No. 25-1017

In the Supreme Court of the United States

REPUBLICAN NATIONAL COMMITTEE,
Petitioner,

v.

MI FAMILIA VOTA, ET AL.,
Respondents.

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

BRIEF FOR AZ AANHPI FOR EQUITY, LUCHA, AND PROMISE ARIZONA RESPONDENTS

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QUESTIONS PRESENTED

1. Does the National Voter Registration Act or a federal consent decree prohibit Arizona from requiring voter-registration applicants to produce "satisfactory evidence" of U.S. citizenship to register for federal elections when registering with a state registration form or at a public assistance agency?

2. Does the National Voter Registration Act prohibit Arizona from implementing a systematic purge program within 90 days of a federal election?

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CORPORATE DISCLOSURE STATEMENT

Respondents Arizona Asian American Native Hawaiian and Pacific Islanders for Equity, Living United for Change in Arizona, League of United Latin American Citizens, Arizona Students' Association, ADRC Action, Inter Tribal Council of Arizona, Inc., Arizona Coalition for Change, Promise Arizona, and Southwest Voter Registration Education Project do not have parent corporations, nor does any publicly held corporation own 10 percent or more of any stake or stock in respondents.

Respondent San Carlos Apache Tribe is a federally recognized Indian tribe organized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934, ch. 576, 48 Stat. 984, 987.

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PARTIES TO THE PROCEEDING

Petitioner is the Republican National Committee. Petitioner was an intervenor-defendant in the consolidated district court proceedings and an appellant in the court of appeals.

Respondents are the United States, Mi Familia Vota (MFV), 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, the Democratic National Committee, the Arizona Democratic Party, Arizona Asian American Native Hawaiian and Pacific Islanders For Equity, Promise Arizona, Southwest Voter Registration Education Project, Tohono O'odham Nation, Gila River Indian Community, Keanu Stevens, Alanna Siquieros, and LaDonna Jacket. Respondents were plaintiffs in the consolidated district court proceedings and appellees in the court of appeals. Promise Arizona and Southwest Voter Registration Education Project were cross-appellants in the court of appeals.

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,

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the Santa Cruz County Recorder, the Yavapai County Recorder, and the Yuma County Recorder were defendants in the consolidated district court proceedings.

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, were intervenor-defendants in the consolidated district court proceedings and appellants in the court of appeals. They are petitioners in *Petersen v. Mi Familia Vota*, No. 25-1019.

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INTRODUCTION

Congress, exercising its broad congressional authority over federal election procedures, enacted the National Voter Registration Act (NVRA) to promote voter participation and safeguard the integrity of federal elections. 52 U.S.C. § 20501(b)(1)-(4). This case involves two key provisions of the NVRA. The first eases registration access. It requires that any mail registration form for federal elections demand "only" information that "is necessary" to determine an applicant's eligibility to vote. *Id.* § 20508(b)(1). The second protects registered eligible voters from erroneous removals close to Election Day. It prohibits states from systematically purging suspected "ineligible voters" from the voting rolls within 90 days of a federal election. *Id.* § 20507(c)(2).

This case also raises a critical question regarding the proper procedure for seeking modification or vacatur of a federal court order. Federal Rule of Civil Procedure 60(b) provides the exclusive means of doing so. That is true regardless of whether the order resulted from a consent decree or otherwise. And it is true regardless of the specific complaints raised about the underlying court order.

Two Arizona laws at issue in this case—House Bill 2492 and House Bill 2243—are narrowly preempted by the NVRA. The former is also narrowly preempted by an undisturbed consent decree.

H.B. 2492 prevents anyone who fails to submit documentary proof of citizenship (DPOC) on Arizona's state registration form from voting, even in federal elections. The Federal Form does not have such a requirement. Thus, H.B. 2492 makes federal voter

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registration turn not on any substantive criteria but rather on whether an eligible Arizonan uses the State Form or Federal Form to register. While Arizona is free to apply its DPOC requirement to state and local elections, it cannot do so for federal elections for two reasons. First, there is a binding federal consent decree prohibiting such arbitrary treatment between registration forms that no party in this case has sought to modify or vacate, as required by Rule 60(b). Second, Arizona and petitioner have failed to show DPOC is "necessary" for assessing voter eligibility. They have likewise failed to show that a registration form requiring DPOC for federal elections is "equivalent" to one that does not require DPOC for federal elections. 52 U.S.C. § 20506(a)(6)(A)(ii).

H.B. 2243 requires election officials to systematically remove suspected noncitizens from the voting rolls on a monthly basis. Again, while Arizona is free to implement H.B. 2243's procedures most of the time (and individualized removal procedures at any time), the NVRA bars such systematic purges of suspected "ineligible" voters in the 90 days before a federal election, when erroneous removals are notoriously difficult to correct.

To avoid these straightforward results, petitioner seeks a bespoke exemption from Rule 60(b) whose contours are ambiguous at best; interpret the NVRA's restriction on mail voter registration forms to "only" information "necessary" to assess eligibility to actually allow anything merely "helpful"; and hold that the NVRA's use of the term "ineligible voters" somehow silently excludes noncitizens, who are quintessentially ineligible to vote. None of petitioner's arguments persuade.

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This case is not about allowing noncitizens to vote. It is about ensuring the right of citizens to vote. Congress carefully crafted the NVRA to strike a balance between promoting full participation in the franchise and ensuring that only those who are eligible to vote cast ballots. This case is about honoring that balance. And it is about protecting the finality of binding federal court judgments. This Court should afford the NVRA's terms their ordinary meaning, respect an existing federal court judgment and the proper procedures for adjustments to it, and affirm.

STATEMENT OF THE CASE

1. The NVRA "requires States to provide simplified systems for registering to vote in *federal* elections," *Young v. Fordice*, 520 U.S. 273, 275 (1997), to "increase the number of eligible citizens who register to vote in elections for Federal office," and to "enhance[] the participation of eligible citizens as voters in elections for Federal office." 52 U.S.C. § 20501(b)(1)-(2). To achieve these goals, Congress "erected a complex superstructure of federal regulation atop state voter-registration systems." *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 5 (2013) (*ITCA*).

Under that complex superstructure, Section 6 of the NVRA requires states to "accept and use the mail voter registration application form" (Federal Form) made available by the Election Assistance Commission (EAC). 52 U.S.C. § 20505(a)(1)-(2). States can "develop and use" their own state-created forms (State Forms) to register voters for federal elections. *Id.* § 20505(a)(2). But, under Section 9 of the NVRA, those forms "may require only such

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identifying information . . . and other information . . . as is necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration." *Id.* §§ 20505(a)(1)-(2), 20508(b)(1). And Section 7 requires state voter registration agencies to distribute either the Federal Form or "the [voter registration agency] office's own form if it is equivalent to the [Federal] form." *Id.* § 20506(a)(6)(A)(ii).

The NVRA also imposes requirements for "removing ineligible persons" from the voter rolls. *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 761 (2018). But it protects eligible voters from improper removal by prohibiting systematic voter removal within 90 days of a federal election. 52 U.S.C. § 20507(c)(2)(A) (90-Day Provision).

2. This Court has considered Arizona's voter registration requirements multiple times. In *ITCA*, the Court held that Arizona could not require Federal Form applicants to submit DPOC to register for federal elections because Section 6 requires states to "accept the Federal Form as a complete and sufficient registration application" to vote for federal offices, and the Federal Form does not include a DPOC requirement. 570 U.S. at 9.

In *ITCA*, this Court suggested that Arizona could ask the EAC to include DPOC as a necessary item on the Federal Form. *Id.* at 19-20. Arizona asked; the EAC denied the request; and Arizona unsuccessfully challenged that decision. The court of appeals held that Arizona had failed to show that it needed DPOC to verify eligibility. *See Kobach v. U.S. Election Assistance Comm'n*, 772 F.3d 1183, 1197-98 (10th Cir. 2014). This Court denied certiorari. 576 U.S. 1055 (2015) (mem.).

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After *ITCA*, Arizona adopted a bifurcated voter registration system. For those who applied using the Federal Form without DPOC, election officials checked the Arizona Department of Transportation (ADOT) data available to them through the voter registration system. 25-1017 RNC Cert. Pet. App.475a (Pet.App.). If that data confirmed citizenship, the applicant became a full-ballot voter; if not, the applicant was registered as a federal-only voter. *Id.* Election officials ran no similar search for State Form applicants without DPOC. *Id.* State Form applicants without DPOC were rejected even when election officials had access to their proof of citizenship through ADOT.

The League of United Latin American Citizens of Arizona (LULAC) and Arizona Students' Association (ASA) challenged this system, alleging that hinging federal registration status solely on the paper form used to register violated the First and Fourteenth Amendments. Pet.App.475a. To resolve these constitutional claims, then-Arizona Secretary of State Reagan, represented by then-Attorney General Brnovich, agreed to a consent decree (*LULAC* Consent Decree), dictating that Arizona election officials would treat Federal and State Form registrants the same. Pet.App.484a-486a. After the Decree, Arizona could not deny State Form applicants the ability to vote in federal elections only because of failure to submit DPOC.

3. In 2022, the Arizona legislature enacted House Bill 2492. *See* H.B. 2492, 55th Leg., 2d Reg. Sess. (Ariz. 2022). As relevant here, H.B. 2492 required registrars to wholly reject State Form applications that lacked DPOC. A.R.S. § 16-121.01(A), (C). Under H.B. 2492, Arizona election officials would continue to

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use the ADOT database to confirm the citizenship of Federal Form applicants who did not provide DPOC and register them as full-ballot voters if possible. However, election officials would not do the same for State Form applicants without DPOC, leading to the rejection of applicants even when officials could verify their citizenship with ADOT.

Arizona also passed House Bill 2243, imposing monthly systematic voter registration cancellation procedures. *See* H.B. 2243, 55th Leg., 2d Reg. Sess. (Ariz. 2022); *see also* A.R.S. § 16-165(A)(10), (E)-(L). These procedures involve comparing voter registration lists against various databases and cancelling voters who are flagged as potential noncitizens in those databases. *Id.*

4. Respondents challenged the new laws, filing suit against the Arizona Secretary of State and others. Petitioner—and, later, the Arizona Senate President and House of Representatives Speaker—intervened to defend the laws.

a. The district court granted partial summary judgment for respondents, holding that Arizona could not impose H.B. 2492 on State Form applicants for registration for federal elections because (i) the Decree, which had never been modified or set aside, proscribes the conduct, and (ii) the Requirement violated the NVRA. Pet.App.365a-366a. The court also held that H.B. 2243 violates the NVRA insofar as "[it] allow[s] systematic cancellation of registrations within 90 days of federal elections." Pet.App.357a.

At trial, respondents established that the databases relied upon for cancellations under H.B. 2243 contain stale and inaccurate citizenship information for some voters, which would cause U.S.

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citizens to be flagged as noncitizens and purged within 90 days of an election. Pet.App.203a-206a, 222a. Respondents also established, through unrebutted evidence, that noncitizen voting in Arizona is exceedingly rare. Pet.App.227a-229a.

b. Petitioner sought a partial stay on some issues but not others—and not on the 90-Day Provision issue. This Court granted the application in part. Pet.App.426a.

c. The Ninth Circuit affirmed in relevant part. On H.B. 2492, the Ninth Circuit reasoned that both the undisturbed Decree, as well as the NVRA provision limiting State Forms to information that is "necessary" to assess eligibility, barred Arizona's DPOC requirement. Pet.App.47a-52a. It likewise held that, as to public assistance agencies, H.B. 2492 violated the NVRA's separate provision dictating that "state forms supplied to public assistance agencies be 'equivalent' or 'virtually identical' to the federal form." Pet.App.51a (first quoting 52 U.S.C. § 20506(a)(6)(A)(ii); and then quoting Pet.App.37a-38a).

As for Arizona's program of cancelling voter registrations, the Ninth Circuit held that Arizona's "periodic cancellation of registrations violates the 90-day Provision . . . to the extent that [it] authorizes systematic cancellation of registrations within 90 days before a federal election." Pet.App.47a. Judge Bumatay dissented. Pet.App.77a.

d. The Ninth Circuit denied rehearing en banc. Pet.App.163a.

SUMMARY OF THE ARGUMENT

I. H.B. 2492 violates an existing federal consent decree and both Sections 7 and 9 of the NVRA.

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A. It is undisputed that the *LULAC* Consent Decree prohibits Arizona from requiring DPOC for State Form applicants to vote in federal elections. The Decree is a final and enforceable federal court judgment. And no party has ever sought to vacate or modify the Decree. That should be the end of the matter. Neither petitioner nor the United States presents any compelling reason to evade the strictures of Rule 60(b)(5) and refuse to find the Decree enforceable on an ongoing basis unless it is modified or vacated.

B. H.B. 2492 also violates the NVRA. Section 9's requirement that mail registration forms, including State Forms, require "only" information that is "necessary" to assess eligibility means that states can require only essential information for federal registration. H.B. 2492 does not meet that standard. Congress considered and rejected an amendment to the NVRA that would have expressly permitted states to require DPOC. And Arizona has failed to put forward any evidence showing that DPOC is "necessary" to assess an applicant's qualifications to vote. The interpretations pressed by petitioner and the United States would gut the necessity requirement, afford states virtually unlimited discretion to erect barriers to federal registration, and render the NVRA toothless.

H.B. 2492 as applied at public assistance agencies also runs afoul of Section 7 because it renders the State and Federal Forms not "equivalent" within the meaning of the NVRA. An applicant who submits federally qualifying information on the State Form will be denied federal registration, while an identically situated applicant who submits the exact same information on the Federal Form will be

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registered as a federal voter. The two forms are thus not equivalent by any standard.

II. Arizona's voter purge law, H.B. 2243, violates the NVRA's 90-Day Provision, which prohibits states from "systematically remov[ing]" "ineligible voters" from the voting rolls within 90 days of a federal election.

A. Noncitizens are "ineligible" to vote, and when they appear on the voting rolls, they are "ineligible voters" within the meaning of the statute. The NVRA therefore prohibits programs designed to systematically remove suspected noncitizens within 90 days of a federal election.

B. Petitioner and the United States posit that "ineligible voters" refers only to voters who were *previously* eligible to vote. But the statute does not say that. And their reading cannot be squared with the NVRA's ordinary meaning, the statutory context, or the core purpose of the 90-Day Provision.

C. Nor would affording the NVRA its plain meaning somehow deny states the ability to remove noncitizens, like all other ineligible voters, from their registration lists. States can remove noncitizens on an individualized basis at any time, and they can systematically remove such voters outside of the 90-day period. All that the 90-Day Provision does is protect the right of *citizens* to vote by avoiding erroneous removals close to an election.

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ARGUMENT

I. THE CONSENT DECREE AND THE NVRA BAR H.B. 2492

Both a federal consent decree and the NVRA prohibit Arizona from requiring DPOC for people

seeking to register to vote in federal elections using Arizona's State Form.

A. The *LULAC* Consent Decree Bars Arizona's Enforcement Of H.B. 2492

1. Consent Decrees Are Binding, Final Judgments That May Be Disturbed Only Under Rule 60(b)

Under the *LULAC* Consent Decree, Arizona election officials must treat voter registration applicants similarly for federal elections, whether they use the Federal or State Form. Pet.App.476a. No party disputes that H.B. 2492 conflicts with the Decree. The only question presented is whether the Decree continues to "prohibit Arizona from requiring voter-registration applicants to produce 'satisfactory evidence' of U.S. citizenship when registering [for federal elections] with a state registration form." Pet'r Br. i. The Decree has been neither vacated nor modified under Rule 60(b), so it remains an enforceable, binding, and final judgment. Arizona agrees. Ariz. Resp't Br. 21 (Ariz. Br.). Because the Decree continues to have binding force, the answer to the first question presented is yes.

a. "[A] consent decree is a final judgment . . . ." *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 391 (1992). In a consent decree, the parties negotiate an agreement that is "reflected in, and . . . enforceable as, a judicial decree that is subject to the rules generally applicable to other judgments." *Id.* at 378. And like all judicial orders, parties "are expected to obey that decree until it is modified or reversed, even if they have proper grounds to object to the order." *GTE Sylvania, Inc. v. Consumers Union of U.S., Inc.*, 445 U.S. 375, 386 (1980).

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Federal Rule of Civil Procedure 60(b) dictates the grounds for seeking relief from a final judgment. "On motion and just terms, the court may relieve a party . . . from a final judgment," including because "applying it prospectively is no longer equitable." Fed. R. Civ. P. 60(b). Rule 60(b) provides the exclusive path for "a party to seek relief from a final judgment." *Gonzalez v. Crosby*, 545 U.S. 524, 528 (2005). "It is Rule 60(b)'s standard—and *only* Rule 60(b)'s standard—that applies when a party seeks relief from final judgment." *BLOM Bank SAL v. Honickman*, 605 U.S. 204, 214 (2025). And Rule 60(b) applies all the same when it comes to consent decrees: This Court has repeatedly held and reaffirmed that Rule 60(b) provides the mechanism to "seek[] relief from an injunction or consent decree." *Agostini v. Felton*, 521 U.S. 203, 215 (1997); *see also Horne v. Flores*, 557 U.S. 433, 447 (2009); *Rufo*, 502 U.S. at 378 (recognizing that consent decrees are "subject to" the "generally applicable" rules for final judgments).

These basic principles resolve the question presented. All agree that the Decree, if it remains binding, prohibits Arizona from enforcing H.B. 2492. No party has moved under Rule 60(b) in the *LULAC* case, and the district court there has not modified or altered the Decree. As a result, the Decree remains an enforceable "final judgment," *Rufo*, 502 U.S. at 391, and the parties must "obey that decree until it is modified or reversed," *GTE Sylvania*, 445 U.S. at 386. Because no party disputes that H.B. 2492 conflicts with the terms of the Decree and that the Decree remains binding on Arizona, the answer to the first question presented is straightforward: Arizona cannot enforce H.B. 2492 unless the *LULAC* district court alters the Consent Decree.

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b. Petitioner and the United States assert that this Court can look past Rule 60(b)'s procedural requirements and effectively vacate the Decree here. That argument is not persuasive.

First, petitioner complains that Rule 60(b)(5) would "insulate[] a decree's terms from review." Pet'r Br. 41. The dissent below raised the same concern. Pet.App.104a. Not so. Parties and intervenors regularly seek modification or vacatur of consent decrees under Rule 60(b)(5), and courts "take a flexible approach to Rule 60(b)(5) motions addressing such decrees." *Horne*, 557 U.S. at 450 (quotation marks omitted); *see, e.g.*, *Rufo*, 502 U.S. at 392-93 (granting modification request brought years after decree was entered by successor government officials who had inherited decree); *Grace v. Bank Leumi Trust Co.*, 443 F.3d 180, 188-89 (2d Cir. 2006); *Binker v. Pennsylvania*, 977 F.2d 738, 745 (3d Cir. 1992); *Dunlop v. Pan Am. World Airways, Inc.*, 672 F.2d 1044, 1051-52 (2d Cir. 1982); *NAACP, Inc. v. Duplin Cnty.*, No. 7:88-cv-00005, 2012 WL 360018, at *2-4 (E.D.N.C. Feb. 2, 2012) (granting intervention to state legislators and voters in litigation concerning decades-old consent decree). Indeed, Arizona notes that, after this Court clarifies the matter, the Secretary of State or the Maricopa County Recorder may seek relief under Rule 60(b)(5). Ariz. Br. 27.

As to non-parties, *Horne* is illustrative. There, Arizona entered a consent decree, but its legislative leaders later asserted that Arizona's Attorney General failed to represent their interests. The legislators intervened as defendants and "moved for relief under [Rule 60(b)(5)] based on changed circumstances." *Horne*, 557 U.S. at 443; *see also Agostini*, 521 U.S. at 214 (noting that "a new group of

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parents," not involved in the original lawsuit, filed a Rule 60(b) motion). This Court explained that the consent decree in that case "dictat[ed] state or local budget priorities" and thus raised significant "[f]ederalism concerns." *Horne*, 557 U.S. at 448. But that only *underscored* the "particularly important function" of Rule 60(b). *Id.* at 447. And this Court ultimately remanded the case to the district court for additional Rule 60(b) analysis. *See id.* at 472.

Horne also discredits the unsupported assertion that, "as a non-party in the *LULAC* litigation, the RNC may not even be able to seek relief under Rule 60." Pet'r Br. 40; *see also* U.S. Resp't Br. 30 (U.S. Br.). Other cases show parties have intervened to do just that. *E.g.*, *Agostini*, 521 U.S. at 214. If petitioner and Arizona's legislators are dissatisfied with the Decree, they can follow that path. If the district court denies intervention, appellate courts and this Court can clarify the proper standards to apply. *See* Landmark Legal Found. Amicus Br. 21-22. But petitioner cannot disregard Rule 60(b) to insist that another court ignore the binding Decree.

Second, the United States maintains that requiring a Rule 60(b) motion is a "formality" and review of a consent decree "is not limited to an affirmative motion for Rule 60(b) relief from the decree." U.S. Br. 25, 28-29. It principally relies on *Frew ex rel. Frew v. Hawkins*, 540 U.S. 431 (2004), for the proposition that "the 'traditional power of a court of equity'" is to assess whether continued enforcement is proper. U.S. Br. 28. But *Frew* does not countenance ignoring Rule 60(b)'s requirements altogether.

The United States ignores critical language in *Frew*, where this Court explained that "the law's primary response" to federalism concerns with

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consent decrees lies in "Rule 60(b)(5)," which "allows a party to move for relief if it is no longer equitable that the judgment should have prospective application." 540 U.S. at 441 (internal quotation marks omitted). The Court concluded that if the defendants "establish[] reason to modify the decree" under Rule 60(b)(5), the issuing court "should make the necessary changes; *where it has not done so, however, the decree should be enforced according to its terms*." *Id.* at 442 (emphasis added).[1]

The United States' other major case, *Martin v. Wilks*, 490 U.S. 755 (1989), does not support its proposition either. *Martin* addressed whether a consent decree precluded independent claims of unlawful discrimination. Petitioner has brought no independent claim here. Further, unlike this case, the *Martin* plaintiffs did not argue that the decree should be vacated due to changed circumstances, *see id.* at 761-62, and no court in *Martin* vacated the decree itself. Even if petitioner could file a separate case and argue that the Decree cannot be read to bar its separate claims, it does not follow that petitioner

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[1] This language demonstrates the flaw in the United States' argument that "in *Frew* itself, the State officials raised their objection to the decree in an opposition to a motion to enforce rather than a Rule 60(b) motion." U.S. Br. 29. Although the Court analyzed the Eleventh Amendment issue raised by state officials, it concluded that "[o]nce entered, a consent decree may be enforced," and emphasized the importance of Rule 60(b)(5). *Frew*, 540 U.S. at 440-42. And unlike petitioner here, the state officials in *Frew* did not argue that the consent decree should be vacated or modified due to changed circumstances but instead raised arguments concerning the scope of the decree's enforceability.

can argue that an undisturbed Decree is a nullity altogether.

Third, petitioner argues that Rule 60 does not apply because the Decree's terms stated that the district court "retain[ed] jurisdiction" over this action "only until December 31, 2020." Pet'r Br. 39. Not so. Although the continuing jurisdiction provision was timebound, none of the substantive obligations in the Decree have an expiration date. Pet.App.483a-494a. Moreover, the continuing jurisdiction provision specifically addresses only jurisdiction "to enter such *further* relief as may be necessary," and does not imply an end to the relief embodied in the Decree itself. Pet.App.494a (emphasis added). Courts have rejected arguments to construe such provisions—which govern active supervision of implementation—as short-circuiting the mandatory obligations of a consent decree. *See Roberts v. St. Regis Paper Co.*, 653 F.2d 166, 171 (5th Cir. Unit B Aug. 1981) (clause retaining jurisdiction for five years did not "refer[] to the life of the decree itself," and decree's injunction was permanent); *see also Consumer Advisory Bd. v. Glover*, 989 F.2d 65, 68 n.5 (1st Cir. 1993). Since the Decree's substantive obligations did not expire, they remain enforceable unless modified or terminated. *See Frew*, 540 U.S. at 432 ("Federal courts are not reduced to approving consent decrees and hoping for compliance. Once entered, that decree may be enforced.").

Finally, the United States complains that this challenge is a "*new* action on a *different docket*." U.S. Br. 29. That argument was never raised or presented, and the Ninth Circuit did not pass on it. *See Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005) (this is a Court "of review, not of first view"). And it is

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irrelevant to the question presented here, which asks only whether the Decree bars enforcement of H.B. 2492 (it does), not whether the district court could enforce the Decree.

In any event, the government provides no support for its insinuation that a collateral enforcement action is improper. Other courts are not free to ignore binding judgments merely because they arose in different litigation. *See United States v. S. Ute Tribe*, 402 U.S. 159, 171-74 (1971) (interpreting the scope of a consent decree issued in a separate 1950 case and holding that it had preclusive effect); *Amalgamated Sugar Co. v. NL Indus., Inc.*, 825 F.2d 634, 639 (2d Cir. 1987) ("The general rule is that a final consent decree is entitled to res judicata effect. This is so because the entry of a consent judgment is an exercise of judicial power, that is entitled to appropriate respect and because of the policy favoring finality of judgments.") (citations omitted); *Satsky v. Paramount Commc'ns, Inc.*, 7 F.3d 1464, 1468 (10th Cir. 1993) ("Consequently, we hold that the consent decree is a final judgment on the merits of the state law claims.").

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2. Changed Circumstances Do Not Justify Bypassing Rule 60(b)

Petitioner, the United States, and Petersen argue that enforcement of the Decree is inequitable because (1) the Arizona legislature enacted a new law that runs contrary to the existing decree, and (2) the underlying Decree does not rest on a violation of federal law. Pet'r Br. 2, 16, 36; U.S. Br. 24-25; Petersen Resp't Br. 18 (Petersen Br.). Those arguments are appropriately directed to a Rule 60(b) motion before the *LULAC* court. *See supra* I.A.1. But

they do not allow petitioner to bypass Rule 60(b) altogether.

First, petitioner and the United States assert a change in Arizona law—but there has been no meaningful change. Pet'r Br. 35; U.S. Br. 24-28. Petitioner emphasizes *LULAC* defendants' assertion that the Decree allowed for modification of registration practices "consistent with the provisions of Arizona law." Pet'r Br. 37. But it ignores that H.B. 2492 and its predecessor contain functionally identical language, each requiring officials to "reject any application for registration that is not accompanied by satisfactory evidence of United States citizenship." A.R.S. § 16-166(F) (2018); *see also* A.R.S. § 16-121.01(C) (adding exception for Federal Form applicants); Landmark Legal Found. Amicus Br. 9 ("Even before the passage of H.B. 2492, the LULAC Consent Decree contravened Arizona state law. Proposition 200 similarly required county recorders to reject registration lacking DPOC."). As a result, the law enjoined here—H.B. 2492—looks the same as the law Arizona had in place at the time that Arizona entered into the Decree that precluded further enforcement of that requirement.[2]

Second, petitioner and the United States wrongly assert that the Decree lacks an underlying federal-

[2] That Secretary Reagan, represented by Attorney General Brnovich, agreed to the Decree poses no threat to "the Arizona Legislature's sovereign authority." Petersen Br. 20. Although the Legislature has primary authority for setting election rules, *see* U.S. Const. art. I, § 4, cl. 2, that authority does not supersede the normal functioning of the state constitution and laws. *See Moore v. Harper*, 600 U.S. 1, 22 (2023). Here, the Legislature has granted the Attorney General the power to settle actions against the State. A.R.S. § 41-192(B)(4).

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law basis. Pet'r Br. 33; U.S. Br. 27. To the contrary, this Decree was entered to respond to plaintiffs' assertion that Arizona's existing system violated the First and Fourteenth Amendments. Like all consent decrees, it is a "federal-court order that springs from a federal dispute and furthers the objectives of federal law." *Frew*, 540 U.S. at 438. The Decree rests on federal judicial authority and is enforceable absent modification, like any other federal court order. Petitioner and the United States ignore that the Decree was entered to resolve federal constitutional claims. As the Decree stated in its recitals, "this action was brought . . . to vindicate First and Fourteenth Amendment rights relating to voter registration." Pet.App.478a.[3] Moreover, entry of the Decree itself demonstrates that the *LULAC* court concluded there was a federal basis for the Decree. The court granted the parties' motion, which explained that the Decree "resolve[d] all substantive claims of the Plaintiffs," which included only a First Amendment and a Fourteenth Amendment claim. Joint Mot., *League of United Latin Am. Citizens Ariz. v. Reagan*, No. 2:17-cv-04102 (D. Ariz. June 4, 2018), Dkt. 36. This accords with a federal court's power to issue a federal consent decree, which is "limited to

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[3] Contrary to petitioner's assertion, even if H.B. 2492 was meaningfully different from the previous version of Arizona's DPOC law, such state law changes alone do not typically constitute the changed circumstances that would justify modification of the decree. *See Miller v. French*, 530 U.S. 327, 347 (2000) (explaining that enforceability issues may arise "when *Congress* changes the law underlying a judgment awarding prospective relief") (emphasis added). Neither petitioner nor the United States points to a change in federal constitutional law that would justify modification.

reasonable and necessary implementations of *federal* law." *Horne*, 557 U.S. at 450 (emphasis added) (citation omitted).

That the *LULAC* defendants disclaimed liability and that the Decree's terms did not contain an explicit finding of a federal law violation does not change that. Pet'r Br. 37. Parties often refuse to admit liability when entering valid, enforceable consent decrees; that lack of admission does not change the nature of the court order. *See, e.g.*, Settlement Agreement & Consent Decree ¶ 9, *United States v. New Jersey*, No. 3:21-cv-15031 (D.N.J. Aug. 24, 2021), Dkt. 12 ("Entrance into this Agreement does not constitute an admission of liability by NJDOC or the State of New Jersey.").

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B. The NVRA Bars Arizona's Enforcement Of H.B. 2492

H.B. 2492 violates the NVRA twice over. Arizona has failed to demonstrate that its DPOC requirement is "necessary," as required by Sections 6 and 9 of the NVRA, and the State and Federal Forms are not "equivalent" to each other as required by Section 7 for use at public assistance agencies.

1. The NVRA's Use Of "Necessary" Means "Essential"

State Forms may be used to register voters for federal elections, but those forms "may require only such identifying information . . . and other information . . . as is *necessary* to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration." 52 U.S.C. §§ 20505(a)(1)-(2), 20508(b)(1) (emphasis added). As the Ninth Circuit

correctly held, the word "necessary" means "essential"—and petitioner has failed to show that documentary proof of citizenship is "essential" to assessing voter eligibility. Pet.App.37a, 50a. Text, context, and structure compel this result.

a. The "ordinary, contemporary, common meaning" of necessary, Pet.App.38a, is "essential," "requisite," "required," or "indispensable." *Necessary*, American Heritage Dictionary of the English Language 877 (New College ed., 1981); *see also* Webster's New Collegiate Dictionary 761 (150th Anniversary ed., 1981) ("absolutely needed," "required"); Webster's Ninth New Collegiate Dictionary 790 (1990) (same); Merriam-Webster's Collegiate Dictionary 776 (10th ed. 1993) (same).

Courts have likewise repeatedly held that "[n]ecessary" is a "word[] of limitation" that typically imposes a "high standard." *Vorchheimer v. Philadelphian Owners Ass'n*, 903 F.3d 100, 105 (3d Cir. 2018). Necessary "implies more than something merely helpful or conducive," and "suggests instead something 'indispensable,' 'essential,' something that 'cannot be done without.'" *Cinnamon Hills Youth Crisis Ctr., Inc. v. Saint George City*, 685 F.3d 917, 923 (10th Cir. 2012); *One Love Housing, LLC v. City of Anoka*, 93 F.4th 424, 433 (8th Cir. 2024) (same); *Women's Elevated Sober Living L.L.C. v. City of Plano*, 86 F.4th 1108, 1112 (5th Cir. 2023) (same). Guided by the ordinary meaning of "necessary," these courts rejected attempts to broaden the word to include things that would be merely "preferable" or "better." *Cinnamon Hills*, 685 F.3d at 923; *see also Vorchheimer*, 903 F.3d at 107.

b. Statutory context confirms that result. Section 9 uses "necessary" in conjunction with

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"only"—states can require "only" information that "is necessary," 52 U.S.C. §§ 20505(a)(2), 20508(b)(1)—and "only" is an adverb of limitation. *See Only*, Black's Law Dictionary (6th ed. 1990) ("without anything more," "nothing else or more"); Webster's Third New International Dictionary of the English Language Unabridged 1577 (1993) ("as just the one simple thing and nothing more or different"); *see also* Bryan A. Garner, *A Dictionary of Modern Legal Usage* 619 (2d ed. 1995) (describing "only" in relation to "words intended to be limited").

c. The NVRA's structure further confirms that necessary means essential. Absent congressional limitation, states enjoy plenary power to set their registration requirements. U.S. Const. art. I, § 4, cl. 1. Through the NVRA, Congress intervened to limit those powers to ease registration hurdles and "increase the number of eligible citizens who register to vote in elections for Federal office." 52 U.S.C. § 20501(b)(1). Situating the "necessary" requirement in Section 9 of the NVRA matters, because that Section, as applied to the State Form through Section 6, acts as a *limitation* on the otherwise default power states retain to dictate election procedures. If "necessary" did not operate to limit what a State Form could require, tying State Forms to the provision would serve little purpose. And this Court has rejected the premise that an entity can treat a necessity requirement as little more than a blank check. *See AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 391-92 (1999) (holding the FCC must give "some substance" to a "necessary" requirement).

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2. Arizona's DPOC Requirement Is Not "Necessary"

As petitioner emphasizes, states are granted the authority to make first-order determinations of necessity about the State Form, just as the EAC has parallel authority for the Federal Form. *See ITCA*, 570 U.S. at 12; Pet'r Br. 24. But these decisions are both subject to judicial review, and here, there is no indication that requiring DPOC is "necessary" to establish a person's eligibility to vote. Just the opposite: Congress has already concluded that DPOC is *not* necessary, and petitioner developed no record in this case suggesting otherwise.

a. Congress has already decided that DPOC is not "necessary" within the meaning of the NVRA. When Congress rejects "the very language that would have achieved the result the [petitioner] urges," that "weighs heavily against the [petitioner's] interpretation." *Hamdan v. Rumsfeld*, 548 U.S. 557, 558, 579-80 (2006). That is the case here.

Congress specifically debated and rejected an amendment that would have permitted states to require DPOC for voter registration. *See* 139 Cong. Rec. S2897-04, S2900-02 (daily ed. Mar. 16, 1993) (Amendment No. 130 to S. 460). Not only that—the Conference Committee rejected that proposal on the *specific grounds* that it was "*not necessary* or consistent with the purposes of this act." H.R. Rep. No. 103-66, at 23 (1993) (Conf. Rep.) (emphasis added). Although some House members tried to reject the Conference agreement because of the exclusion of the amendment—arguing that without it, the statute prohibited any such requirements—their efforts failed. *See, e.g.*, 139 Cong. Rec. H2264-03, H2271-76

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(daily ed. May 5, 1993). As the House Report made clear, a DPOC requirement was likely to "effectively eliminate, or seriously interfere with, the mail registration program" created by the Act. H.R. Rep. No. 103-66, at 23.

b. The record below similarly cannot support a finding of "necessity."

Neither petitioner nor any defendants below demonstrated—with evidence—that requiring DPOC is necessary to assess voter qualifications. To the contrary, petitioner's motion for summary judgment on this issue was devoid of facts, *MFV v. Fontes*, No. 2:22-cv-509 (D. Ariz. May 15, 2023), Dkt. 367, and neither petitioner nor any other defendants proposed post-trial factual findings to demonstrate the necessity of a DPOC requirement, Resp't.App.1a-316a, *Petersen v. MFV*, No. 25-1019 (May 26, 2026) (25-1019 Resp't.App.). The briefs in this Court similarly cite no facts to support the notion that DPOC is somehow "necessary" to assess voter eligibility. Ariz. Br. 14-17; U.S. Br. 15-22; Pet'r Br. 18-27; Petersen Br. 9-13.

Nor can petitioner show the *specific* DPOC requirements the statute imposed are necessary under the NVRA. First, petitioner's dearth of evidence is particularly glaring considering the dual registration currently in practice in Arizona. At the time of trial, there was a list of 19,439 federal-only voters available to defendants—*i.e.*, voters who attested to citizenship but did not provide DPOC. Pet.App.19a. No evidence was introduced that any of those voters were not citizens. Pet.App.229a. Second, in the proceedings below, all parties understood H.B. 2492 to require election officials, under penalty of criminal prosecution, to reject voter registration

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forms that did not include the specified forms of DPOC, *even when* election officials had access to the citizenship data the statute otherwise demands through the voter registration system's automated access to ADOT records. A.R.S. § 16-121.01(C), (F); Pet.App.404a. This is the record petitioner seeks to defend as compliant with the NVRA while providing no explanation as to why *additional* DPOC would be "necessary" for applicants whose DPOC could be confirmed seamlessly by state officials through the same means that the state officials use for Federal Form registrants and already used for State Form registrants prior to H.B. 2492. While the Attorney General subsequently and appropriately advised election officials to register these individuals, *see* Op. Ariz. Att'y Gen. I24-015, at 8-15 (2014), that change in practice departs from the record below, upon which petitioner seeks reversal and is not enshrined in statute.

Other states' experiences also suggest DPOC is not "necessary." Courts and the EAC have repeatedly found no evidence to suggest DPOC is "necessary" for assessing voter eligibility. *See Kobach*, 772 F.3d at 1194-98 (holding that Kansas and Arizona "failed to meet their evidentiary burden of proving that they cannot enforce their voter qualifications" without DPOC); *see also Fish v. Kobach*, 840 F.3d 710, 746-49 (10th Cir. 2016) (finding Kansas's "meager evidence" failed to show any necessity for DPOC); EAC, Mem. Concerning State Requests to Include Additional Proof-of-Citizenship Instructions on the National Voter Registration Form, Dkt. EAC-2013-0004 (Jan. 17, 2014) (discussing requests from Arizona, Georgia, and Kansas); *see also* National Voter Registration Act of 1993, 59 Fed. Reg. 32,311, 32,316 (June 23, 1994)

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(codified at 11 C.F.R. pt. 8) (FEC rulemaking on the Federal Form finding "[t]he issue of U.S. citizenship is addressed within the oath required by the [NVRA] and signed by the applicant under penalty of perjury").

c. That Arizona law defines providing DPOC as a voter qualification does not make it "necessary." Ariz. Br. 16-17; *see* Pet'r Br. 24. States are, of course, vested with the sole power to set voter qualifications. U.S. Const. art. I, § 2, cl. 1; *id.* art. II, § 1, cl. 2. But the Elections Clause provides Congress with "'comprehensive . . . authority to provide a complete code for congressional elections,' including . . . regulations relating to 'registration.'" *ITCA*, 570 U.S. at 8-9 (citation omitted). And the line between qualifications and procedures is substantive, not semantic. States cannot circumvent federal regulation by clothing registration requirements—the domain of Congress's preemptive authority—in qualifications language. *See Vote.Org v. Callanen*, 89 F.4th 459, 487 (5th Cir. 2023) (holding that states cannot circumvent federal law "by defining all manner of [registration] requirements, . . . as being a qualification to vote"). The NVRA's substantive restrictions cannot be so easily evaded.

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3. Petitioner's Counterarguments Fail

Petitioner argues that (a) the definition of "necessary" is toothless and officials have unfettered discretion to verify qualifications, *see* Pet'r Br. 15; U.S. Br. 19-22; Petersen Br. 10-12; and (b) *ITCA* dictates the outcome in this case, *see* Pet'r Br. 17-18; U.S. Br. 20-21; Petersen Br. 11-13; Ariz. Br. 16-17. Neither argument is persuasive.

a. Petitioner, the United States, and Petersen appear to disagree on exactly what "necessary" means. *Compare* Pet'r Br. 15, 19-22 (defining "necessary" as "useful," "helpful," or "any means calculated to produce [an] end"), *with* U.S. Br. 16-17 (defining "necessary" as "appropriate and well adapted to fulfilling an objective"), *and* Petersen Br. 12-13 (arguing "necessary" has no "fixed character"). But all three urge this Court to adopt a construction of "necessary" so hollow that states would have unfettered and unreviewable discretion to impose additional requirements on federal registrants via the State Form. This is apparent from petitioner's suggestion that it should prevail without proffering a single piece of record evidence to demonstrate the law's necessity. *See supra* I.B.2.

Despite petitioner and the United States' apparent agreement that statutory language must be interpreted in context, *see* U.S. Br. 16, they overlook the limiting modifier "only" in the statutory text, and their arguments render it mere surplusage. If Congress wanted to say that the State Form can include "*any* other information election officials would deem *helpful*," it would have. It did not. And it is "a cardinal principle of statutory construction" to interpret statutes so that "no clause, sentence, or word shall be superfluous." *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (citation omitted).

The cases petitioner relies on fare no better. In *Ayestas v. Davis*, 584 U.S. 28 (2018), this Court's adoption of a more lenient necessity standard turned on Congress's use of the word "reasonably" as a modifier. *See id.* at 43-44. The same goes for *United States v. Westinghouse Electric Corporation*, 788 F.2d 164 (3d Cir. 1986), where the statute's context was to

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grant powers to an inspector general, the statute used the modifier "all" rather than "only," and the legislative history did not indicate any intention to limit the grant of power. *Id.* at 170. And *Cellular Telecommunications & Internet Association v. FCC*, 330 F.3d 502 (D.C. Cir. 2003), eschewed a definition of necessary as "absolutely required" only because it would lead to the "absurd result" and render portions of the statute a "nullity" because "it is difficult to imagine a regulation whose enforcement is . . . indispensable." *Id.* at 511-12. Here, context runs in the opposite direction. *See supra* I.B.1. And it is easy to identify information—such as name, birthdate, address, mailing address, party affiliation, and so on—that might be "essential" to election administration. Indeed, the EAC and states have relied on Section 9 to require exactly that type of information. *See* 11 C.F.R. § 9428.4.

Context also renders Section 9 quite different from the Necessary and Proper Clause, where the surrounding language suggests an *expansion* of Congress's powers. Here, Congress's decision to use the limiting construction "only . . . necessary" evinces its "intention . . . to make this clause restrictive" both "in form as well as in effect." *McCulloch v. Maryland*, 17 U.S. 316, 420 (1819). Put another way, "when Congress wants to loosen necessity . . . it uses the phrase 'reasonably necessary' . . . [o]r it pairs 'necessary' with a looser term to include what is merely fitting or preferable." *Vorchheimer*, 903 F.3d at 107.

Also, while petitioner, Arizona, the United States, and Petersen emphasize state flexibility, they miss that Section 9 applies equally to the EAC and the states. "Necessary" cannot mean two things at the

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same time. And there is no reason to believe Congress, in a statute meant to simplify registration procedures, granted the EAC such boundless discretion to dictate new registration requirements. *See West Virginia v. EPA*, 597 U.S. 697, 721 (2022); *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001) ("Congress . . . does not, one might say, hide elephants in mouseholes.").

That is not to say that states lack any independent judgment in assessing necessity or that the NVRA's State Form option is without substantial function. Under Section 9, states can both demand information that they can show is necessary and request helpful information. States exercise both of those options routinely. State Forms include both required and optional fields not on the Federal Form, including, among many other things, sex, e-mail, voter-registration history, felony conviction information, primary language, and pre-registration eligibility information. *Compare* EAC, National Mail Voter Registration Form: Register to Vote In Your State By Using This Postcard and Guide (rev. Mar. 2025), https://perma.cc/9HKH-DHK9, *with State Voter Registration Forms*, Brennan Ctr. for Just. (Oct. 9, 2026), https://www.brennancenter.org/our-work/research-reports/state-voter-registration-forms. And states design their forms in ways that are most useful for their election administration. *See infra* I.B.4.

Finally, petitioner is wrong that the phrase "only the minimum amount of information necessary" in Section 5 renders the necessity language in Section 9 impotent. *See* Pet'r Br. 25. First, that language is not as different from Section 9 as petitioner claims; rather it shows that Congress consistently limited states to

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demanding only "necessary" information. In any event, Section 5, concerning driver's license agencies, is unique: in that context, states append additional fields onto existing driver's license forms to affect registration, enhancing the risk of longer, more burdensome, and duplicative paperwork. And the choice is not a binary one. Construing the word "necessary" as "essential" in Section 9 would not undermine the Tenth Circuit's application of a maximally stringent "least possible amount of information" standard in Section 5. *See Fish*, 840 F.3d at 736.[4]

b. Petitioner is also wrong that *ITCA* dictates the result here. After explaining that "state-developed forms may require information the Federal Form does not," *ITCA* noted that Arizona's then-State Form solicited proof of citizenship. 570 U.S. at 12. Petitioner argues this "all but resolves this issue." Pet'r Br. 17-18; *see also* U.S. Br. 20; Petersen Br. 13. Far from it.

That passage is better read as acknowledging that State Forms can and do include additional requirements for state registration, rather than opining on whether State Forms could add requirements *and* enforce them for federal registration. *See ITCA*, 570 U.S. at 12 n.4 (noting that, under the majority's construction of the NVRA,

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[4] Petitioner's gestures to other uses of "necessary" in unrelated portions of the statute are similarly unavailing. Pet'r Br. 24-25. The meaning of necessary in those contexts has never been litigated. When used in the context of empowering the Attorney General or EAC to enforce the statute, the word "necessary" could be broader, especially where Congress did not use a restricting modifier like "only."

"every eligible voter can be assured that if he does what the Federal Form says, he will be registered"). Indeed, that is precisely how both Utah and South Dakota structure their DPOC requirements and State Forms. S.D. Codified Laws § 12-4-1.3; Utah Code § 20A-3a-201.5(1)(c).

Even if *ITCA* had implied that State and Federal Forms can differ for purposes of federal registration requirements, citing an unchallenged example of such differences does not equate to a holding of compliance with a different portion of the statute. As Petersen points out, when this Court highlighted the Arizona "example," *ITCA*, 570 U.S. at 12, "[i]t did not tarry over evidentiary showings or advert to notions of means-end fit." Petersen Br. 13. It did not even consider whether the example met the requirements of Section 9. Whether H.B. 2492 complies with the NVRA's necessity requirement was neither presented nor "fully debated" in *ITCA*, and this Court is "not bound" by that dicta. *Parents Involved v. Seattle Sch. Dist.*, 551 U.S. 701, 737 (2007).

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4. Arizona's State Form Is Not "Equivalent" To The Federal Form

a. As Arizona appears to concede, *see* Ariz. Br. 18, the State Form is not "equivalent" to the Federal Form for the purposes of Section 7 of the NVRA, 52 U.S.C. § 20506(a)(6)(A)(ii). The Ninth Circuit explained why: "If applicants who do not include DPOC use the state form, they will not be registered as federal-only voters but if they use the federal form, they will be registered." Pet.App.51a. Thus, "[t]he DPOC requirement renders the state form not 'equivalent' to the federal form for applicants without DPOC." *Id.*

Petitioner, the United States, and Petersen nevertheless argue that the Ninth Circuit erred in construing the term "equivalent" as "virtually identical." Pet'r Br. 27-28; U.S. Br. 22-23; Petersen Br. 14-15. Yet, Arizona's reliance on State Forms to register voters at voter registration agencies would run afoul of Section 7 under any of the alternative definitions petitioner, the United States, and Petersen proffer, including "[e]qual in value, force, measure, volume, power, and effect or having equal or corresponding import, meaning or significance," or "having the 'same function.'" Pet'r Br. 28; U.S. Br. 22. Because choice of form would be outcome determinative for identically situated applicants who submit the *same exact information* under Arizona's law, there is no way the forms could be "equivalent" by any definition.

b. Petitioner wrongly insists that, if "equivalent" means "virtually identical," it would annihilate the flexibility that the NVRA affords states, allowing them only to "create little more than a photocopy of the federal form." Pet'r Br. 29-30. Not so.

First, states can create and use a registration form at public assistance agencies that deviates from the Federal Form, as long as identically situated applicants using *either* the Federal or State Form are registered for federal elections. That was the case in Arizona prior to the challenged law because the State Form included the DPOC requirement but failure to complete it did not impact federal registration.

Second, there are myriad ways in which states exercise the flexibility granted to them by the NVRA without running afoul of the equivalency requirement. The Department of Justice's own guidance explains that a State Form is often

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preferable because it is "not . . . as lengthy as the federal form," and it "should be easier for applicants to navigate and easier for agencies and election officials to process." *The National Voter Registration Act Of 1993 (NVRA)*, U.S. Dep't of Just., C.R. Div. (Nov. 1, 2024), https://perma.cc/75BK-DNA5.

The Arizona State Form is a prime example. It includes a QR code for voters, an option to enroll in the active early voting list, and an option to express interest in working at the polls. It also contains a host of optional requests for information, including tribal identification, occupation, and e-mail address. And it includes instructions on the DPOC requirement that apply to state elections. Requiring some State Form applicants to be registered as federal-only voters would not convert Arizona's State Form into a "photocopy of the federal form." Pet'r Br. 29-30.

c. Arizona argues—for the first time in this Court—that if the State Form is not equivalent, "Arizona public assistance agencies would have to distribute the Federal Form (or some other equivalent form)." Ariz. Br. 18; *see also* Pet'r Br. 31-32; U.S. Br. 24. Arizona failed to raise this argument about the scope of the appropriate remedy, thereby forfeiting it. "Absent unusual circumstances . . . [this Court] will not entertain arguments not made below." *OBB Personenverkehr AG v. Sachs*, 577 U.S. 27, 38 (2015). Neither the petition for certiorari nor any court of appeals brief raised this alternative remedy issue. In any event, the Section 7 holding below rested on the undisputed fact that public assistance agencies solely use the State Form. Pet.App.51a, 290a. And at no point in the proceedings below did the Secretary of State suggest a willingness to change its practice of distributing the State Form to those agencies as an

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alternative remedy. Regardless, the question of a final remedy for the Section 7 violation, standing alone, is premature. The district court's injunction was based on its conclusion that H.B. 2492 was unlawful on several grounds, and the remedy was thus designed to resolve all violations. If this Court narrows those rulings, the district court can consider the proper remedy for the remaining violations on remand.

II. ARIZONA'S SYSTEMATIC REMOVAL OF INELIGIBLE VOTERS VIOLATES THE NVRA'S 90-DAY PROVISION

The NVRA mandates that a "State shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters." 52 U.S.C. § 20507(c)(2)(A). H.B. 2243's removal program violates the NVRA because it systematically purges voters from the voting rolls within 90 days of a federal election.

That H.B. 2243 would "systematically remove" individuals from the voter registration list is undisputed. The United States also concedes that H.B. 2243 constitutes a "program" under the NVRA's 90-Day Provision. U.S. Br. 32. To prevail, petitioner and the United States would have this Court hold—contrary to commonplace understanding—that noncitizens are *not* "ineligible voters" by dramatically contorting the relevant statutory text. Under that reading, the 90-Day Provision would not bar "any" program to remove ineligible voters subject to specified exceptions but only *one type of program*: a program to remove voters who moved. To reach that

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improbable conclusion, petitioner and the United States ask this Court to redefine "ineligible voters" as voters who were once eligible but are no longer. *See* U.S. Br. 33; Pet'r Br. 45-46. That argument and others defy the 90-Day Provision's text, ignore the broader statutory context, and would subvert the overriding purpose of protecting the right of *citizens* to vote.

The NVRA means what it says: states are free to engage in systematic list maintenance, just not within 90 days of a federal election. And states remain free to engage in non-systematic removals during those 90 days. There is no reason to adopt anything other than the plain and commonsense meaning of the text.

A. The NVRA's 90-Day Provision Prohibits Arizona's Systematic Removal Program

1. As the United States concedes, the plain meaning of the term "ineligible voter" does "[o]f course . . . describe noncitizens." U.S. Br. 32. No party disputes that noncitizens are not permitted to vote in federal elections, *see* 18 U.S.C. § 611, and noncitizens are thus definitionally "ineligible" to vote. *See Ineligible*, Merriam-Webster's Collegiate Dictionary 596 (10th ed. 1993) ("not qualified for a[] . . . position"). And a "voter" is "a person who can or does vote." *Voter*, Collins English Dictionary 1721 (3d ed. 1994). Because a noncitizen who has mistakenly been registered to vote appears on a state's list of eligible voters, despite their legal ineligibility, that person is an "ineligible voter."

2. The 90-Day Provision's context and structure support reading "ineligible voter" to include noncitizens. The statutory scheme envisions only two categories of voters: "eligible" and "ineligible." It does

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not contemplate any third category. A noncitizen who is on the voter rolls is not, of course, an "eligible voter," leaving only "ineligible voter" as a possible descriptor. Congress knew how to legislate broadly when identifying the covered activity ("any program"), but it chose limited, mutually exclusive language when describing what kinds of voters there can be ("ineligible voters" and "eligible voters").

There is no exception to the 90-Day Provision for systematic citizenship-based-removal programs. Congress knew how to create exceptions and did so expressly, listing several exceptions after the general rule. *See* 52 U.S.C. § 20507(c)(2)(B). Systematic citizenship-based-removal programs are not listed. Because "Congress explicitly enumerate[d] certain exceptions to a general prohibition, additional exceptions are not to be implied . . . ." *TRW Inc.*, 534 U.S. at 28.

3. The neighboring sections likewise demonstrate noncitizens are "ineligible voters" covered by the general rule.

The 90-Day Provision is located in 52 U.S.C. § 20507, and provisions in three surrounding sections—Sections 5, 7, and 9—all refer to "citizenship" as an "eligibility requirement," such that noncitizens must be ineligible voters. *See id.* § 20504(c)(1), (c)(2)(C)(i); *id.* § 20506(a)(6)(A)(i); *id.* § 20508(b)(2). Citizenship is in fact the *only* form of "eligibility" Congress specifically mentioned.

It is the "normal presumption" that "within a single statute, [a] term bears a consistent meaning throughout." *Azar v. Allina Health Servs.*, 587 U.S. 566, 576 (2019). That is particularly true when the terms are in "close proximity," as that is a "classic

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case for application" of the presumption. *Comm'r v. Lundy*, 516 U.S. 235, 250 (1996) (citation omitted). The NVRA's repeated reference to citizenship as an "eligibility requirement" creates a strong presumption that Section 8's similar reference to "ineligible voters" includes voters who are ineligible by reason of citizenship. There is no "good reason or evidence to unseat" that presumption. *Azar*, 587 U.S. at 576.

4. The NVRA's broader purpose—to protect eligible *citizen* voters who are at risk of erroneous removal from the rolls—also supports applying the 90-Day Provision to systematic removals based on all forms of purported ineligibility, not just some.

As Congress expressly concluded, "unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections." 52 U.S.C. § 20501(a)(3). Against that backdrop, Congress recognized both the "costs" and "benefits of systematic programs" to audit the voter rolls. *Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1346 (11th Cir. 2014). While "[a]t most times during the election cycle, the benefits of systematic programs outweigh the costs," "the calculus changes" in the "final days before an election." *Id.*

That is because even well-meaning programs to systematically remove ineligible voters can mistakenly remove eligible *citizen* voters. Real-world examples abound. Arizona's own databases identified over 6,000 established citizens as noncitizens. *See* Pet.App.203a. One Alabama program removed "thousands of United States citizens" eligible to vote, with citizens making up a *majority* of the voters removed. *See Ala. Coal. for Immigrant Just. v. Allen*, No. 2:24-cv-1254, 2024 WL 4510476, at *1 (N.D. Ala.

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Oct. 16, 2024). A systematic Florida program that used the same federal SAVE database as H.B. 2243 mistakenly removed U.S. citizens from the voting rolls. *See Arcia*, 772 F.3d at 1339-41. And a Virginia program likewise removed citizens from the rolls. *See Va. Coal. for Immigrant Rts. v. Beals*, 803 F. Supp. 3d 454, 461 (E.D. Va. 2025).

Last-minute systematic removals threaten the ability of *eligible* voters to cast their ballots in federal elections—and the "indelibly clear" and "constitutionally protected right to vote" of all citizens. *Reynolds v. Sims*, 377 U.S. 533, 554 (1964). Because eligible voters removed during the final days before an election "will likely not be able to correct the State's errors in time to vote," *Arcia*, 772 F.3d at 1346, systematic programs pose too high a risk that eligible citizen voters will be disenfranchised. This threat exists regardless of whether a voter is removed because they are inaccurately identified as a noncitizen, as a nonresident, or as "ineligible" for some other reason.

The 90-Day Provision, properly read, "carefully balance[s]" the need for "accurate and current voter registration rolls" with the desire to encourage "eligible citizens [to] register to vote." *Id.* (citation omitted).

B. The Alternative Readings Advanced By Petitioner And The United States Cannot Be Squared With The NVRA's Text, Context, Or Purpose

Although noncitizens are ineligible to vote, petitioner and the United States argue the NVRA's reference to "ineligible voters" does not include noncitizens. That atextual argument does not work.

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1. Petitioner—though notably not the United States—advances two arguments that cannot be squared with the text of the NVRA.

a. Petitioner first argues that "noncitizens are not 'voters' at all" because the plain meaning of "voter" refers to "a person who has the qualifications entitling him to vote." Pet'r Br. 42. This reading is nonsensical. The statute does not refer merely to "voters" but instead to both "eligible voters"—those who have the necessary qualifications to vote—and "ineligible voters"—those without the necessary qualifications to vote. *See, e.g.*, 52 U.S.C. § 20507(a)(4), (c)(2)(A). By using both terms, Congress made clear a "voter" is a person who appears on a "list[] of eligible voters," *id.* § 20507(c)(2)(A), irrespective of their qualifications.

Accepting petitioner's definition—that the term "voter" alone accounts for a person's eligibility to vote—makes nonsense of the statutory terms. It would render the phrase "eligible voter" pure surplusage, since every "voter" (under petitioner's reading) would definitionally be eligible. *See Fischer v. United States*, 603 U.S. 480, 493 (2024) (noting the "obligation to give meaning where possible to each word and provision in" a statute). And it would, conversely, render the term "ineligible voter" an oxymoron, since no voter could both "ha[ve] the qualifications" for voting, Pet'r Br. 42, and also be "ineligible" to vote. This Court presumes that "a contradiction in terms" and "oxymoron [are] not . . . typical feature[s] of congressional drafting." *Stern v. Marshall*, 564 U.S. 462, 477 (2011).

b. Petitioner next argues that despite the 90-Day Provision referencing "any program," it applies only to a "program" established under subsection (a)(4),

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which requires states to conduct "a general program" to remove ineligible voters by reason of "the death of the registrant" or "a change in the residence of the registrant." 52 U.S.C. § 20507(a)(4); *see* Pet'r Br. 47.

That interpretation is textually foreclosed by the 90-Day Provision itself. Under petitioner's reading, removals under subsection (a)(3) fall outside the 90-Day Provision by operation of the word "program." But subsection (c)(2) specifically lists—and exempts—certain removals under subsection (a)(3). *See* 52 U.S.C. § 20507(c)(2)(B)(i) (exempting removals "described in paragraph (3)(A) or (B) . . . of subsection (a)"). It would make no sense for Congress to explicitly exempt certain (a)(3) programs from the 90-Day Provision if the 90-Day Provision was limited to (a)(4) "program[s]" from the start.

Petitioner's definition also suggests that the 90-Day Provision says "any program" but means just one program: removal based on change in residence. *Contra Patel v. Garland*, 596 U.S. 328, 338 (2022) ("As this Court has repeatedly explained, the word 'any' has an expansive meaning.") (citation modified). That is because the 90-Day Provision specifically exempts removals based on death of the registrant—the only other category covered by (a)(4). 52 U.S.C. § 20507(c)(2)(B)(i). That too is nonsensical. Congress knew how to refer to subsection (a)(4) programs specifically if it wanted to; it did so in the provision immediately preceding the 90-Day Provision. *Id.* § 20507(c)(1) (explaining how a State can meet its list maintenance obligations "of subsection (a)(4)").

Congress's different language in the 90-Day Provision and subsection (a)(4) further shows they cover different removal programs. Unlike subsection (a)(4), which speaks to "a *general* program" for

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removals based on death or changes in residence, the 90-Day Provision sweeps in "*any* program" to "systematically remove the names of ineligible voters." *Id.* § 20507(a)(4), (c)(2) (emphasis added). Petitioner's reading would erase the "usual presumption that 'differences in language . . . convey differences in meaning.'" *Ysleta Del Sur Pueblo v. Texas*, 596 U.S. 685, 698 (2022) (citation omitted).

2. The United States, for its part, advances only one textual defense of Arizona's statute (at 36-37). The theory, shared by petitioner (at 42-46), is that the phrase "ineligible voters" means something other than a person who is ineligible to vote—and that Congress, without ever defining the term, meant to refer exclusively to individuals who *once* could lawfully vote but have since lost their eligibility.

In their telling, Section 8 creates a cascading series of complex unstated definitions. First, individuals seeking to register to vote are "applicants" who are either "eligible applicants" or "ineligible applicants." At this stage, petitioner and the United States give "eligibility" and "ineligibility" their ordinary definitions, referring, respectively, to applicants who have the qualifications to vote and those who do not. Second, only "eligible applicants" become "registrants." And third, "registrants" are "eligible voters" unless they lose eligibility, in which case they become "ineligible voters." Under this view, because "ineligible voters" must have once been "registrants," who, in turn, must have once been "eligible applicants," the 90-Day Provision's prohibition against systematically removing "ineligible voters" within 90 days of an election does not cover noncitizens because they were never "eligible applicants" to begin with.

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Every court to consider this convoluted reading of the statute has rejected it. *See, e.g.*, *Va. Coal. for Immigrant Rts. v. Beals*, No. 24-2071, 2024 WL 4601052, at *1 (4th Cir. Oct. 27, 2024); *Beals*, 803 F. Supp. 3d at 473; *Allen*, 2024 WL 4510476, at *1. And the United States itself previously rejected it as contradicting the plain text of the statute. *See* U.S. Br. 32 n.3. The government was right then and is wrong now.

a. For starters, neither petitioner nor the United States points to any dictionary definition—or, for that matter, any other textual support—suggesting that "ineligible," "voter," or "ineligible voter" describes only a *previously* eligible individual. And the notion that an "ineligible voter" is only someone who was *previously* eligible to vote cannot be squared with petitioner's preferred definition of a "voter"—a person who has "the qualifications entitling him to vote." Pet'r Br. 42. Neither that definition of voter nor any identified definition of "ineligible" hinges on *when* a voter has or lacks the qualifications to vote.

Petitioner and the United States' theory also conflates "registrants" with "voters." According to petitioner and the United States, "registrants" are people who were once eligible applicants. U.S. Br. 34; Pet'r Br. 44. And, according to petitioner and the United States, "voters" has the same meaning: people who were once eligible applicants. In petitioner and the United States' telling, the 90-Day Provision would have the same meaning if, instead of prohibiting states from removing "the names of ineligible voters from the official lists of eligible voters," 52 U.S.C. § 20507(c)(2)(A), Congress instead prohibited states from removing "the names of ineligible registrants from the official lists of eligible voters." That would

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violate the cardinal rule that courts "assume[] different meanings were intended" "when the legislature uses certain language in one part of the statute and different language in another." *Sosa v. Alvarez-Machain*, 542 U.S. 692, 711 n.9 (2004); *see also Beals*, 2024 WL 4601052, at *2 (explaining that petitioner's theory requires reading the distinct terms of "voters" and "registrant" as "having the same meaning").

Nothing overcomes that assumption. There is no statutory evidence Congress intended to equate the two terms. Congress never once linked "registrants" to "voters" in the way petitioner and the United States suggest, nor did Congress textually limit "ineligible voters" to those who were once "registrants." In the absence of any textual evidence that the NVRA silently enacted this three-tier applicant-registrant-voter model, the basic presumption that different terms have different meanings should govern. *Sosa*, 542 U.S. at 711 n.9.

"[E]ven supposing [this] theory were a textually permissible way to understand the statute," this Court "do[es] not usually pick a conceivable-but-convoluted interpretation over the ordinary one." *Stanley v. City of Sanford*, 606 U.S. 46, 55-56 (2025); *cf. Mullin v. Doe*, 609 U.S. 324, 342 (2026) ("Statutory interpretation proceeds on the assumption that those who draft and enact a provision generally intend its terms to mean what they mean in ordinary usage."). The NVRA's reference to "ineligible voters" for systematic removal most straightforwardly refers to people whose names appear on the voting rolls, but who are not eligible to vote. That definition plainly encompasses suspected noncitizens.

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b. The reading advanced by petitioner and the United States would also create other problems in the statute.

For one thing, it would render nonsensical Congress's repeated use of the term "official lists of eligible voters." *See* 52 U.S.C. § 20507(c)(2)(A); *see also id.* § 20507(a)(3), (a)(4), (b)(2), (d)(1), (d)(3), (f), (i)(1). The term "voters" cannot mean only those who were once eligible, because voter registration systems are not perfect. No state does—or could—maintain an "official list[]" of only voters who were once eligible. The only "official lists" that exist—and thus the only lists that Congress could have been describing—are states' lists of *all* persons whom the states have deemed eligible to vote during the registration process. Petitioner's contrary reading would suggest Congress centered the 90-Day Provision around lists that do not and could not exist.

For another, their reading cannot be squared with the structure of the 90-Day Provision for the same reason that petitioner's "program" definition fails. The Provision's operative section, 52 U.S.C. § 20507(c)(2), exempts three specific types of removals from the 90-Day Provision's coverage: those "described in paragraph (3)(A) or (B) or (4)(A) of subsection (a)." Those three sections describe three of the four ways that "a registrant may . . . be removed": "at the request of the registrant," "by reason of criminal conviction or mental incapacity," or due to "the death of the registrant." *Id.* § 20507(a)(3), (4). If petitioner is correct that "ineligible voters" are exclusively a subcategory of "registrants"—and thus that the 90-Day Provision covers only systematic programs to remove *registrants*—then the 90-Day Provision covers only the narrow fourth situation not

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mentioned in subsection (c)(2): systematic removals premised on a "change in the residence of the registrant." *Id.* § 20507(a)(4)(B).

It would make little sense for Congress to craft a broad provision barring "*any* program the purpose of which is to systematically remove the names of ineligible voters," *id.* § 20507(c)(2)(A) (emphasis added), if Congress wanted to prevent only those removals based on changes in residence. And elsewhere in Section 8, Congress provided detailed procedures governing when and how states can remove voters due to changes in residence. *See* 52 U.S.C. § 20507(c)(1), (d). This Court should not "[d]raw[] meaning" from ambiguity when "Congress has shown that it knows how to [address an issue] in express terms." *Samantar v. Yousuf*, 560 U.S. 305, 317 (2010) (citation omitted).

The United States attempts to justify this bizarre reading, suggesting it is explained by "the NVRA's protracted statutory history, which culminated . . . in a 'compromise.'" U.S. Br. 40. The United States also suggests that structuring the 90-Day Provision as a separate statutory subsection makes sense because it would accommodate Congress later "expand[ing]" the "exceptions to the general-removal ban" through statutory amendments. *Id.* at 40-41. Neither justification is persuasive.

First, the United States is wrong about the legislative history, which described the 90-Day Provision in broad terms. As the House conference report put it, the NVRA "does not permit a State to conduct a systematic procedure to *confirm voting lists* within 90 days before a Federal election." H.R. Rep. No. 103-66, at 20 (emphasis added). The House committee report likewise stated that the 90-Day

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Provision covers "any program," including "a mailing or a door to door canvas." H.R. Rep. No. 103-9, at 16 (1993). And the Senate report described covered activities as including "the mailing of list verification notices or conducting a canvas." S. Rep. No. 103-6, at 19 (1993). None of these reports made any mention of limiting the 90-Day Provision to residence-change sweeps—or, for that matter, any qualification whatsoever to the statute's broad language.

And while the NVRA generally was a legislative "compromise," U.S. Br. 40, that is not a license to accept an illogical construction of the statute when a more coherent one is available. *See Home Depot U.S.A., Inc. v. Jackson*, 587 U.S. 435, 453 (2019) (Alito, J., dissenting) (rejecting a construction of a statute where "respondent does not try to defend its rationality, suggesting instead that it simply reflects a legislative compromise"). Even if the 90-Day Provision was itself born of legislative compromise, that does not explain why Congress would have drafted a separate, broadly worded statutory subsection (90-Day Provision) simply to prevent removals based on changes in residence. As demonstrated by Congress's extremely detailed procedure for *how* to remove an individual on the basis of a change in residence, *see* 52 U.S.C. § 20507(d), there is no reason to think that Congress wanted to prevent last-minute systematic residence-change removals through a highly roundabout construction of subsection (c)(2).

Second, the United States' contention—that Congress wrote a broad provision that, in reality, has only one narrow application because Congress foresaw that future legislation "might later expand" that exception, U.S. Br. 41—is a hypothetical

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rationale for which the United States cites no support. The far more reasonable approach is to take the exceptions to subsection (c)(2) at face value: Congress knew how to create compromise carve-outs, and this Court should not further expand those. Put another way, the 90-Day Provision means what it says: it broadly covers *any* kind of systematic removal, including removals targeted at any kind of ineligible voter.

c. Finally, petitioner's and the United States' attempts to contort the 90-Day Provision to exempt noncitizenship-based systematic removals fail even on their own terms. Even if "ineligible voters" covered by the provision are only those voters who underwent "a *change* that ma[de] a once-eligible voter ineligible," Pet'r Br. 45, that necessarily includes noncitizens who were denaturalized or who renounced their citizenship. *See, e.g.*, 8 U.S.C. §§ 1451, 1481. In fact, defendants specifically argued below that H.B. 2243 was necessary in part to identify individuals who had renounced their citizenship, and they cited statistics showing that thousands of U.S. citizens renounce each year, including in Arizona. *See* 25-1019 Resp't.App.24a-25a. Because H.B. 2243 does not distinguish between previously-eligible voters and always-ineligible voters, it would not pass muster even under petitioner's interpretation of the 90-Day Provision.

C. States Retain The Power To Prevent Noncitizens From Voting

Petitioner and the United States argue the decision below is untenable because it is tantamount to allowing noncitizens to vote. That absurd suggestion finds no support in the statute. The

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parties disagree on a number of points but agree on this one: noncitizens can—and should—be removed from voter rolls consistent with the NVRA.

1. As the Ninth Circuit made clear, the "plain language" of the 90-Day Provision allows states to systematically remove suspected noncitizens before the 90-day window, and states may "continue any non-systematic cancellation of registrations within the 90-day window." Pet.App.43a. If states learn that specific noncitizens are registered to vote, Section 8 leaves them free to initiate an "investigation" based on "individualized information." *Arcia*, 772 F.3d at 1344. So, states continue to have two robust options to remove suspected noncitizens: (1) systematic programs or individualized removal more than 90 days before a federal election, or (2) individualized removal during the 90 days. *See, e.g.*, *Bell v. Marinko*, 367 F.3d 588, 591-92 (6th Cir. 2004). The NVRA prohibits only 90-day systematic removals.

States also retain full authority to ensure that only eligible citizens register to vote in the first place. The government fears a "rush of noncitizens" registering to vote at the eleventh hour. U.S. Br. 43. But Section 8 does not prevent states from taking lawful measures to verify eligibility for individuals registering to vote at the front end, before they are added to the voter rolls, whether that happens in the 90 days before a federal election or not. Not surprisingly, then, states have not faced a "rush" of ineligible individuals—either noncitizens or sixteen-year-olds—registering to vote in the final days before an election. *See* Pet.App.227a-229a (unrebutted evidence showing noncitizen voting in Arizona is exceedingly rare).

2. Notwithstanding the Ninth Circuit's holding and respondents' consistent position, petitioner and

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the United States suggest that noncitizens could never be removed unless the Court adopts their reading. Specifically, they argue that if noncitizens qualify as "registrants," they could never be removed "because the general removal ban [for registrants in subsection (a)(3)] also does not expressly exempt noncitizens." U.S. Br. 37; *see* 52 U.S.C. § 20507(a)(3) (barring states from removing "the name of a registrant . . . from the official list of eligible voters" except under enumerated circumstances).

Respondents agree that the best reading of the NVRA is that "registrants" refers to once-"eligible applicant[s]." Subsection (a)(1) requires states to ensure that "any eligible applicant is registered to vote," tying applicants who are eligible to vote to the "regist[ration]" of that applicant to "vote in an election." 52 U.S.C. § 20507(a)(1). So understood, subsection (a)(3) does not apply to noncitizens, and adopting respondents' reading would not prohibit states from removing noncitizens altogether. Such a reading also respects states' constitutional authority to set voting qualifications. *ITCA*, 570 U.S. at 16 ("Congress [can] regulate *how* federal elections are held, but not *who* may vote in them.").

That does not mean that "ineligible voters" and "eligible voters" must all be "registrants" within the meaning of the statute. The NVRA never links the terms "registrant" and "voter," nor does it suggest that "ineligible voters" must all be a subcategory of previously eligible applicants—a leap that makes little textual or logical sense for the reasons explained above.

And the term "registrant" is not subdivided into "eligible" and "ineligible" subcategories, a textual clue that Congress thought registrants are all previously

eligible applicants. By contrast, the NVRA subdivides "voters" into "eligible" and "ineligible" subcategories. That suggests Congress understood there will be some people on the voter rolls who do not have the qualifications to vote and others who do, just as Congress understood there will be some people who *apply* to vote who are qualified, and others who are not. Nothing about the NVRA's use of "eligibil[ity]" or "ineligibil[ity]" suggests that "ineligibility" refers only to those who were *previously* eligible.

In the end, all agree: "In creating a list of justifications for removal, Congress did not intend to bar the removal of names from the official list of persons who were ineligible and improperly registered to vote in the first place." *Bell*, 367 F.3d at 591-92; *see also U.S. Student Ass'n Found. v. Land*, 546 F.3d 373, 386 (6th Cir. 2008) (noting that *Bell* involved an Ohio state law that removed voters "after a hearing on the issue" to "determine[] that a particular challenged individual is not an eligible voter") (emphasis omitted). A ruling in respondents' favor on the narrow subsection (c)(2) question would not imply the absurd premise—posited by no party or court—that the NVRA somehow protects noncitizens from removal.[5]

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[5] Both petitioner (at 51) and the United States (at 4) note that some noncitizens were erroneously registered to vote in New Jersey due to a computer glitch—outside the 90-day window. That situation is not before this Court and there is no record to assess how the NVRA intersects with New Jersey's program. But nothing about the 90-Day Provision barred New Jersey from taking immediate action to remove those voters. *See Statement by Governor Mikie Sherrill*, State of N.J., Governor Mikie Sherrill (July 21, 2026), https://perma.cc/NY77-AEMS.

* * *

The reading advanced by petitioner and the United States would destroy Congress's purposeful and "hard-fought" choices, U.S. Br. 41, by artificially narrowing the 90-Day Provision in ways that are unsupported by the NVRA's plain text. That outcome would redound to the detriment of eligible citizen voters. Congress used capacious terms to give the 90-Day Provision a broad meaning—not from a mistaken solicitude for noncitizens, but because it recognized that "unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections" by *citizens*. 52 U.S.C. § 20501(a)(3). H.B. 2243 does exactly that. If enforced, it would throw election administration into disarray and risk removing eligible U.S. citizens from the rolls—with an election looming and only days to remedy their computer-generated disenfranchisement.

CONCLUSION

The judgment of the court of appeals should be affirmed.

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