercise Arizona's power to establish who may select presidential electors, as the Constitution prescribes. Framed in this way, the questions this Court can resolve are simple:

(1) May Arizona require proof of citizenship from applicants using its own voter registration forms?

(2) May Arizona require voters who have not provided proof of citizenship to vote in person and preclude them from choosing presidential electors?

The answer to each is "yes." Once these basic principles are clarified, the answers to ancillary questions in the petitions for certiorari become apparent. However the Court conceives of the issues in play, it is eminently clear that the petitions should be granted to restore the constitutional division of authority for regulating elections.

SUMMARY OF THE ARGUMENT

The Ninth Circuit's judgment should be reversed on numerous grounds.

To begin with, this Court should summarily reverse the egregious Ninth Circuit revisionism regarding discriminatory intent. The panel majority (Gould & Wardlaw, JJ.) impermissibly reweighed the district court's findings on discriminatory intent while purporting to conduct clear-error review. This Court's precedent forecloses that maneuver, and the Ninth Circuit should know better. The actual fact-finder, the district

court, applied the *Arlington Heights* factors, found no discriminatory motive, and concluded that plaintiffs' evidence lacked probative force. Undeterred, the panel substituted its own narrative of animus. Judge Bumatay's panel dissent recognized ample record support for the district court's finding, underscoring the panel's departure from deferential review and confirming this issue is suitable for summary reversal. Pet. App. at 140–153 (No. 25-1019).

Regarding preemption, Arizona's Voting Laws fall within the State's plenary authority to set and enforce voter qualifications and to administer elections consistent with constitutional limits. The laws implement citizenship, residency, and age qualifications through targeted mechanisms that confirm eligibility and expand full-ballot access when citizenship evidence is found, while preserving a federal-only ballot where verification is pending. These measures track *Inter Tribal Council*'s guidance on state flexibility to design state forms and to obtain information needed for enforcement, and they align with recognized state interests in counting only eligible votes.

Importantly, the NVRA does not regulate mail-in voting or the mechanics of presidential ballot-casting, and the Ninth Circuit's contrary approach improperly transforms a registration statute into a general federal election code. Nothing in the NVRA speaks to who may vote by mail or what verification steps a State may require at the point of casting a ballot—particularly in regard to selection of Presidential electors—so Arizona's safeguards operate alongside the NVRA without conflict.

The lower courts also erred by giving dispositive weight to an expired 2018 consent decree entered by a former Secretary of State, which cannot bind future legislatures or preclude new laws the decree never held unconstitutional. Consent decrees resolve litigation without constitutional adjudication, expire by design, and cannot disable a State's sovereign prerogative to legislate for election integrity consistent with current needs.

Granting review will allow this Court to correct the Ninth Circuit's clear-error misstep, restore appropriate limits on NVRA preemption, and confirm that States may tailor election-administration rules that verify eligibility and preserve both full-ballot access and the federal franchise. This case presents a clean vehicle to resolve conflicts created by the decision below and to ensure Arizona's carefully crafted framework—designed in light of *Inter Tribal Council*—can stand.

ARGUMENT

I. This Court Should Summarily Reverse on Discriminatory Intent

A low-hanging fruit, ripe for summary reversal is the Ninth Circuit's failure to acknowledge the district court's plausible, evidence-based finding of no discriminatory intent. Although the panel majority paid lip service to clear-error review, it did no such thing. The Ninth Circuit went much further, impermissibly imposing its own interpretation of the facts.

Allegations of discriminatory intent in Arizona are not new. This Court rejected them in the last election

case to arise from Arizona, which involved the exact same evidence. *Brnovich*, 594 U.S. at 664 (holding that voting laws "had not been enacted with discriminatory intent."). Notwithstanding that precedent and the Ninth Circuit's obligation to apply a deferential clear-error standard, the panel majority reweighed evidence according to its own constructed narrative of animus. That was a direct violation of this Court's command that an appellate court may not reverse plausible fact findings merely because it would "have weighed the evidence differently in the first instance." *Id.* at 687.

The Ninth Circuit's fig leaf is that the district court failed to assess the totality of the circumstances. To the contrary, the district court applied the *Arlington Heights* factors, assessing historical background, legislative sequence, procedural departures, and impact, and found no discriminatory motive where "[n]othing in the legislative hearings evince a motive to discriminate." The Ninth Circuit reweighed the evidence to find that concerns over non-citizen voting were insincere, that AZFEC's use of the word "illegals" in a lobbying document proved racist motivation,[2] and that an audit's no-fraud finding was also

2. If appellate courts, including this Court, are now in the business of weighing evidence, it bears noting that variations on the term "illegal" appear in federal law (*e.g.*, The Illegal Immigration Reform and Immigration Responsibility Act of 1996, Pub. L. No. 104–208), in court opinions (*e.g.*, *Texas* v. *United States*, 328 F. Supp. 3d 662, 675 (S.D. Tex. 2018) ("The Court understands that some people find the phrase 'illegal alien' offensive. The Court uses this term because it is the term used by the Supreme Court in its latest pronouncement pertaining to this area of law.") (citing *Arizona* v. *United States*, 567 U.S. 387, 397 (2012))), and in President Biden's 2024 state of the union address (see Adriana Gomez Locon, *Biden's reference to 'an illegal' rankles some Democrats who argue he's*

somehow proof of discriminatory intent. If that sounds like reweighing the evidence, it is.

Applying the correct standard, Judge Bumatay's dissent recognized that the "district court's finding on discriminatory intent had ample support in the record." Pet. App. at 172 (No. 25-1019). Although the majority accused the district court of giving too little weight to "'circumstantial' evidence," Judge Bumatay astutely observed that the district court *did* in fact "examine[] circumstantial evidence—it just found it *unconvincing*." *Id.* at 174.

Amici are uniquely positioned to speak to the issue of intent, as authors of the provisions in question. The Voting Laws have nothing to do with animus. Rather, they reflect a sincere belief—shared by legislators and advocates like Amici—that the Voting Laws were "a necessary prophylactic measure" to ensure that individuals voting

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still preferable to Trump, AP News (Mar. 8, 2024), https://apnews.com/article/illegal-biden-backlash-laken-riley-41819b01c3942435f0f862789cd1d0f0.

Of course, members of any race are capable of being illegally present in the United States. Moreover, other cases have recognized that context is essential to identifying the rare cases of "racially coded" language. *See, e.g.*, *Cadet-Legros v. N.Y. Univ. Hosp. Ctr.*, 21 N.Y.S.3d 221, 230 (2015).

Here, there are no allegations of any derogatory references regarding race or national origin anywhere in AZFEC's materials. Nor did the Ninth Circuit identify a single episode in AZFEC's history of advocacy on hot-button issues in which it allegedly spoke or acted with racial animus. Rather, AZFEC's stated purpose—as borne out in the race-neutral Voting Laws themselves—was to ensure non-citizens and other unqualified individuals are prevented from voting illegally, regardless of race.

in state and presidential elections were, in fact, qualified to do so, and to identify those voting a federal-only ballot who are entitled to vote a full ballot. *Brnovich*, 594 U.S. at 664.

For these reasons, this Court should summarily reverse on discriminatory intent. Clear-error review, the presumption of legislative good faith, and streamlining the many other issues presented for certiorari all counsel in favor of a prompt reversal of this glaring error.

II. Arizona Is Able to Adopt Non-Discriminatory Voting Laws that Improve Election Integrity and Restore Voter Confidence

The Constitution endows the States—and not the federal government—with plenary authority to determine qualifications for electors. See *Inter Tribal Council*, 570 U.S. at 17. This principle goes to the heart of this nation's federalism, as this Court has recognized for well over a century. *E.g.*, *McPherson* v. *Blacker*, 146 U.S. 1, 35 (1892) ("[F]rom the formation of the government until now the practical construction of the clause has conceded plenary power to the state legislatures in the matter of the appointment of electors."); *Bush* v. *Gore*, 531 U.S. 98, 104 (2000) (per curiam) ("[T]he state legislature's power to select the manner for appointing electors is plenary; it may, if it chooses, select the electors itself."). Although the panel majority pays lip service to this principle, it did not engage with Arizona's ability to determine the "Times, Places and Manner of holding Elections for Senators and Representatives," U.S. Const. art. I, §4, cl. 1, or ask whether specific provisions in the NVRA genuinely "conflict" with Arizona law, *Ex parte Siebold*,

100 U.S. 371, 384 (1879). As a result, its decision striking down key provisions of the Voting Laws failed to account for Arizona's right to adopt and enforce constitutional qualifications for voting.

To vote in Arizona, a person must be a United States citizen, a resident of Arizona, and at least eighteen years of age. ARIZ. CONST. art. VII, §2. No party to the instant suit disputes the legitimacy of these qualifications. And as the district court observed, it is a class 6 felony to register oneself or another person to vote knowing of that person's ineligibility to vote. Arizona has a compelling interest in enforcing and proactively preventing the violation of this law. See *Crawford*, 553 U.S. at 196 ("There is no question about the legitimacy or importance of the State's interest in counting only the votes of eligible voters.").

But while the lower courts alluded to Arizona's authority to set voter qualifications, they sapped that authority of meaning by foreclosing meaningful enforcement. Enforcing voting qualifications is intrinsic to the States' entitlement to establish such qualifications. See *Fitzgerald* v. *Green*, 134 U.S. 377, 380 (1890) ("Congress has never undertaken to interfere with the manner of appointing electors . . . , to regulate the conduct of such election, or to punish any fraud in voting for electors, but has left these matters to the control of the states."). Undermining Arizona's enforcement reduces its duly adopted qualifications standing sentinel around election integrity to paper tigers.

Enforcing qualifications based on citizenship, age, residency, and criminal background requires information. In *Inter Tribal Council* this Court acknowledged that

"Arizona may obtain information needed for enforcement." 570 U.S. at 17. Despite the fact that Congress may have taken a different path regarding confirming a would-be voter's citizenship in the elections for which it has the ability to preempt state laws, Arizona was under no obligation to demand additional information regarding citizenship for the elections that it regulates. *Id.* at 12, 15.

The Voting Laws—like the election regulations upheld in *Brnovich*—reflect stakeholders' informed belief that the provisions were "a necessary prophylactic measure" to (a) ensure that individuals voting in state and presidential elections were, in fact, qualified to do so, and (b) identify those voting with a federal-only ballot who should be voting a full ballot. *Id.*

The now-enjoined Voting Laws also effectuate the permissible goal of addressing security vulnerabilities of mail-in voting. *Id.* at 685. Mandating that federal-only ballots be cast in person, where poll workers can verify voters' identities in a manner consistent with *Crawford,* fits comfortably within the State's prerogatives. The NVRA, which says nothing of voting by mail, certainly does not preclude such regulation. Neither the NVRA nor any other federal law requires Arizona to permit ***any*** mail-in voting. Indeed, many States do not offer mail-in voting at all; few are as generous as Arizona is; and even fewer permitted mail-in voting at the time of the 1982 amendments to the Voting Rights Act, *id.* at 670. Against that backdrop, it is impossible for a regulation aimed at improving the security of mail-in voting that also advances the State's interest in offering full ballots to anyone who qualifies by presenting suitable identification could be preempted.

Insisting on constitutional prerequisites for voting is a legitimate exercise of a State's authority. So, necessarily, are measures that implement those prerequisites by confirming they are satisfied. AZFEC remains proud to have supported the Voting Laws' adoption to ensure election integrity in Arizona. This Court should grant certiorari and reverse the panel majority's contrary policy-making.

III. The Courts Below Erred in Concluding Congress Has Foreclosed Arizona's Election-Integrity Measures

As discussed above, the Elections Clause enables federal laws to preempt certain state laws governing the manner of conducting elections for the U.S. Senate and House of Representatives. The NVRA narrowly does so as to voter registration. However, its preemptive reach does not extend to all election-integrity measures that the States adopt. In particular, the NVRA does not regulate either mail-in voting procedures or procedures regarding presidential elections. Thus, it cannot preempt state laws related to those aspects of the electoral process. The Voting Laws at issue here are clear expressions of Arizona's legitimate authority to assure lawful voting.

A. The NVRA Does Not Regulate Mail-in Voting

The NVRA's text, structure, and purpose center on how eligible voters are added to the rolls—not on the myriad procedural choices States make for casting and counting ballots. That boundary matters. Arizona's challenged measures regulate how certain registrants may vote and how election officials verify eligibility at the point of voting; they do not erect additional federal-registration prerequisites.

"[T]he purpose of Congress is the ultimate touchstone in every pre-emption case." *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 494 (1996) (quotation omitted). This Court in *Inter Tribal Council* held that the NVRA "precludes Arizona from requiring a Federal Form applicant to submit information beyond that required by the form itself." 570 U.S. at 20. That holding rested on the statutory text requiring that States "shall accept and use" the federal registration form. 42 U.S.C. §1973gg-4(a) (2013) (transferred/recodified to 52 U.S.C. §20505(a)). In the absence of such express language creating a conflict with contrary state law, the ordinary tools of preemption apply, requiring either a conflict with federal law or a framework of federal regulation "so pervasive that Congress left no room for the States to supplement it." *Arizona* v. *United States*, 567 U.S. 387, 399 (2012) (quotations and modifications omitted). Neither of those circumstances is present beyond the narrow requirement that States accept the federal form for federal elections.

To begin with, the NVRA says nothing about mail-in voting. The statute does not mandate that the States offer voting by mail, nor does it dictate who may use that voting modality when a State chooses to make it available. Quite simply, that silence is dispositive: when Congress legislates with precision on registration but nowhere addresses mail-balloting mechanics, it leaves those mechanics to the States. There can be no conflict with federal legislation that does not exist, and there is no indication that Congress views mail-in voting as a field that "must be regulated by its exclusive governance." *Ibid.* The Court would do the country a great service by clarifying the scope of preemption under the NVRA.

Moreover, Arizona's in-person requirement for federal-only registrants is a ballot-casting rule, not a registration rule. It neither denies registration to applicants who submit the federal form nor conditions federal registration on documentary citizenship proof. To the contrary, such applicants are registered and may vote in federal elections; Arizona simply channels their voting to in-person settings where eligibility can be immediately confirmed and, where appropriate, upgraded to a full ballot upon presentation of qualifying identification. Given that Arizona provides 27 days of in-person voting, this requirement imposes minimal inconvenience on voters who have not established their citizenship. Most importantly, this design promotes accuracy without burdening federal registration. And because the NVRA concerns only registration, state regulation of other aspects of voting is not preempted.

By contrast, the decisions below expand NVRA preemption beyond this Court's holding in *Inter Tribal Council* and well beyond traditional preemption principles. The Ninth Circuit's approach would find preemption of not only registration rules but also every downstream election practice, effectively transforming the NVRA into a catchall code for federal election administration. That is not what Congress wrote. Indeed, it did not speak about voting methods at all. The Ninth Circuit's approach would create constitutional conflicts by stretching the NVRA beyond the narrow field in which it regulates.

Finally, Arizona's mail-in safeguards operate alongside, not against, the NVRA's registration scheme. Applicants using the state form must provide documentary proof of citizenship to receive a full ballot; applicants using the federal form are registered and, if citizenship

cannot be verified through required database checks, are assigned a federal-only status that preserves their franchise in federal races. County recorders must proactively search multiple databases to obtain citizenship evidence for federal-form applicants and fully register them if such evidence exists. These measures respect the NVRA's registration pathways while ensuring that mail balloting is reserved for voters whose eligibility can be confirmed without the real-time safeguards of an in-person check.

In short, nothing in the NVRA speaks to who may vote by mail, how mail ballots are issued, or what verification steps a State may require at the point of casting a ballot. Arizona's in-person requirement for federal-only registrants fits squarely within the State's authority to administer elections and protect the integrity of the vote, without imposing any additional federal-registration requirement or denying the federal franchise to any eligible registrant.

B. The NVRA Does Not Regulate Selection of Presidential Electors

Just as it does not regulate voting by mail, the NVRA does not regulate the casting or counting of ballots for presidential electors. As Justice Thomas succinctly noted, "[c]onstitutional avoidance is especially appropriate in this area because the NVRA purports to regulate presidential elections, an area over which the Constitution gives Congress no authority whatsoever." *Inter Tribal Council*, 570 U.S. at 35 n.2 (Thomas, J., dissenting). Congress's

authority over presidential elections is distinct and limited, confined to setting the time for choosing electors and the day they cast their votes. U.S. CONST. art. II, §1. This distinction underscores that the NVRA does not dictate eligibility for choosing electors or the verification steps States may require in connection with the same.

As with the in-person requirement discussed above, the Voting Laws' regulation of who may cast a ballot for presidential electors falls outside the NVRA's reach. Interpreting the NVRA to cover presidential voting eligibility would improperly extend its reach, transforming it into a comprehensive code for election administration and creating constitutional tensions not addressed by the statute. Because the Voting Laws do not encroach on the timing of presidential elections, it is impossible that they could offend a valid federal statute. The best reading of the NVRA is therefore limited to the elections over which Congress has regulatory authority, a set that does not include the choice of presidential electors.

IV. An Expired Consent Decree Entered by a Former Arizona Secretary of State Cannot Prevent a Future Arizona Legislature from Adopting Legislation that the Consent Decree Never Said Was Unconstitutional

The fact that the lower courts gave the consent decree at issue here any weight at all—much less dispositive weight—is deeply concerning. An expired consent decree cannot bind future legislatures or prevent them from enacting new legislation. Permitting a single executive

official to unilaterally relinquish a State's ability to regulate elections would undermine the Elections Clause. The misuse of consent decrees is so problematic for popular governance and the separation of powers that it has earned denunciation from both the federal executive branch[3] as well as the judiciary.[4]

Consent decrees are agreements that resolve litigation without a determination of constitutionality, and they are inherently limited in scope and duration. Once expired, they hold no legal force to constrain legislative action. The consent decree in question was a temporary measure, addressed to specific issues at a particular time. It did not declare any legislative action unconstitutional, nor did it permanently alter the legislative landscape. As such, it cannot be used to argue against the validity of subsequent laws passed by the Arizona Legislature.

Moreover, the principle of legislative sovereignty allows each legislative body to enact laws reflecting current policy priorities and public needs. Binding future legislatures to the terms of an expired decree would undermine this principle and stifle democratic governance. The Arizona Legislature retains the power to

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3. *E.g.*, Office of Att'y Gen., Memorandum for Heads of Civil Litigating Components United States Att'ys, Principles and Proc. for Civil Consent Decrees and Settlement Agreements with State and Local Governmental Entities (Nov. 7, 2018), https://www.justice.gov/opa/press-release/file/1109681/dl.

4. *E.g.*, United States v. Michigan, 68 F.4th 1021, 1023 (6th Cir. 2023) (discussing an expired consent decree that was extended indefinitely by a court, and noting that "[m]uch has been written about the perniciousness of consent decrees," which "provide[] the legitimacy of a judicial decision without the reality of a judicial decision") (citations omitted).

enact laws that it deems necessary for election integrity, provided they comply with constitutional requirements. Accordingly, the expired consent decree binding a single executive official does not preclude Arizona from enacting new laws to address contemporary challenges, free from the constraints of inapplicable past agreements.

* * *

The Ninth Circuit panel pulled out all the stops to impose its desired policy on Arizona. From a scandalous fact determination regarding discriminatory intent to an expansion of the NVRA to include mail-in voting and presidential electors, the panel razed every principle protecting the States' ability to regulate elections. The result is an assortment of issues that cry out for this Court's review. Because the limits in *Inter Tribal Council* have failed to contain America's most populous circuit, the Court should now reassert those limits in reversing the decision below.

CONCLUSION

For the above-stated reasons, along with those expressed in the three petitions for certiorari, the Court should review the decision of the Ninth Circuit and reverse it in its entirety.

March 26, 2026 Respectfully submitted,

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