IN THE

Supreme Court of the United States

REPUBLICAN NATIONAL COMMITTEE, *et al.*,
Applicants,

v.

MI FAMILIA VOTA, *et al.*,
Respondents.

ON APPLICATION FOR A STAY TO THE HONORABLE ELENA KAGAN, CIRCUIT JUSTICE FOR THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

CERTAIN NON-U.S. PLAINTIFFS' OPPOSITION

BRUCE SAMUELS
JENNIFER LEE-COTA
PAPETTI SAMUELS WEISS MCKIRGAN LLP
16430 North Scottsdale Road
Suite 290
Scottsdale, Arizona 85254
(490) 800-3530
bsamuels@pswmlaw.com

SETH P. WAXMAN
Counsel of Record
CHRISTOPHER E. BABBITT
DANIEL S. VOLCHOK
JOSEPH M. MEYER
BRITANY RILEY-SWANBECK
WILMER CUTLER PICKERING HALE AND DORR LLP
2100 Pennsylvania Avenue N.W.
Washington, D.C. 20037
(202) 663-6000
seth.waxman@wilmerhale.com

August 16, 2024

Counsel for the Democratic National Committee and Arizona Democratic Party

(Additional counsel listed in concluding signature blocks)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

Page(s)

DOCKETED CASES

CONSTITUTIONAL AND STATUTORY PROVISIONS

REGULATIONS AND RULES

LEGISLATIVE MATERIALS

OTHER AUTHORITIES

INTRODUCTION

Just weeks before early voting begins for the general election and days before Arizona ballots are to be printed, applicants ask this Court to *change* the state election laws and procedures, compelling election officials to implement three statutory provisions that—with applicants' knowing acquiescence for over a year—have never been enforced. This plea comes much too late. Granting applicants' request would cause chaos and confusion among election officials, as well as harm to voters. It is no surprise that no Arizona election official joins in the request, and the Secretary of State, the Attorney General, and the State of Arizona itself opposed a stay below.

Applicants' request is that this Court compel Arizona to revise how it conducts voter registration—as election officials across the State frenetically try to process registration applications streaming in before the coming election—and force officials to reject applicants who they know are qualified to vote. Applicants also seek to change the rules as to already-registered voters, demanding restrictions that would mean people who voted for a presidential candidate or by mail earlier this year—including in the July 30 primary just two weeks ago—would suddenly be unable to do so. For at least two of the provisions, applicants have forfeited any opportunity to seek emergency relief. But as to all of the provisions, this Court has forbidden "this kind of judicially created confusion," when a decision can cause widespread confusion among election officials and voters shortly before an election. *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423, 425 (2020).

If more were needed, applicants' arguments fail on the merits. Indeed, applicants' efforts to stay the injunction of Arizona's ban on certain people voting by mail in *any* federal election or for president *at all* have been rejected by every judge to consider them. Rightly so. The arguments conflict with the text of the National Voter Registration Act (NVRA), as well as decisions of this Court and others, including *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013) (*ITCA*), which held that the NVRA requires states to "accept and use" a federally created voter-registration form (Federal Form).

Applicants' arguments for staying the injunction of a provision requiring election officials reject voter-registration applications on Arizona's state-issued form (State Form) absent accompanying documentary proof of citizenship (DPOC) fare no better. App.6–7. Six years ago, Arizona agreed to a consent decree (the *LULAC* Decree) requiring election officials to do just the opposite, i.e., treat voter-registration applicants similarly whether they use the Federal Form or State Form to register for federal elections. The decree has governed voter-registration procedure since 2018, and applicants have never sought to have it set aside. Even if the *LULAC* Decree did not exist, the restriction violates both the NVRA and the Equal Protection Clause.

The application should be denied.

BACKGROUND AND PROCEDURAL HISTORY

A. Arizona's Bifurcated Voter-Registration System And The *LULAC* Decree

In 2004, Arizona enacted a law requiring voter-registration applicants to provide DPOC to register. *See* Ariz. Rev. Stat. (A.R.S.) §16-166(F). *ITCA* held that the

NVRA preempted this law as applied to those who register to vote for federal offices using the Federal Form. *See* 570 U.S. at 9-10; *see also* 52 U.S.C. §20508(a)(2) (requiring Federal Form's creation). The NVRA, *ITCA* explained, requires that states "accept and use" the Federal Form when a person seeks to "register to vote in elections for Federal office." 570 U.S. at 5. Thus, states "must accept the Federal Form as a complete and sufficient registration application" to vote for federal offices. *Id.* at 9.[1]

After *ITCA*, Arizona enforced the DPOC requirement as to registration to vote for state and local offices, resulting in a bifurcated system. Applicants who applied with any form and provided DPOC could vote for any office. Applicants who applied using the State Form without DPOC had their applications rejected. And applicants who applied with the Federal Form without DPOC were registered for federal elections, as *ITCA* required, creating a class of federal-only voters. For Federal-Form applications unaccompanied by DPOC, moreover, Arizona election officials would determine if the Arizona Department of Transportation (ADOT) had DPOC on file for the applicant. If DPOC was found, the applicant became a full-ballot voter. Election officials ran no similar search for DPOC for State-Form applicants.

In 2018, Arizona's Secretary of State entered into a consent decree requiring county recorders to treat Federal-Form and State-Form applicants the same in this regard. Suppl. App.135-150 (*LULAC* Decree). Under that decree, officials must

[1] The Federal Form "includes a statutorily required attestation, subscribed under penalty of perjury, that an Arizona applicant meets the State's voting requirements (including the citizenship requirement)," *ITCA*, 570 U.S. at 6-7, but does not require DPOC.

conduct the same search of the ADOT database for *any* applicant who applies to vote without DPOC, to see if Arizona already possesses confirmation of the applicant's citizenship. Suppl. App.146-147. If DPOC is found, the applicant is registered as a full-ballot voter. *Id.* If not, the applicant must be registered as a federal-only voter, regardless of which form they used. *Id.*

Arizona's election procedures, as promulgated through its Elections Procedures Manual (EPM), have consistently implemented the terms of the *LULAC* Decree, App.16-17, including in a 2018 addendum to the State's EPM, the 2019 EPM, and the now-operative 2023 EPM. *See, e.g.,* Suppl. App.177. The EPM is binding on all county recorders. *See* App.54. Violating it is a class-2 misdemeanor under Arizona law. A.R.S. §16-452(C).

B. House Bill 2492

In 2022, the Arizona legislature enacted House Bill 2492 (H.B. 2492), which restricts the rights of voters in several ways. *First*, it bars federal-only voters from voting in any federal election by mail, A.R.S. §16-121.01(E)—the way that the vast majority of Arizonans vote. App.169. *Second*, it bars federal-only voters from voting for president *at all*. *Id*. Both bans apply not only to new applicants who register without DPOC, but also to the tens of thousands of existing federal-only voters. *See* A.R.S. §16-127(A); App.48. *Third*, H.B. 2492 requires county recorders to "reject any [State Form] application for registration that is not accompanied by satisfactory evidence of citizenship," A.R.S. §16-121.01(C), *even if the applicant already provided DPOC to Arizona and the recorder could instantly confirm as much in the ADOT database*. Regardless of any stay here, Arizona election officials will continue to use

the ADOT database to confirm the citizenship of Federal-Form applicants who do not provide DPOC. As a result, under A.R.S. §16-121.01(C), and notwithstanding the *LULAC* Decree, voters would see their applications rejected solely based on which paper they use to register. "A county recorder or other officer in charge of elections who knowingly fails to reject an application for registration as prescribed by this [§16-121.01(C)] is guilty of a class 6 felony." *Id.*

Since their March 2022 enactment, these provisions have *never* been enforced. The United States, as well as various civic and tribal organizations, promptly sued challenging the law. (The suits were consolidated as *Mi Familia Vota, et al. v. Fontes, et al.*, No. 22-cv-00509 (D. Ariz.).) Given the challenges, Arizona's election officials—including the Secretary of State and all fifteen county recorders—made clear they would continue to follow the EPM and await the outcome of litigation before amending longstanding election procedures. *See* App.109 (Defendants conceding "the Voting Laws are not currently being enforced"); App.6 (observing §16-121.01(C) "had never taken effect in Arizona"). At no point did applicants (or any defendant) try to have these laws enforced at any time while this litigation was pending.

C. The District Court Proceedings

As relevant here, plaintiffs' complaints alleged that H.B. 2492 (1) conflicts with the NVRA by prohibiting federal-only registrants from voting by mail in federal elections or for president, and (2) violates the *LULAC* Decree, the NVRA, and the Equal Protection Clause by treating identically situated applicants differently based on whether they use the Federal or State Form. App.87, 161. Applicants intervened as defendants. D.Ct. Dkt. 24; 363. The district court set an expedited discovery and

summary-judgment schedule to ensure that all claims could be resolved before the 2024 elections. D.Ct. Dkt.338; 362.[2]

In September 2023, the court granted summary judgment for plaintiffs on the claims at issue here. App.164. It first held that the NVRA preempts both of H.B. 2492's restrictions on federal-only voters. As to presidential voting, the court noted that the "plain language of the NVRA reflects an intent to regulate all elections for '[f]ederal office,' including for President or Vice President." App.165 (quoting 52 U.S.C. §20507(a) and 52 U.S.C. §30101(3)). The court rejected applicants' argument that Congress lacks authority to regulate presidential elections, pointing to contrary case law from this Court and the Ninth Circuit. App.165-167.

As to the mail-voting restriction, the district court found both express and obstacle preemption. App.168-169. The court observed that while the NVRA allows *certain* limitations on mail voting for those who register by mail pursuant to the NVRA's protections, *see* 52 U.S.C. §20505(c)(1)-(2), H.B. 2492 goes beyond those limits. App.168. Applying the *expressio unius* canon, the court concluded Congress did not otherwise intend to permit states to restrict federal-only voters' use of otherwise-available methods of voting based on how they registered. *Id.* And the restriction, the court held, would interfere with the NVRA's objective of facilitating voter registration by eligible Americans.

[2] Unless otherwise noted, citations to the district-court docket refer to case number 2:22-cv-00509 and to the Ninth Circuit docket refer to case number 24-3188.

Finally, the court enjoined A.R.S. §16-121.01(C) as violating the *LULAC* Decree. App.176-177. It observed that the decree formed part of a final judgment in earlier litigation that the Secretary resolved by agreeing to the decree's terms. While acknowledging that courts may reopen and set aside such final judgments, it pointed to circuit law forbidding the legislature from doing the same. *Id.* (citing *Taylor v. United States*, 181 F.3d 1017, 1024 (9th Cir. 1999)). Even setting aside the *LULAC* Decree, the court explained, §16-121.01(C) violates the NVRA. App.177 n.13. Arizona, which was then in the process of preparing its biannual EPM, incorporated the district court's summary-judgment rulings into the 2023 EPM, which election officials are currently following. *See* Suppl. App.183.

Nearly a month after the district court granted summary judgment on the claims at issue here, applicants moved for entry of a partial final judgment. D.Ct. Dkt.557. They sought no relief from the Ninth Circuit or this Court at that time. The district court denied the motion after trial.

In February 2024, the court (having held a ten-day bench trial) granted plaintiffs additional relief on some claims but not others. App.108-109. Applicants did not seek to expedite a final judgment. Rather, nearly a month passed before the parties jointly moved for entry of final judgment. D. Ct. Dkt.711. The district court granted the motion the same day and instructed the parties to propose a final judgment. Again applicants showed little urgency, and the parties did not propose a final judgment until April 30—over two months after the district court's post-trial order. D.Ct. Dkt.719. The court entered judgment two days later. App.191-195.

Applicants then waited over two weeks more before moving for a stay from the district court (on the same issues raised here), finally filing that motion on May 17—more than two-and-half months after the district court issued its final ruling. D.Ct. Dkt.730. Plaintiffs opposed the stay. D.Ct. Dkt.737; 738. So did the Arizona Secretary of State, who declared, after detailing various imminent election administration deadlines, that a stay even then would "create chaos and confusion, and undermine the credibility of our elections and related processes." Suppl. App.93. He thus asked the court "to preserve the status quo and deny" a stay. Suppl. App.96. The Arizona Attorney General—who vigorously defended much of H.B. 2492 and is also an appellant below—echoed the Secretary's concerns and, on behalf of the State, explained that "the State's interests are better served by denying a stay." Suppl. App.103. The district court denied a stay on June 28, emphasizing that applicants had failed to demonstrate any irreparable harm and that the equities weighed strongly against disturbing the status quo. Suppl. App.1, 3-5.

D. Ninth Circuit Proceedings To Date

Applicants did not ask the Ninth Circuit for a stay until June 25—nearly six weeks after first seeking a district-court stay. CA9 Dkt.50. Plaintiffs again opposed, CA9 Dkt.65; 66, and Arizona officials again emphasized that, because applicants sought to change longstanding election procedures, a stay risked seriously upsetting the State's election administration late in an election cycle. Suppl. App.29-37, 38-50.

On July 18, a motions panel largely denied applicants' request, refusing to disturb the district court's injunction as to the presidential and mail restrictions. App.43-46. The panel granted the stay—albeit with no analysis—only "with respect

to the portion of the injunction barring enforcement of A.R.S. §16-121.01(C)," i.e., the *LULAC* Decree issue. App.45. The panel added that its "order [wa]s subject to reconsideration by the [merits] panel." *Id.* It also set an expedited briefing schedule for the appeal, *id.*, pursuant to which both sides have filed their opening briefs, and the Ninth Circuit is set to hear argument on September 10.

Several plaintiffs promptly took up the motions panel's invitation to ask the merits panel to reconsider the partial stay of the injunction as to §16-121.01(C). Suppl. App.51-80. Plaintiffs noted that the partial stay was effectively a mandatory injunction, requiring Arizona election officials to develop and implement procedures for a never-enforced provision of law—all on the fly and on the brink of an election. Suppl. App.56. They further emphasized the absurd practical consequences of the partial stay, including the requirement that county recorders reject State-Form applicants even when they could confirm that such applicants are citizens through an instantaneous search of the ADOT database. *Id.*; *accord* Suppl. App.83, 85 (Arizona Attorney General emphasizing this "strange result of the stay"). Finally, plaintiffs explained that the district court's injunction of §16-121.01(C) could be upheld on a host of grounds, including the *LULAC* Decree, the NVRA, and the Equal Protection clause. Suppl. App.60-70. Arizona officials—including the State's "chief election official," A.R.S. §16-142—*supported* reconsideration and at least a partial vacatur of the stay. *See* Suppl. App.81-88; 89-91.

Applicants, in sharp contrast, chose not to seek reconsideration of the denial of their stay request with respect to the presidential and mail voting.

On August 1, the merits panel, over a dissent, granted reconsideration and vacated the partial stay. App.6-7. Citing *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam), the panel ruled that the motions panel had overlooked or misunderstood "the extent of confusion and chaos that would be engendered by a late-stage alteration to the status quo of Arizona's election rules." App.9. In so ruling, it detailed the extensive confusion, disruption, and manifest injustice likely to be inflicted by the stay order. App.15-18. It also concluded that applicants were not likely to succeed on appeal because the *LULAC* Decree, as a final judgment, retained its preclusive effect absent appropriate efforts to set it aside—which applicants never pursued. App.9-11. It also found that applicants failed to show irreparable harm. App.13.

E. The Application

Applicants waited another week before filing their "emergency" application with this Court—three weeks after the motions panel first denied the bulk of their stay request. Applicants ask this Court to issue a stay as to all three provisions that were the subject of their initial stay motion—the presidential-voting restriction, the mail-voting restriction, *and* the requirement to reject State-Form applicants without DPOC despite the *LULAC* Decree—even though only the last was at issue before the merits panel. Applicants claim the merits panel "abandon[ed] regularity" by permitting the votes of two judges to prevail over the motions panel's competing views. Appl.1 (alteration in original). But the motions panel explicitly stated that the parties could seek reconsideration from the assigned merits panel. App.45. Moreover, to date, *every* judge to consider applicants' demand to enforce the presidential and mail-voting restrictions on federal-only voters has rejected their arguments. Indeed, applicants

did not even bother to raise those twin restrictions with the merits panel, even though the motions panel invited them to do so.

STANDARD OF REVIEW

In seeking the "extraordinary relief" of a stay—particularly in this extraordinary procedural posture—applicants bear a "heavy burden." *Winston-Salem/Forsyth Cnty. Bd. of Educ. v. Scott*, 404 U.S. 1221, 1231 (1971). Before a stay may issue, they must establish: (1) "a 'reasonable probability' that four Justices will consider the issue sufficiently meritorious to grant certiorari," (2) "a fair prospect that a majority of the Court will [vote to reverse the judgment] below," *and* (3) "[a] like[lihood that irreparable harm] will result from the denial of a stay." *Corsetti v. Massachusetts*, 458 U.S. 1306, 1306-1307 (1982) (Brennan, J., in chambers) (quoting *Rostker v. Goldberg*, 448 U.S. 1306, 1308 (1980)). Moreover, because a stay is an "intrusion into the ordinary processes of administration and judicial review," *Nken v. Holder*, 556 U.S. 418, 427 (2009), it is never "a matter of right, even if irreparable injury might otherwise result," *Virginian Ry. Co. v. United States*, 272 U.S. 658, 673 (1926).

"[W]hen a district court judgment is reviewable by a court of appeals that has denied a motion for a stay, the applicant seeking an overriding stay from this Court bears 'an especially heavy burden.'" *Edwards v. Hope Med. Grp. for Women*, 512 U.S. 1301, 1302 (1994). The Ninth Circuit has the responsibility "to review the District Court's decision … in the first instance," *McLane Co. v. EEOC,* 581 U.S. 72, 85 (2017), and its denial of a stay "is entitled to great deference from this Court because the

court of appeals ordinarily has a greater familiarity with the facts and issues in a given case," *Garcia-Mir v. Smith,* 469 U.S. 1311, 1313 (1985) (Rehnquist, J., in chambers). Ultimately, "a stay application to a Circuit Justice on a matter before a court of appeals is rarely granted," especially where the court of appeals "itself has refused to issue the stay." *Heckler v. Redbud Hosp. Dist.*, 473 U.S. 1308, 1312 (1985) (Rehnquist, J., in chambers). "Respect for the assessment of the Court of Appeals is especially warranted when that court is proceeding to adjudication on the merits with due expedition," as it is here. *Doe v. Gonzales,* 546 U.S. 1301, 1308 (2005) (Ginsburg, J., in chambers); *accord Fargo Women's Health Org. v. Schafer,* 507 U.S. 1013, 1014 (1993) (O'Connor, J., concurring).

ARGUMENT

I. THE APPLICATION TO STAY THE INJUNCTION OF THE PRESIDENTIAL AND MAIL-VOTING RESTRICTIONS IS IMPROPER

As a threshold matter, the application to stay the district court's injunction of the presidential and mail-voting restrictions disregards this Court's rules and fails to reflect the urgency necessary to warrant an emergency stay. A stay application must "set out with particularity why the relief sought is not available from any other court or judge." S.Ct. R. 23.3. The application does not even address this threshold condition.

As noted, the motions panel *denied* applicants request to stay these restrictions on federal-only voters. That important fact is barely acknowledged by applicants, noted passingly in a single sentence that omits to mention it was the Ninth Circuit *motions* panel that denied relief as to these provisions. See Appl.2. In its ruling, moreover, the motions panel invited any party to seek reconsideration of its decision

from the merits panel. App.45. Plaintiffs promptly did so as to the sole issue on which a stay was granted. App.6-7. Applicants did not—not because they were rushing for resolution from this Court (this application did not follow until *three weeks* after the motions panel's decision), and not because the merits panel was unavailable for speedy adjudication (it resolved plaintiffs' motion for reconsideration in days). As the election and related deadlines approached week by week after the motions panel's ruling, with hundreds of thousands of Arizonans voting in the July 30 state primary and more Arizonans registering to vote each day, applicants did *nothing* to suggest that an emergency had arisen. Instead, they sat out the process for seeking relief from the merits panel already assigned to their case, *contra* S.Ct. R. 23.3, and only now seek a stay after having suffered an additional defeat on their *LULAC* Decree claim. This Court has made clear that stays will not be granted when applications arrive with such "unexplained tardiness." *Graddick v. Newman*, 453 U.S. 928, 936 (1981).

The tardiness is particularly inexcusable here, as applicants seek to weaponize Arizona's forthcoming ballot-printing deadline to obtain relief. According to them, that deadline is August 22 (App.199)—a mere two weeks from when this application was filed, but *five weeks* from when the motions panel denied applicants' requested relief touching on this deadline. Applicants cannot claim ignorance on this score: The materials they cite for the August 22 deadline (Appl.2) predate the motions panel order. Yet applicants fail to explain why they sat on their hands for most of this

interlude between the motions panel denying their relief and this supposed deadline. No more is needed to reject the application.[3]

II. A STAY WOULD IMPROPERLY UPSET THE STATUS QUO

There is no credible dispute that a stay here would disrupt rather than preserve the status quo. Because the new provisions that applicants seek to enforce have never been implemented, "a stay would send election officials 'scrambling to implement and administer'" new policies on the eve of an election and without guidance. Suppl. App.9; *accord* App.34-37. It was precisely for this reason that Arizona's Secretary of State and Attorney General *opposed* a stay, emphasizing that it would wreak havoc on election administrators and introduce significant voter confusion at this late stage. Suppl. App.94-96; 102-104. Arizona's election officials have spent the better part of a year incorporating the district court's September 2023 summary-judgment order into the 2023 EPM. Particularly given applicants' inexcusable delay in seeking enforcement of the provisions at issue, there is no reason for this Court to depart from the principle that courts "should ordinarily not alter the election rules on the eve of an election." *Republican Nat'l Comm.*, 589 U.S. at 424 (citing *Purcell*); *see also Moore v. Harper*, 142 S.Ct. 1089, 1089 (2022) (Kavanaugh, J., concurring) (agreeing that under *Purcell*, it was too late to implement a state legislature's redistricting map enjoined by the state supreme court).

[3] By the upcoming ballot-printing deadline, officials must accurately translate the ballot into several Native American languages and Spanish pursuant to section 203 of the Voting Rights Act. *See* 86 Fed. Reg. 69,611 (Dec. 8, 2021).

Purcell's caution about injecting confusion into the election system applies with special force here, where both voters *and* election officials are likely to be confused about new restrictions and penalties foisted upon them at the last minute. *See, e.g.*, App.16 (merits panel recognizing that a stay would "only create confusion and chaos for voters and election officials alike" and subject officials to "conflicting criminal penalties, orders, and policies" about their duties in processing registration applications).

Applicants turn *Purcell* on its head. The Ninth Circuit did not intervene on the eve of an election to *disrupt* the status quo, as they suggest (Appl.1-2, 7-8, 18-19). To the contrary, it affirmed the district court's refusal to stay its summary-judgment ruling, issued *thirteen months* before the 2024 general election. As the district court explained in denying a stay, it was *applicants* "who seek last-minute alterations to the state's election procedures." Suppl. App.10 n.6. Indeed, a stay now would unquestionably change the rules for many Arizonans who voted for president or by mail in the primary but would be barred from doing either in the general election.

Applicants respond (Appl.18-19) that the status quo is the law as enacted in 2022, even while they fail to dispute that none of these provisions have gone into effect in any election since. But members of this Court have cautioned against such a formalistic view. *See, e.g.*, *Labrador v. Poe ex rel. Poe*, 144 S.Ct. 921, 930-931 (2024) (Kavanaugh, J., concurring) (a rigid definition of the "status quo" as "the status after [a] new law is in place" would engender an "inequitable" regime where "unconstitutional or otherwise illegal laws would nonetheless remain in effect … for

several years pending the final decision on the merits"); *see also Alexander v. S.C. State Conference of the of the NAACP*, 23A851 (22-807), 2024 WL 2805735 (June 3, 2024) (unanimously denying a partial stay of the district court panel's injunction of South Carolina's enacted plan as a racial gerrymander less than three months before a primary election despite ultimately reversing the panel's injunction in *Alexander v. S.C. State Conference of the NAACP*, 144 S.Ct. 1221 (2024)). Identifying the relevant status quo instead requires a case-by-case approach, based on the facts in each proceeding. *See Labrador*, 144 S.Ct. at 930-931. Both the merits panel and the district court made just such case-specific determinations here. The motions-panel ruling to which applicants cling, by contrast, did not.[4]

Recognizing the proper status quo—the *actual* state of affairs before the challenged injunction—makes clear that it is applicants who seek to change the rules of the road. But the change applicants request would undoubtedly cause confusion for voters. Voters have registered and continue to register in Arizona using State Forms, which tell registrants "that otherwise eligible applicants without DPOC … *will* be eligible to vote in federal elections" without limitation. App.17 (emphasis in original). Election officials and civic engagement groups have structured their voter-outreach efforts based on the longstanding rule that State- and Federal-Form applications are treated equally. And the tens of thousands of Arizona's federal-only

[4] Applicants also say (Appl.18-19) that "the Ninth Circuit order stopped state officials from enforcing the law," whereas a stay "would just return to the status quo before the district court's injunction." That is simply untrue. As explained, even prior to the district court's injunction, the laws were not being enforced.

active voters have been permitted to vote by mail and in presidential elections since 2013, including in the March 2024 primary election. If applicants secure a stay now, those voters would suddenly find themselves barred from the most prevalent form of voting in Arizona and shut out of participating in the presidential election altogether. None of this is remotely consistent with *Purcell* and its progeny.[5]

A stay would also create confusion for election officials. The EPM, which carries the force of law, was adopted "consistent with the lower court's judgment in this case and the LULAC Consent Decree" and subjects elections officials to prosecution for failing to abide by it. App.16. But a stay would have the practical effect of exposing elections officials to prosecution for a *different* criminal offense, for knowingly failing to reject State-Form registration applications without accompanying DPOC. *See id.* There is no sound reason to burden election officials with a seemingly serious possibility of criminal prosecution no matter what they do.

Consistent with the views of the State's election officials, this Court should adhere to its settled practice of not disrupting the status quo just before an election.

III. APPLICANTS HAVE NO FAIR PROSPECT OF SUCCESS ON APPEAL

A. Applicants Are Unlikely To Succeed On Their NVRA Arguments

The district court correctly held that the NVRA preempts Arizona's voting restrictions on people who register using the Federal Form. That holding is supported by decades of unwavering precedent from this Court (and others), and by the NVRA's

[5] Applicants shockingly suggest that perhaps federal-only voters could be offered ballots that include the presidential election but then the tabulators can be configured to exclude those votes. Appl.3.

text and purposes. There is no reasonable probability that this Court will review the district court's holding, nor any fair prospect it would reverse if it did review.

H.B. 2492 does exactly what *ITCA* disallows. *ITCA* held that Arizona could not require those who register using the Federal Form to submit DPOC; in the Court's words, "requir[ing] state officials to 'reject' a Federal Form unaccompanied by documentary evidence of citizenship[] conflicts with the NVRA's mandate that Arizona 'accept and use' the Federal Form." 570 U.S. at 9. *ITCA* forecloses Arizona's latest effort to deny voters who do not submit DPOC with the Federal Form the right to vote in presidential elections, or by mail in *any* federal election. As this Court emphasized, "accept and use" "mean[s] that a State must accept the Federal Form as a *complete and sufficient* registration application." *Id*. (emphasis added). Arizona's efforts to bar those who submit such forms (and no one else) from voting in certain ways or in certain federal elections flatly violates this Court's instruction, treating such forms as *in*complete (because DPOC is absent) and *in*sufficient (because applicants are not entitled to the same voting rights as those who submit DPOC).

1. The NVRA's Regulation Of Presidential Elections Is Constitutional

Applicants' argument that the NVRA cannot preempt H.B. 2492's DPOC requirement for voting in presidential elections (Appl.13-14) rests on the premise that Congress lacks constitutional authority to regulate presidential elections at all. That is wrong; multiple constitutional provisions back the NVRA's regulation of presidential elections. And applicants' position cannot be squared with decades of this Court's precedent.

a. Congress's Constitutional Power To Regulate Presidential Elections

Several constitutional provisions give power Congress to regulate presidential elections.

First, this Court has recognized that Congress's authority "to preserve the purity of presidential … elections" is inherent in the power it "undoubtedly[] possesses … to preserve the departments and institutions of the general government from impairment or destruction." *Burroughs v. United States*, 290 U.S. 534, 544-545 (1934). Indeed, "[t]he importance of [the president's] election and the vital character of its relationship to and effect upon the welfare and safety of the whole people cannot be too strongly stated." *Id.* at 545. Thus, "to say that Congress is without power to pass appropriate legislation to safeguard such an election … is to deny to the nation in a vital particular the power of self-protection." *Id.*

Second, the NVRA's regulation of presidential elections is a "Necessary and Proper" exercise, U.S. Const. art. I, §8, cl. 18, of Congress's powers under the Elections and Electors Clauses. This Court has long described the Elections Clause as "comprehensive," "embrac[ing] authority to … enact the numerous requirements … necessary … to enforce the fundamental right involved." *Smiley v. Holm*, 285 U.S. 355, 366 (1932). And under its Electors Clause power to "determine the Time of ch[oo]sing" presidential electors, U.S. Const. art. II, §1, cl. 4, and to "count[]" those electors' votes, *id.* cl. 3, Congress has chosen to hold presidential and congressional elections simultaneously, 2 U.S.C. §7; 3 U.S.C. §1. Given that simultaneity, applying the NVRA to presidential elections is a necessary and proper way both to regulate

the "manner" of congressional elections, U.S. Const. art. I, §4, cl. 1, and to ensure that the "count" of presidential electors' votes, art, II, §1, cl. 3, is "beneficial[ly]" carried out, *M'Culloch v. Maryland*, 17 U.S. 316, 408-409 (1819). Congress's determination that one voter-registration process should apply to all federal elections is certainly "rationally related"—i.e., "convenient," "useful," or "conducive"—to the "implementation of" Congress's Elections and Electors Clause powers, *United States v. Comstock*, 560 U.S. 126, 133-134 (2010).

Third, the NVRA's regulation of registration for presidential elections is a valid exercise of Congress's power under the Fourteenth and Fifteenth Amendments. Those amendments authorize Congress to "use any rational means to effectuate the constitutional prohibition of racial discrimination in voting." *South Carolina v. Katzenbach*, 383 U.S. 301, 324 (1966). Mandating a simplified system for registering to vote in presidential elections and restricting states' ability to purge voters from the rolls are assuredly "rational means," *id.*, of preventing "discriminatory and unfair registration laws and procedures," 52 U.S.C. §20501(a)(3).

Indeed, one applicant (the Republican National Committee) conceded below that the Fourteenth and Fifteenth Amendments "could have been a valid source for the NVRA had Congress invoked them." D.Ct. Dkt. 442 at 5. That concession is fatal, because (contrary to the RNC's assumption) Congress need not invoke its power under the amendments when legislating; there need only be "some legislative purpose or factual predicate" to support the exercise of that power, *EEOC v. Wyoming*, 460 U.S. 226, 243 n.18 (1983). In any event, Congress *did* invoke its power under the

Reconstruction Amendments in enacting the NVRA. Congress's findings—enshrined in the statutory text—recognize that "discriminatory and unfair registration laws and procedures … disproportionately harm voter participation by various groups, including racial minorities." 52 U.S.C. §20501(a)(3). And the concomitant Senate report stated that the law sought "to remove the barriers to voter registration and participation under Congress' power to enforce the equal protection guarantees of the 14th Amendment." S.Rep. No. 103-6, at 3 (1993); *see also* H.Rep. No. 103-9, at 3 (1993) (deeming the NVRA necessary to complete the work of the Voting Rights Act ("VRA")).

Notwithstanding its concession, the RNC argued below (D.Ct. Dkt. 367 at 7) that legislation under the Fourteenth and Fifteenth Amendments must be "congruen[t] and proportional[]" to the problem it addresses, *City of Boerne v. Flores*, 521 U.S. 507, 508 (1997)—rather than merely a "rational means" to address the problem, *Katzenbach*, 383 U.S. at 324—and that the NVRA fails the congruence-and-proportionality test. Both claims were wrong. Even after *City of Boerne*, this Court has applied *Katzenbach* when Congress sought to remedy racial discrimination or protect voting rights. *See Lopez v. Monterey Cnty.*, 525 U.S. 266, 283 (1999). Courts have thus recognized that *Katzenbach*'s "rational means" standard governs in cases involving the Fifteenth Amendment. *Janis v. Nelson*, 2009 WL 5216902, at *8 (D.S.D. Dec. 30, 2009). Regardless, the NVRA *is* congruent and proportional. In enacting the NVRA, Congress relied on an extensive record of discrimination in voting registration, similar to that underlying the VRA. *See* S.Rep. No. 103-6, at 3; H.Rep. No. 103-9, at 3-4. And courts have held, based on the law's extensive legislative record, that the

VRA's prophylactic elements are a congruent and proportional means of addressing voter discrimination. *See United States v. Blaine Cnty.*, 363 F.3d 897, 904-909 (9th Cir. 2004). The same is thus true of the NVRA.

b. This Court's Precedents Confirm Congress's Power To Regulate Presidential Elections

This Court has repeatedly recognized Congress's power to regulate presidential elections. For example, this Court held in *Burroughs* that "Congress, undoubtedly, possesses" the "power to pass appropriate legislation to safeguard [presidential] election[s]." 290 U.S. at 545. In so holding, the Court rejected the *exact same* "narrow … view of the powers of Congress" that applicants espouse, *id.* at 544, namely that congressional authority to regulate presidential elections is "limited to determining 'the Time of chusing the Electors, and the Day on which they shall … Vote[],'" *id.*. The Court called this "'a proposition so startling as to arrest attention.'" *Id.* at 546 (quoting *Ex parte Yarbrough*, 110 U.S. 651, 657 (1884)).

Applicants claim (Appl.14) that *Burroughs* "merely confirmed that an application of the Federal Corrupt Practices Act [FCPA] to political committees trying to influence the selection of presidential electors complies with the constitutional allocation of authority." That is unavailing. The FCPA—like the NVRA—regulated presidential elections. And *Burroughs* expressly considered and rejected "the constitutional objection" that Congress lacked the authority to enact such regulations. 290 U.S. at 544. And this Court subsequently confirmed that *Burroughs* recognized "broad congressional power to legislate in connection with the election[] of the President." *Buckley v. Valeo*, 424 U.S. 1, 13 n.16 (1976) (per curiam). Applicants' only

response—that *Buckley* involved "a power not relevant to the NVRA" (Appl.14)—does nothing to change the salient fact: *Buckley* made clear that this Court's longstanding precedent holds that Congress has "broad … power to legislate in connection with the election[] of the President," 424 U.S. at 13 n.16.

This Court's recognition in *Burroughs* and *Buckley* of that power is consistent with the Court's longstanding interpretation of state legislatures' Electors-Clause authority over the "Manner" of appointing presidential electors, U.S. Const. art. II, §1, cl. 2. The Court has defined "Manner" in that clause as the "method" or "mode" of appointing electors, *McPherson v. Blacker*, 146 U.S. 1, 27 (1892), meaning the clause empowers legislatures to select which organ of the state ("the people," "the legislature," "the governor," "the [state] supreme court," or some "other agent," *id.* at 34-35) will appoint its electors. The state is not required to select popular election as the manner for appointing its electors, but once it does, certain constitutional and federal statutory constraints apply. Thus, this Court held in *Bush v. Gore*, 531 U.S. 98 (2000) (per curiam), that the "federal constitutional right to vote" applies once a "state legislature chooses a statewide election as the means to implement its power to appoint members of the electoral college," *id.* at 104. *Burroughs* and *Buckley* establish that the same is true of applicable federal statutory provisions. The Electors Clause does not, that is, give states an exclusive power over every aspect of how presidential elections are administered. Applicants' contrary argument "conflates the 'manner' of appointing presidential electors—by popular election—with underlying

rules of election administration." *Trump v. Kemp*, 511 F.Supp.3d 1325, 1337 (N.D. Ga. 2021).

At a minimum, *Burroughs* and *Buckley* establish that *some* congressional regulation of presidential elections is permitted, specifically where necessary "to preserve the purity of presidential and vice presidential elections," *Burroughs*, 290 U.S. at 544. For example, absent federal campaign-finance regulation of presidential candidates (and preemption of state regulation of federal candidates), states would have the exclusive authority to regulate campaign-finance issues for presidential candidates, such that those candidates could face over 50 different versions of limitations on their fundraising and spending. That outcome is untenable; as *Buckley* recognized, Congress's provision of a single set of campaign-finance rules for presidential candidates was necessary "to insure both the reality and the appearance of the purity and openness of the federal election process," 424 U.S. at 78. The same is true here: As Congress determined in enacting the NVRA, a uniform and simplified system for registering to vote in federal elections is necessary to prevent the "damaging effect on voter participation" that would otherwise result from "discriminatory and unfair registration laws and procedures," 52 U.S.C. §20501(a)(3).

Consistent with the cases just discussed, courts of appeals have unanimously approved the NVRA's regulation of presidential elections. *See Voting Rts. Coal. v. Wilson*, 60 F.3d 1411, 1414 (9th Cir. 1995); *ACORN v. Miller*, 129 F.3d 833, 836 n.1 (6th Cir. 1997); *ACORN v. Edgar*, 56 F.3d 791, 793 (7th Cir. 1995).

c. No Case Supports Applicants' Position

In contrast to the multiple cases just discussed, applicants have no supporting authority for their position.

Applicants highlight (Appl.16) *ITCA*'s recognition that, in *Oregon v. Mitchell*, 400 U.S. 112 (1970), "[f]ive Justices took the position that the Elections Clause did *not* confer upon Congress the power to regulate voter qualifications in federal elections," 570 U.S. at 16 n.8. That is a red herring: As the district court explained here, the NVRA "does not regulate voter qualifications." App.167 n.6. It does not disturb any choice Arizona (or another state) has made to require U.S. citizenship as a qualification for voting in federal elections (a qualification also required by federal law, 18 U.S.C. §611). It simply regulates the proof of qualification that states may require from federal-form registrants. And *ITCA* confirms that that is constitutional, recognizing that "the Elections Clause empowers Congress to regulate *how* federal elections are held." 570 U.S. at 16.

2. The Text And Purposes Of The NVRA Foreclose Applicants' Mail-Voting Arguments

Applicants' arguments regarding the mail-voting restriction also fail. H.B. 2492's mail voting restriction is preempted because it conflicts with the NVRA's aim to provide a "backstop … that guarantees that a simple means of registering to vote in federal elections will be available," *ITCA*, 570 U.S. at 12.

Applicants and their amici respond largely by mischaracterizing the district court's ruling. The court did not "create[] a ban on state limits on mail voting" (Appl.13). It simply prevented states from eviscerating the NVRA's protections (and

circumventing *ITCA*) by punishing Federal-Form registrants by cutting off their access to mail voting. That does not mean the NVRA preempts generally applicable mail-voting rules, only that the NVRA does not permit states to discriminate against a voter *because* they registered pursuant to the NVRA's protections, including by cutting off their voting access. Put simply, applicants' and their amici's "parade-of-horribles" arguments fail because nothing about the district court's opinion below would disrupt generally applicable mail voting restrictions. And any claims of far-reaching impact are particularly flimsy given that, to respondents' knowledge, no other state punishes voters who register using the methods protected by the NVRA by restricting their access to otherwise-available methods of voting.

Applicants also argue (Appl.12) that the NVRA cannot preempt state laws concerning mail voting because the statute concerns only "*registration*," not actual "*voting*." That narrow view of preemption is at odds with this Court's broad view of Congress's "power to pre-empt" through Elections Clause legislation. *See ITCA*, 570 U.S. at 14. Applicants' proposed dichotomy between registration and voting, moreover, is belied by both the text and purpose of the NVRA. And accepting it would gut the statute's protections, allowing states to evade the law simply by placing voting restrictions on those who register pursuant to the NVRA's protections, rather than directly restricting registration itself.

The NVRA's text covers both registration *and* voting access for registrants. The law declares that the right "to vote" is "fundamental," and that states must "promote the exercise of that right." 52 U.S.C. §20501(a)(1), (3). Indeed, the law's stated

purposes include "enhanc[ing] the participation of eligible citizens *as voters*." *Id.* §20501(b)(2) (emphasis added). Accordingly, courts recognize that the NVRA's purpose is to ensure that the "right to *exercise the[] franchise* … not be sacrificed." *Project Vote/Voting for Am., Inc. v. Long*, 682 F.3d 331, 335 (4th Cir. 2012) (emphasis added). That purpose cannot be served by protecting registration alone: Because "[r]egistration is indivisible from election," states may not, "by separating registration from voting, … undermine the power that Article I section 4 grants to Congress." *Edgar*, 56 F.3d at 793. Registration, in other words, is not an end in itself; it exists entirely so that people can cast a ballot that will be counted. States thus cannot circumvent Congress's mandates in the NVRA by imposing prerequisites to voting that effectively deny the protections the statute provides. Indeed, because "[r]egistration is indivisible from election," *id.*, Arizona's prohibition on mail voting *by particular registrants only* is, for all intents and purposes, a regulation of registration itself. Put simply, applicants' position would all but destroy the NVRA. Because H.B. 2492's requirement that federal-form registrants provide DPOC in order to vote by mail "stands as an obstacle to the accomplishment and execution of the full purposes and objectives" of the NVRA, *Lamps Plus*, 587 U.S. at 183, it is preempted.

Applicants point, however (Appl.13), to the NVRA's additional purpose of "protect[ing] the integrity of the electoral process," 52 U.S.C. §20501(b)(3), which they construe as being about voter fraud. But voting by non-U.S. citizens in Arizona is exceedingly rare. App.75-76. And it strains credulity to assert that preventing fraud

was even the objective of H.B. 2492, given that the law exempts from the DPOC requirement everyone who registered before 2004. A.R.S. §16-166(G). Put simply, the district court's injunction of H.B. 2492's restriction on mail voting does not—unlike the restriction itself—prevent the accomplishment of Congress's purposes.

Applicants also fail to rebut the district court's textual analysis of the NVRA. Section 20505(c)(1) enumerates specific circumstances in which states *may* limit mail voting for certain individuals who register by mail. As the court recognized, App.171, it is a "sensible inference" that Congress "must have … meant" to *prevent* states from limiting mail voting for those individuals in *other* circumstances, *NLRB v. SW Gen., Inc.*, 580 U.S. 288, 302 (2017). Applicants' response that "the text of a law controls over purported legislative intentions unmoored from any statutory text" (Appl.13) is curious given that the court's analysis was, as explained, based on *the statutory text*. The analysis was a straightforward application of the "[e]xpressio unius" canon, which this Court's precedent (and common sense) make clear is "textual," *Bruesewitz v. Wyeth LLC*, 562 U.S. 223, 232-233 (2011).

Applicants have offered a different argument below regarding this provision, asserting (CA9 Opening Br. 13) that section 20505(c)(1) "addresses only when a narrow class of voters"—"those who registered by mail and have not previously voted"—may be required to vote in person, and contending that the "default" rule is that states can enact any restriction on Federal-Form registrants' ability to vote by mail. But if that were the "default" rule, section 20505(c)(1) would be superfluous.

The better reading, therefore, under both *expressio unius* and the canon against superfluity, is the district court's.

Finally, applicants say (Appl.13) that the district court's preemption ruling cannot be "reconciled" with 52 U.S.C. §20503(a). That is wrong. Section 20503(a) simply mandates specific opportunities each state must offer for voter registration. In particular, it provides that every state must "establish procedures" for people in that state to register (1) when applying for a driver's license, (2) by mail, and (3) in person at certain specified locations. *Id.* That mandate for certain enumerated registration procedures does not authorize Arizona's attempt to limit access to certain *voting* methods based on the way a voter chose to register.

B. The District Court's Ruling Enjoining Enforcement Of A.R.S. §16-121.01(C) Was Correct On The Merits

The district court properly enjoined A.R.S. §16-121.01(C). The *LULAC* decree remains a binding judgment that prevents enforcement of the statute. A.R.S. §16-121.01(C) also violates the NVRA, as the district court recognized in its summary-judgment order. Finally, the statute violates the Equal Protection Clause, treating similarly situated applicants differently based on the arbitrary distinction of whether they submitted a Federal Form or a State Form.

1. The LULAC *Decree Remains Enforceable*

The district court correctly held that the *LULAC* Decree precludes enforcement of A.R.S. §16-121.01(C). A consent decree "is subject to the rules generally applicable to other judgments and decrees," and is therefore binding. *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 378 (1992); *accord Frew ex rel. Frew v. Hawkins*, 540 U.S.

431, 438 (2004). Applicants' "suggest[ion] that "a state legislature may nullify a final judgment entered by an Article III court which [applicants] have not sought to set aside" (App.11-12) finds no support in the law.

At the outset, applicants cannot succeed because they never sought to set aside or modify the decree by filing a motion under Federal Rule of Civil Procedure 60(b). *See Rufo*, 502 U.S. at 378 ("There is no suggestion in these cases that a consent decree is not subject to Rule 60(b)."); *Hook v. State of Ariz., Dep't of Corr.*, 972 F.2d 1012, 1017 (9th Cir. 1992) ("Even if the law underlying the consent decree no longer appears to support the decree, a party cannot disobey the decree without bringing a Rule (60)(b) motion to modify or vacate the decree."). Despite multiple rounds of briefing concerning the *LULAC* Decree, applicants have never explained that failure.

Indeed, even in the cases that applicants rely on to attack the decree (Appl.9), this Court reaffirmed that the proper method for lodging objections to a consent decree is through a Rule 60(b) motion. In *Horne v. Flores*, 557 U.S. 433 (2009), the petitioners—Arizona legislators and a state official—contended that a district court order requiring funding for an English-language learner program should be modified. Discussing the nature of "institutional reform decrees," this Court set the standard for when such decrees should be modified under Rule 60(b)(5). *Id*. at 450. Nowhere in *Horne* did the Court contemplate invalidation of a decree by intervenor-*defendants* who sought to evade Rule 60(b). The same is true of *Agostini v. Felton*, 521 U.S. 203 (1997), also relied on by applicants (Appl.10). *See* 521 U.S. at 214 (noting that the petitioners there sought relief through a Rule 60(b) motion). And in *Frew*, this Court

explained that if state officials raise concerns about consent decrees "undermin[ing] sovereign interests and accountability of state governments," "the law's primary response to these concerns has its source … [in] the direction given by" Rule 60(b)(5). 540 U.S. at 441.[6]

These cases all demonstrate that applicants are wrong to assert (Appl.10) that enforcement of consent decrees could "'handcuff governments in perpetuity." (quoting App.28 (Bumatay, dissenting)). Applicants were not "handcuffed"; like the litigants in *Horne*, *Agostini*, and *Rufo*, they could have sought to modify or set aside the decree. Their choice not to do so makes their federalism concerns ring hollow and means their application here must be denied.

Next, applicants complain (Appl.2) that "the panel majority ignored the established rule that a consent decree yields to a change in the law, including a change in the statutory law." *See also* Appl.10 ("'Legislative acts must predominate over consent decrees.'" (quoting App.28 (Bumatay, dissenting))). Of course, a change in the *federal* law that underlies a decree may be a good reason to modify the decree or set it aside, because federal law controls the entry and modification of federal consent decrees. *See Frew*, 540 U.S. at 438 ("The decree is a federal-court order that springs from a federal dispute and furthers the objectives of federal law."). But applicants insist that a change in *state* law—enactment of A.R.S. §16-121.01(C)—

[6] *Horne* and *Agostini* also demonstrate that non-parties to a decree may intervene to file a Rule 60(b) motion. In *Horne*, in fact, *leaders of the Arizona legislature* did so. 557 U.S. at 443. In *Agostini*, "a new group of parents," who were not involved in the original lawsuit, filed a Rule 60(b) motion. 521 U.S. at 214.

automatically nullifies a *federal* decree that was entered to protect the *federal* constitutional rights of the plaintiffs in the *LULAC* case. There is no support for that position, and for good reason: The state law at issue codifies the very practice that the consent decree was intended to prevent; there is no relevant change to the federal law that served as the basis for the decree. The *LULAC* Decree was entered to enjoin the state practice of rejecting State Forms without DPOC. A.R.S. §16-121.01(C) would simply reinstate that same enjoined practice.[7]

As the merits panel explained, App.12, allowing a state to override a federal-court decree simply by re-enacting a statute the decree enjoined would violate the Supremacy Clause. *See Cooper v. Aaron*, 358 U.S. 1, 18 (1958) ("If the legislatures of the several states may, at will, annul the judgments of the courts of the United States, and destroy the rights acquired under those judgments, the constitution itself becomes a solemn mockery." (quotation marks omitted)).

Unsurprisingly, the cases applicants rely upon all involved changes to federal law. For example, they quote (Appl.10) *Miller v. French*, 530 U.S. 327, 347 (2000), for the proposition that "[w]hen a legislative body 'changes the law underlying a judgment awarding prospective relief, that relief is no longer enforceable to the extent it is inconsistent with the new law'.". Applicants' selective quotation from *Miller* elides the distinction between that case and this one. *Miller* actually explained that enforceability issues may arise "when *Congress* changes the law underlying a

[7] The complaint in *LULAC* alleged that differential treatment of State Forms and Federal Forms violated the Equal Protection Clause. Suppl. App.128-131; 135.

judgment awarding prospective relief." 530 U.S. at 347 (emphasis added). In that case, the district court originally entered an injunction against an Indiana prison to remedy violations of the Eighth Amendment, and this Court assessed whether and how a subsequently-enacted *federal* statute could affect the prospective relief that injunction granted. 530 U.S. at 331. Similarly, in *Agostini*, 521 U.S. 203 (*cited in* Appl.10), the question was whether, after entry of a district-court injunction, this Court's (obviously federal) Establishment Clause jurisprudence had changed enough to entitle the petitioners to relief under Rule 60(b)(5). 521 U.S. at 237.

The same is true for the cases applicants cite to support their claim that new legislation "'alter[s] the prospective effect of injunctions entered by Article III courts.'" Appl.11 (quoting *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 232 (1995))(alteration in original). The quoted language from *Plaut* described the holding in *State of Pennsylvania v. Wheeling & Belmont Bridge Co.,* 59 U.S. 421 (1855). There, this Court analyzed whether "[t]he provisions of [an] act of [C]ongress" were rendered invalid due to a previous agreement between states. *Id.* at 422. Likewise, *Biodiversity Associates v. Cables*, 357 F.3d 1152 (10th Cir. 2004), addressed whether a congressional rider on forest management techniques improperly "distur[bed] final dispositions of cases," *id.* at 1164. The Tenth Circuit explained that "when *Congress* changes the laws, it is those amended laws—not the terms of past injunctions—that must be given prospective legal effect." *Id.* at 1165 (emphasis added).

Applicants' contention (Appl.9-10) that enforcement of the *LULAC* Decree "displace[s] legislative power" and amounts to a "judicially imposed distortion of a

State's chosen allocation of sovereign authority," fails too. First, as explained, applicants' claim is made in the wrong posture: If a state official argues that enforcement of a decree unconstitutionally "undermine[s] the sovereign interests" of the state, "the law's primary response to these concerns has its source" in a Rule 60(b)(5) motion. *Frew*, 540 U.S. at 441; *see also Hook*, 972 F.2d at 1016 (refusing to address party's constitutional argument attacking decree "until it has been raised in a Rule 60(b)(5)-(6) motion").

Nor does the *LULAC* Decree improperly infringe on the legislature's role. It does not prevent the legislature from enacting any laws. Rather, like any other binding judgment, it prevents Arizona's Secretary of State from *enforcing* a statute enacted by the legislature, unless and until the judgment is set aside or modified. *See Hollingsworth v. Perry*, 570 U.S. 693, 706-707 (2013) (distinguishing between role in "the process of enacting the law" and the law's enforcement).[8]

The Secretary's entry into the consent decree was proper under Arizona law and this Court's precedent. State law tasked the Attorney General with litigating the enforceability of Arizona law on behalf of the Secretary, *see* A.R.S. §41-193(A)(3), and

[8] Applicants' quotation of *Horne* to argue (Appl.9) that the *LULAC* decree would "'improperly deprive future officials of their designated legislative and executive powers'" (quoting 557 U.S. at 449) is misplaced. *Horne* was describing "institutional reform litigation"—such as that concerning school funding or prison conditions—which creates concern because the decree might "dictat[e] state or local budget priorities." 557 U.S. at 447-448. The *LULAC* Decree did not result from institutional reform litigation. Further, *Horne* was targeted at decrees "'not limited to reasonable and necessary implementations of federal law.'" *Id.* at 450. Applicants offer no reason to conclude the *LULAC* decree fits that description.

he had the authority to settle claims against the Secretary with the Secretary's approval, *id*. §41-192(B)(4). This Court has endorsed such an arrangement, noting that a "State may choose to mount a legal defense of the named official defendants and speak with a single voice, often through an attorney general." *Berger v. North Carolina State Conf. of NAACP,* 597 U.S. 179, 184 (2022) (quotation marks omitted).[9]

2. A.R.S. §16-121.01(C) Violates The NVRA And Equal Protection Clause

Applicants are highly unlikely to succeed on the merits for another reason left unaddressed by their application: Even without the *LULAC* Decree, A.R.S. §16-121.01(C) is unlawful. This Court "may affirm a lower court judgment on any ground permitted by the law and the record," *Los Rovell Dahda v. United States*, 584 U.S. 440, 450 (2018) (quotation marks omitted), and applicants cannot establish likely success where they do not even address plaintiffs' alternative grounds for affirmance.

a. A.R.S. §16-121.01(C) Violates The NVRA

The district court made clear that the NVRA bars Arizona from refusing to register State-Form applicants to vote for federal offices because they do not provide DPOC. App.177 n.13. Moreover, the district court's holdings that H.B. 2492's documentary proof of *residence* (DPOR) requirements for State-Form applicants ran

[9] While applicants are correct (Appl.10) that state legislatures are authorized to regulate federal elections under the U.S. Constitution, this Court recently explained "that the Elections Clause does not exempt state legislatures from the ordinary constraints imposed by state law." *Moore v. Harper*, 600 U.S. 1, 34 (2023). Arizona law gives the Attorney General and the Secretary power to litigate on behalf of the State, pursuant to laws passed by the legislature. Nothing about that arrangement chosen by Arizona offends the Elections Clause.

afoul of the NVRA for registration in federal elections (App.120-122) are directly applicable to A.R.S. §16-121.01(C) as well. Applicants did not even seek a stay of those holdings.[10]

The district court correctly held that the NVRA allows states to require on State Forms only what is "necessary" to assess a voter's eligibility to vote in federal elections and requires states to use forms "equivalent" to the Federal Form when providing voter registration services at public assistance agencies. App.120-122. The district court's factual findings established that, on this record, the DPOC requirement for State Forms cannot satisfy either requirement.[11]

The NVRA unambiguously protects applicants using the State Form to register for federal elections: Section 8 requires that Arizona "ensure that any eligible applicant is registered to vote" if their "valid voter registration form" is received at least 30 days before an election. 52 U.S.C. §20507(a)(1). And while NVRA section 6 allows states to use their own state forms for federal elections, *id.* §20505(a)(2), those forms must comply with section 9. Pursuant to sections 6 and 9, a state form "may require only such identifying information … and other information … as is necessary

[10] As such, a stay of A.R.S. §16-121.01(C) would result in a bizarre distinction between voters who submit forms without DPOC and those who submit forms without DPOR, which is also required by the challenged laws. Due to the district court's ruling, applicants who submit State Forms without DPOR will be registered for federal elections. But if a stay is granted, otherwise identical forms submitted without DPOC will be rejected.

[11] Because this claim turns on the district court's factual findings that demonstrate a lack of necessity, applicants cannot show a reasonable probability that the court will grant certiorari. *See* S.Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings[.]").

to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration." 52 U.S.C. §20508(b)(1). Therefore, as the district court held, Arizona may require only additional information that is "necessary" to assess the applicant's eligibility. App.120-121.

At trial, applicants failed to make that showing under any plausible definition of "necessary." The NVRA (52 U.S.C. §20504(c)(2)(C)) and Arizona law (A.R.S. §16-152(A)(14)) each already provide for proof of citizenship in the form of an attestation under penalty of perjury—exactly what "Congress has historically relied … as a gate-keeping requirement for access to a wide variety of important federal benefits," *Fish v. Kobach*, 840 F.3d 710, 716-717, 737 (10th Cir. 2016). And during the ten-day trial, neither applicants nor any other defendant presented any direct evidence of non-U.S. citizen voter fraud. Nor did they present "evidence that *any* of Arizona's Federal-Only voters are non-citizens." App.76 (emphasis added). Rather, the trial testimony established that voter fraud is "exceedingly rare … in Arizona." App.75. Applicants have conceded below (CA9 Opening Br.20) that the NVRA allows states to seek only the information "necessary" to assess an applicant's eligibility. Yet they have no evidence that DPOC is necessary to assess voter eligibility. *Id*. That should be the end of the inquiry.[12]

[12] As the Ninth Circuit noted, applicants have remarkably argued that election officials must reject "applicants whose documentary proof of citizenship is already on file with the State and is instantly accessible by state elections officials … on the incredible basis that they have not provided the State with documentary proof of citizenship." App.17. Such a procedure cannot be squared with the NVRA's demand that states require only information that is "necessary" to assess eligibility.

Moreover, the federal Election Assistance Commission (EAC) already denied Arizona's request to include DPOC as "necessary" under NVRA section 9. *Kobach v. U.S. Election Assistance Comm'n*, 772 F.3d 1183, 1196-1197 (10th Cir. 2014) (holding that Kansas and Arizona "failed to carry the burden *ITCA* establishes for them: to convince a court conducting APA review that the denial of their request precluded them from obtaining information that is 'necessary' to enforce their respective states' voter qualifications"), *cert. denied*, 576 U.S. 1055 (2015).

Rather than addressing section 9's fact-dependent necessity standard, applicants have relied heavily below on this Court's recognition that under NVRA section 6, states may create their own registration forms that "may require information the Federal Form does not." *ITCA*, 570 U.S. at 12. True enough. But those requirements still must satisfy section 9's necessity requirement. Section 9 imposes a necessity standard that gives states some flexibility but only to require information they *actually need*. The district court did not clearly err in finding that election officials do not need DPOC. Nothing in *ITCA*—which did not address whether a DPOC requirement would comply with section 9—suggests otherwise.

Applicants' position below appears to be that NVRA section 9 imposes no restriction on what states may deem necessary to determining voter eligibility. But that position was rejected in *ITCA*. 570 U.S. at 46 (Alito, J., dissenting). And such a reading would not only be at odds with the plain meaning of "necessary," but also render that requirement surplusage, which counsels strongly against that reading, *see Pulsifer v. United States*, 601 U.S. 124, 143 (2024). Such an interpretation would

also be bizarre considering the NVRA's purpose to "increase registration of eligible citizens," in part to address Congress's findings that some states were employing "discriminatory and restrictive [registration] practices that deter potential voters." S.Rep. No. 103-6 at 1, 3 (1993). "Allowing the states to freely add burdensome and unnecessary requirements by giving them the power to determine what is ['necessary'] would undo the very purpose for which Congress enacted the NVRA." *Fish*, 840 F.3d at 743.

Finally, A.R.S. §16-121.01(C) also violates NVRA section 7, 52 U.S.C. §20506, governing registration by public-assistance agencies. Section 7 requires those agencies to distribute the Federal Form or an "equivalent" form. 52 U.S.C. §20506(a)(6)(A)(ii) (citing §20508(a)(2) and 20506(a)(2)). As the district court held, "Section 7 is clear: if the Secretary of State supplies the State Form to public assistance agencies, the State Form must be 'equivalent,' or 'virtually identical' to the Federal Form." App.121. Thus, states like Arizona—where agencies required to conduct voter-registration services under section 7 rely on the State Form supplied by the Secretary, App.121—have no discretion in what they require for registration at public-assistance agencies. They can require only what the Federal Form requires. *Id.* Since A.R.S. §16-121.01(C) demands that State Forms require DPOC where Federal Forms do not, they are not "equivalent." Therefore, A.R.S. §16-121.01(C)

cannot be applied to applications originating from public assistance agencies. App.122 (applying same reasoning to H.B. 2492's DPOR requirement).[13]

b. A.R.S. §16-121.01(C) Violates The Equal Protection Clause

A.R.S. §16-121.01(C) also violates the Equal Protection Clause by treating identically situated voters differently based on which registration form they happen to submit. The unconstitutionality of this arbitrary disparate treatment is another reason this Court is unlikely to reverse the district court's order.[14]

The Equal Protection Clause requires "all persons similarly situated … be treated alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985); *see also Dunn v. Blumstein*, 405 U.S. 330, 336 (1972) ("a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction"). "[O]ne source of [the right to vote's] fundamental nature lies in the … dignity owed to each voter." *Bush*, 531 U.S. at 104. "[A]rbitrary and disparate treatment" in either the "allocation of the franchise" or "the manner of its exercise" is therefore unlawful. *Id.* at 104-105; *see also Baker v. Carr*, 369 U.S. 186, 207-208 (1962) (cataloguing cases recognizing that "[a] citizen's right to vote free of arbitrary impairment by state action" is "a right secured by the Constitution" and holding that

---

[13] Applicants' only response below to the foregoing straightforward textual analysis is nonsensical. They argue (CA9 Opening Br.41) that section 9 allows states flexibility for their form to differ from the Federal Form, and that compliance with this flexible section 9 standard makes a State Form "equivalent" to the Federal Form. But equivalent means equivalent, not "similar" or "close enough." *See* App.121 (citing *Black's Law Dictionary* defining equivalent as "virtually identical").

[14] The district court did not reach this equal-protection claim because it determined that A.R.S. § 16-121.01(C) violates the *LUCHA* Decree. App.12.

plaintiffs had standing to challenge a state statute as "arbitrary and capricious state action"); *American Party of Tex. v. White*, 415 U.S. 767, 795 (1974) (disparate treatment as to the availability of absentee voting across two groups of "qualified voters in similar circumstances" voting was "an arbitrary discrimination violative of the Equal Protection Clause").

A.R.S. §16-121.01(C) ignores this command by treating identically situated applicants differently based on whether they use the State Form or the Federal Form. A person who submits a State Form without DPOC will not be registered to vote in any election. But an identically situated applicant who uses the Federal Form and does not provide DPOC will be registered to vote in federal elections. And, if that applicant's U.S. citizenship is confirmed through ADOT records, the applicant will be registered to vote in *all* elections. No defendant here (including applicants) has identified any relevant difference that supports this distinction. Indeed, the district court found that the State and Federal Forms are "substantively indistinguishable." App.177 n.13. That finding is entitled to clear-error deference. *See Cooper v. Harris*, 581 U.S. 285, 293 (2017).[15]

[15] This arbitrary disparate treatment has major effects in Arizona, as use of the State Form is widespread. Most Arizonans who use a paper form use the State Form. Suppl. App.152-153. And third-party voter registration groups and public-assistance agencies largely rely on State Forms. Suppl. App.152-153. Empirical evidence indicates that the DPOC requirement disenfranchises voters: After the *LULAC* decree was implemented and eliminated the DPOC requirement for State-Form voters, the number of registered federal-only voters increased from 1,700 to 11,600. Suppl. App.155-156.

The record does not support the only rationales defendants have proffered for this differential treatment: preventing non-U.S. citizen voting and increasing voter confidence. First, the district court found that "[p]rior to passing the Voting Laws, the Arizona Legislature did not establish that any non-citizens were registered to vote in Arizona." App.80. It also found that "there is no evidence that Federal-Only Voters may be non-citizens." App.83. Again, these findings are entitled to significant deference under the clear-error review standard. *See Easley v. Cromartie*, 532 U.S. 234, 243 (2001). Thus, there is no evidence that continuing longstanding practice in Arizona will lead to *any* non-citizen registrations.

Second, the laws do not plausibly increase voter confidence. The district court found that defendants "adduced no evidence quantifying the likelihood that Arizonans will become aware of the Voting Laws and their purported impacts on preventing voter fraud in Arizona," and there was no "direct evidence predicting the expected effects of the Voting Laws on Arizonans' confidence in the State's elections." App.77. Indeed, applicants can hardly explain why such a prohibition on State-Form applicants would increase voter confidence given that Federal-Form applicants can still register to vote in federal elections without DPOC.

This Court has explained that if a federal agency limited the ability to apply for relief "by flipping a coin … we would reverse the policy in an instant" because it would be "arbitrary and capricious." *Judulang v. Holder*, 565 U.S. 42, 55 (2011). It has also held that "hing[ing]" eligibility for immigration relief "on an irrelevant comparison between statutory provisions" with "no relation" to "the appropriate

operation of the immigration system" is "arbitrary and capricious" and not "reasonable." *Id.* at 55-56, 64. These principles apply equally here. Under A.R.S. §16-121.01(C), identically situated Arizona applicants will have their application rejected or accepted based on the coin flip of whether they have applied using the State or Federal Form. This rule is plainly neither rational nor reasonable but instead arbitrary. Section 16-121.01(C) therefore violates the Equal Protection Clause, providing a further reason that this Court is unlikely to reverse the district court's order.

IV. APPLICANTS FAIL TO SHOW IRREPARABLE HARM

Applicants have not shown irreparable injury. This Court has previously denied a request by the RNC (and others) to stay an election-law consent decree because "the state election officials support[ed] the challenged decree" and applicants "lack[ed] a cognizable interest in the State's ability to 'enforce its duly enacted' laws." *Republican Nat'l Comm. v. Common Cause R.I.*, 141 S.Ct. 206, 207 (2020) (per curiam). The same is true here, and the same result is warranted.

A. Legislators

Applicants Ben Toma and Warren Petersen (the legislators) claim irreparable injury to Arizona's sovereign interests. That claim fails because they are not the State and they lack the authority to enforce its laws. The authority to represent the State rests with the Attorney General, and as the Ninth Circuit found, "no party has disputed the Attorney General's authority." App.15; *see also* A.R.S. §16-1021 (assigning enforcement of election statutes to the Attorney General); *id.* §41-193(A)(3) (the Attorney General shall "[r]epresent this state in any action in a federal court").

Because the irreparable-harm standard is "whether the applicant will be irreparably injured absent a stay," *Nken*, 556 U.S. at 425-426, the legislators cannot rely on alleged sovereign interest harms to the State rather than themselves. The legislators' contrary arguments attempt to demonstrate *standing*; they do not show irreparable harm.

While a state "may authorize [a] legislature 'to litigate on the State's behalf,'" *Berger*, 597 U.S. at 192, Arizona has not done so. A.R.S. §12-1841 confers only state-law authority as to certain rights in proceedings "subject to [§12-1841's] notice requirements." *Id.* §12-1841(D). By contrast, the North Carolina laws in *Berger* "expressly authorized the legislative leaders" to act "as agents of the State'" in that lawsuit. 597 U.S. at 193 (quoting N.C. Gen. Stat. §§1-72.2(b), 120-32.6(b)). Applicants cite (Appl.15) the word "any" in §12-1841, which they say encompasses this litigation. That is wrong; this federal case is subject only to *federal* notice requirements. *See* Fed. R. Civ. P. 5.1 (notice requirements for federal cases challenging state laws' constitutionality); Fed. R. Civ. P. 44 (same on appeal); S.Ct. Rule 29.4(c) (same in this Court).

The legislators' arguments regarding injury to the state legislature would fail even if they *could* assert such injury. Applicants assert (Appl.16) that the legislature has suffered harm as an institution, but that assertion does not show *irreparable* harm. This Court has never held that a legislature is irreparably injured any time an enacted law is enjoined. Where cases have found irreparable injury to a legislature, it was because the legislature was deprived entirely of its legislative power in a

particular sphere. *See, e.g.*, *Va. House of Delegates v. Bethune-Hill*, 587 U.S. 658, 667-668 (2019) (distinguishing between a law that "permanently deprived" a legislature of its dominant role in redistricting and a court order that did not); *see also Priorities USA v. Nessel*, 978 F.3d 976, 982 (6th Cir 2020) (finding harm where the law at issue "disrupted" the legislature's "specific powers" by categorically prohibiting the legislature from "even *regulat[ing]* hired voter transportation for federal elections"). By contrast, the injunction here does not permanently deprive the legislature of any role in the legislative process. Any such "institutional injury" upon the legislature, "is not 'irreparable'" because the legislators "may yet pursue and vindicate [their] interests in the full course of this litigation." *Washington v. Trump*, 847 F.3d 1151, 1168 (9th Cir. 2017), *cert. denied sub nom. Golden v. Washington*, 583 U.S. 974 (2017).

Applicants' reliance (Appl.14-15) on *Abbott v. Perez*, 585 U.S. 579 (2018), is misplaced because that case concerned harms *to the State*—not to the legislature as a body—and also involved an injunction issued *prior* to a final merits determination in the district court. (The quoted sentence (Appl.14) relates to this Court's jurisdiction under 28 U.S.C. §1253, i.e., "before the final decision in the district court." *Abbott*, 585 U.S. at 595-596.) Yet applicants read it as forever preventing a federal court from enjoining a state voting law before an election. That cannot be right, as it would mean any law would have to be enforced during the appeals process—even if (as here) that would upend the status quo. *See Labrador*, 144 S.Ct. at 930-931. Likewise, that a state cannot contravene a federal-court order is a long-standing legal principle. *E.g.*, *Cooper*, 358 U.S. at 17-18; *Washington v. Washington State Com. Passenger Fishing*

Vessel Ass'n, 443 U.S. 658, 695 (1979). That does not prevent the legislature from enacting laws inconsistent with the order's terms, but it may operate to prevent some legislation from being *enforced* by state officials absent relief from judgment. *See Hollingsworth*, 570 U.S. at 705-706. And as discussed, the proper procedure for seeking relief from a consent decree is a Rule 60(b) motion. *See supra* at 30-31.

B. Republican National Committee

Applicants likewise fail to show any irreparable injury to the RNC. Again, this Court held four years ago that in analogous circumstances the RNC "lack[ed even] a cognizable interest in the State's ability to enforce its duly enacted laws," *RNC*, 141 S.Ct. at 206.

Ignoring this prior decision, the RNC first points to "an interest" (Appl.17) it has in avoiding eleventh-hour changes for its voters. But even were this "interest" sufficient to constitute irreparable harm, eleventh-hour changes will occur only if a stay is granted by this Court. *See supra* pp.14-17; *see also RNC*, 141 S.Ct. at 206 (mem.) (denying a stay where "[t]he status quo is one in which the challenged requirement has not been in effect, given the rules used in [the state's] last election, and many … voters may well hold that belief").

The RNC next argues that it will "suffer injury" (Appl.17) if its candidates have a reduced chance of victory. But even were such an injury sufficient for *standing*, applicants' delay in seeking a stay from this Court on their presidential and mail-voting challenges belies any notion of irreparable injury. In any event, there is no support for RNC's novel and anti-democratic theory that it is irreparably injured by the prospect of more voters being allowed access to the franchise. This Court should

not countenance the use of the judiciary—particularly on such a short time frame so late in the election—to compel the rejection of voters. The available remedy for the RNC is to appeal to Arizona voters, not to block them from political participation. *Cf. Bethune-Hill*, 587 U.S. at 670 ("Changes to [the House's] membership brought about by the voting public … inflict no cognizable injury on the House.")[16]

V. THE REMAINING EQUITABLE FACTORS DO NOT SUPPORT A STAY

The balance of equities and public interest, which "merge" here, *Nken*, 556 U.S. at 435, counsel strongly against a stay because a stay would cause severe harm.

To start, a stay would curtail many thousands of Arizonans' right to vote. Suppl. App.98 ¶5. This Court has held that the public has a "strong interest in exercising the 'fundamental political right' to vote." *Purcell*, 549 U.S. at 4. The "public interest" thus "favors permitting as many qualified voters to vote as possible." *Obama for Am. v. Husted*, 697 F.3d 423, 437 (6th Cir. 2012). Indeed, although this factor does not require a showing of *irreparable* injury, courts frequently "deem restrictions on fundamental voting rights irreparable injury." *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) (collecting cases). Curtailing tens of thousands of Arizonans' ability to vote, Suppl. App.98 ¶5, is undoubtedly against

[16] While Applicants argue that Republican voters are disproportionately underrepresented in the federal-only list (Appl.17), they ignore that the same data they cite shows that 52.5% of the existing federal-only voters are unaffiliated. App.197. Thus, in addition to the 14.3% identified as Republican, 52.5% of the list may very well be Republicans who simply did not indicate party preference at the time they registered to vote. Applicants provide no evidence that all unaffiliated registrants are Democrats.

the public interest, especially given that there is no evidence of non-U.S. citizen voter fraud in Arizona, *see supra* p.37.

Applicants devote just three sentences to the public interest. Appl.18. And they do not even suggest that a stay would *serve* the public interest, instead claiming that a stay "would not inflict any countervailing harms" to voting rights because the district court found no evidence that DPOC will "impede any qualified voter from registering … or staying on the voter rolls" (quotation marks omitted). That is misleading. The district court excluded evidence on this issue at trial specifically because it had already granted summary judgment based on the *LULAC* Decree. *See* D.Ct. Dkt.607 at 1 (removing "H.B. 2492 §4's rejection of State-Form applications lacking DPOC" "from the scope of issues for trial"). As mentioned, that decree prohibits enforcement of H.B. 2492's provision requiring election officials to reject *State*-Form registration applications submitted without DPOC. A stay would—for the first time—block these voters from registering. And as the merits panel explained, "applicants whose documentary proof of citizenship is already on file with the State and is instantly accessible by state elections officials will see their voter registration applications summarily rejected on the incredible basis that they have not provided the State with" DPOC. App.17. Applicants do not dispute that their requested relief would disenfranchise such eligible voters.

Finally, as to those who register or registered using the Federal Form, the relevant harm is being denied the right to vote in presidential elections, or by mail in any election, which "unquestionably constitutes irreparable injury," *Elrod v. Burns*,

427 U.S. 347, 373 (1976). Nothing in the record or the opinions below negates that the challenged laws cause *those* harms, including to thousands of currently registered Arizona voters. They unquestionably do.

CONCLUSION

The application for a stay should be denied.

Respectfully submitted,

BRUCE SAMUELS
JENNIFER LEE-COTA
PAPETTI SAMUELS WEISS MCKIRGAN LLP
16430 North Scottsdale Road
Suite 290
Scottsdale, Arizona 85254
(490) 800-3530
bsamuels@pswmlaw.com

SETH P. WAXMAN
Counsel of Record
CHRISTOPHER E. BABBITT
DANIEL S. VOLCHOK
JOSEPH M. MEYER
BRITANY RILEY-SWANBECK
WILMER CUTLER PICKERING HALE AND DORR LLP
2100 Pennsylvania Avenue N.W.
Washington, D.C. 20037
(202) 663-6000
seth.waxman@wilmerhale.com

Counsel for the Democratic National Committee and Arizona Democratic Party

NIYATI SHAH
TERRY AO MINNIS
ASIAN AMERICANS ADVANCING JUSTICE-AAJC
1620 L Street N.W.
Suite 1050
Washington, D.C. 20036
(202) 296-2300
nshah@advancingjustice-aajc.org

SADIK HUSENY
AMIT MAKKER
EVAN M. OMI
LATHAM & WATKINS LLP
505 Montgomery Street
Suite 2000
San Francisco, CA 94111-6538
(415) 391-0600
sadik.huseny@lw.com

Counsel for Arizona Asian American Native Hawaiian and Pacific Islander for Equity Coalition

ELISABETH C. FROST
CHRISTOPHER D. DODGE
QIZHOU GE
ELIAS LAW GROUP LLP
250 Massachusetts Avenue N.W.
Suite 400
Washington, D.C. 20001
(202) 968-4490
efrost@elias.aw

ROY HERRERA
DANIEL A. ARELLANO
JULLIAN L. ANDREWS
HERRERA ARELLANO LLP
1001 N. Central Avenue
Suite 404
Phoenix, AZ 85004
(602) 567-4820

Counsel for Mi Familia Vota and Voto Latino

DANIELLE LANG
JONATHAN DIAZ
BRENT FERGUSON
KATHRYN HUDDLESTON
CAMPAIGN LEGAL CENTER
1101 14th Street N.W.
Suite 400
Washington, D.C. 20005
(202) 736-2200
dlang@campaignlegalcenter.org

COURTNEY HOSTETLER
JOHN BONIFAZ
FREE SPEECH FOR PEOPLE
1320 Centre Street, Suite 405
Newton, MA 02459
Telephone: (617) 249-3015
chostetler@freespeechforpeople.org

LEE H. RUBIN
MAYER BROWN LLP
Two Palo Alto Square
Suite 300
3000 El Camino Real
Palo Alto, CA 94306-2112
(650) 331-2000
lrubin@mayerbrown.com

GARY A. ISAAC
DANIEL T. FENSKE
ANASTASIYA K. LOBACHEVA
WILLIAM J. MCELHANEY, III
MAYER BROWN LLP
71 S. Wacker Drive
Chicago, IL 60606 (650) 331-2000
(312) 782-0600

RACHEL J. LAMORTE
MAYER BROWN LLP
1999 K Street N.W.
Washington, D.C. 20006
(202) 362-3000

Counsel for Living United for Change in Arizona, League of United Latin American Citizens, Arizona Students' Association, ADRC Action, Inter Tribal Council of Arizona, Inc., San Carlos Apache Tribe, and Arizona Coalition for Change

August 16, 2024