No. 24A164

---

IN THE SUPREME COURT OF THE UNITED STATES

---

REPUBLICAN NATIONAL COMMITTEE, ET AL., APPLICANTS

v.

MI FAMILIA VOTA, ET AL.

---

RESPONSE OF THE UNITED STATES
IN OPPOSITION TO APPLICATION FOR STAY

---

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

IN THE SUPREME COURT OF THE UNITED STATES

_______________

No. 24A164

REPUBLICAN NATIONAL COMMITTEE, ET AL., APPLICANTS

v.

MI FAMILIA VOTA, ET AL.

_______________

RESPONSE OF THE UNITED STATES
IN OPPOSITION TO APPLICATION FOR STAY

_______________

The Solicitor General, on behalf of the United States, respectfully submits this response in opposition to the application to stay the injunction entered by the United States District Court for the District of Arizona.

The National Voter Registration Act of 1993 (NVRA or Act), 52 U.S.C. 20501 et seq., requires States to "accept and use" a standard federal form to register voters for federal elections. The federal form requires voters to attest under penalty of perjury that they are U.S. citizens, but does not require them to submit documentary proof of citizenship such as a passport or birth certificate. In 2022, however, Arizona enacted a statute under which a federal-form user must, in certain circumstances, submit such documentary proof in order to vote for President or vote by mail. The statute also requires voters to submit documentary proof of

citizenship if they register to vote using an alternative, state-created form.

The United States and private respondents sued Arizona and its officials in federal court, claiming that the NVRA preempts Arizona's requirement that federal-form users submit documentary proof of citizenship in order to vote for President or vote by mail. Private respondents also claimed that an earlier consent decree precludes Arizona from enforcing the provision relating to state forms. Applicants -- the Republican National Committee and state legislative leaders -- intervened to defend the challenged provisions.

The district court granted summary judgment to the United States and private respondents on the NVRA claim, granted summary judgment to private respondents on the consent-decree claim, and enjoined the enforcement of the challenged provisions. A motions panel of the Ninth Circuit granted applicants a partial stay pending appeal, siding with applicants on the private respondents' consent-decree claim but not on the NVRA claim. The merits panel to which the case was assigned reconsidered the stay motion, disagreed with the motions panel's analysis of the consent-decree claim, and vacated the partial stay.

Applicants now ask this Court to stay the district court's injunction pending their appeal to the Ninth Circuit. Because the United States did not join private respondents in raising the consent-decree claim, we take no position on whether this Court

should stay the portion of the injunction based on that claim -- that is, Paragraph 2 of the district court's final judgment, which enjoins the enforcement of Ariz. Rev. Stat. Ann. § 16-121.01(C). But this Court should decline to stay the portion of the injunction based on the United States' NVRA claim -- that is, Paragraph 1 of the judgment, which enjoins the enforcement of Ariz. Rev. Stat. Ann. §§ 16-121.01(E) and 16-127(A). None of the six judges on the Ninth Circuit's motions and merits panels questioned that aspect of the injunction, and applicants' cursory discussion of the relevant issues provides no sound basis for a stay.

The NVRA requires a State to "accept and use" the federal form to register voters in federal elections. 52 U.S.C. 20505(a)(1). In Arizona v. Inter Tribal Council of Arizona, Inc., 570 U.S. 1 (2013), this Court explained that a State violates the Act by rejecting a federal form on the ground that the voter failed to submit documentary proof of citizenship along with it. The Act thus preempts Arizona's requirement that voters who register with the federal form submit documentary proof in order to vote for President or vote by mail.

Applicants are unlikely to prevail on the merits of their contrary contentions. Applicants argue (Appl. 13-14) that the NVRA's regulation of presidential elections exceeds Congress's enumerated powers. But the Act fits within both Congress's power under the Necessary and Proper Clause "to legislate in connection with the elections of the President and Vice President," Buckley

v. Valeo, 424 U.S. 1, 14 n.16 (1976) (per curiam), and its power to enforce the Fourteenth and Fifteenth Amendments. Applicants also defend (Appl. 13) Arizona's requirement that voters submit documentary proof of citizenship with the federal form in order to vote by mail. But that state requirement plainly conflicts with Arizona's obligation to "accept the Federal Form as a complete and sufficient registration application." Inter Tribal Council, 570 U.S. at 9.

Even putting aside the merits, applicants are not entitled to a stay. Applicants' three-paragraph analysis of the NVRA claim (Appl. 13-14) is too conclusory to justify emergency relief -- particularly relief premised on the assertion that an Act of Congress is unconstitutional. And the State of Arizona, its Attorney General, and its Secretary of State have opposed a stay, explaining that Arizona has never yet implemented the challenged requirements and that judicial intervention at this stage would undermine the orderly administration of the election, risking the disfranchisement of thousands of voters who have already registered to vote using the federal form. This Court should deny the application to the extent it pertains to the United States' claim.

## STATEMENT

### A. The NVRA

Congress enacted the NVRA in 1993 in order to simplify voter registration in federal elections. The Act reflects Congress's recognition that citizens have a "fundamental right" to vote and

that governments have a "duty" to "promote the exercise of that right." 52 U.S.C. 20501(a)(1) and (2). The Act also responds to concerns that "discriminatory and unfair registration laws" can "have a direct and damaging effect on voter participation" and can "disproportionately harm voter participation by various groups, including racial minorities." 52 U.S.C. 20501(a)(3).

The NVRA regulates voter registration for federal elections -- i.e., presidential and congressional elections. See 52 U.S.C. 20502(1) and (2), 30101(1) and (3). The Act directs the Election Assistance Commission, a federal agency, to develop a standard federal voter-registration form. See 52 U.S.C. 20508(a)(2). A State must "accept and use the [federal form] for the registration of voters" in federal elections. 52 U.S.C. 20505(a)(1). A State also may develop and use its own form "[i]n addition to accepting and using" the federal form. 52 U.S.C. 20505(a)(2).

The NVRA requires the federal form to contain an attestation, under penalty of perjury, that the applicant is a citizen of the United States. See 52 U.S.C. 20508(b)(2)(A) and (B). But neither the Act nor the federal form developed by the Election Assistance Commission requires the applicant to submit documentary proof of citizenship, such as a birth certificate or passport. See Arizona v. Inter Tribal Council of Ariz., Inc., 570 U.S. 1, 4-5 (2013). The Act's legislative history suggests that Congress considered the attestation requirement and the Act's other provisions to be "sufficient to deter fraudulent registrations." H.R. Rep. No. 9,

103d Cong., 1st Sess. 10 (1993) (House Report).

In Inter Tribal Council, this Court interpreted the NVRA to mean that "a State must accept the Federal Form as a complete and sufficient registration application." 570 U.S. at 9; see id. at 9-15. The Court thus held that the Act preempted an earlier Arizona law requiring a person to submit documentary proof of citizenship along with the federal form in order to register to vote in federal elections. Id. at 16.

**B. H.B. 2492**

In Arizona, a person may register to vote for federal elections using either the federal form or an alternative state-created form. See Appl. App. 49. In 2022, the Arizona State Legislature enacted H.B. 2492, a statute that amended the laws governing the use of those forms. See Act of Mar. 30, 2022, ch. 99, 2022 Ariz. Sess. Laws 568.

When a person registers to vote using the federal form, H.B. 2492 requires the county recorder to use certain databases to verify the person's citizenship status, "provided the county has access." Ariz. Rev. Stat. Ann. § 16-121.01(D); see Appl. App. 55-61 (finding that counties lack access to some of the databases). If the county recorder "is unable" to verify the person's citizenship -- for instance, because the county lacks access to the necessary databases -- he must notify the registrant, who must then provide documentary proof of citizenship. Ariz. Rev. Stat. Ann. § 16-121.01(E). If the registrant fails to provide such

proof, he "is not eligible to vote in presidential elections" and "is not eligible to receive an early ballot by mail." Id. § 16-127(A). We refer to those restrictions as the federal-form provisions.

H.B. 2492 also tightens restrictions on the use of the state form. Before H.B. 2492, an eligible voter who filed the state form without accompanying documentary proof of citizenship would be registered to vote in federal elections, though not in state elections. See Appl. App. 176-177. Under H.B. 2492, however, state officials must altogether reject state forms that are not accompanied by documentary proof of citizenship. See Ariz. Rev. Stat. Ann. § 16-121.01(C). We refer to that provision of H.B. 2492 as the state-form provision.

**C. Proceedings Below**

1. In 2022, the United States and private respondents sued the State and state officials in the U.S. District Court for the District of Arizona. See Appl. App. 191. As relevant here, the United States and private respondents claimed that the NVRA preempts H.B. 2492's federal-form provisions. See id. at 165. Private respondents also claimed that an earlier consent decree precludes state officials from enforcing H.B. 2492's state-form provision. See id. at 176-177. Applicants -- the Republican National Committee, the President of the Arizona Senate, and the Speaker of the Arizona House of Representatives -- intervened to defend H.B. 2492. See id. at 191-192.

In September 2023, the district court granted partial summary judgment to the United States and private respondents on the claims at issue here. See Appl. App. 156-190. The court agreed with the United States and private respondents that the NVRA preempts H.B. 2492's federal-form provisions. See id. at 187. The court also agreed with private respondents that the consent decree precludes Arizona from enforcing the state-form provision. See ibid.

In May 2024, the district court resolved the remaining claims in the case and entered final judgment. See Appl. App. 191-195. The court permanently enjoined Arizona from enforcing the challenged federal-form and state-form provisions. See id. at 192.

2. Applicants appealed to the Ninth Circuit and moved for a stay of the district court's injunction pending appeal. See Appl. App. 45. On July 18, a unanimous motions panel granted that motion in part, staying the portion of the injunction that was based on the consent-decree claim but not the portion that was based on the NVRA claim. See id. at 43-46. The motions panel provided that its order was "subject to reconsideration by the panel assigned to decide the merits." Id. at 45. Applicants did not ask the merits panel to reconsider the denial of a stay as to the portion of the injunction based on the NVRA claim. They also did not seek relief from this Court.

On August 1, a divided merits panel granted private respondents' motion for reconsideration. See Appl. App. 1-42. The merits panel disagreed with the motions panel's decision to stay the

portion of the injunction based on the consent-decree claim. See id. at 7. It vacated the partial stay and directed that "[n]o portion of the district court's judgment shall be stayed pending appeal." Ibid.*

Judge Bumatay dissented. See id. at 20-42. He explained that he would have left the partial stay in place, but he did not question the motions panel's denial of a stay as to the portion of the injunction based on the United States' NVRA claim.

**ARGUMENT**

A stay is "'not a matter of right'" but a matter of "'judicial discretion,'" and an applicant "bears the burden of showing that the circumstances justify an exercise of that discretion." Nken v. Holder, 556 U.S. 418, 433-434 (2009) (citation omitted). The applicant must show that (1) it would likely succeed on the merits, (2) it will suffer irreparable harm without a stay, and (3) the equities and the public interest support a stay. See Ohio v. EPA, 144 S. Ct. 2040, 2052 (2024). An applicant seeking emergency relief from this Court must also show a reasonable probability that the Court would grant certiorari. See Hollingsworth v. Perry, 558 U.S. 183, 190 (2010) (per curiam).

---

* Private respondents also argued that H.B. 2492's state-form provision violates the Equal Protection Clause and various provisions of the NVRA. See Appl. App. 12 n.4. The district court accepted some of private respondents' NVRA arguments. See id. at 120-122, 177 n.13. But because the Ninth Circuit merits panel sided with private respondents on the consent-decree claim, it found it unnecessary "to reach their alternative arguments under the NVRA and the Equal Protection Clause." Id. at 12 n.4.

Because applicants have failed to make those showings, this Court should deny the application to the extent it seeks a stay of the portion of the injunction based on the United States' NVRA claim. Notably, none of the six judges on the Ninth Circuit's motions and merits panels suggested that applicants were entitled to a stay of that portion of the injunction.

## I. APPLICANTS ARE UNLIKELY TO PREVAIL ON THE MERITS OF THE UNITED STATES' NVRA CLAIM

The NVRA provides that "[e]ach State shall accept and use the [federal form] for the registration of voters in elections for Federal office." 52 U.S.C. 20505(a)(1). In Arizona v. Inter Tribal Council of Arizona, Inc., 570 U.S. 1 (2013), this Court interpreted the Act to mean that "a State must accept the Federal Form as a complete and sufficient registration application." Id. at 9. The Court also explained that the Act forbids a State from requiring a voter to "submit additional information beyond that required by the Federal Form." Id. at 15. The Court accordingly held that the Act preempted an earlier Arizona law directing election officials to reject federal forms that are unaccompanied by documentary proof of citizenship. See ibid.

The NVRA similarly preempts H.B. 2492's provisions requiring federal-form users to submit documentary proof of citizenship in order to vote for President or vote by mail. In those provisions, Arizona has refused to "accept the Federal Form as a complete and sufficient registration application." Inter Tribal Council, 570

U.S. at 9. It has instead required a voter who seeks to vote for President or to vote by mail to "submit additional information beyond that required by the Federal Form." Id. at 15. That "state-imposed requirement of evidence of citizenship * * * is 'inconsistent with' the NVRA's mandate that States 'accept and use' the Federal Form." Ibid. (citation omitted).

Applicants respond that (A) the NVRA's regulation of voter registration for presidential elections violates the Constitution and (B) the Act does not preempt H.B. 2492's restrictions on mail voting. Applicants are unlikely to succeed on either contention.

### A. The Constitution Empowers Congress To Enact The NVRA's Provisions Regulating Presidential Elections

Applicants do not dispute (Appl. 13-14) that the NVRA, on its face, preempts H.B. 2492's requirement that voters submit documentary proof of citizenship along with the federal form in order to vote for President. But they argue (ibid.) that Congress lacks the constitutional authority to regulate voter registration in presidential elections. That is incorrect. The Act's regulation of presidential elections fits within Congress's authority under the Necessary and Proper Clause and the Reconstruction Amendments.

**Necessary and Proper Clause.** Congress may "make all Laws which shall be necessary and proper for carrying into Execution" the "Powers vested by this Constitution in the Government of the United States." U.S. Const. Art. I, § 8, Cl. 18. A law is "necessary" if it is "conducive to [the] beneficial exercise" of

the federal government's enumerated powers and "proper" if it is consistent "with the letter and spirit" of the Constitution. McCulloch v. Maryland, 4 Wheat. 316, 409, 421 (1819).

This Court has repeatedly recognized that "Congress has power to regulate Presidential elections and primaries" under "the Necessary and Proper Clause." Buckley v. Valeo, 424 U.S. 1, 90 (1976) (per curiam). For example, the Court has upheld a federal law prohibiting the use of force and threats in presidential elections, explaining that the Clause empowers the federal government "to protect the elections on which its existence depends from violence." Ex Parte Yarbrough, 110 U.S. 651, 658 (1884). The Court also has upheld federal campaign-finance laws that apply to presidential elections, explaining that the Clause empowers Congress "to protect the election of President and Vice President from corruption." Burroughs v. United States, 290 U.S. 534, 545, 547 (1934); see Buckley, 424 U.S. at 14 n.16, 90-91, 132.

Like those laws, the NVRA falls comfortably within Congress's authority under the Necessary and Proper Clause. Free and fair presidential elections, in which the people can hold the President answerable for his actions and the actions of his subordinates, are "essential to the successful working" of the Executive Branch -- indeed, "essential to the healthy organization of the government itself." Yarbrough, 110 U.S. at 666. Congress may thus regulate presidential elections in order to "safeguard" them "from impairment or destruction." Burroughs, 290 U.S. at 545. Congress also

may regulate those elections so as to provide "a fully effective voice to all citizens" and make executive officials "as responsive as possible to the will of the people whom they represent." Oregon v. Mitchell, 400 U.S. 112, 134 (1970) (opinion of Black, J.); see id. at 124 n.7. Congress exercised that authority in the Act, which safeguards presidential elections by preempting "discriminatory and unfair registration laws," 52 U.S.C. 20501(a)(3), and which promotes the Executive Branch's democratic accountability by increasing "voter participation," ibid.

The NVRA is "proper" because it respects "state sovereignty." Printz v. United States, 521 U.S. 898, 924 (1997). Under the Constitution, each State retains the sovereign power to "order the processes of its own governance" by regulating its own elections. Trump v. Anderson, 601 U.S. 100, 110 (2024) (per curiam) (citation omitted). But that power over governance "does not extend to federal officeholders and candidates" -- "especially the Presiden[t]." Id. at 110-111. The President "represents all the voters in the Nation," and presidential elections "implicate a uniquely important national interest." Id. at 116 (brackets and citation omitted). Congressional regulation of presidential elections thus "in no sense invades any exclusive state power." Burroughs, 290 U.S. at 545.

Applicants argue (Appl. 14) that, because Article II empowers Congress 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. 4, Congress lacks the power to regulate presidential elections in any other way. But this Court has already considered and rejected that argument, stating that "[s]o narrow a view of the powers of Congress in respect of [presidential elections] is without warrant." Burroughs, 290 U.S. at 544. Applicants' contrary theory would threaten to invalidate not only the NVRA, but also a host of other federal election statutes that apply to presidential elections. See, e.g., 52 U.S.C. 10101(b) (coercion and intimidation of voters); 52 U.S.C. 20102(a) (accessibility of polling places to disabled voters); 52 U.S.C. 20302(a) (absentee voting by members of the armed forces and overseas voters).

Applicants also argue (Appl. 13-14) that federal regulation of presidential elections invades the States' exclusive power to "appoint" presidential electors "in such Manner as the Legislature thereof may direct." U.S. Const. Art. II, § 1, Cl. 2. Again, this Court has already considered and rejected that argument. See Burroughs, 290 U.S. at 544. Under Article II, "the appointment and mode of appointment of electors belong exclusively to the States." McPherson v. Blacker, 146 U.S. 1, 35 (1892). Each State may thus pick among the "various modes of choosing the electors" -- e.g., "by the legislature itself," "by vote of the people for a general ticket," and "by vote of the people in districts." Id. at 29. But once a State chooses popular elections, as all States have, Congress may regulate those elections under the Necessary and Proper Clause. See Burroughs, 290 U.S. at 544-545.

**Reconstruction Amendments.** The Fourteenth and Fifteenth Amendments independently empower Congress to enact the NVRA. The Fourteenth Amendment's Equal Protection Clause and the Fifteenth Amendment both prohibit racial discrimination in voting. See U.S. Const. Amend. XIV, § 1; Amend. XV, § 1. In addition, "[w]hen the state legislature vests the right to vote for President in its people, the right to vote as the legislature has prescribed is fundamental" and is protected by multiple aspects of the Fourteenth Amendment. Bush v. Gore, 531 U.S. 98, 104 (2000) (per curiam); see id. at 104-105 (Equal Protection Clause); Anderson v. Celebrezze, 460 U.S. 780, 786-787 (1983) (incorporation of the First Amendment); In re Quarles, 158 U.S. 532, 535 (1895) (Privileges or Immunities Clause).

The Fourteenth and Fifteenth Amendments both empower Congress to enact "appropriate" laws to "enforce" their guarantees. U.S. Const. Amend. XIV, § 5; Amend. XV, § 2. In exercising that power, "Congress may enact so-called prophylactic legislation that proscribes facially constitutional conduct, in order to prevent and deter unconstitutional conduct." Tennessee v. Lane, 541 U.S. 509, 518 (2004) (citation omitted). In the core context of racial discrimination, this Court has reviewed such legislation deferentially, asking whether the law is a "rational means to effectuate the constitutional prohibition." South Carolina v. Katzenbach, 383 U.S. 301, 324 (1966). In particular, although the Reconstruction Amendments focus on "purposeful discrimination," the Court

has repeatedly held that Congress may "outlaw voting practices that are discriminatory in effect" as "an appropriate method" of effectuating the constitutional guarantee. Allen v. Milligan, 599 U.S. 1, 41 (2023) (citation omitted); see City of Rome v. United States, 446 U.S. 156, 173-178 (1980); South Carolina, 383 U.S. at 327-337. In contexts apart from racial discrimination, the Court has asked whether the enforcement legislation is "congruent and proportional" to the object of enforcing the right at issue. Lane, 541 U.S. at 531.

The NVRA fits comfortably within Congress's power to "outlaw voting practices that are discriminatory in effect." Milligan, 599 U.S. 1 at 41 (citation omitted). In the Act, Congress found that "discriminatory and unfair registration laws and procedures" had "disproportionately harm[ed] voter participation by various groups, including racial minorities." 52 U.S.C. 20501(a)(3). The Act's legislative history includes ample evidence to support that finding. "Restrictive registration laws and administrative procedures were introduced in the United States in the late nineteenth and early twentieth centuries to keep certain groups of citizens from voting: in the North, the wave of immigrants pouring into the industrial cities; in the South, blacks and the rural poor." House Report 2. Although "the Voting Rights Act of 1965 eliminated the more obvious impediments to registration," it left "a complicated maze of local laws and procedures, in some cases as restrictive as the outlawed practices." Id. at 3.

To highlight just one example, some States required voters "to go down to the county courthouse" in order to register to vote. Equal Access to Voting Act of 1989: Hearing on S. 675 Before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary, 101st Cong., 1st Sess. 93 (1989) (statement of Frank R. Parker) (Equal Access Hearing). That requirement produced a disparate effect on black voters, who were disproportionately less likely to be able to take time off from work and disproportionately more likely to lack transportation to the county seat. See ibid.

As a result of such practices, serious racial disparities in voter registration persisted into the modern era. See Equal Access Hearing 21 (statement of Sen. Kennedy). A 1988 survey showed that "black registration trail[ed] white registration" by substantial margins in many States. Ibid. The survey showed "even worse disparities between white and Hispanic voter registration rates." Id. at 109 (statement of Frank R. Parker). The Fourteenth and Fifteenth Amendments empower Congress to adopt uniform federal voter-registration procedures to address those racial disparities.

The NVRA also fits within Congress's power to enforce the fundamental right to vote for President. As the Act's legislative history documents, States had a long record of impeding access to the polls through burdensome registration practices, such as "restrictions on hours of voter registration," "limitations on days of the month or week when citizens can register," and requirements that voters "register twice before they were fully qualified."

Equal Access Hearing 92, 101-102 (statement of Frank R. Parker). That history confirms that the NVRA is congruent and proportional to the objective of "promot[ing] the exercise" of the "fundamental right" "to vote." 52 U.S.C. 20501(a)(1) and (2).

The stay application entirely ignores (at 13-14) Congress's enforcement power. But in the Ninth Circuit, applicants argued that the NVRA cannot rest on that power because this Court has described the Act as "Elections Clause legislation." C.A. Doc. 71, at 2 (July 12, 2024) (quoting Inter Tribal Council, 570 U.S. at 15). That is incorrect. The Elections Clause is certainly among the powers that supports the Act, but federal statutes often rest on an "aggregate of powers" rather than a "single enumerated power." Legal Tender Cases, 12 Wall. 457, 535 (1871). And when this Court upholds a federal statute under a particular power, it "do[es] not imply the absence" of other powers. Griffin v. Breckenridge, 403 U.S. 88, 107 (1971).

**B. The NVRA Preempts H.B. 2492's Limits On Mail Voting**

Applicants separately argue (Appl. 13) that, because the NVRA governs only "voter registration," and because "mail voting" is distinct from "registration," Arizona may require a voter to submit documentary proof of citizenship along with a federal form in order to vote by mail. That argument lacks merit. In general, federal law leaves it up to each State to decide whether, and to what extent, to allow mail voting. Having made mail voting generally available, however, Arizona may not discriminatorily withhold that

option from voters who submit the federal form without accompanying documentary proof of citizenship.

The NVRA requires a State to "accept and use the [federal form] for the registration of voters in elections for Federal office." 52 U.S.C. 20505(a)(1). The word "accept" requires the State to "accept the Federal Form as a complete and sufficient registration application," not just to "use [the form] somehow in its voter-registration process." Inter Tribal Council, 570 U.S. at 9-10. The word "registration," in turn, refers to the "act or process of becoming credentialed to vote." Black's Law Dictionary (12th ed. 2024).

H.B. 2492's mail-voting provision violates the plain terms of that statutory command. Under H.B. 2492, Arizona does not treat the federal form as "complete and sufficient," Inter Tribal Council, 570 U.S. at 9, for "becoming credentialed to vote," Black's Law Dictionary. Arizona instead gives the federal form partial credit. Voters who submit the federal form without appending documentary proof of citizenship are credentialed to vote only in person, while voters who register using other methods are credentialed to vote both in person and by mail. Arizona's partial acceptance of the federal form falls short of the complete acceptance demanded by the statutory text and Inter Tribal Council.

Reinforcing that reading, the NVRA expressly provides that a State may require a registrant who mails in a federal form to "vote in person" if "the person has not previously voted in that juris-

diction." 52 U.S.C. 20505(c)(1). Congress included that provision in order to allay concerns about "fraudulent registrations." House Report 10. Under the interpretive principle known as expressio unius est exclusio alterius, the Act's inclusion of that provision implies the exclusion of other circumstances in which a State may deny federal-form registrants a mail-voting option that the State makes generally available to other voters.

Applicants' contrary theory proves too much. On applicants' understanding of the words "accept" and "registration," a State could "accept" the federal form solely to place voters' names on the voting rolls, but could then preclude voters who use that form from actually casting ballots in the election. A State could also "accept" the federal form but then subject voters who use that form to special restrictions inapplicable to other voters (no mail voting, no early voting, shortened voting hours, and so forth). This Court should reject that self-defeating reading of the Act, under which the federal form would "ceas[e] to perform any meaningful function, and would be a feeble means of 'increasing the number of eligible citizens who register to vote in elections for Federal office.'" Inter Tribal Council, 570 U.S. at 13 (quoting 52 U.S.C. 20501(b)(1)) (brackets omitted).

## II. THE OTHER FACTORS WEIGH AGAINST GRANTING A STAY

A. In order to obtain emergency relief from this Court, applicants must establish a reasonable probability that the Court will grant certiorari when it considers the case in the ordinary

course. See Does 1-3 v. Mills, 142 S. Ct. 17, 18 (2021) (Barrett, J., concurring in the denial of application for injunctive relief). "Were the standard otherwise, applicants could use the emergency docket to force the Court to give a merits preview in cases that it would be unlikely to take -- and to do so on a short fuse without benefit of full briefing and oral argument." Ibid.; accord Labrador v. Poe, 144 S. Ct. 921, 931 (2024) (Kavanaugh, J., concurring in the grant of stay). Applicants have not met that standard here.

As an initial matter, this Court ordinarily "decline[s] to address" issues that have not been "meaningfully present[ed]" at the certiorari stage. Moore v. Harper, 600 U.S. 1, 36 (2023). The stay application does not "meaningfully present" applicants' contentions with respect to the United States' NVRA claim. Even though judging the constitutionality of an Act of Congress is the "most delicate duty that this Court is called on to perform," Blodgett v. Holden, 275 U.S. 142, 148 (1927) (opinion of Holmes, J.), applicants devote just two paragraphs (Appl. 13-14) to the argument that the Act exceeds Congress's enumerated powers. They make no serious effort (ibid.) to reconcile their constitutional theory with this Court's precedents applying the Necessary and Proper Clause, cf. Haaland v. Brackeen, 599 U.S. 255, 279-280 (2023), and they do not even mention Congress's power to enforce the Reconstruction Amendments. Similarly, they devote just one paragraph (id. at 13) to arguing that the Act does not preempt

H.B. 2492's mail-voting restrictions. In that paragraph, they never quote, much less analyze, the operative statutory text. The cursoriness of that presentation by itself justifies denying emergency relief.

Applicants also fail to identify any circuit conflict that would warrant this Court's review. Multiple courts of appeals have determined that the Constitution authorizes Congress to apply the NVRA to presidential elections, and applicants cite no court of appeals decision holding otherwise. See ACORN v. Miller, 129 F.3d 833, 836 n.1 (6th Cir. 1997); ACORN v. Edgar, 56 F.3d 791, 793-794 (7th Cir. 1995); Voting Rights Coalition v. Wilson, 60 F.3d 1411, 1414 (9th Cir. 1995), cert. denied, 516 U.S. 1093 (1996). Nor do applicants cite any court of appeals decision addressing, much less upholding, the type of mail-voting provision that Arizona has enacted here. The absence of a circuit conflict confirms that this Court's emergency intervention is unwarranted.

B. Applicants must also show that they would suffer irreparable harm without a stay. See Ohio, 144 S. Ct. at 2052. Applicants observe that "a State" suffers irreparable harm when it is enjoined from enforcing its laws. Appl. 15 (citation omitted). But applicants are not the State of Arizona; they are the Republican National Committee and state legislative leaders. The State of Arizona, speaking through its Attorney General, has opposed a stay. See C.A. Doc. 62, at 9 (July 3, 2024). The State also argued below that the legislative leaders lack the authority to

represent the State's interests in federal court, see id. at 7-9, and the Ninth Circuit noted uncertainty about that state-law issue, see Appl. App. 14-15.

Applicants separately contend (Appl. 17-18) that the injunction irreparably harms the Republican National Committee by reducing its candidates' chance of victory. But the NVRA embodies Congress's judgment that facilitating voter registration is a laudable objective to be pursued, not a source of harm to be avoided. See 52 U.S.C. 20501(b). "[A] court sitting in equity cannot 'ignore the judgment of Congress, deliberately expressed in legislation.'" United States v. Oakland Cannabis Buyers' Co-op., 532 U.S. 483, 497 (2001) (citation omitted). Increased voter participation thus does not qualify as irreparable harm.

C. Finally, applicants must show that the irreparable harm they face would outweigh the harm to the other parties and to the public interest. See Ohio, 144 S. Ct. at 2052. Applicants cannot make that showing either.

To begin, the United States has an interest in enforcing the NVRA. See 52 U.S.C. 20510(a) (empowering the Attorney General to enforce the Act). Granting a stay would impair that interest by allowing Arizona to enforce state laws that violate the Act.

In addition, the State of Arizona, its Attorney General, and its Secretary of State opposed a stay below, explaining that a stay would throw the administration of the election into chaos. See C.A. Doc. 62, at 2-4; C.A. Doc. 52, at 2-5 (June 27, 2024).

As applicants have acknowledged, the State has never implemented H.B. 2492's provisions. See C.A. Doc. 50, at 21 (June 25, 2024). Thousands of voters have already registered to vote by filing the federal form without accompanying documentary proof of citizenship. See C.A. Doc. 52, at 2-3. Judicial intervention at this stage would produce unnecessary "confusion and chaos on the cusp of an election." Id. Ex. 1, at 4.

**CONCLUSION**

This Court should deny the application to the extent it seeks a stay of Paragraph 1 of the district court's final judgment, which enjoins the enforcement of Ariz. Rev. Stat. Ann. §§ 16-121.01(E) and 16-127(A). The United States takes no position on the application to the extent it seeks a stay of Paragraph 2 of the final judgment, which enjoins the enforcement of Ariz. Rev. Stat. Ann. § 16-121.01(C).

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General

AUGUST 2024