No. 24A164

In The

Supreme Court of the United States

REPUBLICAN NATIONAL COMMITTEE, ET AL.
Applicants,
v.

MI FAMILIA VOTA, ET AL.,

BRIEF OF THE REPUBLICAN PARTY OF ARIZONA AS *AMICUS CURIAE* IN SUPPORT OF EMERGENCY APPLICATION FOR STAY PENDING APPEAL

On Emergency Application for Stay Pending Appeal from the U.S. Court of Appeals for the Ninth Circuit

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STATEMENT OF INTEREST[1]

The Republican Party of Arizona ("AZ GOP") is organized under the authority of the Arizona Revised Statutes. It promotes Republican principles and policies and supports the election of Republican candidates in national, state, and local elections in Arizona. Its elected leadership is directly accountable to its Arizona constituents. The AZ GOP has a strong interest in the rules governing the administration of Arizona elections, which impact its operations and its allocation of resources. The lower court's determination that Arizona HB 2492 is unconstitutional has a direct and tangible effect on the activities of the AZ GOP.

SUMMARY OF THE ARGUMENT

The District Court erred when it concluded that a federal voter registration form created under the National Voter Registration Act ("NVRA"), which permitted a registrant to merely check a box on the form to affirm their citizenship, preempted a requirement under Arizona HB 2492 for voters to present proof of citizenship to register to vote in that state's presidential elections. The District Court's holding is inconsistent with the text of the Electors Clause in Article II of the Constitution, the deliberate choice made by the Framers in the Constitutional Convention to exclude Congress from power over the manner of presidential elections, including voter qualifications, and the plain text of Congress's power under Article I's Elections Clause, which is the source of its authority to enact the NVRA.

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

What we commonly call the presidential election is, in fact and by law, a process in each state for appointing that state's presidential electors. Pursuant to Article II of the Constitution, presidential electors are the persons who vote in the Electoral College to select the President and Vice President. Under settled Supreme Court precedent and a historical record dating back to the Constitutional Convention, a state's presidential electors are *state* officials.

Article II of the Constitution gives *states* "plenary" power to decide how they will appoint their presidential electors. That all states have chosen to do so through a state election does not diminish their constitutional power over their presidential elector appointment process. This Court has recognized that Arizona has the authority to both limit voting in presidential elections to citizens and to enforce that requirement by requiring voters to submit documentary proof of their citizenship to register to vote in those elections.

As for Congress's power over elections, the Constitutional Convention also deliberately denied Congress power over the manner of states' appointment of their presidential electors, expressly limiting Congressional power to only the timing of choosing presidential electors and the date of their vote within the presidential selection process.

As recognized by the District Court and many others, Congress's power to enact the NVRA stems from the Elections Clause of Article I of the Constitution. The Elections Clause gives Congress the power to regulate the time, place, and manner of Congressional elections (in which voters directly vote for their own federal

representatives in Congress). Nothing in Article I relates to a state's appointment of its presidential electors, which is solely addressed by Article II. Congress's specific power in Article I to regulate the manner of Congressional elections, is missing from the scope of Congress's listed Article II powers over presidential elector appointments. Further, Article II does not even mandate that states use elections to appoint their electors, whereas Congress's power under Article I is limited to elections and, specifically, Congressional elections.

The NVRA, authorized under Congress's Article I power over the manner of Congressional elections, therefore cannot preempt states' plenary Article II power to choose how they will appoint their own presidential electors—including a state's choice to require all voters to provide documentary proof of citizenship to be eligible to vote.

ARGUMENT

I. The Constitution's Plain Text Grants States Power to Choose Their Method for Appointing Their Presidential Electors

The "framers of the constitution employed words in their natural sense; and, where they are plain and clear, resort to collateral aids to interpretation is unnecessary, and cannot be indulged in to narrow or enlarge the text." *McPherson v. Blacker*, 146 U.S. 1, 27 (1892). Under Art. II, §1 (the "Electors Clause"), States are given the power to appoint their presidential electors. *See Fitzgerald v. Green*, 134 U.S. 377, 379 (1890); *McPherson*, 146 U.S. at 27–28; *Ray v. Blair*, 343 U.S. 214, 225 (1952). The Electors Clause provides that "Each State shall appoint, *in such Manner as the Legislature thereof may direct*, a Number of Electors, equal to the whole

Number of Senators and Representatives to which the State may be entitled in the Congress[.]" U.S. Const. art. II, § 1 (emphasis added). These electors (collectively, the Electoral College) then vote for President and Vice President. *Id.*

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

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

presidential election selects state officials to exercise state official duties as required by the Constitution).

The Electors Clause also prescribes a specific role for Congress. In contrast to giving states' plenary power to decide how to appoint their presidential electors, *Bush*, 531 U.S. at 104, the Electors Clause merely grants Congress the authority to determine "the Time of Chusing the Electors, and the Day on which they shall give their Votes." U.S. Const. art. II, § 1, cl. 2. The Electors Clause thus conveys "far reaching authority" and "the broadest power of determination" to states, while also providing minimal authority (i.e., setting the time for choosing electors and date of the election) for Congress to impact the process. *Chiafalo,* 591 U.S. at 588–89.

II. Records of the Constitutional Convention, Contemporaneous Sources, and Post-Convention Tradition Agree that States Were Empowered to Appoint Their Presidential Electors

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

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

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

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

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

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

produced a partial report proposing the following language for the selection of the president:

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

3 *The Madison Papers*, p. 1486. While there was additional debate over the Committee's proposal, the Committee's general framework for having state-appointed electors appoint the presidential electors was ultimately adopted. The decision to delegate the power of appointing presidential electors to states was, therefore, a much-debated compromise between factions at the constitutional convention.

The Framers' later discussions of the Electoral College reinforce that the framers intended Article II to provide States plenary power over how to appoint presidential electors. Rufus King stated that this great compromise of the constitutional convention "provides that Representatives shall be chosen *by the People,* Senators *by the Legislature* of each State and Electors *in such manner as the Legislature of each State may direct.*" Letter from Rufus King to C. King (Sept. 29, 1823), https://www.consource.org/document/rufus-king-to-c-king-1823-9-29/ (emphasis in the original).

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

> The State governments may be regarded as constituent and essential parts of the federal government; whilst the latter is nowise essential to the operation or organization of the former. Without the intervention of the State legislatures, the President

> of the United States cannot be elected at all. They must in all cases have a great share in his appointment, and will, perhaps, in most cases, of themselves determine it.

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

In Federalist No. 68, Alexander Hamilton noted the lack of opposition to the proposed power of states over the appointment of presidential electors:

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

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

Years later, describing how states received Article II's method of selecting the president during the ratification process, Rufus King reflected:

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

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

One hundred years after the Constitution's ratification, this consensus was reflected in this Court's discussion of the issue when it noted the "appointment and mode of appointment of electors belong exclusively to the states under the constitution of the United States." *McPherson*, 146 U.S. at 35. In *McPherson*, this Court considered a Michigan plan for appointing presidential electors that awarded

electoral votes based on congressional district. In holding that Article II provides states authority to award electors in whatever manner they deem fit, this Court did not mince words: "The appointment of [Presidential] electors is thus placed *absolutely and wholly* with the legislatures of the several states." *Id.* at 34–35. Article II's grant of power to the states to appoint their presidential electors "*can neither be taken away nor abdicated*." *Id.* (emphasis added). And this Court noted the unbroken and unassailable record demonstrating this was the Framers' intent:

> From this review, in which we have been assisted by the laborious research of counsel, and which might have been greatly expanded, it is seen that from the formation of the government until now *the practical construction of the clause has conceded plenary power to the state legislatures in the matter of the appointment of electors.*

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

McPherson is no relic of history. This Court has regularly applied its central holding that states control their process for appointing presidential electors in subsequent cases, including just months ago. *See Trump v. United States*, 144 S. Ct. 2312, 2339 (2024); *Moore v. Harper*, 600 U.S. 1, 28 (2023); *Chiafalo v. Washington*, 591 U.S. 578, 608 (2020); *Bush v. Gore*, 531 U.S. 98, 104 (2000).

III. The Framers Deliberately Excluded Congress from Having Power Over the Appointment of Presidential Electors

The absence in the Constitution of a substantial role for Congress in presidential elections was not an oversight. In statements to delegates, Gouverneur

Morris directly addressed the reasons why the Framers did not think Congress should have a hand in presidential selection:

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

3 The Madison Papers, pp. 1489-1490.

Thirteen years after the Constitutional Convention, the Annals of Congress summarized the statements of Constitutional delegate Charles Pickney of South Carolina from the floor of the U.S. Senate. He was said to have

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

10 ANNALS OF CONG. 29 (Jan. 23, 1800) (emphasis added).

In Senate debate surrounding proposed constitutional amendments, Rufus King vigorously defended the constitution's process, explaining that the Constitution

granted states plenary power to appoint presidential electors to "protect the people of the States from this great central power," and that, "instead of concentrating power in one place, the Constitution has provided for the division and distribution of it throughout and among the States," the result of which, King argued, "perpetuate[s] our liberties." 41 ANNALS OF CONG. 362 (Mar. 18 1824).

IV. State Power to Determine the Manner of Appointing their Presidential Electors Includes the Power to Determine and Enforce Voter Qualifications in Presidential Elections

H.B. 2492's regulations concern the process Arizona has created for determining its presidential electors under the Electors Clause. *Mi Familia Vota v. Fontes*, 691 F.Supp.3d 1077, 1088 (D. Ariz. 2023) (Appendix 166-167). Arizona's statutes provide that its presidential electors are to be appointed by allowing citizens to vote for presidential candidates, and then having the winning candidate represented by a slate of electors at the electoral college. Ariz. Rev. Stat § 16–212. The legislature has determined that only citizens providing documentary proof of citizenship are allowed to participate in the appointment process. Ariz. Rev. Stat § 16-121.01(C).

The Constitution gives to states, and not the federal government, the power to determine the qualifications for voting. "Prescribing voting qualifications, therefore, 'forms no part of the power to be conferred upon the national government' by the Elections Clause, which is 'expressly restricted to the regulation of the *times,* the *places,* and the *manner* of elections.'" *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 17 (2013) (quoting The Federalist No. 60, at 371 (A. Hamilton) and No. 52, at 326 (J. Madison)); *see also id.* at 16 ("Surely nothing in these provisions lends

itself to the view that voting qualifications in federal elections are to be set by Congress.") (quoting *Oregon v. Mitchell,* 400 U.S. 112, 210 (1970) (Harlan, J., concurring in part and dissenting in part)).

Moreover, "the power to establish voting requirements is of little value without the power to enforce those requirements" and "Arizona is correct that it would raise serious constitutional doubts if a federal statute precluded a State from obtaining the information necessary to enforce its voter qualifications." *Id*. at 17.

This Court, in *Inter Tribal*, avoided the constitutional issue presented in the instant matter by anticipating that the U.S. Election Assistance Commission ("EAC") would, upon Arizona's request, incorporate Arizona's documentary proof of citizenship requirement into the NVRA federal form and thus accommodate Arizona's power under the Electors Clause—or else Arizona could sue the EAC if it refused. *Id*. at 19-20. After *Inter Tribal*, the EAC refused Arizona's request to modify the NVRA federal form but Arizona's subsequent litigation to compel the EAC to do so was unsuccessful. *See Kobach v. U.S. Election Assistance Comm'n*, 772 F.3d 1183, 1188–89 (10th Cir. 2014), *cert. denied* 576 U.S. 1055 (2015).

V. The NVRA, Based On Congress's Election Clause Power to Regulate the Time, Place, and Manner of Congressional Elections, Does Not Supersede State Power Under the Electors Clause to Regulate Presidential Voter Qualifications

The District Court's conclusion that the NVRA pre-empts Arizona's documentary proof of citizenship requirement is inconsistent with the plain text of the Constitution's division of authority between states and Congress with respect to the appointment of states' presidential electors.

"The government of the United States is one of delegated powers alone. Its authority is defined and limited by the Constitution." *United States v. Cruikshank,* 92 U.S. 542, 551 (1876). "The Constitution confers on Congress . . . only certain enumerated powers." *New Jersey Thoroughbred Horsemen's Ass'n v. Nat'l Collegiate Athletic Ass'n*, 584 U.S. 453, 471 (2018). "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. CONST. amend. X. "Every law enacted by Congress must be based on one or more of its powers enumerated in the Constitution." *United States v. Morrison*, 529 U.S. 598, 607 (2000).

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

The "Elections Clause" provides that states choose "[t]he Times, Places and Manner of holding *Elections for Senators and Representatives*," but Congress "may at any time" alter those state regulations. U.S. CONST. art. I, § 4 (emphasis added). The Elections Clause thus expressly allows Congress to "pre-empt state regulations

governing the 'Times, Places and Manner' of holding *congressional elections*." *Inter Tribal Council of Arizona*, 570 U.S. at 8 (emphasis added). "The 'Manner of holding Elections' was understood to refer to 'the circumstances under which elections were held and the mechanics of the actual election.'" *Husted v. A. Philip Randolph Institute*, 584 U.S. 756, 782 (2018) (Thomas, J., concurring).

Congress's Elections Clause power over Congressional elections, and therefore the NVRA which it authorizes, does not preempt Arizona's power under the Electors Clause to require documentary proof of citizenship to vote in Presidential elections for three reasons.

First, Congress's Elections Clause power to regulate the times, places, and manners of elections is, per the plain text of the Elections Clause, limited to *congressional* elections. The District Court traced the notion that the Electors Clause, despite its plain text, reaches beyond congressional elections to presidential elections to *Burroughs v. United States*, 290 U.S. 534 (1934). *Mi Familia Vota*, 691 F. Supp. 3d at 1089. But in *Burroughs*, the Court determined that, while Congress has the power to pass legislation to safeguard the presidential election from the "improper use of money to influence the result" of the election, "[n]either in purpose nor in effect does [the congressional act under review] interfere with the power of a state to appoint electors or the *manner* in which their appointment shall be made." *Burroughs*, 290 U.S. at 544–45 (emphasis added). In a later seminal federal campaign finance case, *Buckley v. Valeo*, 424 U.S. 1, 13-14 (1976), the Court highlighted that no party in *Burroughs* was challenging Congress's ability to regulate federal elections and that

the decision focused on "whether the specific legislation that Congress has enacted interferes with First Amendment freedoms or invidiously discriminates against nonincumbent candidates." In a footnote, the *Buckley* court also cited *Burroughs* for the proposition that it had previously "recognized broad congressional power to legislate in connection with the elections of the President and Vice President." *Buckley*, 424 U.S. at 14 n.16. A conclusion that Congress has the implied power to regulate federal campaign contributions to prevent the corruption of elected federal officials, including presidents and vice presidents, has no bearing on, and is consistent with, the states' plenary Elector Clause power to choose the *manner* of appointing their presidential electors—including limiting the right to vote for presidential electors to citizens and requiring documentary proof of their citizenship.

Second, the Electors Clause that gives the states their power to choose the manner of appointing their presidential electors also specifies Congress's power with respect to presidential electors and expressly limits that power to setting the time of choosing electors and the date of their vote. U.S. CONST. art. II, § 1, cl. 2; U.S. CONST. art. II, § 1, cl. 4. In contrast to the grant of power to Congress over congressional elections in the Elections Clause, which permits Congress to preempt regulations concerning the time, place *and manner* of congressional elections, *the Electors Clause omits Congressional power over the "manner"* of the appointment of presidential electors. *Compare* U.S. CONST. art. I, § 4 *with* U.S. CONST. art. II, § 1, cl. 2.

Third, the constitutional provisions governing the selection of members of congress (Article I, § 4) and the president (Article II, § 1) are found in two different

articles of the Constitution and use different language. The Elections Clause grants Congress the power to legislate the time, place, and manner of an election, but as discussed above the Electors Clause grants states the power to appoint their presidential electors and does not mandate that states conduct a popular election to do so. Extending Congress's power over the manner of congressional elections to the manner of presidential elections would make little sense because Congress would then have supreme power to preempt a state's process for appointing its electors *only* if the state chose to do so through an election, but if it chose another method. There is no support for such a reading in the text or history of the Constitution.

The Elections Clause's limitation of congressional power to *congressional* elections, the Electors Clause's limitation of congressional power over states' appointment of their presidential electors—omitting any power over the *manner* of such appointments, and the distinction between Congressional power over *elections* in the Elections Clause and the states' power to *appoint* presidential electors by other means are consistent with the text and history of the Electors Clause and the Framers' deliberate choice to give states' plenary power over the manner of appointment of their electors. Constitutional text and history is, by contrast, wholly inconsistent with reading into the Elections Clause a congressional power to pre-empt the manner of a state's appointment of its presidential electors, including a requirement that voters provide proof of citizenship to vote in presidential elections.

Just eleven years ago, this Court considered a similar Arizona statute requiring proof of citizenship. In *Inter Tribal*, this Court held that the Election

Clause's "substantive scope is broad" and that "Times, Places, and Manner," are "'comprehensive words', which 'embrace authority to provide a complete code *for congressional elections*[.]" *Inter Tribal Council of Arizona*, 570 U.S. at 8–9 (emphasis added) (quoting *Smiley v. Holm*, 285 U.S. 355, 366 (1932)). The Court further noted that "[t]he power of Congress over the 'Times, Places and Manner' of *congressional* elections 'is paramount[.]'" *Id*. at 9 (emphasis added) (quoting *Ex parte Siebold*, 100 U.S. 371, 392 (1880). In rebuffing Arizona's arguments in that case, the Court concluded "there is no compelling reason not to read Elections Clause legislation simply to mean what it says," *id*. at 15, "[o]ne cannot read the Elections Clause as treating implicitly what these other constitutional provisions regulate explicitly," *id*. at 16, and "[i]t is difficult to see how words could be clearer in stating what Congress can control and what it cannot control." *Id*. In this vein, the Court should therefore uphold the plain text of the Electors Clause and the Elections Clause to hold that Congress, through the NVRA, does not have the power under the Elections Clause to preempt a state's choice to require documentary proof of citizenship to vote in an election for the appointment of that state's presidential electors.

CONCLUSION

The Constitution does not support the district court's holding that the NVRA, in an exercise of Congress's Elections Clause power to regulate the manner of congressional elections, preempts a state's choice pursuant to its power under the Electors Clause to require voters to submit documentary proof of citizenship to vote in elections to appoint that state's presidential electors. The Court should therefore

immediately stay the District Court's injunction to the extent it interferes with Arizona's constitutional power to choose how it appoints its presidential electors.

Respectfully submitted,

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