

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 AMICUS CURIAE
THE CLAREMONT INSTITUTE'S CENTER
FOR CONSTITUTIONAL JURISPRUDENCE
IN SUPPORT OF PETITIONER**

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INTEREST OF AMICUS CURIAE¹

The Center for Constitutional Jurisprudence is the public-interest law arm of the Claremont Institute, whose stated mission is to restore the principles of the American Founding to their rightful and preeminent authority in our national life. Foremost among those principles is the idea, announced in the Declaration of Independence, that legitimate government derives its just powers from the consent of the governed—and that “the governed,” for that purpose, are the members of the body politic, the “one people” who established the government and whose consent sustains it. The Center has participated as *amicus curiae* in numerous cases before this Court involving one or another application of that principle to the structural Constitution, federalism, citizenship, and the law of elections, including *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013); *Shelby County v. Holder*, 570 U.S. 529 (2013); *Evenwel v. Abbott*, 578 U.S. 54 (2016); *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004); and *Moore v. Harper*, 600 U.S. 1 (2023). The Center also filed an amicus brief in *Kobach v. United States Election Assistance Commission*, 772 F.3d 1183 (10th Cir. 2014), cert. denied, 576 U.S. 1055 (2015), warning of precisely the constitutional difficulties that have now materialized in the wake of this Court’s decision in *Inter Tribal Council*.

This case lies at the intersection of all of those concerns. The Ninth Circuit read a federal registration statute, enacted under the Elections Clause, to forbid

¹ No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund its preparation or submission. No person other than amicus curiae, its members, or its counsel made such a monetary contribution. See S. Ct. Rule 37.6.

a State from determining whether an applicant possesses the one qualification—citizenship—that the Constitution most clearly commits to state law. It read the same statute to shield a foreign national who never possessed the franchise from correction of an erroneous registration. And it held that a consent decree entered by executive officers, without any adjudication that federal law required it, permanently disables a later legislature from exercising authority the Constitution assigns to the State. Each holding subordinates the consent of the governed to something else: the say-so of an applicant, the inertia of a database, or the policy preferences of officials who have since left office. The Center has a substantial interest in each.

SUMMARY OF ARGUMENT

The Constitution divides authority over federal elections between two sovereigns, and it draws the line with care. Congress may “make or alter” regulations of the “Times, Places and Manner” of holding congressional elections. U.S. Const. art. I, § 4, cl. 1. But the electors themselves “shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.” *Id.* art. I, § 2, cl. 1; *id.* amend. XVII. The Elections Clause governs the mechanics of conducting federal elections. The Qualifications Clauses, by contrast, leave to the States the antecedent question of who is qualified to vote in them. This Court said exactly that in *Inter Tribal Council*: the Elections Clause empowers Congress “to regulate how federal elections are held, but not who may vote in them.” 570 U.S. at 16.

That reservation would be an empty promise if a State could prescribe a qualification but be forbidden to determine whether anyone actually meets it. This Court recognized as much. “[T]he power to establish

voting requirements is of little value without the power to enforce those requirements,” and a federal statute that “precluded a State from obtaining the information necessary to enforce its voter qualifications” would raise “serious constitutional doubts.” *Id.* at 17. Rather than resolve those doubts, the Court pointed Arizona to two avenues: it could ask the Election Assistance Commission to add a proof-of-citizenship instruction to the Federal Form, *id.* at 17–20, or it could use its own form, since “States retain the flexibility to design and use their own registration forms,” which “may require information the Federal Form does not.” *Id.* at 12.

Arizona tried the first avenue and was turned away. *Kobach*, 772 F.3d at 1191–99. House Bill 2492 takes the second. It leaves the Federal Form exactly as the Election Assistance Commission has prescribed it under the criteria Congress set, and requires documentary proof of citizenship only from applicants who choose Arizona’s own form. The Ninth Circuit nevertheless closed that avenue too, reasoning that because an attestation suffices on the Federal Form, Arizona’s form may demand nothing more. Pet. App. 50a–51a. That holding collapses the two forms Congress separately authorized into one, converts *Inter Tribal Council’s* narrow, form-specific holding into the very prohibition the Court crafted its opinion to avoid, and leaves the State with no lawful means of doing what the Constitution entitles it to do. The NVRA’s text does not require that result. Arizona law now requires a State Form applicant to establish citizenship through satisfactory documentary evidence. Ariz. Rev. Stat. §§ 16-101(A), 16-121(A). Because that evidence directly establishes the qualification the election official must assess, it falls comfortably within the information the NVRA permits States to require

as “necessary to enable the appropriate State election official to assess the eligibility of the applicant.” 52 U.S.C. § 20508(b)(1). Section 7 of the NVRA, 52 U.S.C. § 20506, likewise imposes a distribution duty on designated agencies; it does not make the Federal Form the ceiling for every registration form a State may use.

The 2018 *LULAC* consent decree supplies no alternative basis for the injunction. A consent decree is an agreement between the parties that bears a judge’s signature. It is not a statute, and it is not federal law within the meaning of the Supremacy Clause. This one rested on no finding that federal law required anything; the settling officials disclaimed any violation and premised their consent on consistency with then-existing Arizona law. The Legislature then changed that law. Whatever the decree’s continuing force between its original parties—a question that belongs to the court that entered it—private plaintiffs may not carry it into a different action on a different docket and wield it as a rule of decision against the Legislature, the RNC, and every county recorder in the State. Arizona itself concedes that the officials bound by the decree would now have “a strong case for relief” from it under Rule 60(b). A judgment concededly ripe for reconsideration cannot at the same time be a conclusive ground for a new statewide injunction, entered without any equitable inquiry, against strangers who are told they forfeited every objection by failing to intervene in someone else’s lawsuit. That is not the consent of the governed. It is government by the consent of officials who no longer hold office.

Finally, the NVRA’s 90-day provision restricts programs to remove “ineligible voters.” A confirmed noncitizen is not a “voter,” eligible or otherwise. The Act moves in sequence from “applicant,” to “eligible

applicant,” to “registrant,” to “voter,” and only then to a voter who may later become ineligible. A person who never possessed the citizenship qualification never entered that sequence. A clerk’s error may record a name; it cannot confer the franchise, and it cannot admit a foreign national into the American body politic any more than it could naturalize him. The judgment should be reversed.

ARGUMENT

I. THE CONSTITUTION RESERVES TO THE STATES BOTH THE POWER TO FIX ELECTOR QUALIFICATIONS AND THE POWER TO DETERMINE WHETHER THEY ARE MET.

A. The Elections Clause governs the “how” of federal elections; the Qualifications Clauses reserve the “who” to the States.

The provisions of the Constitution governing the election of Representatives and, since the Seventeenth Amendment, Senators, serve two purposes: they protect the federal government against the States, and they protect the people against the federal government. Article I, Section 4 accomplishes the first. By allowing Congress to “make or alter” state regulations of the “Times, Places and Manner of holding Elections,” it ensures that no recalcitrant State can prevent a House of Representatives from being formed. U.S. Const. art. I, § 4, cl. 1. Article I, Section 2 accomplishes the second. By providing that the electors of the House “shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature,” it denies Congress any power to choose the constituency that will sit in judgment of it. *Id.* art. I, § 2, cl. 1. The Seventeenth Amendment

repeats the rule for the Senate. U.S. Const. amend. XVII.

The distinction was not an accident of drafting. James Madison warned the Constitutional Convention in 1787 that if Congress could regulate the qualifications of electors, it could “by degrees subvert the Constitution.” 2 *The Records of the Federal Convention of 1787* 250 (Max Farrand ed., rev. ed. 1966). Leaving the matter to the unconstrained discretion of state legislatures was equally unacceptable, because it would have made the House dependent upon the state governments rather than upon the people. The Federalist No. 52, at 326 (James Madison) (Clinton Rossiter ed., 1961). The Convention’s solution was to adopt, as the federal rule, the qualification each State had already fixed for the most numerous branch of its own legislature—a rule “conformable to the standard already established, or which may be established, by the State itself.” *Id.* The definition of the right of suffrage, Madison explained, is “very justly regarded as a fundamental article of republican government,” and the Constitution placed that article beyond the reach of the very body whose members are chosen by it. *Id.*

Those who ratified the Constitution understood the allocation in the same terms. Tench Coxe explained to the New York convention that Congress had received the power “of prescribing merely the circumstances under which elections shall be holden, not the qualifications of the electors, nor those of the elected.” Tench Coxe, *A Pennsylvanian to the New York Convention*, Pennsylvania Gazette (June 11, 1788), reprinted in 20 THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION 1139, 1145 (John P. Kaminski et al. eds., 2004) (hereinafter “DOCUMENTARY HISTORY”) (emphasis omitted). Hamilton

was, if anything, more emphatic. Congress’s authority, he wrote, was “expressly restricted to the regulation of the times, the places, and the manner of elections.” The Federalist No. 60, at 371 (Alexander Hamilton) (Clinton Rossiter ed., 1961) (emphasis omitted). And the justification he offered for that authority in Nos. 59 and 61 had nothing to do with the composition of the electorate. It was the principle that “every government ought to contain in itself the means of its own preservation”—the danger that a hostile State might simply refuse to hold congressional elections at all. The Federalist No. 59, at 362 (emphasis omitted); The Federalist No. 61, at 375.

The Massachusetts convention drew the line in a single sentence: “the power of controul given by this sect, extends to the manner of election, not the qualifications of the electors.” Convention Debates (Jan. 21, 1788), *in* 6 DOCUMENTARY HISTORY 1279 (John P. Kaminski et al. eds., 2000) (emphasis omitted). The precision was deliberate. Eighteenth-century charters that spoke generally of the “manner of election” were often understood to include elector qualifications. The Framers did not confer that undifferentiated power. They addressed qualifications, times, and places separately, and then coined the narrower phrase “Manner of holding Elections” for what remained. Robert G. Natelson, *The Original Scope of the Congressional Power to Regulate Elections*, 13 U. Pa. J. Const. L. 1, 20–23 (2010). Registration machinery, in short, is within Congress’s reach. The qualifications of those who register are not, and the power over the machinery cannot be used to erase them.

This Court has honored that allocation throughout. The States have the “historic function” of establishing nondiscriminatory voting qualifications.

Carrington v. Rash, 380 U.S. 89, 91 (1965). *Inter Tribal Council* reduced the rule to a phrase: the Elections Clause empowers Congress “to regulate how federal elections are held, but not who may vote in them.” 570 U.S. at 16. And the Court observed that five Justices in *Oregon v. Mitchell*, 400 U.S. 112 (1970), had agreed that the Elections Clause did not authorize Congress to regulate voter qualifications in federal elections. *Inter Tribal Council*, 570 U.S. at 16 n.8.

B. A qualification the State is forbidden to verify is no qualification at all.

Citizenship is the archetypal qualification of an elector. Arizona’s Constitution reserves the franchise to citizens of the United States. Ariz. Const. art. VII, § 2(A). Federal law presupposes the same thing, making it unlawful, subject to narrow exceptions, for an alien to vote in an election for federal office. See 18 U.S.C. § 611(a), (c). No party suggests that Congress could compel Arizona to enfranchise foreign nationals in elections for its own legislature and thereby, through the operation of Article I, Section 2, remake the congressional electorate. The Qualifications Clauses plainly forbid it.

But a qualification that exists only on paper is no qualification at all. To “qualify” an elector is not merely to announce a criterion; it is to establish that the person possesses it. A State that prints the word “citizen” on an application and then must accept every applicant’s say-so as conclusive has not prescribed a qualification. It has prescribed a formality. If the Qualifications Clauses mean anything, the authority to declare that only citizens may vote must carry with it the authority to distinguish citizens from noncitizens. Otherwise Congress could accomplish indirectly what the Constitution forbids it to do directly: enlarge

a State's electorate by forbidding the State to find out who belongs in it.

The ratifiers said as much. "How can there be a House of Representatives, unless its members be chosen?" asked one Virginia essayist. "How can its members be chosen, unless it be known and ascertained who have a right to vote in their election?" An Impartial Citizen VI, *Petersburg Virginia Gazette* (Mar. 13, 1788), *reprinted in* 8 DOCUMENTARY HISTORY 495 (John P. Kaminski et al. eds., 1988). A Landholder assured the people of Connecticut that the formalities of choosing their federal representatives would remain in hands they controlled: "Your own assemblies are to regulate the formalities of this choice, and unless they betray you, you cannot be betrayed." A Landholder IV, *Connecticut Courant* (Nov. 26, 1787), *reprinted in* 14 DOCUMENTARY HISTORY 233 (John P. Kaminski et al. eds., 1983). And A Freeman explained that the state constitutions and legislatures "must determine the qualifications of the electors"—a structural safeguard he called the "antidote to aristocracy, oligarchy and monarchy." A Freeman II, *reprinted in* 3 *The American Museum or Repository of Ancient and Modern Fugitive Pieces* 143 (Matthew Carey ed., 1788). None of them imagined that the States were being handed the power to announce a criterion and denied the power to apply it.

Inter Tribal Council confirms that this is not merely the original understanding but the law. "Since the power to establish voting requirements is of little value without the power to enforce those requirements," the Court explained, it "would raise serious constitutional doubts if a federal statute precluded a State from obtaining the information necessary to enforce its voter qualifications." 570 U.S. at 17. This was

the ground on which the Court’s entire constitutional-avoidance analysis rested, and it is the premise on which this case must be decided.

C. *Inter Tribal Council* governed the Federal Form, and it expressly preserved the state form Arizona now uses.

The statutory holding of *Inter Tribal Council* was narrow, and it was specific to one form. The NVRA directs each State to “accept and use” the Federal Form prescribed by the Election Assistance Commission. 52 U.S.C. § 20505(a)(1). Arizona at the time required every applicant—including one who submitted the Federal Form—to supply documentary proof of citizenship that the Federal Form did not call for. This Court held that the additional demand could not be squared with the command to “accept and use” the Federal Form as a complete application. 570 U.S. at 9–15.

That is all the Court held. It did not hold that the NVRA forbids documentary proof of citizenship. It held that a State may not graft such a requirement onto the federal form authorized by Congress. And it took pains to contrast that form with the other one Congress authorized. Section 20505(a) gives an applicant two alternatives: the Federal Form, § 20505(a)(1), or a mail voter registration form the State may “develop and use,” § 20505(a)(2). Explaining the difference, the Court stated without qualification that “States retain the flexibility to design and use their own registration forms,” and that “state-developed forms may require information the Federal Form does not.” 570 U.S. at 12. The example the Court chose to illustrate the point was Arizona’s own “proof-of-citizenship requirement.” *Id.*

House Bill 2492 does exactly what *Inter Tribal Council* said Arizona remained free to do. It leaves the Federal Form untouched. It requires documentary proof only from applicants who elect to use Arizona's form. The Federal Form applicant receives the form, the contents, and the legal consequences Congress authorized and the Commission prescribed; the State Form applicant must satisfy the lawful requirements of the alternative Congress separately authorized. Nothing in the NVRA commands the States to abandon their own forms, and nothing reduces Section 20505(a)(2) to a license to reproduce the Federal Form on state letterhead.

The Ninth Circuit read it that way anyway. Because an attestation suffices on the Federal Form, the court reasoned, Arizona may not require documentary proof on its own form. Pet. App. 50a–52a; *cf. id.* at 37a–38a (parallel reasoning as to documentary proof of residence). That reasoning collapses two statutory alternatives into one. It converts a holding this Court expressly confined to the Federal Form into a universal rule the Court just as expressly disclaimed. And it does so in the teeth of the Court's warning that a statute so construed would raise "serious constitutional doubts." 570 U.S. at 17.

D. *Kobach* closed the federal avenue; the Ninth Circuit has now closed the state one.

Inter Tribal Council avoided the constitutional question in part because Arizona had somewhere else to go. It could ask the Election Assistance Commission to include a state-specific proof-of-citizenship instruction on the Federal Form, and it could seek judicial review if the Commission refused. 570 U.S. at 17–20. The availability of that avenue mattered to the

Court’s conclusion that the NVRA did not necessarily leave Arizona unable to obtain the information it needed to enforce its citizenship qualification. *Id.* at 20.

Arizona and Kansas took the Court at its word. Their requests sat unresolved because the Commission had no quorum. An official acting as Executive Director then denied them, and the Tenth Circuit held both that the official could act for the Commission and that the States had not established that documentary proof was “necessary” under the agency’s standard. *Kobach*, 772 F.3d at 1191–99. The avenue this Court identified thus led nowhere. Arizona emerged from it without authorization to require documentary proof on the Federal Form—and, as the Center warned in that case, with its power to enforce a qualification the Constitution commits to state law now dependent on the staffing of a federal agency.

Consider what that avenue actually required. Arizona did not ask a federal agency for leave to make citizenship a qualification; the Constitution settled that. It asked only for an instruction telling Federal Form applicants how to prove a qualification the State indisputably may impose. The answer—delivered by a single staff officer of a Commission that lacked a quorum—was that the State had not shown it needed such proof, and the Tenth Circuit deferred to the agency’s reading of its own authority under *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), and reviewed the rest under a standard it described as “very deferential.” 772 F.3d at 1191, 1196–98. Whatever remains of that framework after *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 412–13 (2024), the deeper difficulty is that a judgment the Constitution assigns to the State—

whether an oath suffices to establish a qualification of its own electors—was treated as a matter of federal administrative discretion at all.

That is not a tenable state of affairs, and *Inter Tribal Council* did not create it. A State’s ability to enforce the citizenship of its electors cannot depend entirely on whether a federal commission has a quorum, what the incumbent federal Executive thinks of documentary proof, or whether federal officials can be persuaded to approve a state-specific instruction. Congress separately preserved state-developed forms, and this Court expressly recognized that those forms may call for information the Federal Form does not. Arizona walked through the one door the Court told it remained open.

House Bill 2492 does not evade *Inter Tribal Council* or *Kobach*. It conforms to the line those cases drew. Arizona continues to accept the Federal Form without documentary proof, and it places its proof requirement only on the form Congress independently authorized. If the Federal Form remains closed to proof absent EAC approval, and if the state form must nonetheless be a near-copy of the Federal Form, then both doors are shut. The constitutional assurance in *Inter Tribal Council* becomes an empty promise, and an opinion written to avoid serious constitutional doubt becomes the source of the very prohibition that created the doubt.

E. Arizona’s proof requirement is “necessary” to assess eligibility, and Section 7 does not invalidate the State Form.

A state-developed mail form must meet the criteria prescribed for the Federal Form, including the requirement that it “may require only such identifying information (including the signature of the applicant)

and other information . . . as is necessary to enable the appropriate State election official to assess the eligibility of the applicant.” 52 U.S.C. §§ 20505(a)(2), 20508(b)(1). The Ninth Circuit read “necessary” in its strictest possible sense—indispensable, such that nothing else could suffice—and concluded that a checked box and a signature made documentary proof unnecessary. Pet. App. 50a.

That reading fails for reasons the parties have fully developed. Since *McCulloch v. Maryland*, the word has been understood to embrace means that are “appropriate” and “plainly adapted” to a legitimate end, not merely those without which the end is impossible. 17 U.S. (4 Wheat.) 316, 413–15, 421 (1819); see *Ayestas v. Davis*, 584 U.S. 28, 44 (2018). Documentary evidence of citizenship is direct proof of the very qualification the official is charged with assessing. See Pet. Br. 18–27; Arizona Br. 14–17; U.S. Br. 16–22. Section 7 likewise supplies no basis for the injunction: its “equivalent” clause imposes a distribution duty on designated public-assistance agencies, so if Arizona’s form were not “equivalent,” the consequence would be that those agencies must distribute the Federal Form—not that Arizona must strip documentary proof from the separate form Congress authorized in Section 20505(a)(2). See Pet. Br. 27–33; Arizona Br. 17–20; U.S. Br. 22–24; Pet. App. 116a (Bumatay, J., dissenting). Rather than repeat those arguments, *amicus* adds two points.

First, the state-law argument has a limiting principle, and Arizona’s law satisfies it. House Bill 2492 provides that satisfactory evidence of citizenship is itself a condition of being qualified to register and a component of being a qualified elector. Ariz. Rev. Stat. §§ 16-101(A), 16-121(A). It directs recorders to reject

a State Form that lacks such evidence, and it penalizes a knowing failure to do so. *Id.* § 16-121.01(C). Citizenship remains the underlying constitutional qualification; documentary proof is the State’s prescribed means of determining that the applicant has established it. To be sure, a State cannot make an irrelevant demand “necessary” by attaching that label to it. But these provisions demand nothing collateral. They demand evidence of citizenship itself. An Arizona official cannot lawfully assess a State Form applicant as eligible while the state-law condition of eligibility remains unsatisfied. See Arizona Br. 14–17.

Second, treating the applicant’s attestation as conclusive is a constitutional error. Congress required the applicant to attest, under penalty of perjury, that he meets the State’s eligibility requirements. 52 U.S.C. § 20508(b)(2). It separately authorized the State to obtain the information an official needs to assess eligibility. § 20508(b)(1). Reading the attestation as the whole of the inquiry confuses the Elections Clause with the Qualifications Clauses. Congress may prescribe that an applicant swear to his eligibility. It may not prescribe that the oath be the end of the inquiry, for that would be to decide who votes.

At the very least, Arizona’s construction is fairly possible, and that is enough. It avoids the serious constitutional doubt this Court identified in *Inter Tribal Council*. 570 U.S. at 17. The Ninth Circuit’s reading closes the federal avenue absent EAC approval and then closes the state avenue by demanding virtual identity with the Federal Form. Nothing in the NVRA compels that constitutional dead end.

II. A CONSENT DECREE IS NOT FEDERAL LAW, AND IT CANNOT BE USED IN A SEPARATE ACTION TO DISABLE A LATER LEGISLATURE.

A. A decree's binding force does not extend to strangers in collateral litigation.

In 2018, Arizona's Secretary of State and the Maricopa County Recorder entered a consent decree with private plaintiffs concerning State Form applications that lacked documentary proof of citizenship. The decree required specified searches and, if citizenship could not be verified, registration of the applicant as a federal-only voter. Pet. App. 474a–494a. The district court made no finding that federal law required any of this. To the contrary, the Secretary denied that Arizona's prior practice was unlawful and consented on the stated premise that the agreement was consistent with then-existing Arizona law. *Id.* at 476a–478a.

The Legislature then changed Arizona law. House Bill 2492 directs recorders to reject a State Form that lacks documentary proof. Ariz. Rev. Stat. § 16-121.01(C). The present plaintiffs did not move to enforce the decree in the case that produced it. They filed a new action, on a different docket, alleging an NVRA violation. Yet the district court invoked the decree as an additional ground for a new injunction, and the Ninth Circuit held that the decree remains binding and bars Arizona election officials from complying with the later statute. Pet. App. 47a–49a, 365a–366a.

Arizona and its Attorney General contend that the decree remains binding unless modified; that Rule 60(b)(5) ordinarily supplies the vehicle for modification; and that the decree's December 31, 2020 retention clause limited further relief rather than the decree's own life. Arizona Br. 21–27. The first

proposition is unobjectionable in the abstract. One who is subject to an extant federal order must ordinarily obey it until the issuing court modifies or vacates it. *Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 441–42 (2004); *Celotex Corp. v. Edwards*, 514 U.S. 300, 306 (1995). But that proposition does not decide this case, and the Court need not decide whether the original governmental defendants must seek relief in the issuing action before departing from the decree. The question here is a different one: whether private plaintiffs may carry the decree into another action and use it to obtain new statewide relief against persons who were never parties to it and never consented to it.

Even if the decree remains enforceable against its original governmental parties and their proper successors in the original action, it does not thereby become a rule of general application binding the Legislature, the RNC, legislative officers, every county recorder, and Arizona’s electorate. Rule 25(d) substitutes an official’s successor. Rule 65(d) identifies those bound through an enjoined party. Neither rule makes the Legislature or the RNC a party, enlarges the decree beyond its lawful scope, or gives executive litigants the power to enact federal election law by agreement.

A consent decree is both a voluntary agreement and a judicial order. *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 378 (1992). Its contractual character permits consenting parties to undertake obligations a court could not have imposed after trial; its judicial character makes those obligations enforceable as a judgment. *Local No. 93, International Association of Firefighters v. City of Cleveland*, 478 U.S. 501, 519–26 (1986). But neither character permits the parties

to manufacture federal law. A decree must “spring from, and serve to resolve,” a dispute within federal jurisdiction and must further the objectives of the federal law on which the suit rests. *Frew*, 540 U.S. at 437. And it may not impose obligations on a person who did not consent. *Local No. 93*, 478 U.S. at 529. *See also Perkins v. City of Chicago Heights*, 47 F.3d 212, 216–17 (7th Cir. 1995) (absent supported findings of a federal violation, parties to a consent decree may agree only to what they could do outside litigation).

The Supremacy Clause makes the distinction explicit. What preempts state law is the Constitution, the laws of the United States made in pursuance of it, and treaties—the sources Article VI makes supreme. *See Arizona v. United States*, 567 U.S. 387, 399 (2012). A policy concession by state executive officers is none of those things, and it does not become one because a court embodied it in a judgment. Nor does the Federal Government possess a general authority to review and veto state enactments before they take effect. *Shelby County v. Holder*, 570 U.S. 529, 542 (2013). A consent decree may resolve a federal dispute and bind those it lawfully reaches. What it cannot do is become a free-floating rule that displaces later state legislation throughout Arizona, as against parties who never agreed to it, in a case in which it was never entered.

B. House Bill 2492 removed the premise of a decree that adjudicated no federal violation.

House Bill 2492 changed the law on which the Secretary’s consent expressly depended. In 2018, the Secretary represented that the agreed policy was “consistent with the provisions of Arizona law” and would continue compliance with that law. Pet. App. 476a, 478a. House Bill 2492 now requires what the decree

forbids. The premise that permitted the executive defendants to consent without violating state law has ceased to exist.

This Court’s institutional-decree cases treat such a change as central. A court “errs when it refuses to modify an injunction or consent decree in light of” a significant change in fact or law. *Agostini v. Felton*, 521 U.S. 203, 215 (1997). When later law materially alters the legal premise on which a decree rests, the decree is not immutable. *Rufo*, 502 U.S. at 388–92; *System Federation No. 91 v. Wright*, 364 U.S. 642, 647–48, 650–52 (1961). And when federal supervision touches “areas of core state responsibility,” courts must ensure that authority returns promptly to politically accountable officials once circumstances warrant. *Horne v. Flores*, 557 U.S. 433, 448–50 (2009). It is hard to imagine an area of state responsibility more central than the qualifications of the State’s own electors—the subject the Constitution commits to state law in so many words.

Even Arizona and its Attorney General, while insisting that formal relief ordinarily be sought under Rule 60, acknowledge that the governmental parties (the Secretary of State and the Maricopa County Recorder) would have “a strong case for relief” from the decree under Rule 60(b). Arizona Br. 25. They recognize that House Bill 2492 placed those officials between a statutory command and a contrary decree and destroyed a “key premise” of the agreement. *Ibid.* That concession is fatal to affirmance. A judgment concededly ripe for substantial equitable reconsideration cannot at the same moment serve as the conclusive basis for a new injunction, in a different case, entered without any equitable inquiry at all.

One further feature of the decree requires a word of explanation. The decree’s final operative paragraph provided that the district court “shall retain jurisdiction over this action until December 31, 2020 to enter such further relief as may be necessary for the effectuation of the terms of this Consent Decree,” and the court directed the Clerk to terminate the action. Pet. App. 494a. The Ninth Circuit held that the date changed nothing: because the decree was never set aside, it remains a binding final judgment whether or not the entering court retained jurisdiction. *Id.* at 47a–48a.

Arizona takes a narrower and more defensible position, and on this point it is right: a clause retaining jurisdiction for a fixed period limits the court’s authority to grant further relief on the decree, but it did not necessarily extinguish every substantive obligation on that date. Arizona Br. 24 (citing *Roberts v. St. Regis Paper Co.*, 653 F.2d 166, 171 (5th Cir. 1981), and *Thompson v. HUD*, 404 F.3d 821, 833 (4th Cir. 2005)). This brief does not rest on automatic expiration. The date matters because the decree’s express period for “such further relief” had elapsed before House Bill 2492 was enacted; because the present plaintiffs filed a different action on a different docket; and because the decree was used there to generate new statewide relief. See U.S. Br. 29. Whatever obligations survived between the original parties, the retention clause did not convert them into a rule of law enforceable against everyone else.

None of this permits a State to nullify a federal judgment by legislative fiat. Where a decree remedies an established federal violation, later state law cannot authorize its resumption. *Cooper v. Aaron*, 358 U.S. 1, 18–19 (1958). But *LULAC* adjudicated nothing. No

court found that requiring documentary proof on Arizona’s State Form violates the Constitution or the NVRA. The decree embodied a negotiated executive policy whose state-law foundation has since been removed. The Supremacy Clause does not transform every policy choice memorialized in a consent judgment into federal law that binds strangers and overrides later legislation in collateral litigation.

**C. Rule 60(b)(5) is a safeguard for parties,
not a trap for strangers to the judgment.**

Rule 60(b)(5) supplies an important means by which a party may obtain relief when prospective application of a judgment “is no longer equitable.” In institutional litigation, its flexible application ensures that old decrees do not outlive the violations and conditions that justified them. *Horne*, 557 U.S. at 447–50; *Frew*, 540 U.S. at 441–42. That is why a governmental party seeking modification in the original action should ordinarily invoke it. It does not follow that a stranger to the judgment must first make himself a party to another case before he may resist the judgment’s collateral use against him.

Arizona suggests that affected nonparties may intervene under Rule 24 and then seek Rule 60 relief, pointing to the procedural history of *Horne*. Arizona Br. 25–26. That may be an available route. It is not an exclusive prerequisite. In *Horne*, legislative leaders intervened because the existing defendants were siding with the plaintiffs, and they then sought relief from the order in that action. 557 U.S. at 441–45. The Court did not hold that a nonparty forfeits every defense to a judgment in separate litigation unless he first intervenes in the original case. Rule 24 says when intervention is available. It does not repeal the settled rule that one who was not a party may contest

a judgment when it is asserted against him. *Taylor v. Sturgell*, 553 U.S. 880, 893–95 (2008); see also *Martin v. Wilks*, 490 U.S. 755, 761–62, 768–69 (1989).

Nor is the caption “Rule 60(b)(5) motion” talismanic. In *Frew* itself, the bound officials raised their objection in opposition to a motion to enforce rather than by filing a Rule 60 motion, and both the court of appeals and this Court reached the merits. 540 U.S. at 435–37; U.S. Br. 28–29. The posture here is further removed still. The plaintiffs did not move to enforce the decree in *LULAC*. They filed a new action on a different docket alleging an NVRA violation, and the decree was then invoked, as the United States aptly puts it, “as an amorphous matter of equity to buttress a distinct statutory claim.” U.S. Br. 30.

Arizona’s concern about forum shopping and inconsistent judgments therefore misses the mark. The court in this action need not modify the decree or declare it void as between its parties. It need only decline to treat the decree as a cause of action or a rule of decision authorizing new relief against nonparties. The issuing court remains free to determine the decree’s inter partes force if a proper party seeks enforcement or modification there.

The contrary rule is a one-way ratchet, and it should be named for what it is. Executive officials enter a decree without any adjudication of illegality. The decree preserves their policy after they leave office. A later legislature, answerable to the people, enacts a contrary rule. Private plaintiffs then wield the old decree in a new action to enjoin the new law. And the nonparties whose rights and authority are impaired are told they cannot contest its reach because they failed to proceed under a rule available only to “a party or its legal representative.” Fed. R. Civ. P. 60(b);

see Pet. Br. 40–41. The result is political entrenchment by procedural circularity.

The danger is greatest in exactly this setting. Institutional decrees “bind state and local officials to the policy preferences of their predecessors and may thereby ‘improperly deprive future officials of their designated legislative and executive powers.’” *Horne*, 557 U.S. at 449 (quoting *Frew*, 540 U.S. at 441). Michael McConnell identified the problem nearly forty years ago: *Why Hold Elections?* If the officials who lose an election can bind their successors through a decree, the election has decided very little. Democratic government rests on the rule that the authority empowered to adopt a legal rule may later change it. Michael W. McConnell, *Why Hold Elections? Using Consent Decrees to Insulate Policies from Political Change*, 1987 U. Chi. Legal F. 295, 297–99, 317. Professor Michael Morley documents how government defendants use decrees to entrench policy, bind successors, and circumvent ordinary legislative and regulatory processes without any adjudication that the restraint is legally required. Michael T. Morley, *Consent of the Governed or Consent of the Government? The Problems with Consent Decrees in Government-Defendant Cases*, 16 U. Pa. J. Const. L. 637, 639–40, 675–84 (2014). The Declaration speaks of the consent of the governed. It says nothing about the consent of the government—still less the consent of officials whom the governed have since replaced.

The Court need not hold that government consent decrees are categorically invalid, that original parties may disregard them, or that later legislation automatically dissolves them. It need hold only this: a decree entered without an adjudicated federal violation cannot be treated, in collateral litigation, as a substantive

rule of federal election law that binds nonparties and disables a later legislature. If the decree remains enforceable against its parties, its prospective scope can be addressed in the original action under the flexible standards of *Rufo* and *Horne*. It cannot sustain the statewide injunction entered here.

III. THE NVRA’S 90-DAY PROVISION DOES NOT TRANSFORM A PERSON WHO WAS NEVER ELIGIBLE INTO A PROTECTED “VOTER.”

A. The statute distinguishes a person who never qualified from a voter who later became ineligible.

The NVRA requires a State to complete, no later than 90 days before a federal primary or general election, “any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters.” 52 U.S.C. § 20507(c)(2)(A). Arizona’s law directs cancellation when official inquiries yield information that “confirms that the person registered is not a United States citizen.” Ariz. Rev. Stat. § 16-165(A)(10). The question is whether a confirmed noncitizen is an “ineligible voter” within the meaning of the federal provision.

The word “any” does not answer that question. It is expansive, but it is not “transformative”; a court still must identify the class described by the words it modifies. *Thompson v. United States*, 604 U.S. 408, 414 (2025); see *Freeman v. Quicken Loans, Inc.*, 566 U.S. 624, 634–35 (2012); U.S. Br. 36–37. Congress wrote “ineligible voters,” not “ineligible persons” or “names appearing on a list.” And the Act carefully distinguishes applicants, eligible applicants, registrants, and voters. Those interlocking terms must be read

together. See *Husted v. A. Philip Randolph Institute*, 584 U.S. 756, 768–69 (2018).

Petitioner and the United States have traced the sequence: the Act moves from “applicant,” to “eligible applicant,” to “registrant,” to “voter,” and only then to the enumerated grounds—request, conviction, incapacity, death, change of residence—on which a registrant’s name may be removed. 52 U.S.C. § 20507(a)(1), (a)(3)–(4); see Pet. Br. 41–52; U.S. Br. 31–44. A person who never possessed the citizenship qualification never entered that sequence. And if a confirmed noncitizen were nonetheless a protected “registrant,” the general removal provision—which nowhere lists noncitizenship—would appear to forbid his removal at any time, systematic or individualized; the clerk’s mistake would validate itself. A court should not adopt a reading that confers facially permanent federal protection on an invalid registration and then rely on some unwritten equitable exception to escape the consequence. See U.S. Br. 37–38. Nor is a categorical rule needed to guard against error: Arizona’s statute operates only when information “confirms” noncitizenship, and only after notice and an opportunity to establish citizenship. Ariz. Rev. Stat. § 16-165(A)(10).

Amicus writes to underscore the square circuit conflict, because only one side of it can be reconciled with that structure. The Sixth Circuit holds that the NVRA does not bar correction of registrations belonging to persons who “were ineligible and improperly registered to vote in the first place,” since any other reading would “effectively grant, and then protect, the franchise of persons not eligible to vote.” *Bell v. Marinko*, 367 F.3d 588, 591–92 (6th Cir. 2004). The Eleventh Circuit, like the Ninth Circuit here, rejected that distinction. In the Eleventh Circuit’s view, a

registrant in any removal category may have been ineligible at registration or may have lost eligibility later, so the statute cannot distinguish the two. *Arcia v. Florida Secretary of State*, 772 F.3d 1335, 1344, 1347–48 (11th Cir. 2014). That gets the Act backwards. Its removal categories describe registrants who lawfully entered the rolls and later met a disqualifying event; “ineligible voters” takes its content from that sequence, not from the happenstance of a name in a database. And *Arcia* could not carry its own reading through: it acknowledged that construing the general removal provision to forbid noncitizen removal altogether “would raise constitutional concerns,” *id.* at 1346–47, and deferred that problem to a future case rather than resolve it in the text. The statute does not protect one class of “registrants” inside the 90-day window and a different class outside it. *Bell* has it right. A person who never possessed the qualification never became a “voter” at all; the database entry records a legal status, it does not create one.

The decision below shows where *Arcia*’s approach leads. The Ninth Circuit never asked whether a confirmed noncitizen is an “ineligible voter.” It began with the word “any,” observed that Congress had enumerated exceptions to the 90-day provision, reasoned that exempting Arizona’s program would create another, and concluded that the provision therefore reaches the periodic cancellation of confirmed noncitizens. Pet. App. 42a–43a. It then borrowed *Arcia*’s line between “systematic” and “individualized” removals, held that a program driven by database comparison falls on the systematic side, and pronounced Arizona’s statute a “voter suppression measure” that “should not be tolerated by the law.” *Id.* at 43a–47a. Nowhere did the court examine the words that define the provision’s object—“ineligible voters”—the sequence of

defined terms through which the Act moves before it reaches those words, or the Sixth Circuit's contrary holding. The dissents did that work. *Id.* at 119a–127a (Bumatay, J., dissenting); *id.* at 165a, 184a–85a (R. Nelson, J., dissenting from denial of rehearing en banc). A court that reads “any” to enlarge the class the statute’s own words describe has not applied the statute; it has rewritten it. See *Thompson v. United States*, 604 U.S. at 414.

B. The NVRA protects eligible citizens and the integrity of the rolls; the contrary reading collides with the Qualifications Clauses.

The NVRA’s enacted purposes confirm the textual distinction. Congress sought “to increase the number of eligible citizens who register,” to enhance the participation of “eligible citizens as voters,” to “protect the integrity of the electoral process,” and to ensure “accurate and current voter registration rolls.” 52 U.S.C. § 20501(b) (emphases added). Those purposes are complementary, not competing. Access belongs to eligible citizens; accuracy and integrity require correction of names that never lawfully belonged on the roll.

Citizenship is not one more field in a database. To become a citizen is to become “a member of a Nation, part of a people distinct from others,” belonging “to the polity” and entitled to participate in democratic decisionmaking. *Foley v. Connelie*, 435 U.S. 291, 295–96 (1978). A State may preserve “the basic conception of a political community,” *id.* at 296 (quoting *Sugarman v. Dougall*, 413 U.S. 634, 647 (1973)), by reserving governmental authority to citizens, because “the right to govern is reserved to citizens.” *Id.* at 297. Voting is the quintessential exercise of that reserved authority.

It is the act by which the governed give, and withhold, their consent.

The political theory of the Founding reflects the same conception of political membership. At the very outset of the Declaration, “one people” announced that they were assuming a “separate and equal station” among the powers of the earth, and that governments derive “their just powers from the consent of the governed.” The Declaration of Independence paras. 1–2 (U.S. 1776). The people whose consent legitimates the government are the members of the body politic—joined by reciprocal allegiance, entitled to exercise political sovereignty, and answerable to one another for how they exercise it. An administrative database cannot admit a foreign national into that people any more than it can naturalize him. Nor can Congress, under the guise of regulating the “Manner” of elections, require a State to treat him as though it had.

A contrary reading of the NVRA would therefore raise, at list maintenance, the same constitutional problem the Ninth Circuit created at registration. Congress may regulate the timing and methods by which the States maintain their federal-election rolls. It may not require Arizona to treat a person who never possessed the State’s citizenship qualification as a member of its electorate. At a minimum, “ineligible voters” must be read to avoid that collision. No clear statutory text requires Arizona, on the eve of an election, to preserve a registration after confirming that the person named in it never belonged to the electorate at all.

CONCLUSION

The court below reduced this dispute to the mechanics of registration and the housekeeping of voter rolls. The underlying question is who composes the

American electorate and who has constitutional authority to decide. The Constitution answers the second question, and it answers it in favor of the States. The Ninth Circuit's judgment writes that answer out of Article I, reads *Inter Tribal Council* to forbid what it expressly preserved, elevates a consent decree above a statute, and protects from correction a person who was never a voter at all. The judgment of the court of appeals should be reversed.

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