

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* FEDERATION
FOR AMERICAN IMMIGRATION REFORM
IN SUPPORT OF PETITIONER**

CHRISTOPHER J. HAJEC

Counsel of Record

MATT A. CRAPO

FEDERATION FOR AMERICAN
IMMIGRATION REFORM

25 Massachusetts Avenue, NW,
Suite 330

Washington, DC 20001

(202) 328-7004

chajec@fairus.org

*Counsel for Amicus Curiae
Federation for American
Immigration Reform*

TABLE OF CONTENTS

	<i>Page</i>
TABLE OF CONTENTS.....	i
TABLE OF CITED AUTHORITIES	iii
INTEREST OF AMICUS CURIAE.....	1
SUMMARY OF ARGUMENT.....	1
ARGUMENT.....	2
I. Legal Framework.....	2
A. Federal Law.....	2
B. State Law.....	3
II. The courts below erred in concluding that HB 2492 contradicts the NVRA.....	5
A. The Constitution gives states significant power over voting.....	5
B. The NVRA does not preempt Arizona's election laws.....	7
1. Arizona law does not conflict with the NVRA's requirement that states accept and use the Federal Form	7

Table of Contents

	<i>Page</i>
2. States retain the power to create and use their own mail-in voter registration forms under the NVRA.....	9
3. NVRA does not prevent states from purging ineligible voters from the voter rolls	12
CONCLUSION	13

TABLE OF CITED AUTHORITIES

	<i>Page</i>
Cases	
<i>Arizona v. Inter Tribal Council of Ariz., Inc.</i> , 570 U.S. 1 (2013)	3, 4, 6, 7, 8, 9, 10
<i>Buckley v. Am. Constitutional Law Found.</i> , 525 U.S. 182 (1999)	6
<i>Crawford v. Marion Cty. Election Bd.</i> , 553 U.S. 181 (2008)	5
<i>Foley v. Connelie</i> , 435 U.S. 291 (1978)	5
<i>Husted v. A. Philip Randolph Inst.</i> , 584 U.S. 756 (2018)	7
<i>Illinois Bd. of Elections v. Socialist Workers Party</i> , 440 U.S. 173 (1979)	5
<i>Oregon v. Mitchell</i> , 400 U.S. 112 (1970)	6
<i>Purcell v. Gonzalez</i> , 549 U.S. 1 (2006)	5
<i>Storer v. Brown</i> , 415 U.S. 724 (1974)	5
<i>Trump v. Barbara</i> , 609 U.S. __, 146 S. Ct. 2438 (2026)	2, 11

Cited Authorities

	<i>Page</i>
<i>Wesberry v. Sanders</i> , 376 U.S. 1 (1964)	5
<i>Yick Wo v. Hopkins</i> , 118 U.S. 356 (1886)	5
<i>Young v. Fordice</i> , 520 U.S. 273 (1997)	9, 10

Constitutional Provisions

U.S. CONST. amend. XVII cl. 2	3
U.S. CONST. art. I § 2 cl. 2	3, 6
U.S. CONST. art. I § 4 cl. 1	3
U.S. CONST. art. I § 4 cl. 2	3, 6
U.S. CONST. art. II § 1 cl. 4	3
U.S. CONST. art. VI cl. 2	6
ARIZ. CONST. art. VII § 2	3-4

Statutes and Other Authorities

52 U.S.C. § 10101(a)(2)(B)	11
52 U.S.C. § 20501(b)(3)	3

Cited Authorities

	<i>Page</i>
52 U.S.C. § 20505(a)(1)	3, 7
52 U.S.C. § 20505(a)(2)	9
52 U.S.C. § 20507(a)(4)	12
52 U.S.C. § 20507(c).....	12
52 U.S.C. § 20507(d)	12
52 U.S.C. § 20508(b)(1)	9
52 U.S.C. § 20508(b)(2)	10
52 U.S.C. § 20508(b)(3)	10
Ariz. Rev. Stat. § 16-101(A)(1)	4
Ariz. Rev. Stat. § 16-121.01(C)	4, 8
Ariz. Rev. Stat. § 16-121.01(D).....	8
Ariz. Rev. Stat. § 16-121.01(D)(1)-(5).....	9
Ariz. Rev. Stat. § 16-121.01(E).....	9
Ariz. Rev. Stat. § 16-165	4
Ariz. Rev. Stat. § 16-165(K)	4

Cited Authorities

	<i>Page</i>
Ariz. Rev. Stat. § 16-579(A)(1)	4
HB 2243	4, 7
HB 2492	4, 5, 7, 8, 11
Pamela S. Karlan, <i>Discrete and Relational Criminal Representation: The Changing Vision of the Right to Counsel</i> , 105 HARV. L. REV. 670 (1992).....	11

INTEREST OF AMICUS CURIAE¹

Amicus curiae Federation for American Immigration Reform (“FAIR”) is a nonprofit corporation and membership organization that was founded in 1979 and has its principal place of business in Washington, D.C. FAIR’s mission is to advocate for immigration policy that is in America’s best interest. In pursuit of this mission, FAIR regularly participates in litigation to protect the rights and benefits of United States citizens, including their exclusive right to participate in elections. In this case, the lower courts enjoined Arizona laws enacted to prevent noncitizens from voting in elections and thereby ensure citizen self-governance. FAIR therefore has a strong interest in this case.

SUMMARY OF ARGUMENT

The courts below struck down laws of Arizona that were enacted to protect the right of all citizens to vote and to prevent noncitizens from voting in its elections. By striking down Arizona’s laws, the courts below have “undermine[d] republican government, shred[ded] federalism and the separation of powers, and imperil[ed] free and fair elections.” Pet. App. at 163a-164a (Nelson, J., dissenting from denial of reh’g en banc).

1. Pursuant to Rule 37.6, counsel for *amicus* authored this brief in whole, no party’s counsel authored this brief in whole or in part, and no person or entity—other than *amicus*, its members, or its counsel—contributed monetarily to its preparation or submission.

The courts below erred in concluding that Arizona’s laws run afoul of the federal National Voter Registration Act (“NVRA”). Nothing in the NVRA precludes states from requiring documents substantiating facts attested to on its own registration form or from investigating and verifying voter eligibility requirements attested to on the federal form. Arizona accepts registrations submitted on the federal form as required by the NVRA, and it also permissibly verifies that such registrants meet eligibility requirements by confirming that each registrant is a U.S. citizen.

In addition, requiring state-form applicants to disclose their birthplace does not run afoul of the NVRA. Noncitizens are exponentially more prevalent among those born outside the United States than among those born in the United States. And nearly all persons born in the United States are U.S. citizens. *Trump v. Barbara*, 609 U.S. ___, 146 S. Ct. 2438 (2026). Thus, identifying the subset of people *not born in the United States* obviously is useful in determining whether a given registrant is a U.S. citizen. Because the decisions of the courts below undermine the ability of states to protect citizens’ right to self-government and ensure the integrity of their elections, and because the challenged provisions are consistent with the NVRA, this Court should reverse.

ARGUMENT

I. Legal Framework

A. Federal Law

The United States Constitution ties voter qualifications for elections for Representatives to the “Qualifications

requisite for Electors of the most numerous Branch of the State Legislature” in each state. U.S. Const. art. I, § 2, cl. 2.² In addition, the Elections Clause provides that state legislatures shall prescribe the “Times, Places and Manner of holding Elections for Senators and Representatives,” U.S. Const. art. I, § 4, cl. 1, subject to the power of “Congress at any time by Law [to] make or alter such Regulations.” *Id.* art. I, § 4, cl. 2. Article II provides that the states “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 Congress: but no Senator or Representative . . . shall be appointed an Elector.” *Id.* art. II, § 1, cl. 4.

The NVRA was passed to “increase the number of eligible citizens who register to vote for Federal office,” and to “protect the integrity of the electoral process.” 52 U.S.C. § 20501(b)(3). The NVRA accomplishes these objectives by “requir[ing] States to provide simplified systems for registering to vote in federal elections.” *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 16 (2013) (internal quotation marks omitted). Chief among the NVRA’s “simplified system” is the so-called “Federal Form” that states must “accept and use” to register voters. 52 U.S.C. § 20505(a)(1).

B. State Law

To be qualified to vote in Arizona, a person must be a United States citizen and a resident of Arizona. Ariz.

2. The Seventeenth Amendment extended this same requirement to voter qualifications for elections for Senators. U.S. CONST. amend. XVII, cl. 2.

Const. art. VII, § 2. In 2022, Arizona’s legislature enacted House Bill 2243 (“HB 2243”) and House Bill 2492 (“HB 2492”) to improve election integrity by ensuring that voter qualifications are enforced and that voter rolls are accurate.

HB 2492 updates voter qualifications to require documentary proof of citizenship, Ariz. Rev. Stat. § 16-101(A)(1), and proof of residence. *Id.* § 16-579(A)(1). HB 2492 further provides that failure to include proof of citizenship on a state voter registration form is grounds for the application to be rejected. *Id.* § 16-121.01(C). In accordance with *Inter Tribal Council*, 570 U.S. at 7, these new documentary proofs are not required for applicants using the Federal Form to register to vote in congressional elections.

HB 2243 enumerates the reasons why a voter’s registration may be cancelled. It also provides that, before a registration can be cancelled, the election official must provide written notice of the impending cancellation with instructions about how an applicant may remedy his or her registration. Ariz. Rev. Stat. § 16-165. The notice must “include a list of documents the person may provide” to establish his or her citizenship as well as “a postage prepaid preaddressed return envelope.” *Id.* Registration will thus only be cancelled following written notice and an opportunity to establish eligibility. Furthermore, once a registration is cancelled, written notice is again provided to the person explaining the cancellation and including instructions on how to register to vote if and when the person is qualified. *Id.* § 16-165(K).

The courts below struck down Arizona’s election laws because they erroneously concluded that those laws conflict with the NVRA.

II. The courts below erred in concluding that HB 2492 contradicts the NVRA.

The right to vote has long been recognized as a fundamental right of U.S. citizens. *See, e.g., Illinois Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979) (“[V]oting is of the most fundamental significance under our constitutional structure.”); *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964) (“Other rights, even the most basic, are illusory if the right to vote is undermined.”); *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) (holding that the right to vote is “preservative of all rights”); *Foley v. Connelie*, 435 U.S. 291, 296 (1978) (recognizing the “right[] of the people to be governed by their citizen peers”). The fundamental nature of the right to vote requires rules and regulations to ensure fairness and faith in elections. *See Storer v. Brown*, 415 U.S. 724, 730 (1974) (“[A]s a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.”).

A. The Constitution gives states significant power over voting.

States have compelling interests in protecting the integrity and reliability of the electoral process by deterring and detecting voter fraud and—relatedly—safeguarding voter confidence. *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 191 (2008); *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (“A State indisputably

has a compelling interest in preserving the integrity of its election process.”) (internal quotation omitted). Accordingly, “States . . . must regulate their elections to ensure that they are conducted in a fair and orderly fashion.” *Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182, 206 (1999). True, valid federal law supersedes state law when the two conflict, U.S. Const. art. VI, cl. 2, but the Constitution vests control over voting qualifications and—outside of time-place-manner issues—election provisions in the states.

Specifically, the power of Congress to regulate the “time, place, and manner” of elections in one section of Article I neither applies to nor limits the states’ plenary power to set elector qualifications under a different section of Article I. Compare U.S. Const. art. I, § 2, cl. 2 with *id.* art. I, § 4, cl. 2. On voter qualifications, state law controls:

One cannot read the Elections Clause as treating implicitly what these other constitutional provisions regulate explicitly. “It is difficult to see how words could be clearer in stating what Congress can control and what it cannot control. Surely nothing in these provisions lends itself to the view that voting qualifications in federal elections are to be set by Congress.”

Inter Tribal Council, 570 U.S. at 16 (quoting *Oregon v. Mitchell*, 400 U.S. 112, 210 (1970) (Harlan, J., concurring in part and dissenting in part)).³ While Congress’s authority

3. In its *Inter Tribal Council* reply brief, Arizona argued for the first time that registration is a voter qualification, not a time-place-manner restriction, 570 U.S. at 17 n.9, and this Court did not consider—much less resolve—that issue. *Id.*

under the Elections Clause to enact time-place-manner requirements is broad, *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 799 (2018) (Breyer, J., dissenting), Congress has only the authority “to regulate *how* federal elections are held, but not *who* may vote in them.” *Inter Tribal Council*, 570 U.S. at 16 (emphases in original).

B. The NVRA does not preempt Arizona’s election laws.

The courts below erred in holding that the NVRA preempts HB 2492 and 2243. Neither the NVRA nor *Inter Tribal Council* infringe on states’ constitutional authority over voter qualifications in federal elections, nor bar states from performing their constitutional duty to safeguard election integrity. Indeed, nothing in the NVRA requires that states conclusively presume the truth of any assertion an applicant makes on the Federal Form, forbids states from verifying assertions made on that form, or precludes states from establishing their own election procedures or purging their voter rolls of ineligible voters.

1. Arizona law does not conflict with the NVRA’s requirement that states accept and use the Federal Form.

This Court has held that, by requiring that “[e]ach State accept and use the” Federal Form for voter registration, 52 U.S.C. § 20505(a)(1), the NVRA only precludes states from requiring applicants using the Federal Form to provide information beyond that required within the Form itself. *Inter Tribal Council*, 570 U.S. at 15 (explaining that “a state-imposed requirement of evidence of citizenship not required by the Federal Form is

inconsistent with the NVRA's mandate that States 'accept and use' the Federal Form"). HB 2492 does not conflict with that requirement.

Specifically, the NVRA's "accept and use" requirement "does not preclude States from deny[ing] registration based on information in their possession establishing the applicant's ineligibility." *Inter Tribal Council*, 570 U.S. at 15. To the contrary, the "NVRA clearly contemplates that not every submitted Federal Form will result in registration." *Id.* HB 2492 complies with the NVRA because HB 2492 does not interfere with Arizona's acceptance and use of the Federal Form.

Arizona does not require Federal Form applicants to submit evidence of citizenship or residence with the Federal Form; such requirements are only applicable to the state registration form. For state form applicants, HB 2492 requires automatic rejection without evidence of citizenship, but that requirement expressly excludes applicants who submit the Federal Form. *See* Ariz. Rev. Stat. § 16-121.01(C) (requiring rejection where proof of citizenship is lacking "[e]xcept for [applications submitted via] a form produced by the United States election assistance commission").

With respect to the Federal Form, election officials are instructed to "use all available resources to verify the citizenship status of the [Federal Form] applicant." *Id.* § 16-121.01(D). Those resources include—without limitation—databases for the Department of Transportation, Social Security Administration, and the United States Citizenship and Immigration Service Systematic Alien Verification for Entitlements Program.

See id. § 16-121.01(D)(1)-(5). If citizenship cannot be verified based on this information, the election official must provide written notice that “the applicant will not be qualified to vote in a presidential election or by mail with an early ballot in any election until satisfactory evidence of citizenship is provided.” *Id.* § 16-121.01(E). But the applicant is otherwise registered unless the election official affirmatively determines that the applicant is not a U.S. citizen. *Id.* These procedures do not conflict with the mandate that states “accept and use” the Federal Form as clarified by this Court in *Inter Tribal Council*.

2. States retain the power to create and use their own mail-in voter registration forms under the NVRA.

Although the NVRA requires states to “accept and use” the Federal Form, the NVRA also permits states to “develop and use a mail voter registration form that meets all of the criteria stated in section 9(b)[.]” 52 U.S.C. § 20505(a)(2). In other words, although “the NVRA imposes certain mandates on states, describing those mandates in detail[.]” the NVRA “still leaves [the states] room for policy choice.” *Young v. Fordice*, 520 U.S. 273, 286 (1997). Here, Arizona has made a “policy choice” that the NVRA does not preempt.

Under the Elector-Qualifications Clause, Arizona has permissibly decided to require evidence of citizenship on its state mail voter registration form, a decision that is within the NVRA’s bounds. First, the NVRA provides what a mail registration form “may require . . . to assess the eligibility of the applicant.” 52 U.S.C. § 20508(b)(1). But “[t]he NVRA does not list, for example, all other

information the State may—or may not—provide or request.” *Young*, 520 U.S. at 286. Because Section 9(b) does not contain any prohibitions on requiring that documentary evidence be submitted in conjunction with a mail voter registration, states are free to require such information. Accordingly, the fact that the Federal Form does not require documentary proof of citizenship does not preclude states from requiring such information on their own forms.

Next, the NVRA establishes what mail registration forms must contain. It provides that the registration form “shall include a statement that specifies each eligibility requirement (including citizenship); contains an attestation that the applicant meets such requirement; and requires the signature of the applicant, under penalty of perjury.” 52 U.S.C. § 20508(b)(2). The NVRA’s only prohibition is in subsection (b)(3), which provides that the registration form “may not include any requirement for notarization or other formal authentication.” 52 U.S.C. § 20508(b)(3). The Arizona mail voter registration form does not violate anything in the NVRA.

Additionally, “state-developed forms may require information the Federal Form does not.” *Inter Tribal Council*, 570 U.S. at 12. Therefore, under the NVRA, “States retain the flexibility to design and use their own registration forms.” *Id.* Nothing in the NVRA prohibits Arizona from requiring more information—including documentary evidence—in its own mail registration form than the Federal Form requires. *Id.* The purpose of the Federal Form is to provide a simple, streamlined method for voter registration, not to interfere with the states’ authority to set and enforce voter qualifications.

The courts below held that Arizona’s “state form is not equivalent to the federal form because the state form has unnecessary additional requirements of [documentary proof of citizenship and residency] and birthplace.” Pet. App. 51a.⁴ But Arizona’s collection of birthplace information helps advance its interest under the Elector-Qualifications Clause in ensuring that only citizens participate in elections. The birthplace requirement advances this interest by identifying potential noncitizens. Arizona wants to identify people not born in the United States analogously to why Willie Sutton robbed banks: “that’s where the money is.” Pamela S. Karlan, *Discrete and Relational Criminal Representation: The Changing Vision of the Right to Counsel*, 105 Harv. L. Rev. 670, 683 (1992). Here, the search is not for money but for noncitizens, who are exponentially more prevalent among those born outside the United States than among those born in the United States. *Trump v. Barbara*, 146 S. Ct. at 2450 (“Under the Constitution, [children born in the United States] are citizens at birth.”). Thus, identifying the subset of people *not born in the United States* obviously provides useful information on whether a given registrant is a U.S. citizen.

4. The lower courts also held that the birthplace requirement in HB 2492 violates the Civil Rights Act of 1964’s “Materiality Provision,” 52 U.S.C. § 10101(a)(2)(B), by denying the right to vote based on the omission of immaterial information. Pet. App. at 54a-56a.

3. NVRA does not prevent states from purging ineligible voters from the voter rolls.

The NVRA requires that states “conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of the death of the registrant; or a change in address of the registrant.” 52 U.S.C. § 20507(a)(4). The NVRA further provides examples of how states may conduct these programs, including the requirement that such programs be completed “not later than 90 days prior to the date of a primary or general election for Federal office.” 52 U.S.C. § 20507(c). Finally, names are not to be removed for change of residence reasons absent written confirmation of an address change or failure to respond to written notice combined with failure to vote. 52 U.S.C. § 20507(d). HB 2243 complies with each of these requirements. Because the NVRA does not prohibit states from removing voters based on ineligibility, Arizona is free to remove persons it has determined are not U.S. citizens at any time.

CONCLUSION

For the foregoing reasons, the Court should reverse the decision below.

Respectfully submitted,

CHRISTOPHER J. HAJEC

Counsel of Record

MATT A. CRAPO

FEDERATION FOR AMERICAN

IMMIGRATION REFORM

25 Massachusetts Avenue, NW,

Suite 330

Washington, DC 20001

(202) 328-7004

chajec@fairus.org

Counsel for Amicus Curiae

Federation for American

Immigration Reform

Dated: September 4, 2026