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* LANDMARK LEGAL FOUNDATION IN SUPPORT OF PETITIONER

RICHARD P. HUTCHISON
LANDMARK LEGAL FOUNDATION
2405 Grand Boulevard,
Suite 420
Kansas City, MO 64108

MICHAEL J. O'NEILL
Counsel of Record
MATTHEW C. FORYS
LANDMARK LEGAL FOUNDATION
19415 Deerfield Avenue,
Suite 312
Leesburg, VA 20176
(703) 554-6100
mike@landmarklegal.org

Attorneys for Amicus Curiae

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STATEMENT OF INTEREST OF *AMICUS CURIAE*[1]

Amicus Curiae Landmark Legal Foundation ("Landmark") is a national public-interest law firm committed to preserving the principles of limited government, separation of powers, federalism, and originalist construction of the Constitution and individual rights. Landmark has filed amicus briefs to restore the separation of power in multiple cases, such as *Seila Law, LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197 (2020), *Consumers' Rsch. v. Consumer Prod. Safety Comm'n*, 145 S. Ct. 414 (2024), and *Trump v. Slaughter*, 146 S. Ct. 2283 (2026).

INTRODUCTION AND SUMMARY OF ARGUMENT

This case raises several long-unresolved issues concerning the adverse effects of certain types of consent decrees on federalism and the separation of powers. In 2003, Justice Scalia pinpointed these issues during oral argument in *Frew v. Hawkins*, 540 U.S. 431 (2004). He remarked that it "trouble[d]" him that some "consent decrees are imposed upon . . . absolutely *willing* State officers who *want* to be thrown into the briar patch." Transcript of Oral Argument at 50, *Frew v. Hawkins*, 540 U.S. 431 (2004) (No. 02-628) (emphasis added). Justice Scalia offered an example:

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1. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *Amicus Curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

> A suit is brought against a . . . secretary of health and human services in the State who absolutely wants to do these wonderful things for pediatric care that are not required by Federal law. And if the State Attorney General were not in the situation, I am very reluctant to think that this official can go in and say, yes, require me to do these wonderful things that State law does not require, that Federal law does not require, but that I would like to do, signs the consent decree, and then we're stuck.

Id. at 50–51. He later inquired whether "a change in administrations [is] a change of circumstances . . . that justifies [Federal Rule of Civil Procedure] 60(b) being invoked?" *Id.* at 54. When counsel responded "[n]o," Justice Breyer interjected, "Is there then a way to deal with the problem that Justice Scalia raised, which is a serious problem I think?" *Id.* Justice Breyer explained the problem further: there could be "all kinds of things in [a consent] decree that may be very nice and really helpful to people, but actually the legislature would never pass them, and they have nothing to do with Federal law. Now, what [Justice Scalia is] looking for is a remedy for that situation." *Id.* Counsel then quickly pivoted from the hypothetical to the facts at hand, without directly addressing the Justices' concerns.

The consent decree ("LULAC Consent Decree") in this case, entered into by the League of United Latin American Citizens ("LULAC"), then-Secretary of State Michele Reagan, and Maricopa County Recorder Adrian Fontes involves an institutional reform consent decree analogous to the one hypothesized by Justice Scalia and

explored by Justice Breyer. It obligates state election officials to take actions not required, but in fact contrary to state law. It did not remedy any admitted or adjudged violation of federal law. Pet. App. 476a, 478a. It also involves an area of the law explicitly reserved to state legislatures: the establishment and enforcement of voter qualifications. Despite these infirmities, both the circuit and district courts concluded the consent decree bars the enforcement of a duly enacted Arizona state law. Pet. App. 76a, 383a.

Both the district and circuit courts erred in concluding that the LULAC Consent Decree prevented Arizona from enacting House Bill ("H.B.") 2492. In short, the decree cannot "bind future legislative action that contradicts the decree" and "prevent Arizona's executive branch officials from executing duly passed laws subsequently enacted by the Arizona legislature." Pet. App. 170a. And legislative acts must take precedence over consent decrees particularly when there is no finding of "current and ongoing violation of federal law." Pet. App. 106a (quoting *Imprisoned Citizens Union v. Ridge*, 169 F.3d 178, 189 (3d Cir. 1999)).

But this case also involves the larger issue raised by Justice Scalia in *Frew v. Hawkins*: the lack of remedies available to non-parties in cases involving an institutional reform consent decree entered by a willing state official without an admitted or adjudged violation of federal law. These cases, where state officials enter into agreements with litigants in a non-adversarial context, raise constitutional, federalism, and separation of powers issues. Under the current procedural framework, non-parties (such as state legislators) must overcome significant

hurdles involving timeliness and change in circumstances to intervene and amend or set-aside an existing consent decree. As explained below, adjustments to how courts apply Fed. R. Civ. P. 24 and 60(b)(5), will allow non-parties who may be affected by the types of decrees at issue here to better protect their interests.

FACTUAL SUMMARY

This case originates from a challenge to H.B. 2492 and H.B. 2243, two Arizona laws enacted in 2022 as part of an effort to increase security in voter registration and decrease the likelihood non-citizens cast votes. Pet. App. 336a. H.B. 2492 imposed additional requirements on individuals registering to vote, Ariz. Rev. Stat. § 16-121.01, and H.B. 2243 established procedures for identifying and removing ineligible individuals from the voter rolls. Ariz. Rev. Stat. § 16-165. Challengers argue that these provisions conflict with federal voting laws, including the National Voter Registration Act (NVRA). National Voter Registration Act, 52 U.S.C. § 20501 *et seq.*

These challenges also implicated a portion of Proposition 200, Arizona's 2004 voter-registration law, Ariz. Rev. Stat. § 16-166 (involving voter qualifications), and the LULAC Consent Decree, Pet. App. 474a, that purported to both govern voter-registration practices and bind Arizona election officials to comply with certain federal requirements.

In 2004, Arizona enacted Proposition 200, a portion of which required individuals registering to vote to provide documentary proof of citizenship ("DPOC") when submitting registration applications. Ariz. Rev. Stat.

§ 16-152, *invalidated by Ariz. v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1 (2013). The Inter-Tribal Council of Arizona ("ITCA") challenged Proposition 200 in 2006, alleging that it violated the NVRA, which requires states to use federal forms when registering voters. *ITCA*, 570 U.S. at 7. The federal forms did not require DPOC. The Court ruled that the NVRA, which did not require DPOC, preempted Proposition 200, requiring Arizona to register voters lacking DPOC as federal-only voters. *Id.* at 20. This decision invalidated the part of Proposition 200 regarding voter registration forms, under Ariz. Rev. Stat. § 16-152, but not voter registration qualifications, under Ariz. Rev. Stat. § 16-166.

A related challenge arose in 2018 from a dispute between LULAC and the then-Secretary of State Michele Reagan. *League of United Latin Am. Citizens of Ariz. v. Reagan*, No. CV17-4102-PHX DGC (Ariz. Dist. Ct. 2018). LULAC claimed that Proposition 200 violated the First and Fourteenth Amendments by requiring different standards of registration for state and federal voters, since Arizona required DPOC for the state form but not the federal form. Pet. App. 474a–475a. The parties resolved this dispute via consent decree, but the Secretary denied any violation of state or federal law. Pet. App. 476a, 478a. The LULAC Consent Decree required county recorders to register a state form applicant lacking DPOC as a "Fed Only Voter," Pet. App. 486a, rather than rejecting them, as Proposition 200 directed. Ariz. Rev. Stat. § 16-166(F).

Immediately after the passage of H.B. 2492 and H.B. 2243, eight suits were filed and consolidated in the federal district court. Pet. App. 13a. The district court ruled that the NVRA preempted H.B. 2492 and that Arizona

must abide by the 2018 LULAC Consent Decree. Pet. App. 381a, 383a. The Ninth Circuit affirmed the district court's statutory and consent decree rulings, finding that, despite a change in state law, the consent decree prohibited Arizona election officials from rejecting state form applications without DPOC. Pet. App. 49a.

ARGUMENT

I. Federal consent decrees not aimed at remedying a violation of federal law or authorized by state amendment cannot bar the enforcement of state law.

Under the Supremacy Clause, the federal Constitution and federal laws are the supreme "Law of the Land." U.S. Const. Art. VI, cl. 2. Any state law in direct conflict with a constitutional or federal law must therefore be vacated. Stephen A. Gardbaum, *The Nature of Preemption*, 79 Cornell L. Rev. 767, 770 (1994). Within states—contracts and prospective orders are generally subject to state law. When a contract conflicts with state law, without any admitted or adjudged violation of federal constitutional or statutory law, state law must prevail, and the contract must be voided. *See* Restatement (Second) of Contr., § 178(1) (A.L.I. 1981). New legislation has the effect of discharging contractual duties or rendering prospective court orders null. Restatement (Second) of Contr., § 264 (A.L.I. 1981); *Pa. v. Wheeling & Belmont Bridge Co.*, 59 U.S. 421 (1856); *Miller v. French*, 530 U.S. 327 (2000).

Federal consent decrees create tension within this framework when they contradict or bar enforcement of state law without remedying any admitted or adjudged

violation of federal law. Concededly, not all consent decrees purport to remedy violations of federal law. As "the parties' consent animates the legal force of a consent decree[,]" *Loc. No. 93, Int'l Ass'n of Firefighters, etc. v. City of Cleveland*, 478 U.S. 501, 525 (1986), "a district court has power to enter a consent decree without first determining that a statutory violation has occurred." *Citizens for a Better Env't v. Gorsuch*, 718 F.2d 1117, 1125 (D.C. Cir. 1983) (citing *Swift & Co. v. United States*, 276 U.S. 311, 327 (1928)). But when a consent decree does not explicitly remedy a violation of federal law, the mere consent of the parties, cannot preempt a duly enacted state law. If allowed, that decree would effectively assume the legal weight of a state constitutional amendment or the federal Constitution without having appealed to either authority.

A. Federal consent decrees do not override duly enacted state laws without purporting to remedy an admitted or adjudged violation of federal law.

In general, parties to a consent decree may not agree to "disregard valid state laws." *People who Care v. Rockford Bd. of Educ. School Dist. No. 205*, 961 F.2d 1335, 1337 (7th Cir. 1992); *See also Perkins v. City of Chi. Heights*, 47 F.3d 212, 216 (7th Cir. 1995) ("While parties can settle their litigation with consent decrees, they cannot agree to 'disregard valid state laws.'") (internal citation omitted). Thus, "district judges should be on the lookout for attempts to use consent decrees to make end runs around the legislature." *Kasper v. Bd. of Election Comm'rs*, 814 F.2d 332, 340 (7th Cir. 1987). This is especially pertinent when state officials are party to

a decree. Some state laws are necessarily "designed to limit the authority of public officeholders, to make them return to other branches of government or to the voters for permission to engage in certain acts." *Perkins*, 47 F.3d at 216 (quoting *Dunn v. Carey*, 808 F.2d 555, 560 (7th Cir. 1986)). And though state officials might "'chafe at these restraints and seek to evade them . . . ' they may not do so by agreeing to do something state law forbids.'" *Perkins*, 47 F.3d at 216 (quoting *Dunn*, 808 F.2d at 560).

Courts have recognized an exception to the rule: a consent decree may disregard otherwise valid state law if it purports to remedy an "admitted or adjudged" violation of federal law. *Cleveland Cnty. Ass'n for Gov't by the People ("CCAGP") v. Cleveland Cnty. Bd. of Comm'rs*, 142 F.3d 468, 477 (D.C. Cir. 1998). *See also Perkins*, 47 F.3d at 216 ("[If the] remedy is *necessary* to rectify a *violation of federal law*, the district court can approve a consent decree which overrides state law provisions."); *St. Charles Tower, Inc. v. Kurtz*, 643 F.3d 264, 270 (8th Cir. 2011); *PG Publ'g Co. v. Aichele*, 705 F.3d 91, 116 (3d Cir. 2013). *CCAGP* also identified a second exception: "by a local act of the General Assembly (*i.e.*, by special amendment of state law)." *CCAGP*, 142 F.3d at 477.

Assuming the broadest scope of exception based on the relevant precedent, then, courts have identified limited circumstances where a federal consent decree may override a duly enacted state law. If neither of these circumstances is present, "the consent decree must comply with state law;" if it does not, "it must be vacated." *Id.*

B. The LULAC Consent Decree contravenes H.B. 2492, and contravened Proposition 200.

The LULAC Consent Decree contravenes Arizona state law. H.B. 2492 makes it a "class 6 felony" to fail to "reject an application for registration" on the state form lacking DPOC. Ariz. Rev. Stat. § 16-121.01(C). In contrast, the LULAC Decree requires county recorders to accept state form applications lacking evidence of citizenship if the county recorder can verify citizenship through the automated processes of the Arizona Motor Vehicles Division (MVD) "database Proxy Table." Pet. App. 484a. If the application cannot be verified by the MVD, county recorders must notify the applicant and switch their registration to that of a "Fed Only Voter." Pet. App. 486a. Neither scenario will result in the rejection of an application. This conflict is not merely semantic or administrative. A command to reject a deficient application is the opposite of a command to process, verify, notify, and register the applicant in a different status. The LULAC Consent Decree therefore does not simply fill a procedural gap left by state law; it displaces the consequence Arizona H.B. 2492 attaches to the absence of DPOC.

Even before the passage of H.B. 2492, the LULAC Consent Decree contravened Arizona state law. Proposition 200 similarly required county recorders to reject registration lacking DPOC. Ariz. Rev. Stat. § 16-166(F). While Secretary Reagan and Maricopa County Recorder Fontes argued that "current technology" would allow the dictates of the consent decree to be carried out in accordance with Proposition 200, no technology is capable of eliminating the fundamental conflict between the directive to reject applications, on the one hand, and to

switch voter registration status, on the other. Pet. App. 476a. Regardless, H.B. 2492 places the LULAC Decree in conflict with state law.

C. The LULAC Consent Decree does not remedy any violation of federal law and was entered without any accompanying amendment to Arizona law.

For the LULAC Consent Decree to override Arizona law and therefore avoid being vacated, it must either purport to remedy an admitted or adjudged violation of federal law, or else have been approved by a special amendment to the Arizona Constitution. Neither occurred.

The LULAC Consent Decree was not entered to remedy any admitted or adjudged violation of federal law. As the Court in *Citizens for a Better Env't* concluded, parties can enter into a consent decree without first finding a violation of law. *Citizens for a Better Env't*, 718 F.2d at 1125 (citing *Swift & Co. v. United States*, 276 U.S. at 327). By extension, this suggests that the mere existence of a consent decree is not enough to assume an admitted or adjudged violation of federal law. LULAC and the Arizona Students' Association ("ASA") alleged that the dual voter registration process outlined in Arizona's Proposition 200 violated the First and Fourteenth Amendments. Despite these allegations, Secretary Reagan denied that "Arizona's voter registration policies violate the First and Fourteenth Amendments or are otherwise illegal under state or federal law." Pet. App. 476a.

As in *CCAGP*, then, "the consent decree in this case specifically provides that no violation" of federal law "is

to be inferred." *CCAGP*, 142 F.3d at 477. Just as it was irrelevant in *CCAGP* whether "[a district court] might ultimately have concluded that the county's previous election method was in violation of the Voting Rights Act[,]" so too is it irrelevant here whether the District Court of Arizona *might* have concluded that Proposition 200 was in violation of the NVRA. *Id.* Such speculation does not establish whether a violation of the NVRA "did indeed exist, and none is to be presumed from the fact of the consent decree's existence." *Id.* Again, there must have been "an admitted or adjudged" violation of federal law. *Id.* None is present here.

Given that there was no admitted or adjudged violation of federal law present in the LULAC Consent Decree, a special amendment to Arizona's Constitution would have been necessary to justify its contravening state law. *Id.*

Arizona passed no special Amendment to accommodate the LULAC Consent Decree. It therefore does not fall into either of the two circumstances which would permit a party to enter a consent decree in violation of state law.

D. The LULAC Consent Decree cannot bar enforcement of H.B. 2492.

Because the LULAC Consent Decree violates Arizona state law, does not purport to remedy any admitted or adjudged violation of federal law, and was not supported by an amendment to the Arizona State Constitution; it cannot bar the enforcement of H.B. 2492. In fact, given its direct conflict with H.B. 2492, it should be vacated. *See CCAGP*, 142 F.3d 468 at 477.

The district court held both that the NVRA preempted H.B. 2492 and that Arizona must comply with the LULAC Consent Decree, and the Ninth Circuit affirmed both rulings. But a federal statute and a federal consent decree do not occupy the same constitutional position. If the NVRA itself preempts a state-law rule, the Supremacy Clause supplies the answer. If, however, a consent decree imposes obligations that federal law does not require, the decree cannot acquire independent preemptive force merely because a federal court entered it. The consent-decree holding requires its own limiting principle.

Thus, a consent decree which involves neither an adjudged nor admitted violation of federal law cannot bar enforcement of an otherwise valid state law. *CCAGP*, 142 F.3d at 477; *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367 (1992); *Milliken v. Bradley*, 433 U.S. 267, 282 (1977). To hold otherwise would allow a federal court to usurp the state of Arizona's constitutional duty to decide the "[q]ualifications requisite" to vote in federal and state elections. U.S. Const. Art. I, § 2, cl. 1; Amend. XVII.

E. Ignoring the supremacy of state law over a federal consent decree that does not remedy an admitted or adjudged violation of federal law in a matter expressly reserved to the states is especially problematic.

A federal consent decree overriding a duly enacted state law involving the establishment and enforcement of voter qualification standards—an area of the law expressly reserved to the states—is particularly problematic. The Voter Qualifications Clause provides that, for the House

of Representatives, "the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature." U.S. Const. Art. I, § 2, cl. 1. The Seventeenth Amendment adopts the same language for Senate elections. U.S. Const. Amend. XVII. The Constitution also provides that "[e]ach State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors" for President. U.S. Const. Art. II, § 1, cl. 2.

The federal government is granted some power over election law within the states, but that power is limited to the regulation of federal elections. The Elections Clause states that the "Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof." U.S. Const. Art. I, § 4, cl. 1. Thus, states' power to regulate the "Times, Places and Manner" is subject to Congress's authority to "make or alter" those regulations. *Id.* Under this framework, states have the authority to determine voter qualifications and the primary authority to regulate elections. Only the latter is subject to the preemptive authority of Congress. That concern is sharper still.

The power to enforce voter qualifications necessarily follows the power to set them: "the power to establish voting requirements is of little value without the power to enforce those requirements." *ITCA*, 570 U.S. at 17. It would be constitutionally suspect "if a federal statute precluded a State from obtaining the information necessary to enforce its voter qualifications." *Id.* It is constitutionally egregious when the asserted source of displacement is not a federal statute enacted by Congress, but a consent decree entered without any admitted or adjudged federal violation.

The LULAC Consent Decree does just that. In the words of the errant Ninth Circuit opinion, the consent decree limits the "ability of executive officers in Arizona to enforce legislation contrary to the final judgment of the federal decree." Pet. App. 48a–49a. The LULAC Consent Decree, in other words, limits the ability of Arizona's Secretary of State and county recorders to carry out the mandates of duly enacted Arizona law. If such reasoning were affirmed, and the consent decree allowed to stand, the Court would be permitting something uniquely offensive: the ability of a federal consent decree to effectively dictate enforcement of the voter qualifications standards for the state of Arizona.

II. Adjustments to how courts apply Federal Rules of Civil Procedure 24 and 60(b) will allow non-parties who may be affected by the types of decrees at issue in this case to better protect their interests.

A. Consent decrees implicating institutional reform and state officials without any admitted or adjudged violation of federal law raise federalism and separation of powers concerns.

Consent decrees first appeared in the Court in the context of federal antitrust proceedings. *See, e.g.*, *United States v. Swift & Co.*, 286 U.S. 106 (1932). The Court has long recognized that consent decrees "'have attributes both of contracts and of judicial decrees,' a dual character that has resulted in different treatment for different purposes." *Loc. No. 93, Int'l Ass'n of Firefighters*, 478 U.S. at 519 (quoting *United States v. ITT Cont'l Baking Co.*, 420 U.S. 223, 236 n.10 (1975)).

> A consent decree no doubt embodies an agreement of the parties and thus in some respects is contractual in nature. But it is an agreement that the parties desire and expect will be reflected in, and be enforceable as, a judicial decree that is subject to the rules generally applicable to other judgments and decrees.

Rufo, 502 U.S. at 378 (citing *Railway Emps. v. Wright*, 364 U.S. 642, 650–51 (1961)). As consent decrees continued to evolve from their federal antitrust origins, they began to emerge in the context of institutional reform litigation, which demanded novel standards from the Court. *See, e.g.*, *Rufo*, 502 U.S. 367. Consent decrees in such contexts often implicate state officials as parties to the decree. *See id.*; *Horne v. Flores*, 557 U.S. 433 (2009); *Frew*, 540 U.S. 431. And, as stated before, such consent decrees can be entered without any admitted or adjudged violation of federal law. *Citizens for a Better Env't*, 718 F.2d at 1125.

Consent decrees implicating institutional reform, however, "often raise sensitive federalism concerns" particularly when the litigation "involves areas of core state responsibility." *Horne*, 557 U.S. at 448. And these federalism concerns are "heightened" when the decree "has the effect of dictating state or local budget priorities." *Id.* This is because, "when a federal court orders that money be appropriated for one program, the effect is often to take funds away from other important programs." *Id.* Though the Court has made clear that "when the objects of the decree have been attained," responsibility for the state's obligations should be "returned promptly to the

State and its officials," *Frew*, 540 U.S. at 442, the lack of a specific termination date often results in "federal-court oversight of state programs for long periods of time even absent an ongoing violation of federal law." *Id.* at 441.

Compliance with a consent decree over extended periods of time, especially when paired with federal monitoring, can prove extremely costly. For example, while entering the 1996 Los Angeles Bus Consent Decree, the city of Los Angeles predicted $550 million in capital costs for compliance. Office of the Inspector General, Mega Project Review of Los Angeles Metro Rail Red Line Project: Federal Transit Administration 22 (1998). There is also the example of the ongoing Chicago Police Department Consent Decree, which took effect in 2019. Consent Decree, *State of Ill. v. City of Chi.*, No. 17-cv-6260 (N.D. Ill. 2019). The City of Chicago Annual Appropriation Ordinance Records from 2020 to 2026 indicate that the city has allotted $99,661,743 over the seven years the consent decree has been in effect.[2] $28.6 million has been paid out to the "Independent Monitor Team" alone. Heather Cherone, *Taxpayers Paid $28.6M Over 7 Years for Chicago's Police Monitors to Enforce Consent Decree: Data*, WTTW News (Mar. 30, 2026), https://tinyurl.com/2ner33yh; *See also IMT Monthly Statements*, Independent Monitoring

2. *See* Chi., Ill., Annual Appropriation Ordinance for Year 2020 (Nov. 26, 2019); Chi., Ill., Annual Appropriation Ordinance for Year 2021 (Nov. 24, 2020); Chi., Ill., Annual Appropriation Ordinance for Year 2022 (Oct. 27, 2021); Chi., Ill., Annual Appropriation Ordinance for Year 2023 (Nov. 7, 2022); Chi., Ill., Annual Appropriation Ordinance for Year 2024 (Nov. 15, 2023); Chi., Ill., Annual Appropriation Ordinance for Year 2025 (Dec. 16, 2024); Chi., Ill., Annual Appropriation Ordinance for Year 2026 (Dec. 20, 2025).

Team: Chicago Police Department Consent Decree, https://tinyurl.com/334npuzw (last visited Aug. 31, 2026) (monthly statements from which the $28.6 million amount was drawn). The burdensome costs of compliance with such decrees fall, in part, on the taxpayers of the state or locality where the consent decree has taken effect. While this case involves election administration rather than police reform, the federalism concern is identical: a consent decree not compelled by federal law may displace legislative budgeting and policy authority.

Yet the costs of complying with these decrees are never approved through any democratic process by those ultimately footing the bill. Because such consent decrees affect the *office*, not merely the *individual*, state officials risk improperly depriving "future officials of their designated legislative and executive powers." *Frew*, 540 U.S. at 441. This includes the legislative body itself, which state administrative officials can effectively circumvent when they enter into an institutional reform consent decree. Such consent decrees may force local or state legislators to approve budget or policy changes to which they, as the representatives of the people, had no part in approving, but which have still become legally binding. This circumvention poses a threat to the separation of powers. State officials risk realizing this threat when they enter into consent decrees "not limited to reasonable and necessary implementations of federal law." *Id.*

The Court has affirmed the principle that federal consent decrees "exceed appropriate limits if they are aimed at eliminating a condition that does not violate [federal law] or does not flow from such a violation." *Horne*, 557 U.S. at 450 (quoting *Milliken*, 433 U.S. at 282). A

district court nevertheless "has power to enter a consent decree without first determining that a statutory violation has occurred." *Citizens for a Better Env't*, 718 F.2d at 1125 (citing *Swift & Co. v. United States*, 276 U.S. at 327).

The LULAC Consent Decree is one such agreement. It implicates both institutional reform litigation and state officials, thus raising the federalism and separation of powers concerns discussed above. By entering the LULAC Consent Decree, then-Secretary Reagan and Maricopa County Recorder Fontes bypassed the authority of the state legislature and dictated the election law preferences of the citizens of Arizona by means of a federal court decree. In this way, the LULAC Consent Decree "usurp[s] the role of elected officials and deprive[s] the people of their right to a democratically accountable government." *Peery v. City of Mia.*, 977 F.3d 1061, 1069 (11th Cir. 2020). In such situations, the Court should ensure that affected non-parties, like legislatures, have a procedural remedy. Where it appears the "parties were not adverse," (such as this case) a need for this remedy is all the more apparent. *David B. v. McDonald*, 116 F.3d 1146, 1148 (7th Cir. 1997).

B. A consent decree involving institutional reform litigation and non-adversarial state officials without any admitted or adjudged violation of federal law can bind affected non-parties who have little recourse to challenge the decree.

"[P]ublic officials sometimes consent to, or refrain from vigorously opposing, decrees that go well beyond what is required by federal law." *Horne*, 557 U.S. at 448 (citing Michael W. McConnell, *Why Hold Elections? Using Consent Decrees to Insulate Policies from Political*

Change, 1987 U. Chi. Legal F. 295, 317 (noting that government officials may try to use consent decrees to "block ordinary avenues of political change" or to "sidestep political constraints")). In other words, in certain cases, a state official enters into a consent decree as a willing, or at least a non-adversarial, party.

Allowing a state official to enter a consent decree implicating institutional reform litigation without any admitted or adjudged violation of federal law as a non-adversarial party further heightens the federalism and separation of powers issues. It risks binding unconsenting non-parties, such as the legislature, with little or no opportunity for relief.

Under current procedural standards, only a party may seek relief from a consent decree. Fed. R. Civ. P. 60(b). But in this scenario, the parties are non-adversarial, seeking to continue, rather than to modify or vacate the decree. Affected non-parties, like the legislature, may wish to seek judicial relief if the decree obligates those non-parties to take action contrary to their legal duties or if the decree substantially violates principles of federalism or separation of powers.

Current procedural standards make the path to relief for non-parties who nonetheless have a cognizable interest in this scenario extremely narrow. Even if an affected outside party managed to intervene in a consent decree of the type entered into by LULAC and Arizona election officials by means of Rule 24 of the Fed. R. Civ. P. (overcoming timeliness issues), and subsequently to file a 60(b)(5) motion for relief, the current standard for granting such motions under *Rufo* would likely not

resolve the issue. Assuming successors to the state official party to the decree desired to remain in the agreement, it could continue to bind the legislature, and through it the people, to budget or policy preferences to which they never consented, without opportunity for procedural relief.

C. Rule 24's current procedural avenue for non-parties seeking intervention is too narrow in cases involving institutional, non-adversarial consent decrees.

A non-party may seek to intervene in a consent decree under Rule 24 of the Fed R. Civ. P. They may do so by claiming either intervention of right, under Rule 24(a), or by permissive intervention under 24(b). Fed R. Civ. P. 24(a), (b). Both standards require that the application for intervention be timely. Circuit courts have established different standards for what constitutes timeliness. *See, e.g.*, *Edwards v. City of Hou.*, 78 F.3d 983, 1000 (5th Cir. 1996) (quoting the four-factor test for timeliness established in *Stallworth v. Monsanto Co.*, 558 F.2d 257, 264–66 (5th Cir. 1977)); *Del. Valley Citizens' Council for Clean Air v. Pa.*, 674 F.2d 970, 974 (3d Cir. 1982) (quoting the three-factor test for timeliness established in *Pa. v. Rizzo*, 530 F.2d 501, 506 (3d Cir. 1976)).

Generally, these standards assume that intervention will occur before the entry of a decree. Thus, if a non-party intervened in the proceedings of a non-adversarial consent decree of the kind described above before the entry of the decree, and met the subsequent standards outlined in Rule 24(a) or (b) it could achieve the status of party. At this point, the intervening party "is entitled to present evidence and have its objections heard at the hearings on whether to approve a consent decree, [but] it does not have

the power to block the decree merely by withholding its consent." *Loc. No. 93, Int'l Ass'n of Firefighters*, 478 U.S. at 529. Nonetheless, "a court 'cannot dispose of the valid claims of nonconsenting intervenors' when 'the parties' settlement would also affect the intervenor's claims." *United States v. Mich.*, 131 F.4th 409, 425 (6th Cir. 2025) (quoting *Tex. v. N.M.*, 602 U.S. 943, 953, 954 (2024)).

If, however, an affected non-party could not intervene before the entry of the decree, it may still attempt to intervene after the entry of the decree by demonstrating "extraordinary circumstances sufficient to overcome the presumption against intervention at this late date" *Del. Valley Citizens' Council for Clean Air*, 674 F.2d at 974. This standard, however, is especially narrow, and generally courts are directed to deny a "motion to intervene after entry of a decree." *Id.* (citing *United States v. Blue Chip Stamp Co.*, 272 F. Supp. 432, 436 (C.D. Cal. 1967)).

The Court, then, ought to recognize the risks associated with consent decrees implicating institutional reform and non-adversarial state officials not remedying any admitted or adjudged violation of federal law as contributing to a finding of "extraordinary circumstance." While these risks alone may not be wholly sufficient to grant intervention after the entry of a consent decree, they should weigh heavily in a court's consideration. If such a motion to intervene was denied, that court would effectively be closing the last procedural avenue for relief available to non-parties who could not intervene before the entry of such non-adversarial consent decrees.

While success intervening by means of Rule 24(a) or (b) before the formation of a consent decree is not a given,

Rule 24 presents a procedural path for non-parties seeking relief from a non-adversarial consent decree. Even if an intervenor's presentation did not convince a court to adjust the terms of the consent decree, that intervening party would maintain the right to file a 60(b) motion to modify or vacate the consent decree in the future. Rule 24 also provides a path, albeit narrow, for affected non-parties to intervene *after* the formation of a decree, provided that the court consider the risks associated with a non-adversarial consent decree of this kind as contributing to a finding of "extraordinary circumstance." If a concerned non-party intervenes in this fashion, it could then file a 60(b) motion to modify or vacate the consent decree.

D. Intervening parties who file 60(b)(5) motions to modify or vacate a consent decree should be excepted from the *Rufo* Standard in cases involving institutional, non-adversarial consent decrees.

A party may seek relief from a consent decree under Fed. R. Civ. P. 60(b) if "applying it prospectively is no longer equitable," or for "any other reason that justifies relief." Fed. R. Civ. P. 60(b)(5), (6). A party specifically seeking relief from an institutional reform consent decree may do so through a given federal court's "equitable powers and the direction given by . . . Rule 60(b)(5)" of the Fed. R. Civ. P. *Frew*, 540 U.S. at 441. Rule 60(b)(5) "provides that a party may obtain relief from a court order when 'it is no longer equitable that the judgment should have prospective application,'" *Rufo*, 502 U.S. at 383–384.

In *Rufo*, the Court established the current standard governing 60(b)(5) motions to modify or vacate institutional reform consent decrees. "[S]ound judicial discretion may

call for the modification of the terms of an injunctive decree if the circumstances, whether of law or fact, obtaining at the time of its issuance have changed, or new ones have since arisen." *Rufo*, 502 U.S. at 380 (quoting *Sys. Fed'n No. 91 Ry. Emps. Dep't v. Wright*, 364 U.S. 642, 647 (1991)). Thus, to successfully modify or vacate a consent decree under Rule 60(b)(5), a party must demonstrate a "significant change either in factual conditions or in law." *Rufo*, 502 U.S. at 384. Additionally, the party must show that the proposed alteration is "suitably tailored to the changed circumstance." *Id.* at 383.

This more "flexible approach," *Id.*, unlike *Swift*'s "grievous wrong" standard, *United States v. Swift & Co.*, 286 U.S. at 119, recognizes that institutional reform consent decrees "reach beyond the parties involved directly in the suit and impact on the public's right to the sound and efficient operation of its institutions." *Rufo*, 502 U.S. at 381 (quoting *Heath v. De Courcy*, 888 F.2d 1105, 1109 (6th Cir. 1989)). In developing this approach, the Court acknowledged both the role of consent decrees in achieving enduring institutional reform and the potential harm in prescribing permanent remedies that have the capacity to bind many parties without their consent. *Id.* at 367.

Yet *Rufo* assumes that parties to a decree are adversarial; that is, the decree arose as a compromise to settle a conflict. Given this, the *Rufo* standard is designed to prevent an adversarial party from evading the duties imposed on it by the consent decree. *Rufo* made the standard for 60(b)(5) relief more flexible in instances of institutional reform, but it undoubtedly remained a standard designed to apply when parties are *adversarial*.

In contrast, when two non-adversarial parties enter into a consent decree, an intervening third party should not be encumbered by *Rufo*'s standard of demonstrating a significant change in fact or law. The third party is not at risk of evading the duties of an institutional reform consent decree. Rather, it is seeking a procedural remedy to protect its interests in the context of a non-adversarial consent decree. It is, in other words, attempting to protect itself against the voluntary abuses of state officials. The Court may determine what standard must be met by parties seeking such procedural remedy, but the *Rufo* standard appears to be inapplicable here.

The Court should therefore provide an exception to the *Rufo* standard for intervening parties that seek 60(b)(5) relief from consent decrees implicating institutional reform and non-adversarial state officials without remedying an admitted or adjudged violation of federal law.

Landmark recognizes that concerned non-parties, rather than pursuing the procedural motions discussed above, could decide to initiate a lawsuit to challenge the legitimacy of a consent decree. Or, if the concerned non-party was a legislature, it could have passed legislation rendering the consent decree null, as the Arizona legislature did by passing H.B. 2492, thereby rendering moot the LULAC Consent Decree.

Concerned non-parties nonetheless should have the option of intervening and successfully adjudicating their claims to seek relief from such non-adversarial consent decrees. The Court should ensure that a procedural avenue exists whereby a concerned non-party might seek relief. Though a non-party might successfully intervene through Rule 24, they would not currently be able to effectuate

the necessary modification of the consent decree through 60(b)(5) due to the inapplicability of the *Rufo* standard. The Court, therefore, ought to grant an exception to the *Rufo* standard to ensure that a procedural remedy for the issue presented above is available to concerned non-parties. This exception would resolve the original issue posed by Justice Scalia involving an officer of the state who wants "to be thrown into the briar patch." Transcript of Oral Argument at 50, *Frew*, 540 U.S. 431 (No. 02-628). While a state official might still attempt to enter into such a consent decree, that agreement would no longer have the potential to bind the legislature and its citizens in perpetuity without any prospect for procedural relief.

CONCLUSION

The lower court erred in concluding that the LULAC Consent Decree precluded Arizona from rejecting state form registrations lacking proof of citizenship. A federal consent decree cannot bind future legislatures and prohibit administrative officials from enforcing duly enacted laws. This is particularly applicable in cases involving a state's authority to set voter qualifications. The Court should reverse this conclusion.

This case also presents an opportunity for the Court to carve out a limited exception as to how courts apply Fed. R. Civ. P. 24 and 60(b)(5) for parties seeking to intervene in consent decrees involving institutional reform litigation and non-adversarial state officials. If left unaddressed, institutional reform consent decrees implicating willing and unaccountable officers of the executive have the potential to bind legislatures and their electorate in perpetuity and, in so doing, undermine fundamental principles of federalism and separation of powers.

Respectfully submitted,

RICHARD P. HUTCHISON
LANDMARK LEGAL FOUNDATION
2405 Grand Boulevard,
Suite 420
Kansas City, MO 64108

MICHAEL J. O'NEILL
Counsel of Record
MATTHEW C. FORYS
LANDMARK LEGAL FOUNDATION
19415 Deerfield Avenue,
Suite 312
Leesburg, VA 20176
(703) 554-6100
mike@landmarklegal.org

Attorneys for Amicus Curiae

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