

No. 25-1017

In the Supreme Court of the United States

REPUBLICAN NATIONAL COMMITTEE, INC.,
Petitioner,

v.

MI FAMILIA VOTA, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

**BRIEF OF *AMICI CURIAE* JUDICIAL WATCH,
INC. AND ALLIED EDUCATIONAL
FOUNDATION IN SUPPORT OF PETITIONER**

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INTERESTS OF *AMICI CURIAE*¹

Judicial Watch, Inc. (“Judicial Watch”) is a not-for-profit educational foundation dedicated to fostering accountability, transparency, integrity in government, and fidelity to the rule of law. In pursuit of its public interest objectives, Judicial Watch routinely requests access to public records from federal, state, and local agencies, which it subsequently disseminates to its members and the public at large.

In 2012, Judicial Watch created an election-law practice group to promote election integrity, focusing especially on enforcing the National Voter Registration Act of 1993’s list-maintenance and public-disclosure provisions contained in § 8 of that act. 52 U.S.C. § 20507. Attorneys from Judicial Watch most recently appeared as lead counsel for petitioners in *Bost v. Ill. State Bd. of Elections*, 607 U.S. 71 (2026) and for Respondent Libertarian Party of Mississippi in *Watson v. Republican Nat’l Comm.*, 146 S. Ct. 2165 (2026).

Judicial Watch’s NVRA work has led to the removal of six million names from voter rolls across nearly a dozen states, primarily through settlement agreements and consent decrees with various jurisdictions.² See, e.g., *Judicial Watch v. Grimes*, No. 17-

¹ *Amici* state that no counsel for a party to this case authored this brief in whole or in part; and no person or entity, other than *Amici* and their counsel, made a monetary contribution intended to fund the preparation and submission of this brief.

² Judicial Watch, *Judicial Watch: 372,000 Inactive Voters Removed from Colorado Voter Rolls after Lawsuit and Settlement*, (Apr. 8, 2026), <https://www.judicialwatch.org/inactive-voters-removed-colorado-voter-rolls/>.

94 (E.D. Ky. 2017) (ECF No. 39) (consent decree entered with the Commonwealth of Kentucky to settle NVRA claims); *Judicial Watch v. Logan*, No. 17-8948 (C.D. Cal. 2017) (NVRA settlement agreement with Los Angeles County and the State of California); *Judicial Watch v. Griswold*, No. 20-2992 (D. Colo. 2020) (NVRA settlement agreement with the State of Colorado); *Judicial Watch v. Pennsylvania Sec. of State*, No. 20-708 (M.D. Pa. 2020) (NVRA settlement agreement with the Commonwealth of Pennsylvania).

The Allied Educational Foundation (“AEF”) is a nonprofit charitable and educational foundation based in Englewood, New Jersey. Founded in 1964, AEF is dedicated to promoting education in diverse areas of study. AEF regularly files *amicus curiae* briefs to advance its purpose.

Judicial Watch and AEF have filed numerous *amicus curiae* briefs addressing the proper interpretation of the NVRA. *See, e.g., Husted v. A. Philip Randolph Inst.*, No. 16-980 (Brief of *Amici* Judicial Watch and AEF); *A. Philip Randolph Inst. v. Husted*, No. 16-3746 (6th Cir. 2016) (Dkt. No. 37) (Brief of *Amicus Curiae* Judicial Watch); *Public Interest Legal Found. v. Schmidt*, No. 23-1590 (3d Cir. 2023) (Dkt. No. 48).

Amici—particularly Judicial Watch—have a strong interest in how courts interpret the NVRA and the structure of federal and state laws under Congress’s Elections and Electors Clauses’ powers. U.S. Const. art. I, § 4, cl. 1; U.S. Const. art. II, § 1, cl. 2.

SUMMARY OF ARGUMENT

The Constitution establishes a fundamental division of authority over federal elections: Congress holds final authority under the Elections Clause to regulate the “Times, Places and Manner” of congressional elections. U.S. Const. art. I, § 4, cl. 1. The states retain exclusive sovereign authority under Article I, Section 2 and the Seventeenth Amendment to prescribe voter qualifications. Pre-election voter registration is inextricably bound to voter qualifications. This case arises because state voter registration requirements sit at the intersection of Congress’s authority to “make or alter” the Manner of federal elections and the states’ plenary authority over voter qualifications.

The states’ power over voter qualifications extends to *all* elections, state and federal. This, together with Congress’s lack of authority over the Time, Place, and Manner of how states conduct *state* elections, makes the Ninth Circuit’s ruling particularly disturbing. Unquestionably, H.B. 2492’s documentary proof of citizenship (“DPOC”) requirement for State elections and State registration forms is a valid exercise of State sovereignty under *Arizona v. Inter Tribal Council of Ariz. Inc.*, 570 U.S. 1 (2013) (“*ITCA*”). The line between Congress’s Manner authority under the Elections Clause and state authority under the Voter Qualifications Clause is often hard to draw. Here, however, the Ninth Circuit clearly erred. Wherever this line is drawn, neither the text nor the structure of the Constitution grants

Congress any power to regulate the Manner or Voter Qualifications in state elections.

This Court has assumed, without deciding, that the Elections Clause confers to Congress broad powers to regulate voter registration. *See Smiley v. Holm*, 285 U.S. 355, 366 (1932); *ITCA*, 570 U.S. at 34 (Thomas, J. dissenting). And this assumption led Congress to invoke its Manner power in passing the National Voter Registration Act (“NVRA”). *ITCA*, 570 U.S. at 1; *Harkless v. Brunner*, 545 F.3d 445, 455 (6th Cir. 2008). But pre-election voter registration has changed drastically in the more than two centuries since communities in New England first required it. Some aspects of voter registration may now be effectively considered a required voter qualification.

To be sure, many current voter registration requirements are not mere administrative machinery. Often pre-election registration lists are the essential adjudicative mechanism wherein states verify that an applicant satisfies eligibility criteria before receiving a ballot. When Elections Clause legislation is construed to prohibit a state from requiring proof of those underlying qualifications, such as citizenship here, those laws unconstitutionally encroach upon exclusive state authority under the Constitution’s Voter Qualifications Clause.

There is an easier route to resolving the significant, complex questions implicitly raised in this case: The Court should invoke the canon of constitutional

avoidance and declare that H.B. 2492’s DPOC requirement complies with Section 9 of the National Voter Registration Act of 1993. 52 U.S.C. § 20508(b)(1)³; see *Zadvydas v. Davis*, 533 U.S. 678 (2001). States have constitutional authority under Art. I, § 2 and the Seventeenth Amendment both to establish qualifications for voters in state and federal elections and reserved powers under the Tenth Amendment for state elections to determine when an applicant satisfies those eligibility requirements.⁴ See *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995); *ITCA*, 570 U.S. at 17 (recognizing that the power to establish voting qualifications is of little value without the power to enforce those requirements).

ARGUMENT

I. VOTER REGISTRATION MEMORIALIZES STATE ADJUDICATION OF VOTER QUALIFICATIONS BEFORE ELECTION DAY.

The state power to regulate elections “inheres in the State by virtue of its obligation [...] to preserve the basic conception of a political community.” *Sugarman v. Dougall*, 413 U.S. 634, 647 (1973) (citation

³ Avoidance is especially necessary here given the NVRA purports to regulate the Manner of holding Presidential elections. See Electors Clause, U.S. Const. art. II, § 1, cl. 2 and *ITCA*, 570 U.S. at 35 n.2 (Thomas, J. dissenting).

⁴ State power over voter qualifications is only limited by powers conferred to the federal government under subsequent amendments, none of which are at issue here. See U.S. Const. amends. XIV, XV, XIX, XXIV, and XXVI.

and quotation marks omitted). This “power and responsibility of the State applies, not only to the qualifications of voters, but also to persons holding state elective or important nonelective” positions “that go to the heart of representative government.” *Id.* at 647

In Arizona, that “political community” has long been limited to only United States citizens who reside in Arizona. Ariz. Const. art. VII, § 2. The Constitution recognizes a basic difference between citizens and aliens. *Sugarman*, 413 U.S. at 651 (Rehnquist, J., dissenting). “That distinction is constitutionally important in no less than 11 instances in a political document noted for its brevity.” *Id.* (listing constitutional provisions distinguishing citizens and aliens).

A. The Historical Development and Function of State Voter Registration.

Pre-election voter registration began in Massachusetts in 1800, when local officials prepared lists to ensure that only “qualified electors” could vote. See Joseph P. Harris, *Registration of Voters in the United States* 65-79 (1929) (detailing the historical development of state registration systems to verify elector qualifications and prevent fraud). Over the next century, states gradually adopted voter registration systems to combat rampant fraud, curb electoral violence, and verify that all listed individuals were qualified to vote. *Id.* at 67-92. “If the elector is required to apply in person, there is a rather good guaranty that such a person exists and is qualified to vote.” *Id.* at 197.

Under this established historical framework, an approved voter registration served as *prima facie* evidence of eligibility on Election Day precisely because the state had already investigated and verified the applicant’s underlying qualifications. *See id.* at 322-23; *cf. Dunn v. Blumstein*, 405 U.S. 330, 348 (1972) (explaining that registration periods provide election officials the necessary time to investigate voter eligibility, confirm bona fide residence, and prevent illegal voting before ballots are cast).

That historical presumption illustrates the proper constitutional division between federal and state power. Under the Elections Clause, Congress may regulate the procedural mechanics of voter registration, such as establishing convenient opportunities to receive and submit applications. *See* U.S. Const. art. I, § 4, cl. 1. But Congress cannot usurp the state’s exclusive sovereign prerogative to adjudicate whether an applicant has presented satisfactory proof of those qualifications, such as residency or citizenship, in the first instance.

The Constitution’s Voter Qualifications Clause “gives States the authority . . . to verify whether [their] qualifications are satisfied.” *Husted v. A. Philip Randolph Inst.*, 584 U.S. 746, 781 (2018) (Thomas, J., concurring) (citation omitted). With that authority, states also have flexibility in how those qualifications are satisfied. Registration prior to Election Day is the most common method. But some states have Election Day registration or no registration at all. North Dakota for instance falls into the latter category. *See* N.D. Cent. Code §§ 16.1-01-04,

16.1-01-04.1 (setting qualifications and identification requirements without requiring advance registration); N.D. Cent. Code § 16.1-02-02. The NVRA implicitly recognizes this state authority by exempting these states from the requirements of the Act. 52 U.S.C. § 20503(b).

But for most states, pre-election registration allows poll officials to presuppose voter eligibility on Election Day. Stated differently, registration is the adjudicative gateway through which qualified voters may enter the voting booth. Before Election Day, state election officials verify qualifications so that on Election Day voting can proceed efficiently with limited challenges. On Election Day, when poll workers perform a largely ministerial check of the adjudicated voters, the benefit of this earlier, substantive determination is realized. The prior act of approving or rejecting the registration application, including what documents or proof is required to satisfy state requirements, is an exercise of the state's sovereign power to verify voter qualifications. As an exercise of state sovereignty, the states' ability to pre-adjudicate voter qualifications before Election Day is even more protected in the context of state and local elections.

While history shows that registration is not the only way to adjudicate qualifications, it is the most widely accepted. Once a state elects to exercise its Voter Qualifications Clause authority by mandating pre-election registration, however, its interest in nondiscriminatory rules that verify and ensure that each applicant meets the qualifications under state law is entitled to substantial deference. "The fact

that States have liberalized voting qualifications and streamlined the verification process through registration does not alter the basic fact that States possess broad authority to set voter qualifications and to verify that they are met.” *ITCA*, 570 U.S. at 29 (Thomas, J., dissenting).

B. Inherent in the Voter Qualifications Clause is State Authority to Verify the Qualifications of its Eligible Registrants.

Yet state interests in enforcing those voter qualification requirements are not being afforded adequate deference. *See ITCA*, 570 U.S. at 43 (Alito, J., dissenting). This is especially true where, as here, concerns about upholding federal “Manner” procedural regulations are being invoked to prevent state enforcement of substantive requirements. Indeed, the weight afforded to state interests is so diminished today that it now threatens state sovereignty over its own state elections. As Justice Alito predicted in *ITCA*, “federal regulation in this area is likely to displace not only state control of federal elections but also state control of state and local elections.” *Id.* at 41. That is exactly what happened in this case with respect to H.B. 2492’s DPOC requirement.⁵

⁵ It is hard to reconcile the deference afforded by the courts to states in the election context. The degree of deference, however, must necessarily track the constitutional source of federal authority at issue. When evaluating state voting procedures under Congress’s remedial powers in the Reconstruction Amendments, this Court accords substantial deference to state interests in or-

The instant dispute arises because the Court has never squarely held whether “voter registration,” as a category, is manner or qualification. It came closest most recently in *ITCA*. 570 U.S. at 8-9. However, the majority expressly declined to resolve the question, instead treating citizenship, rather than registration, as the qualification Arizona sought to enforce. *Id.* at 17 n.9.

Courts have avoided drawing that line by relying on dicta in *Smiley*, 285 U.S. at 366; *see, e.g., ITCA*, 570 U.S. at 8-9. But the core question in *Smiley* was whether the gubernatorial veto is part of the “legislative process” under the Elections Clause’s “Legislature thereof” provision, such that a governor’s veto could block a legislatively passed redistricting plan. *See also Moore v. Harper*, 600 U.S. 1 (2023). *Smiley* did not decide whether registration is a manner regulation. Before reaching the core question, the Court addressed whether congressional redistricting is even covered by the Elections Clause at all. 285 U.S. at 366. Dicta from *Smiley* has shielded courts from

derly administration and election integrity. *See Brnovich v. Democratic Nat’l Comm.*, 594 U.S. 647, 682–85 (2021). That deference is intuitive, given that Congress’s remedial powers are intruding on the states’ own authority to regulate elections. Yet a similar level of deference was extended to state timing regulations regarding late-arriving ballots in federal elections—an area where Congress’s authority is explicit and absolute. *See Watson*, 146 S. Ct. at 2170. Compared to *Watson*, voter qualifications present the inverse structural scenario: the Constitution assigns plenary authority to the States, not Congress. Arizona’s reasonable verification measures therefore deservedly command the highest degree of deference.

the difficult task of line drawing between Manner and Qualification regulations since 1932.

In the absence of a categorical rule, the Court has instead treated registration-adjacent rules differently depending on what the specific rule does. “[T]he Elections Clause empowers Congress to regulate *how* federal elections are held, but not *who* may vote in them.”⁶ *ITCA*, 570 U.S. at 16. The ruling below illustrates the need for the Court to draw clearer metes and bounds between qualifications and manner regulations.

Since *Smiley*, Courts have had to address state power over voter qualifications in other ways. See *ITCA*, 570 U.S. 1; *Tashjian v. Republican Party*, 479 U.S. 208 (1986) (state power over voter qualifications in partisan primaries); *Carrington v. Rash*, 380 U.S. 89 (1965) (residency requirements as applied to military servicemembers); and *Dunn*, 405 U.S. 330, 345-48 (1972) (collecting cases on residency).

Before *ITCA*, the Court’s most comprehensive engagement with the boundary between federal Manner authority and state qualification authority occurred in *Oregon v. Mitchell*, 400 U.S. 112 (1970). In *Mitchell*, a fractured Court upheld parts of the Voting Rights Act Amendments of 1970 that lowered the voting age to 18 in federal elections, abolished literacy tests, and abolished residency requirements for presidential contests, but held that Congress lacked

⁶ To be sure some registration-adjacent rules are Manner regulations. For example, rules controlling how voters receive and submit registration applications. 52 U.S.C. § 20506(a)(4).

constitutional power to enforce minimum-age qualifications in state elections. *Id.* at 117-19 (opinion of Black, J.). Because *Mitchell* produced five separate opinions without a controlling majority rationale, the Court has noted its fractured holding as providing limited guidance on the structural boundary of the Elections Clause. *See ITCA*, 570 U.S. at 16 n.8. What *Mitchell* and its progeny confirm, however, is that Congress's authority to streamline election procedures cannot be transformed into a license to dictate the substantive standards and proofs of voter eligibility reserved to the states.

C. Citizenship Verification Preserves the Basic Conception of Political Community.

As with residency requirements, states have authority to require voters to be U.S. citizens and to enforce that qualification. *See Dunn*, 405 U.S. at 345-48. In *Dunn*, the Court struck down durational residency requirements but confirmed that Tennessee could use a 30-day registration period to investigate and verify whether applicants were bona fide residents, rather than relying solely on self-attestations. H.B. 2492's DPOC requirement serves the same purpose. Even if proving citizenship is more administratively difficult than proving residency, both are core qualifications committed to the states under Article I, § 2.

Congress cannot use its Elections and Electors Clause powers to circumvent state plenary qualifications authority. *See The Federalist* No. 60 (A. Ham-

ilton), at 371 (the “method” of “prescribing qualifications of property ... for those who may elect ... forms no part of the power to be conferred upon the national government” through the Elections Clause). The “Framers understood the Elections Clause as a grant of authority to issue procedural regulations, and not as a source of power to dictate electoral outcomes, to favor or disfavor a class of candidates, or to evade important constitutional restraints.” *Thornton*, 514 U.S. at 833-34 (1995). States have constitutional authority to set “generally applicable and evenhanded restrictions that protect the integrity and reliability of the electoral process itself,” *Anderson v. Celebrezze*, 460 U.S. 780, 788 n.9 (1983), which include restrictions on residency qualifications for out-of-precinct voting. *Brnovich*, 594 U.S. at 678.

Similarly, it cannot use its Elections Clause powers to strike down non-discriminatory verification regime enacted by the state. “A State indisputably has a compelling interest in preserving the integrity of its election process.” *Eu v. San Francisco County Democratic Central Comm.*, 489 U.S. 214, 231 (1989). Moreover, “[a]n appropriately defined and uniformly applied requirement of bona fide residence may be necessary to preserve the basic conception of a political community, and therefore could withstand close constitutional scrutiny.” *Dunn*, 405 U.S. at 343-44.

II. THE DECISION THAT H.B. 2492 IS PREEMPTED DEFIES BOTH THE TEXT AND STRUCTURE OF THE CONSTITUTION.

The NVRA is a “complex superstructure of federal regulation atop state voter-registration systems.” *ITCA*, 570 U.S. at 5. It has two main objectives: first, to “increase the number of eligible citizens who register to vote” and “enhance[]” their “participation ... as voters in elections for Federal office”; and second, “to protect the integrity of the electoral process” and “ensure that accurate and current voter registration rolls are maintained.” 52 U.S.C. § 20501(b). Nothing in these statutory objectives even suggests that Congress intended to, or could, supplant the state’s exclusive authority over voter qualifications.

The initial preemption question is whether, in enacting H.B. 2492, Arizona legislated in a zone concurrently regulated by Congress. Supremacy disputes presuppose that Congress has legislated pursuant to a valid source of constitutional authority in a zone of concurrent power with the states. *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). Here, the Ninth Circuit erroneously held that the federal zone extends to displacing *state* qualification requirements for *state* elections on *state* forms.

But “[t]he United States is entirely a creature of the Constitution. Its power and authority have no other source.” *Reid v. Covert*, 354 U.S. 1, 5-6 (1957)

(plurality opinion) (footnote omitted). Whatever electoral authority is provided in the Elections and Electors Clauses, the text of those provisions is limited to congressional and presidential elections and does not extend into areas of exclusive state sovereignty. Certainly not into areas as sensitive as how a state verifies the qualifications of electors in state elections.

States set voter qualifications for *all* elections. Congress may supersede state rules governing the “Times, Places and Manner” of congressional elections and only “Time” for presidential elections. Regardless of the NVRA’s text, it must be read in a way that is consistent with Elections and Electors Clauses. It cannot be applied in a way that pierces the states’ exclusive authority to enact and enforce voter qualifications in state elections.

Pre-election registration is the traditional (and most efficient) way to ensure only qualified citizens vote in elections. The existence of registration lists reduces the need for *a la carte* challenges to voter eligibility at poll sites during voting. Once deposited in the ballot box, illegal ballots cannot be withdrawn. H.B. 2492’s DPOC requirement and pre-election registration generally address these risks and, ultimately, limit election disputes.

A. The Plan of the Convention Confirms States’ Plenary Qualifications Authority.

Beyond the text, the decision below contravenes the Constitution’s structural design. Under the Tenth Amendment, “[t]he powers not delegated to

the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” U.S. Const. amend. X. The administration of state elections is a core sovereign power reserved to the states, encompassing plenary authority over their time, place, and manner, subject only to the discrete constraints imposed by subsequent constitutional amendments.⁷ See U.S. Const. amends. XIV, XV, XIX, XXIV, and XXVI. This Court addressed this very structural question in the elections context nearly three decades ago in *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995), and its reasoning forecloses the ruling below.⁸

In *Thornton*, a majority of a closely divided Court held that the Tenth Amendment reserves for the states only their original powers that existed prior to ratification, thereby foreclosing states from exercising unilateral authority over the qualifications of federal officers absent an explicit constitutional delega-

⁷ The NVRA was not enacted to redress constitutional injuries in state elections, nor does its text supply any racial trigger. Without either predicate, opponents to H.B. 2492’s DPOC requirement cannot credibly argue that Congress enacted the provisions in question pursuant to its powers under the Reconstruction Amendments. See *City of Boerne v. Flores*, 521 U.S. 507 (1997) (setting forth the congruence-and-proportionality limits governing Congress’s remedial authority).

⁸ Congressional authority to regulate the qualifications of the state’s electorate in state elections is found solely in U.S. Const. amends. XIV, XV, XIX, XXIV, and XXVI. Thus, when the federal government intrudes on the original reserved powers of the state to determine the qualifications of the state’s electorate, it is typically done through amendments to the constitution.

tion. Under this interpretation, whenever a state asserts authority that arises purely out of the existence of the national government, that authority cannot be sustained as a reserved power under the Tenth Amendment unless affirmatively granted by the federal text. “No State can say, that it has reserved, what it never possessed.” 514 U.S. at 801-02 (quoting 1 Story § 627).

Thornton’s limitation on state authority over candidate qualifications is the precise inverse of the Constitution’s treatment of the states’ broad authority over voter qualifications. *Thornton*, 514 U.S. at 806. In *Thornton*, the majority opinion emphasized that while states possessed no pre-constitutional authority over federal offices, the Framers explicitly left the definition and regulation of voter qualifications to the states. See 514 U.S. at 806 (contrasting the fixed constitutional requirements for congressional candidates with the Constitution’s express assignment to the states of authority over the “qualifications of electors”); see The Federalist No. 52 (James Madison). Unlike candidate qualifications—which spring entirely from the creation of the national government and are fixed in Article I, Sections 2 and 3—elector qualifications were an inherent, preexisting attribute of state sovereignty explicitly incorporated into the federal structure by the Voter Qualifications Clause. Under the *Thornton* majority’s framework, because the Constitution explicitly delegates to the states the exclusive authority to set the qualifications of electors, the state’s power over voter qualifi-

cations and its necessary administrative enforcement are constitutionally unassailable. *See* 514 U.S. at 805-06.

Justice Thomas's dissent in *Thornton* approached the constitutional structure from the opposite direction. Under his view, the federal government has only the powers affirmatively delegated to it; everything else remains with the states and the people by default, whether a state actually exercised that specific power before 1789. *See* 514 U.S. at 846-50 (Thomas, J., dissenting). Yet under this approach as well, the result is the same: the Tenth Amendment reserves all non-delegated powers to the states, meaning Congress cannot use its procedural Elections Clause authority to interfere with a state's substantive eligibility verification. *See id.* at 845 and 861 (Thomas, J., dissenting). Whether viewed through the lens of original reserved sovereignty or affirmative constitutional text, the plan of the Convention denies Congress the power to disable state enforcement of voter qualifications.

Under either the *Thornton* majority's view of "original powers" or Justice Thomas's Tenth Amendment dissent, the ruling below fails. Under the majority's approach, Arizona is not asserting some newly invented authority that arises solely from the existence of the federal government; it is exercising the very qualifications power the Constitution affirmatively assigns to the states in Article I, Section 2. The decision below inverts that assignment, treating a power the Constitution vests in the states as

though it were instead a federal entitlement defeasible by mere statute. And under Justice Thomas’s dissent, the error is graver still: because the Tenth Amendment presumptively reserves to the states any power not affirmatively delegated to Congress, the court below needed some affirmative textual grant of federal authority over voter-qualification verification before it could uphold preemption, and none exists. Either way, the Ninth Circuit had it backwards. It treated congressional silence and administrative convenience as a license to displace a state’s constitutional authority, rather than as the absence of any authority to displace it at all.

III. ARIZONA’S DOCUMENTARY PROOF OF CITIZENSHIP REQUIREMENT IS A VALID EXERCISE OF THE STATE’S AUTHORITY TO DETERMINE THE QUALIFICATIONS OF THEIR ELECTORATE.

Like all states, Arizona requires individuals to be citizens of the United States to be qualified to vote in its state and federal elections. Pursuant to its authority under the Constitution’s Voter Qualifications Clause, it mandates registrants to provide proof of their citizenship to vote in state elections.

The Ninth Circuit badly erred in reading the NVRA to preclude state authority to verify the qualifications of its own electorate. According to the court of appeals, the documentary proof of citizenship requirement violates Section 9 of the NVRA since it is not “necessary to enable the appropriate State election official to assess the eligibility of the applicant.”

Mi Familia Vota v. Fontes, 129 F.4th 691, 719 (9th Cir. 2025) (citing 52 U.S.C. § 20508(b)(1)). Since the ordinary public meaning of “necessary” is “essential,” the documentary proof was not essential since “the checkbox requirement already gives proof of citizenship.” *Id.* (citation omitted). In doing so, the Ninth Circuit rewrote the NVRA to mandate whatever is “sufficient” must also be the “only necessary” items required to register.

This is wrong many times over. For starters, it shifts Congress’s valid Time, Place, and Manner authority to regulate congressional elections under the Elections Clause to an invalid Voter Qualifications Clause authority that the Founders explicitly put in states’ hands. A consequence of such argument would presume that “Congress itself would have the power to ‘make or alter’” such qualification regulations, and the “Framers would have approved of such a result,” “upsetting of the delicate constitutional balance” between the state and national government. *Thornton*, 514 U.S. at 832. And as stated *supra*, Congress has no authority in this arena.⁹

⁹ Relying solely on attestation as necessary for proof of citizenship is also wrong as a factual matter. Attestation under penalty of perjury is certainly not sufficient for proof of citizenship, as demonstrated by recent events in New Jersey and Virginia. Both New Jersey and Virginia removed more than 6,000 registrants for being noncitizens. Department of Homeland Security, “DHS Cracks Down on Non-Citizens Illegally Voting in New Jersey,” July 31, 2026, available at <https://www.dhs.gov/news/2026/07/31/dhs-cracks-down-non-citizens-illegally-voting-new-jersey>; Judicial Watch, “Judicial

But there is a better way to read the NVRA that avoids these constitutional issues. Whatever is “necessary to enable the appropriate state election official to assess the eligibility of the applicant” is also “necessary” to prove those eligibility requirements. In this case, documents showing that a person is a citizen of the United States is necessary to enable Arizona to determine whether that individual meets the State’s qualifications to vote. Likewise, Arizona may require proof of residency and proof of age, *e.g.*, a state driver’s license or other authenticated document, to show that the voter lives at the address and is of sufficient age to vote. Nothing in the NVRA restricts a state’s ability to do so.

Watch: Virginia Removes 6,531 Declared Noncitizen Registrations from Voter Rolls,” July 30, 2026, available at <https://www.judicialwatch.org/virginia-voter-rolls/>. Both only require attestation of citizenship under penalty of perjury.

CONCLUSION

For these reasons, the Court should reverse the Ninth Circuit's judgment.

Respectfully submitted,

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