

No. 25-1017

Supreme Court of the United States

REPUBLICAN NATIONAL COMMITTEE,

Petitioner,

v.

MI FAMILIA VOTA, ET AL.,

Respondents.

**On Writ of Certiorari to the U.S. Court of
Appeals for the Ninth Circuit**

**BRIEF OF *AMICI CURIAE* PROFESSOR
MICHAEL T. MORLEY AND FLORIDA STATE
UNIVERSITY ELECTION LAW CENTER IN
SUPPORT OF NEITHER PARTY**

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INTEREST OF *AMICI CURIAE*¹

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The FSU Election Law Center was established by the Florida Legislature to “[c]onduct and promote rigorous, objective, nonpartisan, evidence-based research concerning important constitutional, statutory, and regulatory issues relating to election law,” FLA. STAT. § 1004.421(2)(a) (2025). The Center is empowered to “[p]rovide formal or informal assistance . . . to governmental entities or officials at the federal, state, or county levels, concerning elections or election law, including, but not limited to, research, reports, public comments, testimony, or briefs.” *Id.* § 1004.421(3)(e). The Election Law Center operates pursuant to academic freedom protections. *Id.* § 1004.421(7). Accordingly, the Center’s arguments and positions should not be attributed to Florida State University, the FSU College of Law, or either school’s administration.

¹ Pursuant to Sup. Ct. R. 37.6, no counsel for a party authored this brief in whole or in part, and no counsel or party other than *amici* or their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

SUMMARY OF ARGUMENT

1. Publicly available empirical evidence suggests that thousands, and almost certainly tens of thousands, of non-citizens have been registered to vote throughout the nation over the course of the past decade. These figures reflect a tiny fraction of one percent of all voter registrations. *Cf.* U.S. Election Assistance Comm’n, *Election Administration and Voting Survey 2024 Comprehensive Report* 160 (June 2025). Nevertheless, states have an important interest in demonstrating to the public that robust procedures and safeguards exist to detect and prevent non-citizen registration and voting. Even federal elections can occasionally be decided by a small number of votes. And this Court has recognized that miniscule deviations in the populations of congressional districts can unconstitutionally dilute the weight of citizens’ votes. *See Karcher v. Daggett*, 462 U.S. 725, 732-33 (1983). Especially given the nation’s burgeoning population of non-citizens, it is becoming increasingly important for states to cultivate and bolster public confidence in the electoral process by adopting and enforcing mechanisms to ensure non-citizens cannot register and vote whether through mistake, misunderstanding, faulty database programming, or otherwise.

2. Injunctions and consent decrees which prohibit violations of the U.S. Constitution or federal law are important judicial tools. *See generally* Michael T. Morley, *The Federal Equity Power*, 59 B.C. L. REV. 217 (2018). Consent decrees against state officials enjoining the adoption or enforcement of certain legal provisions or requirements which have not been found

to violate the U.S. Constitution or a federal statute, in contrast, create a potential for abuse. State executive officials may collaborate with ideologically aligned plaintiff groups to undermine federalism, limit state sovereignty, circumvent traditional state legislative and regulatory processes, and entrench their policy preferences through indefinitely applicable court orders adopted despite the potential absence of an actual federal constitutional or statutory violation. See 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, 649 (2014).

Consent decrees derive their authority from the parties' agreement, *Local No. 93, Int'l Ass'n of Firefighters v. Cleveland*, 478 U.S. 501, 522 (1986), but in other contexts this Court has recognized state officials may not surrender state sovereignty based solely on their consent, *New York v. United States*, 505 U.S. 144, 181-82 (1992). At a minimum, the federalism canon of statutory interpretation counsels in favor of construing consent decrees narrowly when the enjoined legal provisions or state action have not been found to violate the U.S. Constitution or federal law. Cf. *Gregory v. Ashcroft*, 501 U.S. 452, 467 (1991). This Court might consider going even further by declining to enforce provisions of consent decrees against state officials which do not redress actual violations of the Constitution or federal statutes. See, e.g., *St. Charles Tower, Inc. v. Kurtz*, 643 F.3d 264, 270 (8th Cir. 2011); *Perkins v. City of Chi. Heights*, 47 F.3d 212, 216 (7th Cir. 1995).

3. The NVRA permits state-created voter registration forms, 52 U.S.C. § 20505(a)(2), like the federal mail registration form, *id.* § 20508(b)(1), to require only the information “necessary” for election officials to assess an applicant’s eligibility and otherwise “administer . . . the election process.” This Court should construe the term “necessary” in this context to mean “convenient” or “useful,” rather than absolutely essential. *Necessary*, *Black’s Law Dictionary* (6th ed. 1990); *see, e.g., Ayestas v. Davis*, 584 U.S. 28, 44-45 (2018); *Comm’r v. Tellier*, 383 U.S. 687, 689 (1966); *Price v. Johnston*, 334 U.S. 266, 279 (1948); *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 413 (1819). Such a broader interpretation would facilitate the collection of “information the State deems necessary to determine eligibility” of individuals registering to vote. *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 19 (2013). Moreover, because states have the constitutional prerogative to establish and enforce voter qualifications for federal elections, *id.* at 17, the constitutional avoidance canon suggests construing the NVRA’s restrictions in a manner that does not hinder such efforts.

ARGUMENT

I. NON-CITIZEN REGISTRATION AND VOTING OCCUR RELATIVELY RARELY, BUT OFTEN ENOUGH TO REQUIRE ROBUST SAFEGUARDS

1. The problem of non-citizens registering (or being registered) to vote is real but limited. It is impossible to state with confidence the number of non-

citizens who are registered or have improperly voted. Based on the available empirical evidence, we can be confident non-citizens comprise no more than a small fraction of one percent of the approximately 227,004,364 reported voter registrations in the United States. See U.S. Election Assistance Comm’n, *Election Administration and Voting Survey 2024 Comprehensive Report* 160 (June 2025). While the percentage of registered voters nationwide who are non-citizens may be tiny, however, the absolute number of such people cannot be dismissed as negligible or *de minimis*.

Over the past decade, thousands—and, almost certainly, tens of thousands—of non-citizens have appeared on voter registration lists across the nation. Many of those individuals have never voted. Such registrations arose from election officials’ errors, faulty programming of computer systems or, in rare cases, intentional fraud. Most recently, New Jersey Governor Mikie Sherrill announced that between June 2023 and June 2024, the State of New Jersey registered approximately 6,600 people who had “answered ‘no’ when asked on a keypad whether they were a U.S. citizen when applying for drivers’ licenses and identification cards.” Statement by Governor Mikie Sherrill (July 21, 2026).² Nearly four hundred (400) of those self-identified non-citizens have voted. *Id.* The Governor ordered the removal of these “erroneously added” individuals. Had this problem been discovered a month or two later—or if, like nearly 20 states, New Jersey conducted its

² <https://www.nj.gov/governor/news/2026/20260721a.shtml>.

congressional primaries in August or September³—the NVRA’s Blackout Provision may have impeded the state’s ability to solve this problem prior to the 2026 election. *See* 52 U.S.C. § 20507(c)(2)(A).

The State of Georgia recently released an audit “identif[ying] 2,570 potential non-citizen registrations that were . . . in active status for a median of 5.4 years before action was taken. Of the 2,570 registrations, 407 (16%) have been used to vote.” Ga. Dep’t of Audits & Accounts, *Voter Registration and List Maintenance*, Rpt. No. 25-09, at 21 (Aug. 2026).⁴ These identifications were based on “juror affidavits of non-citizenship, DDS [Department of Drivers Services] data, and federal SAVE database searches.” *Id.* at 22. Election officials had previously flagged an additional 4,623 applications as originating from potential non-citizens. *Id.* at 21. Those applications were placed in “pending citizenship status,” with the attempted registrants barred from voting. *Id.*

Last year, the Florida Office of Election Crimes and Security identified at least 198 “likely noncitizens who illegally registered and/or voted in Florida.” Fla. Dep’t of State, Office of Election Crimes and Security, *Annual Report to Governor and Legislature 2* (Jan. 15, 2026).⁵ For each of these individuals, the office

³ *See* Nat’l Conference of State Legislatures, *2026 State Primary Election Dates* (May 27, 2026), <https://www.ncsl.org/elections-and-campaigns/2026-state-primary-election-dates>.

⁴ <https://www.audits.ga.gov/ReportSearch/download/34351>.

⁵ <https://files.floridados.gov/media/709938/2025-report-final.pdf>.

reviewed “all the relevant facts and circumstances,” including as appropriate the voter’s election records, motor vehicle records, birth certificate, passport, naturalization documentation, and information in the federal SAVE database. *Id.* at 1-2. The office sent 170 of the alleged non-citizens “to state and federal law enforcement for further criminal investigation and prosecution.” *Id.* at 2.

As an example, one of the people the office identified—who pled guilty to “voting as an unqualified elector”—was a “noncitizen from the United Kingdom.” *Id.* He had been

deported from the United States in 1989 following an arrest for a drug offense. He subsequently returned to the United States, where he claimed that he was a U.S. citizen on a voter registration application in 2000 and presented a fictitious Ohio birth certificate to the Florida Department of Highway Safety and Motor Vehicles in 2013. [He] then went on to illegally vote in six local and national elections in 2022, 2023, and 2024.

Id.

That same year, the Iowa Secretary of State “identified 277 confirmed noncitizens” who registered to vote, including thirty-five (35) who successfully voted in the 2024 general election. Iowa Sec’y of State Paul D. Pate, Press Release, “Iowa Secretary of State’s Audit of Voter Registration Lists Finds 277 Confirmed

Noncitizens Registered to Vote” (Mar. 20, 2025);⁶ *see also* Alabama Sec’y of State Wes Allen, Press Release, “Secretary of State Wes Allen Directs Immediate Removal of 186 Noncitizens Illegally Registered to Vote in Alabama, Identifies 25 Noncitizens Who Illegally Voted” (undated).⁷

In Virginia, “[f]rom September 1, 2023 to August 31, 2024, 2,099 voters were cancelled after identifying [themselves] as ‘non-citizens’ within a DMV process.” Va. Dep’t of Elections, *Annual List Maintenance Report: September 1, 2023 – August 31, 2024*, at 13.⁸ According to former Virginia Governor Glenn Youngkin, the state removed a total of “6,303 non-citizens from the voter rolls” over the first two-and-a-half years of his term. Va. Gov. Glenn Youngkin, *Comprehensive Election Security Protecting Legal Voters and Accurate Counting*, Exec. Order 35 (Aug. 7, 2024).

In Oregon, between 2021 and 2025, “306 people who presented foreign passports when seeking or renewing those driver’s license had those passports wrongly marked as U.S. passports” and were registered to vote without providing evidence of U.S. citizenship. Julia Shumway, *Oregon DMV Data Error Registered 1,259 Noncitizens to Vote, Nine Voted*,

⁶ <https://sos.iowa.gov/news-resources/iowa-secretary-states-audit-voter-registration-lists-finds-277-confirmed-noncitizens>.

⁷ <https://www.sos.alabama.gov/newsroom/secretary-state-wes-allen-directs-immediate-removal-186-noncitizens-illegally-registered>.

⁸ <https://rga.lis.virginia.gov/Published/2024/RD588/PDF>.

OREGON CAPITAL CHRON. (Sept. 23, 2024);⁹ *see also* Ore. Sec’y of State LaVonne Griffin-Valade, Press Release, “Following DMV Review of All Relevant Records, Oregon Secretary of State Identifies 9 Potentially Ineligible Voters with Improper Registration Records” (Sept. 23, 2024).¹⁰ The same study concluded that “another 953 people were wrongly registered to vote since 2021 with foreign birth certificates.” Shumway, *supra*. It appears that nine (9) of these individuals went on to vote despite being ineligible to do so. *Id.*

Going back further, in January 2020, the Illinois State Board of Elections acknowledged that 545 people “who checked ‘no’ on the driver’s license application citizenship question . . . became registered anyway. . . . Since they became registered . . . 19 ballots have been cast by 15 individual voters who were improperly registered.” Peter Hancock, *House Republicans Seek Probe of Non-Citizen Voting*, CAPITOL NEWS ILLINOIS (Jan. 22, 2020).¹¹ California discovered in 2018 that “as many as 1,500 noncitizens” had been “registered to vote [there] after a processing error.” Mark Osborne, *1,500 Noncitizens*

⁹ <https://oregoncapitalchronicle.com/2024/09/23/oregon-dmv-data-error-registered-1259-noncitizens-to-vote-nine-voted/>.

¹⁰ <https://apps.oregon.gov/oregon-newsroom/OR/SOS/Posts/Post/dmv-potential-ineligible-voters-improper-registration-records>.

¹¹ <https://capitolnewsillinois.com/news/house-republicans-seek-probe-of-non-citizen-voting/>.

May Have Been Registered to Vote in California Due to DMV Error, ABC NEWS (Oct. 9, 2018).¹²

In a study of state election records from 2000 through 2017, the Pennsylvania Department of State “found 1,160 records that indicate a registrant apparently self-reported and canceled their registration because they were not citizens.” *Noncitizens Registered to Vote in Pennsylvania: Hearing Before the Pa. House State Government Committee* 7 (Oct. 25, 2017) (statement of Jonathan Marks, Comm’r, Bureau of Commissions, Elections & Legislation, Pa. Dep’t of State).¹³ Approximately 248 of those non-citizens had voted at least once, casting a total of 642 ballots among them (although the testimony also cites a separate aggregate figure of 544 ballots). *Id.* at 8; *see also* N.C. State Bd. of Elections, *Post-Election Audit Report: General Election 2016*, at 4 (Apr. 21, 2017) (discussing 41 people who “acknowledged they were not U.S. citizens” to the North Carolina State Board of Elections, yet had voted in the 2016 general election).¹⁴

This year, the U.S. Department of Homeland Security claims to have identified “over 28,000 non-citizens who illegally registered to vote” across

¹² <https://abcnews.com/US/1500-noncitizens-registered-vote-california-dmv-error/story?id=58377069>.

¹³ https://www.legis.state.pa.us/wu01/li/tr/transcripts/2017_0109t.pdf.

¹⁴ <https://s3.amazonaws.com/dl.ncsbe.gov/election-security/audits/2016-11-08-election-audit-report.pdf>.

twenty-five (25) states which “processed their full voter lists” through the Government’s SAVE system. U.S. Dep’t of Homeland Security, *Preventing Alien Voting* (Aug. 2026).¹⁵ However, this figure overstates the actual number of non-citizens because, among other reasons, the SAVE system incorporates citizenship information from Social Security records which may be outdated. *See League of Women Voters v. U.S. Dep’t of Soc. Sec’y*, No. 25-3501 (SLS), 2026 WL 1784297, at *16 (D.D.C. June 22, 2026).

The contest of Representative Loretta Sanchez’s 1996 election to the U.S. House of Representatives is perhaps the best-known example of non-citizen registration and voting potentially impacting an election’s results. H. RPT. NO. 105-416 (Feb. 2, 1998). Election officials conducted a recount and concluded that Rep. Sanchez prevailed over Rep. Robert K. Dornan by 979 votes. *Id.* at 2. The Orange County District Attorney then executed a search warrant in the offices of Hermandad Mexicana Nacional, “a Latino community service organization[] alleged to be at the center of an effort to register and encourage non-citizens to vote in the 1996 elections.” *Id.* at 3.

A task force convened by the U.S. House of Representatives to investigate the election “was able to clearly and convincingly document that 624 persons [who had voted] had illegally registered and thus were not eligible to cast ballots in the November 1996 election.” *Id.* at 15. Approximately 82% of those people “naturalized after they registered but before

¹⁵ <https://seeb.ga.gov/wp-content/uploads/2026/08/dhs-save-system-summary-redacted.pdf>.

they cast their ballots.” *Id.* at 34. The Task Force further identified 196 other voters for whom there was “some circumstantial indication that they might not have been citizens when they registered.” *Id.* Another “1,718 persons appear to have been registered improperly but did not vote in the November 1996 election.” *Id.* at 35.

The majority’s report concluded that “a significant number of aliens who appear within the INS data bases” were registered to vote in Orange County. *Id.* at 15. Given the “significant number” of “documented aliens” who were registered, the majority was left to speculate as to “how many illegal or undocumented aliens may be registered to vote in Orange County?” *Id.* The Task Force could “make no conclusion based on the materials before it as to the number of illegal aliens who may be on Orange County registration rolls.” *Id.* Accordingly, since the number of proven illegal votes was less than Rep. Sanchez’s margin of victory, the majority suggested dismissing the election contest, *id.* at 16, and the House adopted the recommendation, 144 CONG. REC. H464 (daily ed. Feb. 12, 1998). The Task Force’s investigations and findings were limited to a single congressional district in a single election cycle, raising the question of whether similar schemes may have been implemented elsewhere in the country over the past three decades.

2. States have an important interest in not only detecting and preventing non-citizen registration and voting, but also demonstrating to the public that robust procedures and safeguards exist to do so. Even though non-citizen voting is extremely limited, critical elections can occasionally be decided by a small

number of votes. In 2020, for example, Representative Mariannette Miller-Meeks defeated Rita Hart in Iowa’s second congressional district by only six (6) votes. *See* Iowa Sec’y of State Paul D. Pate, Press Release, “State Canvassing Board Certifies Results of Iowa’s 2020 General Election” (Nov. 30, 2020).¹⁶ That same year, Rep. Claudia Tenney won the election for New York’s 22nd congressional district by a 109-vote margin. N.Y. State Bd. of Elections, *2020 General Election Results* 34 (Nov. 3, 2020).¹⁷ And this Court is well aware that the outcome of the 2000 Presidential election turned on 537 votes in Florida, *see Bush v. Gore*, 531 U.S. 98 (2000) (per curiam)—fewer than the number of apparently invalid votes from a single congressional district in the 1996 Dornan-Sanchez election contest.

Federal courts have recognized that even a tiny percentage of the electorate can directly impact the right to vote in the context of congressional apportionment. This Court “require[s] that absolute population equality be the paramount objective of apportionment . . . in the case of congressional districts . . .” because “there are no *de minimis* population variations” that may avoid judicial scrutiny. *Karcher v. Daggett*, 462 U.S. 725, 732-33 (1983); *see also Kirkpatrick v. Pressler*, 394 U.S. 526, 530 (1969).

¹⁶ <https://sos.iowa.gov/news-resources/state-canvassing-board-certifies-results-iowas-2020-general-election>.

¹⁷ <https://results.elections.ny.gov/document/128?page=34>.

In *Vieth v. Pennsylvania*, 195 F. Supp. 2d 672, 675-76, 678 (M.D. Pa. 2002) (three-judge district court), *appeal dismissed as moot sub nom., Schweiker v. Vieth*, 537 U.S. 801 (2002), for example, the court invalidated a congressional map because it included a population variance of only nineteen (19) people between districts, due to concern that the tiny differential would unconstitutionally dilute the weight of votes cast in the more-populated district. If even a handful of extra residents in a district can create constitutional problems due to their marginal impact on the weight of other people's votes, the inclusion of an equally miniscule number of ineligible voters should raise even greater constitutional concerns. *Cf. Anderson v. United States*, 417 U.S. 211, 226 (1974) (recognizing the "right of all voters in a federal election to express their choice of a candidate and to have their expressions of choice given full value and effect, without being diluted or distorted by the casting of fraudulent ballots").

Finally, a well-functioning electoral system rests on three fundamental principles. All eligible citizens must have a reasonable opportunity to cast a ballot safely and have it counted. The system must be designed to avoid and minimize the potential impact of mistakes, misunderstandings, uncertainty, irregularities, illegality, fraud, accidents, and natural disasters. And, just as importantly, the system must outwardly appear to operate in a fair, accurate, secure manner, instilling public confidence in the integrity of the process and validity of the results. See Michael T. Morley, *Election Emergencies: Voting in Times of Pandemic*, 80 WASH. & LEE L. REV. 359, 362 (2023); *cf. Buckley v. Valeo*, 424 U.S. 1, 27 (1976) (per curiam)

(recognizing the government has a compelling interest in combating not only actual electoral corruption, but the appearance of corruption, as well). To that end, even if non-citizen registration and voting is rare, it remains crucial for a state to demonstrate to the public that robust safeguards exist to identify and prevent it.

The number of non-citizens in this country has more than doubled over the past three decades. Data from the 1990 Census shows that 11,770,318 foreign-born non-citizens resided in the United States at that time. U.S. Dep’t of Commerce, Bureau of the Census, *1990 Census of Population: The Foreign-Born Population in the United States*, Rpt. No. 1990 CP-3-1, at 1 tbl. 1 (July 1, 1993).¹⁸ The 2024 American Community Survey, in contrast, estimates 24,396,883 non-citizens now live in the country, and that figure likely does not reflect the entire undocumented non-citizen population. U.S. Dep’t of Commerce, U.S. Census Bureau, *2024 American Community Survey 1-Year Estimates*, tbl. B05001 (last visited Sept. 2, 2026).¹⁹ As our nation’s non-citizen population continues to grow into the tens of millions, the potential for non-citizen registration and voting—whether arising from programming mistakes, administrative errors, misunderstandings, or otherwise—increases concomitantly.

¹⁸

<https://www2.census.gov/library/publications/decennial/1990/cp-3/cp-3-1.pdf>.

¹⁹

<https://data.census.gov/table/ACSDT1Y2024.B05001?g=010XX00US&t=Citizenship>.

**II. THIS COURT SHOULD BE CAUTIOUS IN
INTERPRETING AND ENFORCING
CONSENT DECREES AGAINST STATE
DEFENDANTS ADOPTED WITHOUT A
DETERMINATION THAT THE ENJOINED
ACTS WOULD BE UNCONSTITUTIONAL OR
VIOLATE FEDERAL LAW.**

A federal court order which limits a state's authority to adopt statutes in the future—especially an order which persists indefinitely—imposes a severe burden on the state's core sovereign authority. As with a federal statute which prohibits states from adopting certain laws, “state legislatures are put under the direct control” of the federal government. *Murphy v. NCAA*, 584 U.S. 453, 474 (2018). “It is as if federal officers were installed in state legislative chambers and were armed with the authority to stop legislators from voting on any offending proposals. A more direct affront to state sovereignty is not easy to imagine.” *Id.* Such restrictions impose even greater burdens when they preclude a legislature from exercising its prerogative under the U.S. Constitution to establish and enforce voter qualifications for federal office such as citizenship requirements. *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 17-18 (2013).

Of course, such restrictions are necessary and appropriate when a state has actually violated the Constitution or federal law. *See Ex Parte Young*, 209 U.S. 123, 150-51 (1908) (discussing “the right to enjoin a state officer from executing a state law in conflict with the Constitution or a statute of the United

States”). In a case such as this, however, “it is the agreement of the parties, rather than the force of the law upon which the complaint was originally based, that creates the obligations embodied in a consent decree.” *Local No. 93, Int’l Ass’n of Firefighters v. Cleveland*, 478 U.S. 501, 522 (1986). Indeed, the consent decree at issue here expressly declares, “The Secretary denies that Arizona’s voter registration policies violate the First and Fourteenth Amendments or are otherwise illegal under state or federal law.” *League of United Latin Am. Citizens of Ariz. v. Reagan*, No. 2:17-cv-4102-PHX, D.E. #37, at 2 (D. Ariz. June 18, 2018).

Even a state’s consent cannot be deemed sufficient to warrant an indefinite restriction of its sovereign legislative power in the absence of an actual violation of the U.S. Constitution or federal law. As this Court explained in the context of federal statutes:

The Constitution does not protect the sovereignty of States for the benefit of the States or state governments as abstract political entities, or even for the benefit of the public officials governing the States. To the contrary, the Constitution divides authority between federal and state governments for the protection of individuals. . . . Where Congress exceeds its authority relative to the States, therefore, the departure from the constitutional plan cannot be ratified by the “consent” of state officials.

New York v. United States, 505 U.S. 144, 181-82 (1992).

In addition to limiting a state’s future sovereign legislative authority, consent decrees also enable state executive officials to cooperate with ideologically aligned plaintiff groups to achieve their mutually desired policy outcomes while circumventing the state’s typical legislative or regulatory processes. See 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, 649 (2014). A consent decree may require a state to adopt a certain policy or prohibit it from implementing a particular statute or regulation without regard to whether the provision at issue is actually mandated or prohibited by federal law or whether the required change would otherwise have been adopted. To the extent a consent decree lasts indefinitely, it also empowers state executive officials to entrench their policy preferences, priorities, and legal interpretations regardless of the results of future elections. *Id.* at 675.

The “federalism” canon of statutory interpretation counsels courts to avoid interpretations of federal laws that infringe on core state sovereign authority in the absence of clear, express, unambiguous language requiring such a conclusion. See *Gregory v. Ashcroft*, 501 U.S. 452, 467 (1991); see also *Nixon v. Mo. Mun. League*, 541 U.S. 125, 140 (2004) (“[F]ederal legislation threatening to trench on the States’ arrangements for conducting their own governments should be treated with great skepticism, and read in a way that preserves a State’s chosen disposition of its own power . . .”). At a minimum, this Court should apply this approach to interpreting and applying

consent decrees imposed without a judicial determination that the enjoined legal provisions or activities would violate the U.S. Constitution or federal law.

Some courts of appeal have gone even further, refusing to approve consent decrees without first confirming they redress an actual federal constitutional or statutory violation. *See, e.g., Perkins v. City of Chi. Heights*, 47 F.3d 212, 216 (7th Cir. 1995) (holding that a federal court “can approve a consent decree which overrides state law provisions” only “upon properly supported findings that such a remedy is **necessary** to rectify a **violation of federal law**” (emphasis in original)); *accord St. Charles Tower, Inc. v. Kurtz*, 643 F.3d 264, 270 (8th Cir. 2011); *cf.* Morley, *supra* at 689 (“A court should not issue a consent decree in a government-defendant case unless . . . the court determines that (i) the plaintiff has stated valid claims and (ii) the relief is closely tailored to remedy the legal violations at issue.”). This Court could apply such an approach to existing consent decrees, such as the one at issue here, by declining to enforce provisions, if any, which do not redress actual violations of the U.S. Constitution or a federal statute.

This Court has recognized that a consent decree has a “dual character” as a “hybrid” of a traditional court order and a private contract. *Local No. 93*, 478 U.S. at 519. As such, consent decrees stand in some tension with both Article III’s requirement of a live case or controversy as well as the adversarial structure of our judicial system. Morley, *supra* at 644. At least in cases involving public law restrictions against state government defendants which raise

concerns about federalism and democratic governance, this Court should place greater emphasis on the traditional principles governing injunctive relief against such entities:

[T]he nature and scope of the remedy are to be determined by the violation . . . [F]ederal-court decrees must directly address and relate to the constitutional violation itself. Because of this inherent limitation upon federal judicial authority, federal-court decrees exceed appropriate limits if they are aimed at eliminating a condition that does not violate the Constitution or does not flow from such a violation

Millikan v. Bradley, 433 U.S. 267, 282 (1977). This Court should not allow state executive officials to undermine federalism, limit state sovereignty, circumvent traditional state legislative and regulatory processes, and entrench their policy preferences through indefinitely applicable court orders adopted despite the potential absence of an actual federal constitutional or statutory violation.

III. THIS COURT SHOULD INTERPRET THE TERM “NECESSARY” IN THE NVRA TO MEAN “USEFUL” RATHER THAN “ESSENTIAL”

1. Arizona law requires a person to provide documentary proof of citizenship (DPOC), *see* ARIZ. REV. STAT. § 16-121.01(C); *see also id.* §§ 16-101(A)(1), 16-152(A)(23), 16-166(F), and documentary proof of residency (DPOR), *id.* §§ 16-121.01(A), 16-123, in

order to register to vote in any elections—federal or state—using Arizona’s state mail application. The Ninth Circuit held that, as applied to federal elections, these requirements violate the NVRA’s restrictions on state mail applications. *Mi Familia Vota v. Fontes*, 129 F.4th 691, 712-13 (9th Cir. 2025) (DPOR), *reh’g en banc denied*, 152 F.4th 1153 (9th Cir. 2025), *cert. granted*, No. 25-1017 (U.S. June 29, 2026); *id.* at 719 (DPOC).

Under the NVRA, state mail applications must “meet[] all of the criteria” for federal mail applications. 52 U.S.C. § 20505(a)(2). Federal mail applications, in turn, may require only the information “necessary” to assess an applicant’s eligibility and otherwise “administer . . . the election process.” *Id.* § 20508(b)(1). The Ninth Circuit observed, “The ordinary meaning of ‘necessary’ is ‘essential.’” *Fontes*, 129 F.4th at 713; *accord id.* at 719. Applying this definition, it held, “The requirement of DPOR is not ‘necessary’ for new applicants because attestation sufficiently confirms the eligibility of registered voters.” *Id.* at 713. The court went on to likewise declare, “DPOC is not ‘necessary’ . . . because . . . the state form’s checkbox requirement supplies proof of citizenship by an attestation.” *Id.* at 719.

U.S. citizenship and state residency are valid and enforceable voter eligibility requirements under the Arizona Constitution. ARIZ. CONST. art. VII, § 2(A); *accord* ARIZ. REV. STAT. § 16-101(A)(1), (A)(3). In the Ninth Circuit’s view, federal law nevertheless makes it illegal for the state to ask for proof of such citizenship or residency because the state can instead

simply take an applicant’s word for it. *See Fontes*, 129 F.4th at 712-13 (“We hold that DPOR is not ‘necessary’”); *id.* at 719 (“DPOC is not legitimately necessary for registration.”). As discussed below, other circuits have likewise adopted this interpretation of the term “necessary” as it appears in the NVRA. *See Fish v. Kobach*, 840 F.3d 710, 716-17 (10th Cir. 2016) (holding, for purposes of driver’s license applications under 52 U.S.C. § 20504(c), that an “attestation under penalty of perjury is the *presumptive* minimum amount of information necessary for state election officials to carry out their eligibility-assessment and related duties”), *permanent injunction granted sub nom., Fish v. Schwab*, 957 F.3d 1105, 1142, 1144 (10th Cir. 2020); *Kobach v. U.S. Election Assistance Comm’n*, 772 F.3d 1183, 1197-98 (10th Cir. 2014); *see also League of Women Voters of the United States v. Newby*, 838 F.3d 1 (D.C. Cir. 2016).

The Ninth Circuit supported its interpretation of the word “necessary” by citing this Court’s ruling in *Williams v. Taylor*, 529 U.S. 420 (2000), which did not involve the NVRA but rather the Antiterrorism and Effective Death Penalty Act (“AEDPA”) of 1996, 110 Stat. 1214 (Apr. 24, 1996). And *Williams* did not discuss the meaning of the word “necessary,” but rather explored the meaning of the word “fail,” 529 U.S. at 431. *See Fontes*, 129 F.4th at 713, 719.

The Ninth Circuit also cited two dictionaries. *See id.* (citing *Necessary*, *Black’s Law Dictionary* (12th ed. 2024); *Necessary*, *Oxford English Dictionary* (2d ed. 1989)). The first of those dictionaries was published over three decades after the NVRA’s adoption. It

defines “necessary” as “[t]hat which is needed for some purpose or reason; essential.” *Necessary*, *Black’s Law Dictionary* (12th ed. 2024).

This Court has held, however, that a statute must be construed based on “dictionar[ies] from the period during which [it] . . . was enacted.” *Regents of the Univ. of California v. Pub. Emp. Rel. Bd.*, 485 U.S. 589, 598 (1988); *see also* *Corner Post, Inc. v. Bd. of Govs. of the Fed. Res. Sys.*, 603 U.S. 799, 800 (2024) (“Contemporaneous legal dictionaries”). The edition of *Black’s Law Dictionary* current at the time of the NVRA’s adoption—the sixth edition, published in 1990—stated that the word “necessary” is “susceptible of various meanings,” and “must be considered in the connection in which it is used.” *Necessary*, *Black’s Law Dictionary* (6th ed. 1990).

It may import absolute physical necessity or inevitability, or it may import that which is only convenient, useful, appropriate, suitable, proper, or conducive to the end sought. It is an adjective expressing degrees, and may express mere convenience or that which is indispensable or an absolute physical necessity. It may mean something which in the accomplishment of a given object cannot be dispensed with, or it may mean something reasonably useful and proper, and of greater or lesser benefit or convenience, and its force and meaning must be determined with relation to the particular object sought.

Id.

As far back as *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 413 (1819), this Court has recognized the term “necessary” does not “always import an absolute physical necessity . . . so strong, that one thing, to which another may be termed necessary, cannot exist without that other.” *McCulloch* explained, “[I]n the common affairs of the world,” the term “frequently imports no more than that one thing is convenient, or useful.” *Id.* It added, “To employ the means necessary to an end, is generally understood as employing any means calculated to produce the end, and not as being confined to those single means, without which the end would be entirely unattainable.” *Id.* at 413-14. Courts have applied this looser, less demanding definition across a variety of contexts. *See, e.g., Price v. Johnson*, 334 U.S. 266, 279 (1948) (rejecting the conclusion that a writ is “necessary for the exercise of [a court’s] jurisdiction[]” under the All Writs Act “only if ‘necessary’ in the sense that the court could not otherwise physically discharge its appellate duties”); *Fattahi v. BATF*, 328 F.3d 176, 180 (4th Cir. 2003) (“[N]ecessary need not mean *absolutely* necessary.”); *Int’l Trad. Co. v. Comm’r*, 275 F.2d 578, 585 (7th Cir. 1960) (“The word ‘necessary’ has been construed to mean ‘appropriate and helpful.’”); *cf. Fish*, 840 F.3d at 734-35.

In the 2018 case *Ayestas v. Davis*, 584 U.S. 28 (2018), this Court addressed the meaning of “necessary” as it appears in 18 U.S.C. § 3599(f). That provision permits a district court to order the payment of “reasonably necessary” expenses for an indigent federal criminal defendant in connection with his trial. 18 U.S.C. § 3599(f). This Court recognized that, “in ordinary speech,” the term “necessary” includes

“something that is merely important or strongly desired.” *Ayestas*, 584 U.S. at 44. The Court concluded the phrase referred to services “a reasonable attorney would regard . . . as sufficiently important.” *Id.* at 45; *see also Comm’r v. Tellier*, 383 U.S. 687, 689 (1966) (holding a business expense qualifies as “necessary” under the Internal Revenue Code if it satisfies the “minimal requirement” of being “appropriate and helpful” for the taxpayer’s business (quoting *Welch v. Helvering*, 290 U.S. 111, 113 (1933))). This Court should construe the NVRA in a similarly broad manner.

2. A strict, narrow definition of “necessary” appears to be in some tension with this Court’s opinion in *Inter Tribal Council*, 570 U.S. 1. That case involved an NVRA provision which requires states to “accept and use” the EAC-created federal mail application. 42 U.S.C. § 1973gg-4(a)(1), *recodified* as 52 U.S.C. § 20505(a)(1). The Court held that a state cannot require people who submit federal mail applications to also submit documentary proof of citizenship to register for federal elections. *Inter Tribal Council*, 570 U.S. at 15.

The *Inter Tribal Council* Court recognized, however, that the Constitution grants states authority to determine voter qualifications for federal elections. *Id.* at 17. Accordingly, “it would raise serious constitutional doubts if a federal statute precluded a State from obtaining the information necessary to enforce its voter qualifications.” *Id.* The Court avoided such concerns by emphasizing that the NVRA allows states to ask the EAC to “alter the Federal Form to include information the State deems

necessary to determine eligibility.” *Id.* at 19 (citing 42 U.S.C. § 1973gg-7, *recodified* as 52 U.S.C. § 20508(a)(2)). And the Court further emphasized a state “may challenge the EAC’s rejection of that request in a suit under the Administrative Procedures Act.” *Id.* The EAC is under a “nondiscretionary duty to include [a state’s] concrete evidence requirement on the Federal Form” when “a mere oath will not suffice to effectuate [the state’s] citizenship requirement” for voter registration. *Id.* at 20.

It is unclear whether *Inter Tribal Council*’s strategy for avoiding constitutional doubts about the NVRA has played out as this Court intended. Shortly after *Inter Tribal Council* was issued, Arizona and Kansas asked the EAC to amend the instructions accompanying the federal mail application to require applicants from those states to provide documentary proof of citizenship to register. The EAC’s Executive Director rejected the request and the Tenth Circuit ultimately affirmed that refusal because the states had failed to show that proof of citizenship was “‘necessary’ to enforce their respective states’ voter qualifications.” *Kobach*, 772 F.3d at 1196-97. The court opined that a state was not entitled to have the EAC amend state-specific instructions for the federal mail application to require documentary proof of citizenship unless that state could show “a substantial number of noncitizens have registered using the Federal Form.” *Id.* at 1197-98.

Two years later, after the EAC hired a new Executive Director, he approved requests from Alabama, Georgia, and Kansas to add documentary proof of citizenship requirements to the instructions

accompanying the federal mail application for those states. The D.C. Circuit ordered entry of a preliminary injunction barring the EAC from enforcing that determination, however, because the director had deferred to the states themselves as to whether the modification was “necessary.” *League of Women Voters of the United States v. Newby*, 838 F.3d 1, 10-11 (D.C. Cir. 2016). The court added that the states had provided “precious little record evidence” that a proof-of-citizenship requirement was needed to prevent “fraudulent registration by non-citizens.” *Id.* at 13. Courts have applied similar reasoning to prevent states from requiring documentary proof of citizenship from applicants registering through driver’s license applications, as well. *See, e.g., Fish*, 840 F.3d at 716-17.

The constitutional avoidance canon counsels in favor of defining the term “necessary” in the NVRA to mean “appropriate” rather than “essential.” *See Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988). This Court should not assume Congress intended to interfere with states’ constitutional prerogative to set and enforce voter qualifications. Although *Inter Tribal Council* did not expressly address this issue, the Court’s ruling did not suggest that states would have to surmount a demanding threshold in order to impose proof-of-citizenship requirements for federal form applicants, 52 U.S.C. § 20508(b)(1), and the NVRA imposes the same standard for state forms such as Arizona’s, *id.* § 20505(a)(2). To the contrary, *Inter Tribal Council* construed the NVRA as recognizing a state’s prerogative to require “information *the State* deems necessary to determine

eligibility.” 570 U.S. at 19 (emphasis added). This Court should require deference to a state’s determinations on this issue.

CONCLUSION

For these reasons, this Court should reverse the judgment of the Ninth Circuit.

Respectfully Submitted,

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