

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 TEN SECRETARIES OF STATE
AND THE REPUBLICAN STATE LEADERSHIP
COMMITTEE AS *AMICI CURIAE*
IN SUPPORT OF PETITIONER
[*Amici* listed on inside cover]**

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QUESTIONS PRESENTED

Whether the National Voter Registration Act, properly construed in light of the states' primary role in setting voter qualifications, restricts a state's authority to require documentary proof of citizenship on state-developed voter registration forms.

Whether a consent decree entered into by a single state executive officer, concerning a claim whose merits were never adjudicated, can override a subsequent legislative enactment.

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INTEREST OF *AMICI CURIAE*¹

Amici are Secretaries of State from across the nation—the officials who, in the majority of states, bear primary responsibility for the administration of elections and the maintenance of voter rolls. They are joined by the Republican State Leadership Committee (“RSLC”), a political organization dedicated to electing Republicans to state-level offices across the country.

Secretaries of State take a dual oath: to the United States Constitution and to the constitutions of their respective states. As public officials, many of them directly elected by the people, they are answerable to both state and federal law. And as the officers most directly charged with conducting elections, they are uniquely affected by conflicts between federal and state statutes governing election procedure.

The decision below casts a pall of uncertainty over state efforts to ensure the franchise is exercised lawfully. It places Secretaries of State in the untenable position of reconciling inconsistent statutory commands. Worse still, it requires them to prioritize predecessors’ voluntary consent decrees over the considered judgment of the people’s legislative representatives. Accordingly, these Secretaries and the RSLC urge the Court to restore the constitutional balance between federal and state authority over elections and vindicate the principles

¹ Counsel for *Amici Curiae* certifies that no party’s counsel authored this brief in whole or in part, and no party, party’s counsel, or person other than *Amici Curiae* contributed money to fund the brief’s preparation or submission.

of democratic accountability upon which our constitutional structure rests.

SUMMARY OF THE ARGUMENT

The Constitution vests the states with primary responsibility for administering elections and determining the qualifications of voters, subject only to congressional regulation of the “Time[], Place[], and Manner” of elections for the House of Representatives and the Senate. U.S. Const. art. I, § 2, cl. 1; art. I, § 4, cl. 1; amend. 10; amend. 17; *see also Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 774 (2018). The Ninth Circuit has upset that balance in two ways, both badly detrimental to state officers’ ability to give effect to state laws.

First, the court below adopted a crabbed reading of the National Voter Registration Act (“NVRA”) that would, in practice, outlaw state-developed voter registration forms that are anything other than a near-carbon copy of the Federal Form. The claim that Congress stripped states of all discretion over how applicants demonstrate their eligibility to vote is belied by the text of the NVRA itself, foreclosed by this Court’s decision in *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1 (2013) (“*Inter Tribal Council*”), and contradicts the canons of construction governing federal preemption of state law. And it does all of this in an area of special constitutional sensitivity, given states’ primary role in setting voter qualifications.

Second, the Ninth Circuit elevated a consent decree, entered into voluntarily by the Arizona Secretary of State and never tested on the merits, into a binding constraint on the state legislature’s

subsequent exercise of its constitutional authority over elections. But a prior holder of an office cannot, by accepting a friendly settlement, bind later officeholders—much less a later legislature—without offending basic principles of democratic accountability and separation of powers. *See Frew v. Hawkins*, 540 U.S. 431, 441 (2004); *Horne v. Flores*, 557 U.S. 433, 450 (2009). The Court should foreclose that dangerous practice.

ARGUMENT

I. Federal Law Does Not Restrict Proof of Citizenship to a Self-Proving Check Mark.

A. Given the Primary Role States Play in Setting Voter Qualifications, They Must Be Given Latitude to Protect the Franchise.

The Constitution assigns to the states the authority to determine “the Qualifications requisite for Electors.” U.S. Const. art. I, § 2, cl. 1; *see also* amend. 17 (identical requirement for Senate elections). This allocation of power was deliberate. The Framers expressly rejected efforts to give exclusive authority over voter qualifications to the federal government. *See Oregon v. Mitchell*, 400 U.S. 112, 124–25 (1970) (opinion of Black, J.) (“It is a plain fact of history that the Framers never imagined that the national Congress would set the qualifications for voters in every election from President to local constable or village alderman [and] [i]t is obvious that the whole Constitution reserves to the States the power to set voter qualifications in state and local elections . . .”); *see also Inter Tribal Council*, 570 U.S. at 17 (acknowledging states’ authority to prescribe the

qualifications of voters); *Husted*, 584 U.S. at 774 (same, for congressional elections).

Citizenship is the most fundamental of these qualifications. Every state conditions the voting franchise on United States citizenship, and the Constitution itself presupposes that requirement.² See U.S. Const. amend. 15 (“right of citizens of the United States” to vote); amend. 19 (same); amend. 26 (same). A state that takes its obligation to police a citizenship requirement seriously must have the means to do so. And a sworn attestation on a form, standing alone, is not the only constitutionally permissible means by which a state may verify a voter’s eligibility.

Arizona’s requirement of documentary proof of citizenship on its state-developed registration form is a direct exercise of this constitutional prerogative. Of note, the state is not demanding proof of citizenship from applicants who use the Federal Form, which was the question resolved in *Inter Tribal Council*. Rather, it is exercising its separate authority, which the NVRA itself acknowledges, to develop its own form and to determine what information is “necessary to enable the appropriate State election official to assess the eligibility of the applicant.” 52 U.S.C. § 20508(b)(1).

² As of August 2026, the District of Columbia and certain municipalities in California, Maryland, and Vermont allow noncitizens to vote in local—but not state—elections.

B. Only a Clear Statement of Congressional Intent Can Oust the States' Primary Constitutional Role.

Where Congress legislates in areas of traditional state authority, courts require a clear statement of intent to preempt state law. *Gregory v. Ashcroft*, 501 U.S. 452, 460–61 (1991) (“If Congress intends to alter the ‘usual constitutional balance between the States and the Federal Government,’ it must make its intention to do so ‘unmistakably clear in the language of the statute.’”) (quoting *Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 242 (1985)). This interpretive canon is a “plain statement rule” grounded in the structural protections of federalism. Because “the States retain substantial sovereign powers under our constitutional scheme,” courts will not lightly assume that Congress meant to divest them of those powers. *Id.* at 461.

The authority to determine voter qualifications, and to verify that those qualifications are met, rests at the heart of the states’ reserved powers. *Inter Tribal Council*, 570 U.S. at 17–18. This Court has emphasized the distinction between the Elections Clause’s grant of congressional power over the “Times, Places, and Manner” of elections and the separate constitutional provisions preserving to the states the authority to set voter qualifications. *Id.* at 16–17. The power to prescribe “manner” is broad, but it is not the same as the power to prescribe “qualifications.” And where the two intersect—as they do with voter registration, which serves as the mechanism by which a voter’s qualification is verified—courts must construe federal law against the

background presumption that Congress did not mean to strip the states of a power the Constitution itself confers.

Nothing in the NVRA contains the clear statement that would be required to accomplish so sweeping a displacement. The statute directs states to “accept and use” the Federal Form. 52 U.S.C. § 20505(a)(1). It separately permits states to develop their own forms, subject to the requirement that those forms request only information “necessary to enable the appropriate State election official to assess the eligibility of the applicant.” *Id.* § 20508(b)(1). These are two different provisions of law, addressed to two different forms, operating within two different constitutional registers. This Court said as much in *Inter Tribal Council*: its holding that the NVRA “precludes Arizona from requiring a Federal Form applicant to submit information beyond that required by the form itself” rested on the specific “accept and use” directive applicable to the Federal Form. 570 U.S. at 15, 20.

The Ninth Circuit’s error was to collapse the distinction between these two provisions and read the constraints applicable to the Federal Form as though they applied with equal force to a state’s own form. That reading finds no support in the statutory text, which uses different language, in different sections, to describe the two forms. And it contradicts the *Inter Tribal Council* majority’s express reservation of the state-form question. Indeed, the Court went out of its way to note that Arizona retained alternative means of enforcing its citizenship qualification, including the ability to seek modification of the Federal Form’s state-specific instructions and the authority to “deny

registration based on information in [its] possession.” 570 U.S. at 15, 19–20.³

C. The Ninth Circuit’s Analysis Creates Dangerous Ambiguity for State Officials Seeking to Enforce State Law.

If the Ninth Circuit is right that the NVRA forbids states from requiring documentary proof of citizenship even on their own forms, the consequences extend well beyond Arizona. Every state that develops its own voter registration form—which is to say, every state except North Dakota, which does not require voter registration⁴—must make a judgment about what information to collect and how to verify it. The decision below tells those states that any departure from the Federal Form’s bare attestation model is suspect, and that a state’s own assessment of what is “necessary” to verify eligibility will be second-

³ The Tenth Circuit’s decision in *Kobach v. United States Election Assistance Comm’n*, 772 F.3d 1183 (10th Cir. 2014), does not disturb this analysis. *Kobach* addressed a different question: whether the EAC was required to add state-specific proof-of-citizenship instructions to the Federal Form. The court held it was not, a conclusion (like the holding in *Inter Tribal Council*) about the Federal Form and the EAC’s administrative obligations under the NVRA’s “accept and use” provision. *Kobach*, 772 F.3d at 1199. That holding does not address the separate authority of states to prescribe the contents of their own registration forms under § 20508(b)(1). Indeed, *Kobach* reinforces the distinction this brief draws; the NVRA treats the Federal Form and state-developed forms as separate instruments, governed by separate provisions, and subject to separate constraints.

⁴ North Dakota lacks a voter registration requirement and only requires presentation of a valid form of identification to vote. See *Voting in North Dakota*, N.D. SEC. OF STATE, <https://www.sos.nd.gov/elections/voter/voting-north-dakota> (last visited Aug 31, 2026).

guessed by federal courts applying a standard no state official can predict.

This uncertainty is especially acute for Secretaries of State, who must issue guidance, design forms, and train and set standards for election officials, all against the backdrop of a federal statute that, on the Ninth Circuit’s reading, may or may not preempt any given state requirement depending on how narrowly a court reads the word “necessary.” The NVRA does not define “necessary” with the precision required to carry the preemptive weight the Ninth Circuit assigns it. And where a federal statute is ambiguous on a question of preemption in an area of traditional state authority, the ambiguity must be resolved in the states’ favor. *See Gregory*, 501 U.S. at 470–71.

The result is an intolerable asymmetry. States have an affirmative constitutional obligation to ensure that only eligible citizens vote. They also face—in the Ninth Circuit’s view—a federal-law prohibition on the most straightforward way of meeting that obligation. In other words, they can set the qualification, but they cannot effectively verify it. That cannot be what Congress intended. And if there is any doubt on the point, the clear-statement rule resolves it. Congress does not implicitly strip states of the tools they need to enforce the qualifications the Constitution commits to their care.

II. A Secretary of State Cannot, by Voluntary Settlement, Short-Circuit the Democratic Process.

A. Basic Principles of Democratic Self-Government Require that Lawfully Enacted Statutes Take Precedence Over Consent Decrees.

The LULAC Consent Decree was entered in 2018 by the then-Secretary of State of Arizona to settle a lawsuit challenging the State’s differential treatment of federal-form and state-form applicants who had not provided documentary proof of citizenship. *See League of United Latin Am. Citizens of Ariz. v. Reagan*, No. 2:17-cv-04102 (D. Ariz. June 18, 2018). The decree required county recorders to register state-form applicants without documentary proof of citizenship for federal elections, effectively overriding Arizona’s proof-of-citizenship requirement through executive agreement rather than legislative action.

Subsequently, in 2022, the Arizona Legislature exercised its constitutional authority and enacted H.B. 2492, which mandated that state-form applications lacking documentary proof of citizenship be rejected. The question the Ninth Circuit confronted—and answered incorrectly—was whether the consent decree entered into by a prior officeholder could override this subsequent legislative enactment.

This Court has repeatedly warned that consent decrees involving state officials, however useful as a settlement device, carry distinct dangers for democratic governance. “[E]nforcement of consent decrees can undermine the sovereign interests and accountability

of state governments.” *Frew*, 540 U.S. at 441. “If not limited to reasonable and necessary implementations of federal law, remedies outlined in consent decrees involving state officeholders may improperly deprive future officials of their designated legislative and executive powers.” *Id.* In effect, a consent decree that outlasts the officeholder who agreed to it transfers policymaking authority from elected officials to the judiciary.

This concern is amplified where, as here, the consent decree trenches on legislative prerogatives in an area of express constitutional commitment. The Elections Clause vests in state “Legislature[s]” the duty to prescribe rules governing federal elections. U.S. Const. art. I, § 4, cl. 1; see *Moore v. Harper*, 600 U.S. 1, 10 (2023); *Inter Tribal Council*, 570 U.S. at 8. Put simply, a consent decree that purports to bind the legislature’s exercise of that constitutionally assigned power is an end run around the constitutional structure and the Constitution’s insistence that the people’s representatives set policy in this area.

B. The Problem is Especially Acute Where, As Here, the Legal Merits Were Never Adjudicated.

When a federal court adjudicates a case’s merits, the resulting order rests on a judicial determination of law. A consent decree entered after adjudication at least carries the weight of that underlying legal analysis and the authority of the reviewing court. Even so, this Court has held that the standard for modifying such decrees must account for changed circumstances. Where “a significant change either in factual conditions or in law” renders continued enforcement

inequitable, modification may be warranted. *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 388 (1992) (citing *System Fed’n No. 91 Railway Employees’ Dep’t v. Wright*, 364 U.S. 642 (1961) (“*Wright*”)); *see also Horne*, 557 U.S. at 450 (requiring a “flexible approach” to Rule 60(b)(5) motions seeking relief from institutional reform decrees entered after adjudication of federal-law violations). The logic is that even a decree anchored in a judicial finding of liability must yield when the legal or factual landscape shifts beneath it.

Moreover, where the change is a change in law, this Court has treated the point as settled. In *Wright*, the Court confronted a pure settlement, entered without any adjudication on the merits, prohibiting conduct that the governing statute had forbidden at the time. Congress subsequently amended the statute to make that conduct lawful. The district court refused to modify the decree, reasoning that the parties had bargained for its protections. This Court ultimately reversed, and Justice Harlan’s opinion left no room for equivocation: “just as the adopting court is free to reject agreed-upon terms as not in furtherance of statutory objectives, so must it be free to modify the terms of a consent decree when a change in law brings those terms in conflict with statutory objectives.” *Wright*, 364 U.S. at 651. The principle that followed was categorical. “The parties have no power to require of the court continuing enforcement of rights the statute no longer gives.” *Id.* at 652.

The parallel to this case is hard to miss. The claims resolved by the LULAC Consent Decree, like those in *Wright*, were never litigated to judgment. No court

determined that Arizona’s treatment of state-form applicants violated the NVRA or held that the Constitution required the result the Arizona Secretary of State agreed to. The Consent Decree was instead the product of a state executive officer’s litigation calculus, which may have involved resource constraints, political considerations, or simple risk aversion—none of which binds a future legislature exercising its independent constitutional authority. The Arizona Legislature thereafter enacted H.B. 2492, exercising the constitutional authority vested specifically in state legislatures. Whatever questions may have existed about Arizona’s treatment of state-form applicants before H.B. 2492, the legislature has now spoken and resolved them.

Yet the Ninth Circuit held that the LULAC Consent Decree trumped this subsequent legislative enactment, treating the decree as a permanent constraint on the legislature’s constitutional authority. This inverts the principle *Wright* established. A court “cannot be required to disregard significant changes in law or facts” when continuing enforcement would turn the decree “into an instrument of wrong.” *Wright*, 364 U.S. at 647 (quoting *United States v. Swift & Co.*, 286 U.S. 106, 114–15 (1932)). And if a consent decree resting on adjudicated findings must yield to changed law, then *a fortiori*, a decree resting on nothing more than an executive officer’s settlement calculation cannot override a subsequent act of the legislature.

C. Enormous Mischief Would Result from Allowing a Single State Officer to Use Litigation Among Friendly Parties to Bypass the Legislative Process.

If the Ninth Circuit is correct, and a consent decree entered by a state executive officer can override a subsequent act of the state legislature—in the teeth of the legislature’s express constitutional authority over elections—then the settlement mechanism becomes a vehicle for entrenching executive policy preferences against democratic change.

Consider the incentive structure the Ninth Circuit’s rule creates. An advocacy organization dissatisfied with a state election law can sue the Secretary of State. If the Secretary is sympathetic to the challenge, or simply unwilling to litigate, the two sides can settle on terms that effectively repeal the statute, all without the legislature’s participation. The resulting consent decree then binds not only the settling secretary but every successor, and (on the Ninth Circuit’s reasoning) even the legislature itself. This is litigation as a substitute for legislation, and it turns the constitutional allocation of election-administration authority on its head.

As Judge Bumatay observed in dissent, “legislative acts must predominate over consent decrees, not the other way around.” *Mi Familia Vota v. Fontes*, 129 F.4th 691, 746 (9th Cir. 2025) (Bumatay, J., dissenting). That observation follows directly from this Court’s admonition that consent decrees “may improperly deprive future officials of their designated legislative and executive powers.” *Frew*, 540 U.S. at 441. It also follows from the broader principle that, in

a democratic republic, the power to make law resides in the legislature and cannot be alienated by the executive through the settlement of a lawsuit. *Cf. Horne*, 557 U.S. at 450 (courts must remain attentive to the risk that consent decrees may become a vehicle for improper interference with a state’s democratic processes).

That risk is magnified by the context of this case. Election law is a domain in which the constitutional text speaks directly to the locus of lawmaking authority. The Elections Clause names the “Legislature”—not the executive, and not the judiciary. U.S. Const. art. I, § 4, cl. 1. When this Court has addressed the scope of that authority, it has emphasized that the power is “plenary” within constitutional limits. *See McPherson v. Blacker*, 146 U.S. 1, 35 (1892). A consent decree entered by a single executive officer cannot, consistent with that allocation of power, serve as a permanent constraint on the legislature’s exercise of its constitutionally designated function.

This Court should hold that a consent decree entered by a state executive official does not bind a subsequent state legislature in the exercise of its constitutional authority over election procedures. At a minimum, it should hold that when a state legislature enacts a statute that is inconsistent with a consent decree previously entered by a state executive officer on a question whose merits were never adjudicated, the statute prevails and the decree must yield. Any other rule turns democratic accountability into an empty promise.

CONCLUSION

The judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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