

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 OF WARREN PETERSEN, PRESIDENT OF THE
ARIZONA SENATE, AND STEVE MONTENEGRO,
SPEAKER OF THE ARIZONA HOUSE OF
REPRESENTATIVES**

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AUGUST MMXXVI

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 when registering with a state registration form?
2. Does the National Voter Registration Act prohibit Arizona from implementing a program within 90 days of a federal election to cancel the registrations of voters who are not U. S. citizens?¹

¹ This brief will direct its arguments only to the first Question Presented. President Petersen and Speaker Montenegro join the Petitioner’s position with respect to the second Question Presented.

PARTIES TO THE PROCEEDINGS

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

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

The State of Arizona, the Arizona Secretary of State, the Attorney General of Arizona, Arizona Department of Transportation Director Jennifer Toth, the Apache County Recorder, the Cochise County Recorder, the Coconino County Recorder, the Gila County Recorder, the Graham County Recorder, the Greenlee County Recorder, the La Paz County Recorder, the Maricopa County Recorder, the Mohave County Recorder, the Navajo County Recorder, the Pima County Recorder,

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

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 proceedings. They are the Petitioners in *Petersen v. Mi Familia Vota*, No. 25–1019.

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INTRODUCTION

Respondents 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 (together, the Legislative Leaders), respectfully submit this brief in support of Petitioner Republican National Committee.

For more than two decades, Arizona has required “satisfactory evidence of United States citizenship” to register to vote in state elections. Ariz. Rev. Stat. §16-166(F) (2005). A set of reforms adopted in 2022 required local elections officials to “reject” any state-specific voter registration form that lacks proof of citizenship. *Id.* §16-121.01(C); RNC App. 458a. The 2022 law also added a proof of residence mandate. *Id.* §16-123. The Ninth Circuit invalidated these and other provisions of the 2022 reforms.

This Court already signaled to the Ninth Circuit that it was embarking on a dubious path. In August 2024, it stayed the district court’s injunction against Ariz. Rev. Stat. §16-121.01(C)—which requires elections officials to “reject” any Arizona state registration form submission that lacks documentary proof of citizenship. RNC App. 426a. The Ninth Circuit “should have taken the hint.” RNC App. 103a (Bumatay, J., dissenting). Instead, two judges proceeded to hold that the National Voter Registration Act, 52 U.S.C. §20501, *et seq.* (NVRA), precludes Arizona from requiring on its own registration form proof of citizenship and residence to register to vote in federal elections. RNC App. 50a–52a. And with respect to proof of citizenship, the panel majority proclaimed the

Arizona Legislature bound by a 2018 consent decree approved by the then-Secretary of State, which prohibits rejecting state form submissions that lack proof of citizenship. RNC App. 47a–49a.

In imputing to the NVRA such expansive preemptive breadth, the panel majority “mangle[d]” the relevant case law and “ignored” this Court’s explicit admonition that “state-developed [registration] forms may require information” such as “proof-of-citizenship,” *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 12 (2013). RNC App.164a (Nelson, J., dissenting from denial of rehearing en banc). And in perpetually subordinating the Arizona Legislature—the locus of sovereignty in Arizona state government—to the dead hand of a third party’s long-ago litigation decisions, the panel majority “defac[ed] the carefully constructed separation of powers designed by our eminent forebearers.” RNC App. 175a (Nelson, J., dissenting from denial of rehearing en banc).

OPINIONS BELOW

The order denying a rehearing en banc is reported at 152 F.4th 1153. RNC App. 155a–187a. The panel opinion is reported at 129 F.4th 691. RNC App. 1a–154a. The district court’s findings and conclusions are reported at 719 F.Supp.3d 929. RNC App. 188a–335a.

JURISDICTION

The judgment of the court of appeals was entered on February 25, 2025. A petition for rehearing en banc was denied on September 22, 2025. The Court granted the petition for certiorari on June 25, 2026. This Court has jurisdiction under 28 U. S. C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant constitutional and statutory provisions are reproduced in Appendix I of the Petitioner's appendix. RNC App. 434a–473a.

STATEMENT OF THE CASE

I. Factual Background

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

In 2013, this Court held that the NVRA prohibited Arizona from requiring federal form applicants to provide proof of citizenship when registering to vote in federal elections. *Inter Tribal Council*, 570 U.S. at 20. Since *Inter Tribal Council*, Arizona has registered federal form applicants who do not supply proof of citizenship as “federal-only” voters; they are eligible

to vote only in federal races. See Ariz. Att’y. Gen. Op. I13–011. As of July 2023, Arizona had 19,439 active registered federal-only voters. RNC App. 19a.

In 2018, the then–Secretary of State entered into a consent decree in *League of United Latin American Citizens of Arizona v. Reagan*, No. 2:17–cv–4102 (D. Ariz. 2018) (LULAC Consent Decree). The LULAC Consent Decree provides that when a state form submission is not accompanied by proof of citizenship, the county recorder must search ADOT records. If citizenship can be confirmed, the applicant is registered as a full-ballot voter; if it cannot be confirmed, the applicant is registered as a “federal-only” voter. RNC App. 474a–494a.

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

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

Ariz. Rev. Stat. §§ 16–121.01(A), (C), 16–123, 16–127, 16–152(A)(7), (A)(14).

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

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

Ariz. Rev. Stat. § 16–165.

II. Procedural History

Various plaintiffs immediately challenged H.B. 2492 and H.B. 2243 under the NVRA, the Fourteenth and Fifteenth Amendments, the Civil Rights Act of 1964, and the Voting Rights Act of 1965. The district court consolidated the actions. The district court resolved some of the claims on cross-motions for summary judgment in September 2023. RNC App. 336a–384a. After a nine-day bench trial in late 2023, the district court issued rulings in February 2024 that resolved the remaining claims, and entered a final judgment in May 2024. RNC App. 188a–335a, 427a. The district court concluded that:

- Section 6 of the NVRA, which requires States to “accept and use” either the federal form or a compliant state form to register in federal elections, preempted the provisions of H. B. 2492 prohibiting federal-only voters from voting for president or by mail;
- State form submissions without proof of citizenship must be processed in accordance with the LULAC Consent Decree, and state form registrants without proof of residence likewise must be registered as “federal-only” voters;
- The state form’s mandatory birthplace field and citizenship confirmation checkbox violate the Materiality Provision of the Civil Rights Act, 52 U.S.C. §10101(a)(2)(B), because they are not “material” in determining a voter’s qualifications;
- The use of SAVE if a recorder has “reason to believe” a voter is a non-citizen violates 52 U.S.C. §10101(a)(1), which prohibits discriminatory voting-related “standards, practices, or procedures,” and Section 8(b) of the NVRA, which requires list maintenance programs to be “uniform, [and] nondiscriminatory,” 52 U.S.C. §20507(b)(1);
- H.B. 2243’s list maintenance programs violate Section 8(c) of the NVRA to the extent they authorize “systematic[]” registration cancellations within 90 days preceding a federal election, see 52 U.S.C. §20507(c)(2); and

- The Arizona Legislature was not motivated by an intent to discriminate on the basis of national origin when it adopted H.B. 2243.

RNC App. 188a–335a. The district court enjoined the enforcement of the provisions of H.B. 2492 and H.B. 2243 that are inconsistent with the foregoing findings. RNC App. 427a–433a.

The Legislative Leaders, the Republican National Committee, and the Attorney General filed timely notices of appeal. Certain plaintiffs filed a cross-appeal on their intentional discrimination claim. On July 18, 2024, a Ninth Circuit motions panel unanimously granted a stay of the district court’s injunction to the extent it blocked enforcement of Ariz. Rev. Stat. § 16-121.01(C), which requires county recorders to “reject” state form applications without proof of citizenship. RNC App. 385a–388a. Days later, a different panel lifted the stay on a 2-1 vote. RNC App. 389a–425a. This Court then stayed the injunction against § 16-121.01(C) on August 22, 2024. RNC App. 426a. Three Justices also would have permitted enforcement of H.B. 2492’s provisions that prohibit registrants who lack proof of citizenship from voting for presidential electors or voting by mail. *Ibid.*

On February 25, 2025, the Ninth Circuit reversed the district court’s finding that H.B. 2243 was not motivated by discriminatory animus, but otherwise affirmed the judgment. Judge Bumatay agreed with the majority’s invalidation of the checkbox requirement and the “reason to believe” provision, but otherwise dissented. RNC App. 1a–154a. On September 22, 2025, the Ninth Circuit denied the Petitioners’ motion for a rehearing en banc; eleven judges dissented.

RNC App. 155a–187a. This Court granted the Republican National Committee’s petition for a writ of certiorari on June 25, 2026. The Legislative Leaders and the Arizona Attorney General filed separate petitions for certiorari, which remain pending. See *Petersen v. Mi Familia Vota*, No. 25–1019; *Arizona v. Promise Arizona*, No. 25–1022.

SUMMARY OF THE ARGUMENT

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

According to the Ninth Circuit, proof of citizenship is not “necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process” under Section 9 of the NVRA, 52 U.S.C. §20508(b)(1), and hence cannot be a prerequisite to registering to vote in federal elections. The Ninth Circuit added that Ariz. Rev. Stat. §16–121.01(C) is superseded by the LULAC Consent Decree, which requires county recorders to accept state forms that lack proof of citizenship and register the applicants as “federal-only” voters.

The Ninth Circuit was incorrect on both counts. Section 9 guarantees that “States retain the flexibility to design and use their own registration forms.”

Inter Tribal Council, 570 U.S. at 12. To that end, States may reasonably conclude, as Arizona did, that a boilerplate attestation of eligibility is an inadequate cordon to protect its elections, and that documentary corroboration of an applicant's citizenship is "necessary to enable" an assessment of the applicant's eligibility. 52 U.S.C. §20508(b)(1).

Similarly, federal consent decrees cannot "eliminat[e] a condition that does not violate federal law or does not flow from such a violation" or "improperly deprive future officials or their designated legislative and executive powers." *Horne v. Flores*, 557 U.S. 433, 450 (2009) (citation omitted). When, as here, a consent decree is not congruent with federal law's actual demands and debilitates the States' exercise of their sovereign authority, affected nonparties, such as the Petitioner, can collaterally challenge its validity.

In short, the Ninth Circuit erroneously derogated the NVRA's careful dispersion of authority between federal and state actors, and countenanced the constriction of core state legislative powers through third parties' litigation settlement agreements.

I. Documentary Proof of Citizenship Is Necessary to Determine a Prospective Voter's Eligibility

Citing Arizona's proof of citizenship mandate as an example, this Court has recognized that "state-developed [registration] forms may require information" beyond that demanded by the federal form. *Inter Tribal Council*, 570 U.S. at 12. The NVRA "erected a complex superstructure of federal regulation atop state voter-registration systems." *Id.* at 5. To that

end, the NVRA contemplates two species of mail-in registration forms. The first is the so-called “federal form” promulgated by the EAC, which the States must “accept and use” to register voters in federal elections. 52 U.S.C. §§ 20505(a)(1), 20508(a)(2). Section 9 of the NVRA enumerates certain basic informational items that the federal form “shall include”—among them, a sworn affirmation of citizenship. 52 U.S.C. §20508(b). The EAC also may incorporate into the federal form any additional informational elements that are “necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process.” *Ibid.* The States cannot unilaterally append onto the federal form their own bespoke mandates or supplements. *Inter Tribal Council*, 570 U.S. at 20.

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

but the Federal Form provides a backstop.” *Inter Tribal Council*, 570 U. S. at 12.

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

Avoiding any substantive engagement with *Inter Tribal Council*, the Ninth Circuit decreed documentary proof of citizenship to be “not ‘essential’” to determining voting eligibility because registrants already provide sworn attestations of their qualifications. RNC App. 37a, 50a–51a. To begin with, the Ninth Circuit appeared to proceed under the faulty premise that Arizona must somehow demonstrate its state form’s compliance with Section 9. Changes to the state-specific form are made by state legislatures pursuant to their lawmaking authority under Article I, § 4. Although these determinations are not subject to

a “presumption” against preemption, *Inter Tribal Council*, 570 U. S. at 13–15, this Court has never ratified the extraordinary proposition that a State bears the burden of affirmatively proving, by adducing some unspecified quantum of factual evidence, that its duly enacted laws are *not* preempted.

More to the point, the Ninth Circuit’s conclusory equation of “necessary” with “essential” is unpersuasive. “The word ‘necessary’ . . . has not a fixed character, peculiar to itself. . . . A thing may be necessary, very necessary, absolutely or indispensably necessary. To no mind would the same idea be conveyed by these several phrases.” *M’Culloch v. State of Maryland*, 17 U. S. 316, 414 (1819). Indeed, in some settings, “necessary” means “merely helpful and appropriate.” *Ayes-tas v. Davis*, 584 U. S. 28, 44 (2018).

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

States, 574 U. S. 528, 537 (2015) (plurality op.) (noting that “[t]he same words, placed in different contexts, sometimes mean different things”).

Finally, the Ninth Circuit’s “essentiality” criterion is incompatible with *Inter Tribal Council*. This Court easily recognized Arizona’s proof of citizenship requirement as an obvious “example” of Section 3’s proper application. 570 U. S. at 12. It did not tarry over evidentiary showings or advert to notions of means-end fit. Consistent with its conception of the NVRA as securing a dualist, federal-state voter registration “superstructure,” *id.* at 5, the Court implicitly but clearly embraced the more flexible and functionalist connotation of “necessary.”

A holistic assessment of Section 9’s text, the NVRA’s structure, and *Inter Tribal Council* thus corroborates Judge Bumatay’s conclusion that “there’s no reason to read ‘necessary’ information as meaning only the bare minimum amount of information.” RNC App. 111a. Because documentary evidence of citizenship is “necessary” to verifying that qualification, the NVRA allows Arizona to mandate it on Arizona’s state-specific registration form.

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

The Ninth Circuit erred in construing “equivalent” to mean “virtually identical.” RNC App. 114a. Because the NVRA does not define “equivalent,” courts should interpret the word “according to its ‘ordinary, contemporary, common meaning.’” *Sw. Airlines Co. v. Saxon*, 596 U. S. 450, 455 (2022) (citation modified). In both common and legal usage, “equivalent” can carry two distinct valences. It can mean “equal in value, force, amount, effect, or significance.” Black’s Law Dictionary (12th ed. 2024) (defining “equivalent”). Or it can denote parity in a strict and literal sense. *Ibid.* (secondary definition of “nearly equal; virtually identical”); see also Merriam-Webster Dictionary (offering multiple definitions of “equivalent,” including “like in signification or import” and “corresponding or virtually identical especially in effect or function”).

The question of which variation aligns with Congress’ intent is “clarified by the remainder of the statutory scheme . . . because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law.” *Util. Air Regulatory Grp. v. E.P.A.*, 573 U. S. 302, 321 (2014) (citation modified). As discussed *supra*, the NVRA contemplates two types of forms for registering voters in federal elections: the federal form promulgated by the EAC and the bespoke state form devised by each State through its respective legislative and administrative processes. 52 U. S. C. § 20505(a)(1)-(2). But Section 9 furnishes a common denominator for both forms’ permissible content. *Id.* §§ 20505(2), 20508(b). The NVRA thus accords equal status to both forms in virtually every registration-related context. Either form “shall be accepted and used for notification of a

registrant's change of address." *Id.* § 20505(a)(3). And States must make either or both forms "available for distribution through governmental and private entities." *Id.* § 20505(b). The unmistakable import is that, while the federal form and the state forms are (by definition) not identical, they are legally and functionally equivalent to each other.

The Ninth Circuit's literalist interpretation hence is dissonant with the NVRA's overall structure, as well as common sense. As Judge Bumatay observed, it would "be odd if Congress gave States the flexibility to create their own form in § 20505(a) but then took away all that freedom through the 'public assistance agencies' provision of § 20506(a)(6)(A)" unless the state form is identical to the federal form in all respects. RNC App. 115a–116a. It is similarly inexplicable that Congress would generally mandate the availability and distribution of both federal and state forms, especially "for organized voter registration programs," 52 U.S.C. § 20505(b), yet confine public assistance agencies to only the federal form (or a state-produced carbon copy of it).

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

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

The Ninth Circuit blocked Arizona's proof of citizenship requirement for state form registrants on the alternative grounds that it violated the LULAC Consent Decree, which required that state form applicants who lack documentary proof of citizenship be registered to vote in federal elections. RNC App. 47a–49a. In holding that a former Secretary of State's litigation decisions shackle the Arizona Legislature's constitutional authority to make laws regulating elections in the State, the Ninth Circuit acted “extrajudicially” and inflicted “great[] damage to the separation of powers.” RNC App. 174a (Nelson, J., dissenting from denial of rehearing en banc).

A. As a non-party to the LULAC Consent Decree, the Petitioner (as well as the Legislative Leaders) may collaterally challenge in this proceeding its continued enforceability in light of Ariz. Rev. Stat. § 16-121.01(C). See *Martin v. Wilks*, 490 U. S. 755, 762 (1989). It appears that other Respondents contend that the Petitioner should have sought to intervene in the LULAC proceedings and then moved to obtain relief pursuant to Federal Rule of Civil Procedure 60(b). Rejecting exactly that proposition, this Court has held that “[t]he law does not impose upon any person absolutely entitled to a hearing the burden of voluntary intervention in a suit to which he is a stranger . . . Unless duly summoned to appear in a legal proceeding, a person not a privy may rest assured that a judgment recovered therein will not affect his legal rights.” *Martin*, 490 U. S. at 763 (citation omitted); see also *id.* at 765

(holding that “the attribution of preclusive effect to a failure to intervene” is “quite inconsistent with Rule 19 and Rule 24”).

That reasoning is consonant with the nature and purpose of a consent decree. Although a consent decree undisputedly is a judgment, it also is a contractual resolution of discrete claims between particular parties in a specific case or controversy. And “parties who choose to resolve litigation through settlement may not dispose of the claims of a third party, and *a fortiori* may not impose duties or obligations on a third party, without that party’s agreement.” *Local No. 93, Int’l. Ass’n. of Firefighters, AFL-CIO C.L.C. v. City of Cleveland*, 478 U.S. 501, 529 (1986). Lower courts hence have repeatedly relied on *Martin* or its logic to permit non-parties whose rights or interests are adversely affected by a consent decree to collaterally attack the judgment. See, e.g., *Navajo Nation v. San Juan Cnty.*, 929 F.3d 1270, 1279 (10th Cir. 2019) (“[B]ecause the Navajo Nation wasn’t a party to the consent decree and settlement order, the collateral-attack doctrine doesn’t bar this action.”); *City of Warren v. City of Detroit*, 495 F.3d 282, 286 (6th Cir. 2007) (“At the outset, it is important to note that Warren is not a party to any of the consent judgments, is not bound by the judgments, and is entitled to its ‘own day in court’ to challenge actions taken under the judgments.”); cf. *Dunn v. Carey*, 808 F.2d 555, 560 (7th Cir. 1986) (“Third parties, not even colorably bound by the decree, should be able to challenge the authority of the person assenting to the decree.”). The LULAC Consent Decree’s continued validity as a binding disposition of the relationship between the NVRA and

Arizona state law hence can be properly raised, litigated, and adjudicated in this proceeding.

B. The LULAC Consent Decree does not survive the enactment of Ariz. Rev. Stat. §16-121.01(C). The crux of the Ninth Circuit’s (sparse) reasoning in holding otherwise was that there is “no authority suggesting that Arizona’s state legislature may permissibly nullify a final judgment entered by an Article III court.” RNC App. 49a. In enacting Ariz. Rev. Stat. §16-121.01(C), however, the Arizona Legislature did not retroactively “nullify” any Article III court’s adjudication of a question of federal law. Rather, it prospectively changed a state statute to codify a policy that no court had ever found inconsistent with federal law.

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

By contrast, when a legislative body “changes the law underlying a judgment awarding prospective relief, that relief is no longer enforceable to the extent it is inconsistent with the new law.” *Miller*, 530 U.S.

at 347; see also *Rufo v. Inmates of the Suffolk Cnty. Jail*, 502 U. S. 367, 388 (1992) (agreeing that “modification of a consent decree may be warranted when the statutory or decisional law has changed to make legal what the decree was designed to prevent”). That is because prospective remedies ordained by a consent decree are subordinate to the statutes on which they are predicated. See *Sys. Fed’n No. 91, Ry. Emp. Dept., AFL-CIO v. Wright*, 364 U. S. 642, 651 (1961) (recognizing that “parties cannot, by giving each other consideration, purchase from a court of equity a continuing injunction”). When those statutes are changed, the consent decree’s prospective force is extinguished, to the extent it is inconsistent with the new law. The Ninth Circuit’s position that litigants can calcify a specific legal status quo that trumps future amendments to the underlying statutes contradicts this Court’s precedents and “poses serious constitutional concerns.” RNC App. 170a (Nelson, J., dissenting from denial of rehearing en banc).

That the operative change in the law here was precipitated by the Arizona Legislature and not Congress is immaterial. If anything, it only amplifies the constitutional perils of the Ninth Circuit’s decision by compounding a separation of powers violation with a corrosion of federalism. To begin with, the NVRA itself allows States to revise and update their mail registration forms to mandate any information “necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process.” 52 U. S. C. §20508(b)(1). This open-ended language contemplates contextual and variable policy

judgments; that a given item of information (such as proof of citizenship) may be deemed not “necessary” at one point in time does not foreclose a State from reaching a different determination at another time and in other circumstances.

More generally, federal courts “have only the most limited role when determining whether a state has surrendered [in a consent decree] some inherent authority, such as its authority to modify state statutory law.” *Doe v. Pataki*, 481 F.3d 69, 78 (2d Cir. 2007). Under Arizona’s constitution, “the legislature ‘has all power not expressly prohibited or granted to another branch of the government.’” *State ex rel. Napolitano v. Brown*, 982 P.2d 815, 817 (Ariz. 1999) (citation modified). By contrast, the Secretary of State possesses only those powers affirmatively conferred by law. Ariz. Const. art. V, § 9. Even if the Secretary could permissibly approve the LULAC Consent Decree to resolve discrete claims brought by particular parties, the Secretary did not—and could not—bargain away the Arizona Legislature’s sovereign authority to prospectively change the statutes governing its state-specific voter registration form. See *Keith v. Volpe*, 118 F.3d 1336, 1393 (9th Cir. 1997) (holding that parties to a consent decree “could not agree to terms which would exceed their authority and supplant state law”); *St. Charles Tower, Inc. v. Kurtz*, 643 F.3d 264, 268 (8th Cir. 2011) (“While parties can settle their litigation with consent decrees, they cannot agree to ‘disregard valid state laws.’” (citation modified)); *Kasper v. Bd. of Election Comm’rs. of the City of Chicago*, 814 F.2d 332, 341-42 (7th Cir. 1987) (“A consent decree is not a method by which state agencies may liberate

themselves from the statutes enacted by the legislature that created them.”). No federal consent decree can reorder a State government’s constitutional structure; the Ninth Circuit erred consequentially in holding otherwise.

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

Relatedly, consent decrees that dictate state policies on matters of broad public interest “often raise sensitive federalism concerns.” *Id.* at 448. Elected representatives in a State “must be presumed to have a high degree of competence in deciding how best to discharge their governmental responsibilities,” and their familiarity with local exigencies can beget “new insights and solutions.” *Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 442 (2004). Consent decrees that

impair State officials' latitude to innovate and adapt policy solutions disrupt the constitutional equilibrium between federal and state governments.

Two attributes of the LULAC Consent Decree magnify these problems. First, it constricts authority that the federal Constitution expressly reserves to the Arizona Legislature. Article I, § 4 “imposes’ on state legislatures the ‘duty’ to prescribe rules governing federal elections.” *Moore v. Harper*, 600 U. S. 1, 9 (2023) (quoting *Inter Tribal Council*, 570 U. S. at 3). And state legislatures prescribe the “qualifications” requisite to voting in congressional elections. U. S. Const., Art. I, § 2; cf. *Inter Tribal Council*, 570 U. S. at 17, n. 9 (declining to decide whether “registration” could itself constitute a “qualification”). In this vein, the NVRA preserves state legislatures’ prerogative to require any information “necessary” to verifying eligibility to register to vote in federal elections. 52 U.S.C. § 20508(b)(1). And the *LULAC* court never adjudicated Arizona’s proof of citizenship mandate for state form registrants to be inconsistent with the NVRA or any other federal law. See *Milliken v. Bradley*, 433 U. S. 267, 282 (1977) (“[F]ederal-court decrees exceed appropriate limits if they are aimed at eliminating a condition that does not violate the Constitution or does not flow from such a violation”). The Ninth Circuit’s holding that litigants in a single case can, via a contractual agreement, indefinitely curtail a legislative body’s constitutional power is as untenable as it is novel.

Second, the Arizona Legislature is not, and never was, a party to the LULAC Consent Decree. It is problematic enough when a federal consent decree

purports to “bind state and local officials to the policy preferences of their predecessors.” *Horne*, 557 U. S. at 449. But here, the Ninth Circuit held that a former Secretary of State could also bind coordinate branches of Arizona state government that never participated in the consent decree’s negotiation or agreed to its terms.² When “different state actors” disagree concerning a consent decree’s validity, “federalism concerns are elevated.” *Id.* at 452.

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

² The Ninth Circuit’s rationalization that the Arizona Legislature is still free to enact effectively unenforceable statutes “neuter[s] the Arizona Legislature by sophistry.” RNC App. 108a (Bumatay, J., dissenting).

CONCLUSION

The Court should reverse the judgment of the court of appeals.

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