

No. 25-1017

**In The Supreme Court of the
United States**

REPUBLICAN NATIONAL COMMITTEE,
Petitioner,

v.

MI FAMILIA VOTA, *et al.*,
Respondents.

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

**BRIEF FOR AMERICAN LEGISLATIVE EXCHANGE
COUNCIL AS *AMICUS CURIAE* IN SUPPORT OF
PETITIONER**

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TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
STATEMENT OF INTEREST	1
SUMMARY OF THE ARGUMENT	3
ARGUMENT	4
I. The Constitution’s Text, Drafting History, and Historical Tradition Confirm States Possess Plenary Authority Over the Manner of Appointing Their Presidential Electors.....	7
II. The Framers Deliberately Withheld from Congress Authority Over the Manner of Appointing Presidential Electors	15
III. The NVRA Cannot Displace Arizona’s Authority to Determine and Enforce Qualifications for Participation in Its Elector Appointment Process	18
CONCLUSION.....	27

TABLE OF AUTHORITIES

Cases

<i>Arizona v. Inter Tribal Council of Arizona, Inc.</i> , 570 U.S. 1 (2013)	19, 20, 22, 26
<i>Ass’n of Cmty. Orgs. for Reform Now v. Miller</i> , 129 F.3d 833 (6th Cir. 1997)	22
<i>Buckley v. Valeo</i> , 424 U.S. 1 (1976)	23, 24
<i>Bush v. Gore</i> , 531 U.S. 98 (2000)	8, 9, 15
<i>Chiafalo v. Washington</i> , 591 U.S. 578 (2020)	8, 9, 15
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008) ..	6
<i>Fitzgerald v. Green</i> , 134 U.S. 377 (1890)	7, 8
<i>Gonzalez v. Arizona</i> , 677 F.3d 383 (9th Cir. 2012)	22
<i>Husted v. A. Philip Randolph Institute</i> , 584 U.S. 756 (2018)	23
<i>League of Women Voters of Ind., Inc. v. Sullivan</i> , 5 F.4th 714 (7th Cir. 2021).....	22
<i>McPherson v. Blacker</i> , 146 U.S. 1 (1892)	7, 8, 14, 15
<i>Mi Familia Vota v. Fontes</i> , 129 F.4th 691 (9th Cir. 2025)	3, 23

<i>Moore v. Harper</i> , 600 U.S. 1 (2023)	15
<i>New Jersey Thoroughbred Horsemen’s Ass’n v. Nat’l Collegiate Athletic Ass’n</i> , 584 U.S. 453 (2018)	21
<i>New York State Rifle & Pistol Ass’n v. Bruen</i> , 597 U.S. 1 (2022)	6
<i>Oregon v. Mitchell</i> , 400 U.S. 112 (1970)	19
<i>Pub. Int. Legal Found., Inc. v. Bellows</i> , 92 F.4th 36 (1st Cir. 2024)	22
<i>Ray v. Blair</i> , 343 U.S. 214 (1952)	7, 8
<i>Smiley v. Holm</i> , 285 U.S. 355 (1932)	26
<i>United States v. Cruikshank</i> , 92 U.S. 542 (1876)	21
<i>United States v. Morrison</i> , 529 U.S. 598 (2000).	22
CONSTITUTION	
U.S. Const. amend. X	21
U.S. Const. art. I	passim
U.S. Const. art. II	passim
Rules	
Rule 37.1	1

Treatises

- James Kent,
 Commentaries on American Law 273 (6th ed.
 1848)..... 9

Other Authorities

- 10 Annals of Cong. 2917
41 Annals of Cong. 362 14, 26
James Madison,
 Journal of the Constitutional Convention (Gallard
 Hunt ed., 1903)..... 9, 10, 11, 16
Luther Martin,
 The Records of the Federal Convention of 1787
 (Max Farrand ed., 1911) 10, 11
 The Federalist No. 45 (James Madison)12
 The Federalist No. 52 (James Madison)19
 The Federalist No. 60 (Alexander Hamilton)19
 The Federalist No. 68 (Alexander Hamilton)13
Robert G. Natelson, *The Original Scope of the*
 Congressional Power to Regulate Elections, 13 U.
 Pa. J. Const. L. 1, 20-22 (2010)21
Letter from Rufus King to C. King (Sept. 29, 1823),
 [https://www.consource.org/document/rufus-king-](https://www.consource.org/document/rufus-king-to-c-king-1823-9-29/)
 [to-c-king-1823-9-29/](https://www.consource.org/document/rufus-king-to-c-king-1823-9-29/).....12

STATEMENT OF INTEREST¹

The American Legislative Exchange Council (ALEC) is America's largest non-profit, nonpartisan voluntary membership organization of state legislators, whose members are dedicated to the principles of limited government, free markets, and federalism. With a membership base comprised of nearly one-quarter of all state legislators in the United States, ALEC's interest in this case is to ensure that state legislators have a clear, consistent, and objective standard when fulfilling their election-related responsibilities under the U.S. Constitution.

ALEC and its members – state legislators – have long maintained an interest in defending the federalist structure and Tenth Amendment protections the U.S. Constitution requires, and protecting state legislators' constitutional duties. Where that authority intersects with the federal government and necessarily implicates constitutional principles, state legislators desire clarity and consistency to ensure the way in which they exercise their authorities comports with the appropriate standards.

¹ Consistent with Rule 37.6, no counsel for a party authored this brief in whole or part; no counsel or party contributed money intended to fund the preparation or submission of this brief; and no person other than amicus or its counsel contributed money intended to fund its preparation or submission.

ALEC's membership has adopted several model policies speaking to the role of state legislatures either with respect to the federal government or with respect to their vested constitutional authorities. These model policies include the Eligibility Verification and Documentary Proof of Citizenship for Registration Requirements Act,² the Statement of Principles for Presidential Elections,³ and the Resolution Reaffirming Tenth Amendment Rights.⁴

² Eligibility Verification and Documentary Proof of Citizenship for Registration Requirements Act (August 12, 2026), <https://alec.org/model-policy/eligibility-verification-and-documentary-proof-of-citizenship-for-registration-requirements-act/> (Establishing a Model Policy for state legislatures to ensure voter eligibility during the registration process by enabling the chief election official to make a credible and reliable determination of applicant status based on citizenship status information received from government entities).

³ Statement of Principles for Presidential Elections (December 3, 2019), <https://alec.org/model-policy/draft-statement-of-principles-for-presidential-elections/> (Addressing the benefits of the Electoral College system and the dangers of the National Popular Vote Interstate Compact which would render the Electoral College obsolete).

⁴ Resolution Reaffirming Tenth Amendment Rights, American Legislative Exchange Council (updated December 6, 2019), <https://alec.org/model-policy/resolution-reaffirming-tenth-amendment-rights/> (Recognizing that state legislators swear to support the Constitution of the United States as well as the constitution of their state and that the Tenth Amendment reserves to States all powers not delegated to the United States by the Constitution).

SUMMARY OF THE ARGUMENT

The Ninth Circuit held the National Voter Registration Act (the “NVRA”) preempts Arizona’s requirement that persons who have not provided documentary proof of citizenship may not vote in presidential elections. *Mi Familia Vota v. Fontes*, 129 F.4th 691, 712 (9th Cir. 2025). It later held the LULAC Consent Decree bars Arizona from rejecting state-form applications submitted without such proof and, alternatively, that the NVRA prohibits Arizona from imposing that requirement upon state-form applicants registering as federal-only voters. *Id.* at 718–20. Together, those holdings require Arizona to register an applicant without documentary proof of citizenship and permit that person to participate in elections through which Arizona appoints its Electors.

That result conflicts with the Constitution’s allocation of electoral authority. Presidential Electors are state officials, and Article II gives each state legislature authority to determine the manner of their appointment. Congress may determine when Electors are chosen and when they cast their votes, but Article II gives Congress no authority over the manner of their appointment. Congress cannot acquire that denied constitutional power by defining the presidency as a “Federal office” in the NVRA or by invoking its Elections Clause authority over congressional elections.

Petitioner RNC recognizes this distinction, explaining that the “Manner” of appointing Electors rests with each state legislature. Pet. RNC Br. 4. This brief develops the original meaning and historical foundation of that proposition. First, Article II’s text, drafting history, contemporaneous explanations, and post-ratification practice confirm the States’ authority over the manner of appointing their Electors. Second, the historical record demonstrates the Framers deliberately withheld that authority from Congress. Third, Arizona’s appointment authority includes the power to determine and enforce qualifications for participation in its chosen appointment process. The NVRA cannot trump Arizona’s Article II duties.

ARGUMENT

This case concerns more than the information Arizona may require on a voter-registration form. It concerns which sovereign possesses constitutional authority over the election in which that form is used. Although commonly described as a federal election, the presidential election conducted in Arizona is, constitutionally, the means selected by the Arizona Legislature for appointing Arizona’s Electors. Those Electors are state officials, and Article II assigns the manner of their appointment to the state legislature not Congress.

Petitioner RNC recognizes this constitutional division of authority. Its brief explains the Electors Clause gives Congress power only over the “Time of choosing the Electors,” while the “Manner” of their appointment rests with each state legislature. Pet. RNC Br. 4 (quoting U.S. Const. art. II, § 1, cl. 4). Building upon that distinction, this brief examines the original meaning and historical understanding of the Electors Clause and demonstrates why Congress’s authority under the NVRA cannot displace Arizona’s constitutional authority over the appointment of its presidential Electors.

Congress enacted the National Voter Registration Act pursuant to its authority under the Elections Clause to regulate the “Times, Places and Manner” of elections for Senators and Representatives. That authority does not, and cannot, extend to the manner in which a State appoints its Electors. Article II grants Congress authority to determine the time for choosing Electors and the day on which they vote, but conspicuously omits any congressional power over the “manner” of their appointment. Congress cannot enlarge that enumerated authority by labeling the appointment of Electors a “Federal election” or by regulating the state registration process through which Arizona conducts that appointment.

Arizona therefore remains constitutionally entitled to determine who qualifies to participate in

its chosen method of appointing Electors and what evidence is required to establish those qualifications so long as they do not violate other constitutional provisions. *See, e.g.*, Const. amends. XIX, XXVI. The availability of the federal form ensures that otherwise qualified applicants may register for congressional elections in accordance with the NVRA. But the NVRA cannot compel Arizona to treat an application lacking documentary proof of citizenship as sufficient for participation in the State’s Article II appointment process.

This Court’s constitutional jurisprudence has repeatedly emphasized history and settled tradition in determining the meaning of constitutional text. Most recently, that emphasis has appeared in cases involving the Establishment Clause, the appointment and removal of executive officers, and, most prominently, the Second Amendment. In *New York State Rifle & Pistol Ass’n v. Bruen*, the Court reaffirmed “constitutional rights are enshrined with the scope they were understood to have when the people adopted them.” 597 U.S. 1, 25 (2022) (quoting *District of Columbia v. Heller*, 554 U.S. 570 (2008)). Although *Bruen* concerned the Second Amendment, its underlying interpretive principle has broader significance: constitutional text is interpreted in light of its original public understanding and the historical evidence illuminating that understanding. Applied here, the text, framing history, contemporaneous

explanations, and early practice surrounding Article II demonstrate that authority over the manner of appointing Electors was deliberately placed in the state legislatures, not Congress.

**I. THE CONSTITUTION’S TEXT, DRAFTING
HISTORY, AND HISTORICAL TRADITION
CONFIRM STATES POSSESS PLENARY
AUTHORITY OVER THE MANNER OF
APPOINTING THEIR PRESIDENTIAL ELECTORS**

The “framers of the constitution employed words in their natural sense; and, where they are plain and clear, resort to collateral aids to interpretation is unnecessary, and cannot be indulged in to narrow or enlarge the text.” *McPherson v. Blacker*, 146 U.S. 1, 27 (1892). Under Art. II, §1 (the “Electors Clause”), States are given the power to appoint their presidential Electors. *See Fitzgerald v. Green*, 134 U.S. 377, 379 (1890); *McPherson*, 146 U.S. at 27–28; *Ray v. Blair*, 343 U.S. 214, 225 (1952). The Electors Clause provides “Each State shall appoint, *in such Manner as the Legislature thereof may direct*, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress[.]” U.S. Const. art. II, § 1 (emphasis added). These Electors (collectively, the Electoral College) then vote for President and Vice President. *Id.*

“The state legislatures’ power to select the manner for appointing electors is plenary . . .” *Bush v. Gore*, 531 U.S. 98, 104 (2000). The Electors Clause thus conveys “far-reaching authority” and “the broadest power of determination” to states *with little authority for Congress to impact the process*. *Chiafalo v. Washington*, 591 U.S. 578, 588–89 (2020); *McPherson*, 146 U.S. at 35 (holding the right to determine the method of appointing presidential Electors belongs to state legislatures).

All state legislatures have, *through state law*, chosen to utilize statewide elections to appoint their Electors for the Electoral College. *Bush*, 531 U.S. at 104; *McPherson*, 146 U.S. at 27 (“The constitution does not provide that the appointment of electors shall be by popular vote . . . and leaves it to the legislature exclusively to define the method of effecting the object.”). The appointment of Electors is not an election of a federal official. Citizens vote for Electors who, though they “are appointed and act under and pursuant to the constitution of the United States,” “are no more officers or agents of the United States than are the members of the state legislatures when acting as electors of federal senators, or the people of the state when acting as electors of representatives in congress.” *Fitzgerald v. Green*, 134 U.S. 377, 379 (1890); *see also Ray*, 343 U.S. at 224–25 (holding presidential Electors are not federal officers or agents because a presidential election selects state officials to

exercise state official duties as required by the Constitution).

The Electors Clause also prescribes a specific role for Congress. In contrast to giving states' plenary power to decide how to appoint their Electors, *Bush*, 531 U.S. at 104, the Electors Clause merely grants Congress the authority to determine “the Time of Chusing the Electors, and the Day on which they shall give their Votes.” U.S. Const. art. II, § 1, cl. 3. The Electors Clause thus conveys “far reaching authority” and “the broadest power of determination” to states, while also providing minimal authority (i.e., setting the time for choosing Electors and date of the election) for Congress to impact the process. *Chiafalo*, 591 U.S. at 588–89.

The drafting history confirms what the constitutional text provides. “The mode of [Presidential] appointment presented one of the most difficult and momentous questions that occupied the deliberations of the assembly which framed the constitution.” James Kent, *Commentaries on American Law* 273 (6th ed. 1848). Founding Father James Wilson described it as the “most difficult” of all the issues they had to decide. James Madison, 3 *The Papers of James Madison* 1491 (“The Madison Papers”) (1st, 1840). Luther Martin described the challenges, stating:

A Variety of opinions prevailed on this Article. Mr. Hamilton of New York wanted the President to be appointed by the Senate, others by both Branches, others by the People at large – others that the States as States ought to have an equal voice --- The larger States wanted the appointment according to numbers – those who were for a one Genl. Government, and no State Governments, were for a choice by the People at large

3 *The Records of the Federal Convention of 1787*, p. 158 (Max Farrand ed., 1911) (“Farrand’s Records”) (Martin before Maryland House of Delegates, Nov. 29, 1787).

The Framers also debated having the President chosen by a direct vote by the Legislatures of the States, James Madison, 2 *The Madison Papers*, p. 1190, choosing the President by direct election of the people, *id.* at 767, having the president chosen by the executive officers of each state, *id.* at 828, dividing states into districts and allowing eligible voters to select Electors, *id.* at 768–69, having each state select its best citizen and the National Legislature choose from the 13 names, *id.* at 1206, allowing six Senators and seven Representatives to choose by a joint ballot of both Houses, *id.* at 1501, and even holding a lottery, *id.* at 1208.

On July 17, 1787, Luther Martin first proposed that the Executive be chosen by Electors appointed by the several Legislatures of the individual States. *Id.* at 1124. This proposal was immediately voted down. *Id.* However, on July 19, Oliver Ellsworth reintroduced the idea of state legislatures appointing electors, and the proposal passed. *Id.* at 1149–50. This consensus was, however, short lived. On July 24 the body passed a resolution once again adopting an alternate process. *Id.* at 1190.

The matter of how to select the president was still an open question by August 31. With no clear path forward, Connecticut’s Roger Sherman proposed creating a special committee to consider the issue. 2 *Farrand’s Records* at 481. This Committee was sometimes referred to as the Committee on Postponed Matters or, alternately, the Committee on Unfinished Parts. *Id.* On September 4, 1787, the Committee produced a partial report proposing the following language for the selection of the president:

“Each State shall appoint in such manner as its Legislature may direct, a number of electors equal to the whole number of Senators and members of the House of Representatives, to which the State may be entitled in the Legislature.”

3 *The Madison Papers*, p. 1486. While there was additional debate over the Committee’s proposal, the Committee’s general framework for having state-

appointed electors was ultimately adopted. The decision to delegate the power of appointing Electors to states was, therefore, a much-debated compromise between factions at the constitutional convention.

Contemporaneous explanations of the Electoral College reinforce the same understanding of Article II. Rufus King stated that this great compromise of the constitutional convention “provides that Representatives shall be chosen *by the People*, Senators *by the Legislature* of each State and Electors *in such manner as the Legislature of each State may direct*.” Letter from Rufus King to C. King (Sept. 29, 1823), <https://www.consource.org/document/rufus-king-to-c-king-1823-9-29/> (emphasis in the original).

In Federalist 45, Madison explained that the States were intended to have wide latitude, if not controlling authority, in selecting the President:

The State governments may be regarded as constituent and essential parts of the federal government; whilst the latter is nowise essential to the operation or organization of the former. Without the intervention of the State legislatures, the President of the United States cannot be elected at all. They must in all cases have a great share in his appointment, and will, perhaps, in most cases, of themselves determine it.

The Federalist No. 45, p. 248, (Gideon ed. 1818, republished in 2001) (J. Madison).

While there was much debate during the Constitutional convention over the manner of selecting the president, once the Constitution was introduced to the states for ratification, this was not an area that garnered much debate. In Federalist No. 68, Alexander Hamilton noted the lack of opposition during the state ratification process to the proposed power of states over the appointment of Electors:

The mode of appointment of chief magistrate of the United States is almost the only part of the system, of any consequence, which has escaped without severe censure, or which has received the slightest mark of approbation from its opponents.

The Federalist No. 68, p. 342, (A. Hamilton).

Years later, Rufus King also reflected on this lack of controversy:

Though great difficulties occurred in the debates of the State conventions on other portions of the Constitution of the United States, no opposition appeared to the provision of the Constitution respecting the manner of electing the President, and no such objection occurred until the fourth election of the President, which

was made by the House of Representatives.

Rufus King, Senate, 41 Annals of Cong. 356 (Mar. 18, 1824) (speaking against an amendment that would establish a uniform mode of electing the President, i.e., require election of the president by congressional districts).

The practice following ratification reflected the same understanding. One hundred years after the Constitution’s ratification, this Court concluded the “appointment and mode of appointment of electors belong exclusively to the states under the constitution of the United States.” *McPherson*, 146 U.S. at 35. In *McPherson*, this Court considered a Michigan plan for appointing presidential Electors that awarded electoral votes based on congressional district. In holding that Article II provides states authority to award Electors in whatever manner they deem fit, this Court did not mince words: “The appointment of [Presidential] electors is thus placed *absolutely and wholly* with the legislatures of the several states.” *Id.* at 34–35. Article II’s grant of power to the states to appoint their Electors “*can neither be taken away nor abdicated.*” *Id.* (emphasis added). And this Court noted the unbroken and unassailable record demonstrating this was the Framers’ intent:

From this review, in which we have been assisted by the laborious research of counsel, and which might have been

greatly expanded, it is seen that from the formation of the government until now *the practical construction of the clause has conceded plenary power to the state legislatures in the matter of the appointment of electors.*

Id. (emphasis added). This grant of power to states was purposeful so “*that congressional and federal influence might be excluded.*” *Id.* at 36 (emphasis added). “In short, the appointment and mode of appointment of electors belong exclusively to the states under the constitution of the United States.” *Id.* at 35.

That historical understanding remains part of this Court’s modern Article II jurisprudence. The Court has repeatedly applied *McPherson*’s central holding that States control the manner of appointing their Electors. *See Moore v. Harper*, 600 U.S. 1, 28 (2023); *Chiafalo v. Washington*, 591 U.S. 578, 608 (2020); *Bush v. Gore*, 531 U.S. 98, 104 (2000).

II. THE FRAMERS DELIBERATELY WITHHELD FROM CONGRESS AUTHORITY OVER THE MANNER OF APPOINTING PRESIDENTIAL ELECTORS

Article II’s omission of congressional authority over the manner of appointing Electors was not an oversight. The Convention repeatedly considered whether the national legislature should participate in selecting the President. In explaining the

Convention's rejection of that method, Gouverneur Morris identified the dangers of legislative involvement in presidential selection:

The first was the danger of intrigue and faction, if the appointment should be made by the Legislature. The next was the inconvenience of an ineligibility required by that mode, in order to lessen its evils. The third was the difficulty of establishing a court of impeachments, other than the Senate, which would not be so proper for the trial, nor the other branch, for the impeachment of the President, if appointed by the Legislature. In the fourth place, nobody had appeared to be satisfied with an appointment by the Legislature. In the fifth place, many were anxious even for an immediate choice by the people. And finally, the sixth reason was the indispensable necessity of making the Executive independent of the Legislature. As the electors would vote at the same time, throughout the United States, and at so great a distance from each other, the great evil of cabal was avoided. It would be impossible, also, to corrupt them.

3 The Madison Papers, pp. 1489-1490.

Thirteen years after the Convention, Charles Pinckney of South Carolina expressly connected the constitutional allocation of authority to the Framers'

desire to exclude Congress from the appointment process. Speaking on the floor of the Senate, Pinckney recalled that he

remembered very well that in the Federal Convention great care was used to provide for the election of the President of the United States, independently of Congress; to take the business as far as possible out of their hands. The votes are to be given by Electors appointed for that express purpose, the Electors are to be appointed by each State, and *the whole direction as to the manner of their appointment is given to the State Legislatures*. Nothing was more clear to him than that *Congress had no right to meddle with it at all; as the whole was entrusted to the State Legislatures, they must make provision for all questions arising on the occasion*.

10 Annals of Cong. 29 (Jan. 23, 1800) (emphasis added).

The same understanding persisted in later debates over proposals to amend Article II. In 1824, Rufus King defended the Constitution's allocation of authority to the States as necessary to "protect the people of the States from this great central power." Rather than concentrating control over presidential selection in the national government, King explained, "the Constitution has provided for the division and

distribution of it throughout and among the States,” thereby helping to “perpetuate our liberties.” 41 Annals of Cong. 362 (Mar. 18, 1824).

These sources demonstrate more than a general preference for state participation in presidential elections. The Framers placed “the whole direction as to the manner” of appointing Electors in the state legislatures and deliberately denied Congress authority to “meddle with it.” Congress received authority to determine when Electors would be chosen and when they would cast their votes, but not to prescribe the manner of their appointment. The Constitution’s different treatment of congressional elections and Elector appointments therefore reflects a deliberate allocation of power, not an accidental difference in wording.

III. THE NVRA CANNOT DISPLACE ARIZONA’S AUTHORITY TO DETERMINE AND ENFORCE QUALIFICATIONS FOR PARTICIPATION IN ITS ELECTOR APPOINTMENT PROCESS

Arizona has exercised its Article II authority by appointing Electors through a popular election. *Mi Familia Vota v. Fontes*, 691 F. Supp. 3d 1077, 1088 (D. Ariz. 2023). Under that system, Arizona’s citizens vote for presidential candidates, and the slate pledged to the prevailing candidate is appointed to represent Arizona in the Electoral College. Ariz. Rev. Stat. § 16-212. Arizona’s state voter-registration form is part of

that appointment process because it determines who may participate in the election through which the State chooses its Electors. The Arizona Legislature has required applicants using that form to provide documentary proof of citizenship. Ariz. Rev. Stat. § 16-121.01(C).

The constitutional authority to determine the manner of appointing Electors necessarily includes authority to confirm that those who are voting have met the necessary qualifications. “Prescribing voting qualifications, therefore, ‘forms no part of the power to be conferred upon the national government’ by the Elections Clause, which is ‘expressly restricted to the regulation of the *times*, the *places*, and the *manner* of elections.’” *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 17 (2013) (quoting *The Federalist* No. 60, at 371 (A. Hamilton) and No. 52, at 326 (J. Madison)); *see also id.* at 16 (“Surely nothing in these provisions lends itself to the view that voting qualifications in federal elections are to be set by Congress.”) (quoting *Oregon v. Mitchell*, 400 U.S. 112, 210 (1970) (Harlan, J., concurring in part and dissenting in part)).

Moreover, “the power to establish voting requirements is of little value without the power to enforce those requirements” and “Arizona is correct that it would raise serious constitutional doubts if a federal statute precluded a State from obtaining the

information necessary to enforce its voter qualifications.” *Id.* at 17.

In *Inter Tribal Council*, this Court avoided the constitutional problem that would arise if federal law prevented Arizona from obtaining the information necessary to enforce its voter qualifications. The Court construed the NVRA to permit Arizona to request the Election Assistance Commission incorporate Arizona’s documentary-proof requirement into the federal form and recognized that Arizona could seek judicial review if the Commission refused. *Inter Tribal Council*, 570 U.S. at 19-20. The Commission subsequently refused Arizona’s request, and Arizona’s effort to compel modification of the federal form was unsuccessful. *See Kobach v. U.S. Election Assistance Commission*, 772 F.3d 1183, 1188-89 (10th Cir. 2014), cert. denied, 576 U.S. 1055 (2015). The constitutional concern identified in *Inter Tribal Council* is therefore no longer hypothetical.

That constitutional allocation of authority controls the present dispute. The Ninth Circuit construed the NVRA to prohibit Arizona from requiring documentary proof of citizenship from applicants using Arizona’s state form. That construction permits Congress, acting under its authority over congressional elections, to dictate the qualifications Arizona must accept as sufficient for participation in its distinct Article II appointment process.

The Ninth Circuit’s construction is inconsistent with the Constitution’s division of authority between Congress and the States. The Framers used different terms of art for congressional elections under Article I (“manner of holding election”) and the appointment of Electors under Article II (“manner” of appointing). See Robert G. Natelson, *The Original Scope of the Congressional Power to Regulate Elections*, 13 U. Pa. J. Const. L. 1, 20-22 (2010). Those textual differences reflect different allocations of constitutional authority. The Ninth Circuit therefore erred by allowing Congress’ Article I authority over congressional elections to bleed into the appointment of Electors. Congress may regulate the manner of congressional elections under Article I, but it may not invoke that authority to control the manner in which Arizona appoints its Electors under Article II.

“The government of the United States is one of delegated powers alone. Its authority is defined and limited by the Constitution.” *United States v. Cruikshank*, 92 U.S. 542, 551 (1876). “The Constitution confers on Congress . . . only certain enumerated powers.” *New Jersey Thoroughbred Horsemen’s Ass’n v. Nat’l Collegiate Athletic Ass’n*, 584 U.S. 453, 471 (2018). “The 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. “Every law enacted by Congress must be based on one or more of

its powers enumerated in the Constitution.” *United States v. Morrison*, 529 U.S. 598, 607 (2000).

Congress enacted the NVRA pursuant to its power under Article I, §4 (the “Elections Clause”) to regulate the time, place, and manner of Congressional elections. *Inter Tribal Council of Arizona*, 570 U.S. at 7–8; *Pub. Int. Legal Found., Inc. v. Bellows*, 92 F.4th 36, 52 (1st Cir. 2024) (“Congress’s authority for the NVRA is rooted in the [Elections Clause]”); *Ass’n of Cmty. Orgs. for Reform Now v. Miller*, 129 F.3d 833, 836 (6th Cir. 1997) (“Congress enacted the National Voter Registration Act under the authority granted it in [the Elections Clause.]”); *League of Women Voters of Ind., Inc. v. Sullivan*, 5 F.4th 714, 723 (7th Cir. 2021) (same); *Gonzalez v. Arizona*, 677 F.3d 383, 391 (9th Cir. 2012) (same).

The “Elections Clause” provides that states choose “[t]he Times, Places and Manner of holding *Elections for Senators and Representatives*,” but Congress “may at any time” alter those state regulations. U.S. Const. art. I, § 4 (emphasis added). The Elections Clause thus expressly allows Congress to “pre-empt state regulations governing the ‘Times, Places and Manner’ of holding *congressional elections*.” *Inter Tribal Council of Arizona*, 570 U.S. at 8 (emphasis added). “The ‘Manner of holding Elections’ was understood to refer to ‘the circumstances under which elections were held and the mechanics of the actual election.’” *Husted v. A.*

Philip Randolph Institute, 584 U.S. 756, 782 (2018) (Thomas, J., concurring).

Congress’ Elections Clause authority, and therefore the NVRA enacted pursuant to it, cannot displace Arizona’s Article II authority for three reasons.

First, the Elections Clause’s plain text limits Congress’ authority over the “Times, Places, and Manner” to elections for Senators and Representatives. The Ninth Circuit rejected that textual limitation, reasoning that *Burroughs v. United States*, 290 U.S. 534 (1934), establishes that Congress possesses the power to control registration for presidential elections. *Mi Familia Vota*, 129 F.4th at 712. But in *Burroughs*, the Court determined, while Congress has the power to pass legislation to safeguard the presidential election from the “improper use of money to influence the result” of the election, “[n]either in purpose nor in effect does [the congressional act under review] interfere with the power of a state to appoint electors or the *manner* in which their appointment shall be made.” *Burroughs*, 290 U.S. at 544–45 (emphasis added). In a later seminal federal campaign finance case, *Buckley v. Valeo*, 424 U.S. 1, 13–14 (1976), the Court highlighted that no party in *Burroughs* was challenging Congress’s ability to regulate federal elections and the decision focused on “whether the specific legislation that Congress has enacted interferes with First

Amendment freedoms or invidiously discriminates against nonincumbent candidates.” In a footnote, the *Buckley* court also cited *Burroughs* for the proposition it had previously “recognized broad congressional power to legislate in connection with the elections of the President and Vice President.” *Buckley*, 424 U.S. at 14 n.16. Congress’ authority to protect presidential elections from corruption does not give Congress authority over the manner in which a State appoints its Electors. *Burroughs* expressly distinguished the two powers. Arizona’s authority to require proof of citizenship during voter registration as a condition of participation in its appointment process therefore remains undisturbed.

That Congress has the implied power to regulate federal campaign contributions to prevent corruption in elections for federal office, including presidents and vice presidents, has no bearing on, and is consistent with, the states’ plenary Elector Clause power to choose the *manner* of appointing their Electors—including limiting the right to vote for Electors to citizens and requiring documentary proof of their citizenship.

Second, the Electors Clause that gives the states their power to choose the manner of appointing their Electors also specifies Congress’s power with respect to Electors and expressly limits that power to setting the time of choosing Electors and the date of their vote. U.S. Const. art. II, § 1, cl. 2; U.S. Const. art.

II, § 1, cl. 4. In contrast to the grant of power to Congress over congressional elections in the Elections Clause, which permits Congress to preempt regulations concerning the time, place *and manner* of congressional elections, **the Electors Clause omits Congressional power over the “manner”** of the appointment of Electors. *Compare* U.S. Const. art. I, § 4 *with* U.S. Const. art. II, § 1, cl. 4.

Third, Articles I and II address different selection processes and employ materially different language. The Elections Clause grants Congress the power to legislate the time, place, and manner of an election, but as discussed above the Electors Clause grants states the power to appoint their Electors and does not mandate states conduct a popular election to do so. Congress’ constitutional authority cannot depend on whether a State voluntarily chooses a popular election as its method of appointment. If Arizona appointed its Electors directly through its legislature, Congress could not prescribe qualifications for participation in that legislative decision. Arizona did not surrender its Article II authority by selecting a popular election instead. The State’s choice of an election as its method of appointment does not transform Article II authority into Article I authority or confer upon Congress a power the Constitution withholds.

The constitutional text and history thus point in the same direction. The Elections Clause gives

Congress authority over the manner of congressional elections. The Electors Clause assigns the manner of appointing Electors to state legislatures and gives Congress authority only as to timing. Reading the Elections Clause to permit Congress to dictate who may participate in Arizona’s Elector appointment process would erase that deliberate, foundational distinction.

This Court’s reasoning in *Inter Tribal Council* reinforces that conclusion. The Elections Clause’s “substantive scope is broad,” and its reference to the “Times, Places and Manner” gives Congress authority to provide “a complete code for congressional elections.” 570 U.S. at 8–9 (emphasis added) (quoting *Smiley v. Holm*, 285 U.S. 355, 366 (1932)). But the Court also emphasized that Elections Clause legislation should “mean what it says,” that the Clause cannot be read as implicitly regulating matters addressed elsewhere in the Constitution, and that its text clearly identifies “what Congress can control and what it cannot control.” *Id.* at 15–16. Those principles apply equally here. Article I gives Congress authority over congressional elections; Article II separately assigns the manner of appointing Electors to state legislatures.

Petitioner RNC has demonstrated the NVRA permits state-developed forms to request information beyond that required by the federal form, including documentary proof of citizenship. Pet. RNC Br. 17–33.

That interpretation accords with the statutory text, preserves the distinct function Congress assigned to state forms, and avoids the serious Article II question created by the Ninth Circuit’s contrary construction.

The federal form remains available as the federally prescribed backstop for registration in congressional elections. But Congress cannot use that backstop to compel Arizona to make its own state form available on terms that the Arizona Legislature has rejected, particularly when that form also governs participation in Arizona’s appointment of Electors. At minimum, the NVRA should not be construed to require that constitutionally doubtful result. The Court should hold the NVRA permits Arizona to require documentary proof of citizenship from applicants who choose to register using Arizona’s state form.

CONCLUSION

The Constitution does not permit Congress, acting pursuant to its Elections Clause authority over congressional elections, to displace Arizona’s Article II authority over the manner of appointing its Electors. Consistent with that constitutional division of authority and the principle of federalism, the NVRA should be construed to permit Arizona to require documentary proof of citizenship from applicants who use Arizona’s state voter-registration form. The Court

should reverse the judgment of the Ninth Circuit
insofar as it holds otherwise.

Respectfully submitted,

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