No. _____

In the Supreme Court of the United States

REPUBLICAN NATIONAL COMMITTEE, ET AL.
APPLICANTS,
v.
MI FAMILIA VOTA, ET AL.

EMERGENCY APPLICATION FOR STAY

To the Honorable Elena Kagan
Associate Justice of the Supreme Court of the United States and
Circuit Justice for the Ninth Circuit

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PARTIES TO THE PROCEEDING AND RELATED PROCEEDINGS

The parties to the proceeding below are as follows:

The Applicants are the Republican National Committee, Warren Petersen, in his official capacity as the President of the Arizona Senate, and Ben Toma, in his official capacity as the Speaker of the Arizona House of Representatives. The Applicants were intervenor-defendants in the consolidated district court proceedings and appellants in the court of appeals proceedings.

The Respondents are Mi Familia Vota, Voto Latino, 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, Arizona Coalition for Change, Poder Latinx, Chicanos Por La Causa, Chicanos Por La Causa Action Fund, Democratic National Committee, Arizona Democratic Party, Arizona Asian American Native Hawaiian and Pacific Islander For Equity Coalition, Promise Arizona, Southwest Voter Registration Education Project, Tohono O'odham Nation, Gila River Indian Community, Keanu Stevens, Alanna Siquieros, and LaDonna Jacket. The Respondents were plaintiffs in the consolidated district court proceedings and appellees in the court of appeals proceedings.

The State of Arizona, the Arizona Secretary of State, the Attorney General of Arizona, Arizona Department of Transportation Director Jennifer Toth, the Apache County Recorder, the Cochise County Recorder, the Coconino County Recorder, the Gila County Recorder, the Graham County Recorder, the Greenlee County Recorder, the La Paz County Recorder, the Maricopa County Recorder, the Mohave County

Recorder, the Navajo County Recorder, the Pima County Recorder, the Pinal County Recorder, the Santa Cruz County Recorder, the Yavapai County Recorder, and the Yuma County Recorder were defendants in the consolidated district court proceedings. The State and Attorney General did not appeal the district court rulings that are the subject of this Application.

The related proceedings below are:

1. *Mi Familia Vota v. Petersen*, No. 24-3188 (9th Cir.) – Judgment entered August 1, 2024;

2. *Mi Familia Vota v. Mayes*, No. 24-3559 (9th Cir.);

3. *Promise Arizona v. Petersen*, No. 24-4029 (9th Cir.); and

4. *Mi Familia Vota v. Fontes*, No. 2:22-cv-0509 (consolidated) (D. Ariz.) – Judgment entered May 2, 2024.

CORPORATE DISCLOSURE STATEMENT

Per Supreme Court Rule 29, Applicant the Republican National Committee states that it has no parent companies or publicly held companies with a 10% or greater ownership interest in it.

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TO THE HONORABLE ELENA KAGAN, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE NINTH CIRCUIT:

This Court has repeatedly instructed that the *Purcell* principle bars federal courts from enjoining the enforcement of state election laws with an election impending. The principle recognizes the important interests state officials have in protecting their elections and avoiding voter confusion. *See DNC v. Wis. State Legislature*, 141 S. Ct. 28, 29 (2020) (Gorsuch, J., concurral); *id.* at 31 (Kavanaugh, J., concurral). But the Ninth Circuit turned this principle *against* the enforcement of state election-integrity laws. Reading the *Purcell* principle as a general interest in the status quo—including a status quo where a district court has enjoined state election law—a divided panel overturned a stay unanimously granted by another Ninth Circuit panel just days before. The majority revived a district court injunction against enforcement of an Arizona law requiring registrants using Arizona's state form to provide documentary proof of citizenship. *See* Ariz. Rev. Stat. §16-121.01(C). But *Purcell* mandates that "when a lower court intervenes and alters the election rules" with an erroneous order, an appellate court must "correct that error," even if it "would prefer not to do so." *RNC v. DNC*, 589 U.S. 423, 425 (2020) (per curiam).

As Judge Bumatay noted in dissent, the panel majority's reversal of another panel faced with identical arguments days earlier "abandon[ed] regularity." App. 20. It also led to the peculiar result that "two judges prevail[ed]" over four who had voted to partially stay the district court's order. App. 21. The four judges who voted for the partial stay were correct. The panel majority found that Arizona's registration law could not be enforced because of a consent decree entered by a single executive office

years before the Arizona Legislature enacted the law. *See League of United Latin Am. Citizens of Ariz. v. Reagan*, Doc. 37, No. 2:17-cv-4102 (D. Ariz. Jun. 18, 2018) (the "LULAC Consent Decree"). But the panel majority ignored the established rule that a consent decree generally yields to a change in the law, including a change in statutory law. That rule is especially important on questions of election administration, which the Constitution expressly entrusts to state legislatures. *See* U.S. Const. art. I, §4.

The Ninth Circuit also refused to stay the district court's injunction against the enforcement of Arizona laws that prohibit voters who have not provided documentary proof of citizenship from casting ballots for president or by mail. *See* Ariz. Rev. Stat. §§16-121.01(E), 16-127(A).

The district court's injunction is an unprecedented abrogation of the Arizona Legislature's sovereign authority to determine the qualifications of voters and structure participation in its elections.

Applicants need prompt relief. Because counties need to print ballots well in advance of the election, the Secretary of State "has advised that the deadline to resolve" ballot-referendum litigation is **August 22, 2024**. App. 199 (Arizona Supreme Court scheduling order in case challenging ballot referendum); App. 202-12 (complaint in ballot-referendum challenge). This emergency application also concerns the form and printing deadline of ballots: to implement its prohibition on voting in presidential elections by individuals who have not provided documentary proof of citizenship, Arizona must either not print the presidential candidates on federal only

ballots, or configure its tabulation machines not to count presidential votes on federal only ballots. Accordingly, Applicants request an **immediate stay of the district court's injunction to the extent it requires Arizona to (1) accept state-form voter registration applications lacking documentary proof of citizenship and (2) allow voters who have not provided documentary proof of citizenship to cast ballots for president or by mail.**

OPINIONS BELOW

The merits panel opinion has been designated for publication in the Federal Reporter and is attached at App. 1. The motions panel opinion is unreported but is attached at App. 43. The district court's final judgment and post-trial rulings are unpublished but attached at App. 191 and App. 47. The district court's opinion with respect to the parties' cross-motions for partial summary judgment is published at 691 F. Supp. 3d 1077 (D. Ariz. 2023), and is attached at App. 156.

JURISDICTION

The Court has jurisdiction over this Application under 28 U.S.C. §§1254(1) and 1651(a). The Republican National Committee, President of the Arizona State Senate Warren Petersen, and Speaker of the Arizona House of Representatives Ben Toma intervened as defendants before the district court and have standing. *See Town of Chester v. Laroe Ests.*, 581 U.S. 433, 439 (2017); *RNC*, 589 U.S. at 423; *Berger v. N.C. State Conf. of the NAACP*, 597 U.S. 179, 191-95 (2022); Ariz. Rev. Stat. §12-1841(A) (authorizing the legislative leaders to defend state laws "[i]n any proceeding

in which a state statute, ordinance, franchise or rule is alleged to be unconstitutional").

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Article I, Section 4 of the United States Constitution, Article II, Section 1 of the United States Constitution, Sections 20501 and 20503 of Chapter 52 of the United States Code, and Sections 16-121.01 and 16-127 of the Arizona Revised Statutes. All are reproduced in the Appendix beginning at App. 213.

STATEMENT

Since 2004, Arizona has required newly registered voters to provide documentary proof of citizenship. *See* Ariz. Rev. Stat. §16-166(F). This Court held that the National Voter Registration Act ("NVRA"), 52 U.S.C. §§20501-20511, preempted that requirement as applied to individuals using the federal form promulgated by the Election Assistance Commission to register to vote in federal elections. *See Arizona v. Inter Tribal Council of Ariz.*, 570 U.S. 1 (2013). It added, however, that "state-developed [registration] forms may require information the Federal Form does not." *Id.* at 12. After *Inter Tribal Council*, Arizona has registered federal-form registrants who do not supply documentary proof of citizenship as "federal-only" voters, who are eligible to vote only in federal races. State-form applicants must still provide documentary proof of citizenship. *See* Ariz. Att'y. Gen. Op. I13-011.

In 2022, Arizona enacted several reforms to its voter-registration laws. *See* 2022 Ariz. Laws ch. 99 (H.B. 2492). Two aspects of this legislation are relevant here.[1] First, Ariz. Rev. Stat. §16-121.01(C) requires elections officials to reject any state-form application that is not accompanied by documentary proof of citizenship. Second, Ariz. Rev. Stat. §§16-121.01(E) and 16-127(A) provide that voters who have not provided documentary proof of citizenship may not vote for president or by mail.

The United States and various private plaintiffs initiated litigation soon after the legislation's passage. Because the Secretary of State refused to implement the relevant provisions, however, the plaintiffs never sought or obtained preliminary injunctive relief. The district court ruled on partial summary judgment motions in September 2023, holding that the NVRA preempted the provisions relating to presidential electors and mail-in voting, and that Arizona must continue processing non-compliant state form registrations in accordance with the LULAC Consent Decree. App. 165-72. The RNC moved for a partial final judgment on those issues in early October, but the district court did not enter an appealable injunction until May 2, 2024. App. 191.

Applicants sought an emergency stay of the injunction in the Ninth Circuit. On July 18, 2024, a motions panel unanimously stayed the injunction to the extent it prohibited enforcement of Ariz. Rev. Stat. §16-121.01(C), and expedited the appeal.

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[1] Other provisions of the same law and a related bill are the subject of ongoing proceedings in the Ninth Circuit.

Several plaintiffs sought reconsideration. Their motion did not raise any new merits arguments but repeated the argument that the LULAC Consent Decree barred enforcement of Arizona's new documentary-proof-of-citizenship requirement for state-form registrants. To support their reconsideration motion, they pointed out that the Maricopa County Recorder had begun enforcing the documentary-proof-of-citizenship requirement for state-form registrants. They argued that this enforcement of state election-integrity laws caused confusion, and that this violated the *Purcell* principle.

After emergency briefing, a divided merits panel lifted the partial stay over Judge Bumatay's dissent. It found that the LULAC Consent Decree requires county recorders to accept state-form applications without documentary proof of citizenship despite Arizona's new law. And it found that the original stay panel had caused a "manifest injustice" by failing to apply *Purcell* to continue to enjoin enforcement of Arizona's law. App. 17-18.

Judge Bumatay first noted that it was unusual for a motion for reconsideration to succeed with no new facts or law, noting that "two judges prevail[ed]" over four "because of the luck of an internal Ninth Circuit draw." App. 21. He explained that allowing a consent decree to prevail over later statutory enactments raised serious separation-of-powers concerns, and that consent decrees ordinarily must yield to changes in law, including statutory law. App. 26-30. He also noted that *Purcell* was not a tool to uphold injunctions barring the enforcement of state law. App. 40-41.

Litigation affecting what will be printed on Arizona's ballot must be resolved by August 22, 2024, hence necessitating relief no later than that date. App. 199.

REASONS FOR GRANTING THE APPLICATION

This Court will grant a stay of a district court's order, including in a case still pending before the court of appeals, if there is "(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 likelihood that irreparable harm will result from the denial of a stay." *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam). Applicants have satisfied these standards here.

I. There Is A Reasonable Probability That Four Justices Would Vote To Grant Review And A Fair Prospect That This Court Would Reverse.

A. The LULAC Consent Decree Cannot Prohibit The Arizona Legislature From Enacting Enforceable Statutes Governing Voter Registration

This Court's prior orders granting stays of injunctions that change state election laws as an election approaches only confirm that the Court's immediate intervention is necessary here. *See, e.g.*, *North Carolina v. League of Women Voters of N.C.*, 574 U.S. 927 (2014) (this Court, 27 days before Election Day, stayed a lower court order changing election laws 32 days before Election Day); *Husted v. Ohio State Conf. of N.A.A.C.P.*, 573 U.S. 988 (2014) (this Court, 36 days before Election Day, stayed a lower court order changing election laws 61 days before Election Day); *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006) (per curiam) (this Court, 18 days before

Election Day, stayed a lower court order changing election laws 33 days before Election Day). This practice recognizes the State's interest in protecting its elections and avoiding voter confusion on the eve of an election. "The Constitution provides that state legislatures—not federal judges, not state judges, not state governors, not other state officials—bear primary responsibility for setting election rules." *Wis. State Legislature*, 141 S. Ct. at 29 (Gorsuch, J., concurral); *see also id.* at 31 (Kavanaugh, J., concurral) ("It is one thing for state legislatures to alter their own election rules in the late innings and to bear the responsibility for any unintended consequences. It is quite another thing for a federal district court to swoop in and alter carefully considered and democratically enacted state election rules when an election is imminent."). So "when a lower court intervenes and alters the election rules" with an erroneous order, an appellate court must "correct that error," even if it "would prefer not to do so." *RNC*, 589 U.S. at 425. The Ninth Circuit turned this shield for state laws into a sword to impose a judicially mandated status quo. And this Court is likely to review the Ninth Circuit's disruptive displacement of election rules enacted by the Arizona Legislature in 2022.

The Ninth Circuit did so based on its erroneous conclusion that a state executive branch official can bargain away to private litigants the legislative branch's constitutional authority to regulate elections. In 2018, the then–Secretary of State executed the LULAC Consent Decree, which provided that if an applicant submits a state form without documentary proof of citizenship, she will be registered as a full ballot voter if her citizenship can be confirmed using information on file with the

Arizona Department of Transportation. If her citizenship cannot be verified, she will be registered as a federal-only voter. App. 48-49. In 2022, the Arizona Legislature exercised its authority under Article I, Section 4 of the U.S. Constitution, and its sovereign powers under the Arizona Constitution, to instead mandate that state forms lacking documentary proof of citizenship must be rejected. *See* Ariz. Rev. Stat. §16-121.01(C).

The Ninth Circuit's holding that the LULAC Consent Decree preemptively denuded the Arizona Legislature's enactment of binding effect "presents significant separation-of-powers concerns." App. 27. It would mean that a judgment entered unilaterally by an executive branch officer indefinitely displaced the Legislature's power. In other words, it would effectively empower "the executive branch [to] circumvent legislative authority." App. 27. Such a judicially imposed distortion of a State's chosen allocation of sovereign authority would "bind state and local officials to the policy preferences of their predecessors and may thereby improperly deprive future officials of their designated legislative and executive powers." *Horne v. Flores*, 557 U.S. 433, 449 (2009) (cleaned up). And in cases such as this one, where different state actors have different views, it would present serious practical risks. An executive officer would be "sorely tempted" to agree to terms that dictate its view of a policy disagreement. App. 27. "Precisely because different state actors have taken contrary positions in this litigation, federalism concerns are elevated." *Horne*, 557 U.S. at 452.

This invocation of the LULAC Consent Decree to displace legislative power is especially serious on issues of election administration. As the dissent emphasized, "State legislatures have express constitutional authority to act" on questions of election administration. App. 28 (citing U.S. Const. art. I, §4). The Arizona Constitution likewise charges the Legislature with "enact[ing] registration and other laws to secure the purity of elections and guard against abuses of the elective franchise." Ariz. Const. art. VII, §12. The notion that an executive branch officer can indefinitely abrogate these core constitutional powers is "alarming." App. 28.

The Court is likely to reverse the district court's displacement of the Arizona Legislature's authority. In observing that "legislative acts must predominate over consent decrees, not the other way around," App. 28, Judge Bumatay channeled this Court's precedents. When 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." *Miller v. French*, 530 U.S. 327, 347 (2000); *see also Agostini v. Felton*, 521 U.S. 203, 215 (1997) ("A court errs when it refuses to modify an injunction or consent decree in light of [legal] changes."). After all, the Ninth Circuit's alternative approach would allow a single executive officer to "handcuff governments in perpetuity." App. 28. And it ignores the general rule that "consent decrees may need to give way to intervening changes in law, including legislative enactments." App. 28; *see also Rufo v. Inmates of Suffolk 10 Cnty. Jail*, 502 U.S. 367, 388 (1992) (A consent decree may need to be modified "when the statutory or decisional law has changed to make legal what the decree was designed to prevent.").

The majority's protestation that "a state legislature may [not] nullify a final judgment entered by an Article III court," App. 11, misses the point. While legislative bodies cannot alter a judgment, their enactment "alter[s] the prospective effect of injunctions entered by Article III courts." *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 232 (1995); *see also Rufo*, 502 U.S. at 379-80 (A "consent [decree] is to be read as directed toward events as they then were. It was not an abandonment of the right to exact revision in the future, if revision should become necessary in adaptation to events to be." (cleaned up)); *Biodiversity Assocs. v. Cables*, 357 F.3d 1152, 1169-70 (10th Cir. 2004) (A consent decree "does not freeze the provisions of the statute into place. If the statute changes, the parties' rights change, and enforcement of their agreement must also change. Any other conclusion would allow the parties, by exchange of consideration, to bind not only themselves but Congress and the courts as well."). Thus, if the Arizona Legislature had rescinded voter registrations accepted under the LULAC Consent Decree, it may well have evoked the constitutional concerns that preoccupied the Ninth Circuit. *See Plaut*, 514 U.S. at 219 (legislatures cannot "retroactively command[] the federal courts to reopen final judgments"). But its enactment of new rules for state-form registrants going forward did not.

B. The NVRA Cannot Preempt Arizona's Qualifications to Vote for Presidential Electors and Does Not Preempt Arizona's Mail-In Voting Laws

This case presents two additional, important election-integrity issues that there is reasonable probability this Court would review. A State "has a compelling interest in preserving the integrity of its election process." *Purcell*, 549 U.S. at 4

(quoting *Eu v. S.F. Cnty. Democratic Central Comm.*, 489 U.S. 214, 231 (1989)). It has a strong "interest in accurate voter lists." *Marston v. Lewis*, 410 U.S. 679, 681 (1973). Allowing an unqualified person to register and vote harms the "right to suffrage" of qualified voters "by debasement [and] dilution," and it undermines the "[c]onfidence in the integrity of our electoral processes" that "is essential to the functioning of our participatory democracy." *Purcell*, 549 U.S. at 4. For this reason, this Court has reviewed decisions presenting novel and important questions about a State's ability to secure its elections. *See Husted v. A. Philip Randolph Inst.*, 584 U.S. 756 (2018) (reviewing challenge to Ohio's system for maintaining voter rolls); *Inter Tribal Council*, 570 U.S. at 20 (reviewing Arizona's requirement for Federal Form registrants to provide proof of citizenship).

This case raises similarly important and novel questions about Arizona's ability to protect its elections. Arizona law permits only those applicants who can provide documentary proof of citizenship to vote by mail. This restriction protects Arizona's elections by extending "mail-in voting"—where "[f]raud is a real risk"—to applicants who can provide documents to show that they are qualified citizens. *Brnovich v. DNC*, 594 U.S. 647, 686 (2021). The district court found that this requirement violated the NVRA, even though that statute addresses "procedures to register to vote in elections." 52 U.S.C. §20503(a). There is a reasonable probability that this Court will review this holding because it expands a statute focused on voter *registration* to require Arizona to expand mail-in *voting*.

There is also a more-than-fair prospect that this Court will reverse. To begin, the district court applied the NVRA—a law governing voter registration—to prohibit Arizona's requirement that only registrants who provide documentary proof of citizenship can vote by mail. App. 167-70. Neither the district court nor any party has reconciled this preemption of a state mail-voting rule by a statute that addresses "procedures to *register to vote* in elections." 52 U.S.C. §20503(a) (emphasis added). Instead, they have primarily argued that this application is consistent with the NVRA's purpose of increasing registered voters, App. 168-69, while ignoring that the NVRA is also designed "to protect the integrity of the electoral process," 52 U.S.C. §20501(b)(3). And the district court's holding created a ban on state limits on mail voting based on a federal statutory provision clarifying that most first-time voters can be required to vote in person even though they can register by mail. App. 167-70. But "this Court has repeatedly stated" that "the text of a law controls over purported legislative intentions unmoored from any statutory text." *Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 144 S. Ct. 2440, 2454 (2024). Nothing in the NVRA's requirement to accept registrants using the Federal Form suggests that States must extend mail-in voting to registrants without proof of citizenship.

The district court also read the NVRA to reach state rules governing the manner of selecting presidential electors. Arizona permits registrants using the Federal Form without proof of citizenship to vote in federal congressional elections, but not in state or presidential elections. *See* Ariz. Rev. Stat. §16-121.01. This approach reflects the Constitution's limit on congressional authority over presidential

elections; Congress can decide only "the Time of chusing Electors, and the Day on which they shall give their Votes." U.S. Const. art. II, §1. That authority does not permit Congress to displace state rules for registering to vote in presidential elections.

The district court ignored those textual limits because it thought that this Court's decisions had expanded Congress's power. App. 164-67. But no decision of this Court has given Congress the power to displace state rules for registering and voting in presidential elections. *Burroughs v. United States* merely confirmed that an application of the Federal Corrupt Practices Act to political committees trying to influence the selection of presidential electors complies with the constitutional allocation of authority. 290 US. 534, 544-48 (1934). The FCPA did not "interfere with the power of a state to appoint electors or the manner in which their appointment shall be made"—a contention that can't be made about the district court's application of the NVRA. *Id.* at 544. And *Buckley v. Valeo* upheld a system of public financing as an exercise of Congress's spending power—a power not relevant to the NVRA. 424 U.S. 1, 90-91 (1976) (per curiam). Neither case can be read to displace Arizona's constitutional power to regulate its state process for registering to vote for presidential electors.

II. Applicants Will Suffer Irreparable Harm Absent A Stay

An "injunction[] barring the State from conducting this year's elections pursuant to a statute enacted by the Legislature … would seriously and irreparably harm the State," if the statute is ultimately determined to be valid. *Abbott v. Perez*,

585 U.S. 579, 602 (2018) (footnote omitted); *see also Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) ("[A]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." (citation omitted)). That harm is especially acute on questions of election administration. The "State indisputably has a compelling interest in preserving the integrity of its election process." *Eu*, 489 U.S. at 231. The harm is even more severe because the Ninth Circuit intervened to displace a State's election-integrity measures with an election impending. *See Purcell*, 549 U.S. at 5.

A. The Ninth Circuit sidestepped these sovereign interests by pointing out that other state officers, including the Attorney General, opposed a stay. App. 14-15. But it is the Legislature who has authority to enact rules to secure Arizona's elections. *See* U.S. Const. art. I, §4. And Arizona has "empower[ed] multiple officials," including the Speaker of the House and the Senate President, "to defend its sovereign interests in federal court." *Cameron v. EMW Women's Surgical Ctr., P.S.C.*, 595 U.S. 267, 277 (2022). In particular, Arizona law authorizes the legislative leaders to "intervene," "file briefs," and otherwise "be heard" in "*any* proceeding in which a state statute … is alleged to be unconstitutional." Ariz. Rev. Stat. §12-1841 (emphasis added); *see also Isaacson v. Mayes*, 2023 WL 2403519, at *2 (D. Ariz. Mar. 8, 2023) (recognizing the statute's applicability in federal court, noting that "[a]ny means any"). Thus, the Legislature "has also reserved to itself some authority to defend state law on behalf of the State" and protect against harms to the State's sovereign interest. *Berger*, 597 U.S. at 194; *see also* App. 39 (recognizing that "Arizona law grants the Legislative

Leaders authority to contest an injunction suspending the Legislature's enactments"). The Speaker and Senate President accordingly have standing to defend Arizona's election laws against the irreparable harm to the State that ensues from the district court's injunction. *See Abbott*, 585 U.S. at 602.

The improper injunction also harms the Arizona Legislature as an institution because it constitutes an extrinsic constraint on the Legislature's lawmaking functions. *See Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 800 (2015) (Arizona Legislature had standing to bring claim that initiative measure "strips the Legislature of its alleged prerogative to initiate redistricting"); *Forty-Seventh Legislature v. Napolitano*, 143 P.3d 1023, 1028 (Ariz. 2006). The injunction thwarts the Legislature from disallowing individuals who have not proved their U.S. citizenship from participating in Arizona's selection of its presidential electors or from using Arizona's generous mail-in voting option. It also elevates the Secretary of State's improvident promises in the LULAC Consent Decree over the State's democratically enacted laws.

In doing so, the injunction abrogates the Arizona Legislature's constitutional power to prescribe qualifications to vote for presidential electors, *see* U.S. Const. art. II, §1; to presumptively determine the "manner" of voting in federal elections, *see id*. art. I, §4; and to safeguard the purity of all elections in Arizona, *see* Ariz. Const. art. VII, §12; *Priorities USA v. Nessel*, 978 F.3d 976, 982 (6th Cir. 2020) (explaining that, when an election law is enjoined, "[t]he legislature has lost the ability to regulate that election in a particular way"). Thus the Legislature itself has sustained an injury

because its "specific powers are disrupted" by the injunction. *Id.*; *see also Ariz. State Legislature*, 576 U.S. at 803 (institutional injury occurs when a legal impediment would nullify "any vote by the Legislature, now or 'in the future,'" by which Legislature exercises a constitutional power). And legislative leadership may seek redress of this harm on the institution's behalf, as both chambers have adopted rules empowering their presiding officers to "bring or assert in any forum on behalf of the[ir houses] any claim or right arising out of any injury to [their houses'] powers or duties under the Constitution or Laws of this state." State of Arizona, *Senate Rules*, 56th Legislature 2023-2024, Rule 2(N), perma.cc/JKK6-QQYM; State of Arizona, *Rules of the Ariz. House of Representatives*, 56th Legislature 2023-2024, Rule 4(K), perma.cc/GE39-MCFA; *see also Ariz. State Legislature*, 576 U.S. at 802 (noting the significance of "authorizing votes in both of its chambers").

B. The district court's judgment will also irreparably harm the RNC. The RNC has an interest in having its members' rights as voters not undermined by eleventh-hour changes to election laws. In addition, "[v]oluminous" authority in the circuit courts agrees that candidates and parties suffer injury when their "chances of victory would be reduced." *Tex. Democratic Party v. Benkiser*, 459 F.3d 582, 587 & n.4 (5th Cir. 2006) (collecting cases). According to the Plaintiffs' own expert, only 14.3% of Federal Only voters are registered as members of the Republican Party, while Republicans comprise 34.5% of the total active registered voter population in Arizona. App. 197. And because elections, like admissions, "are zero-sum," a "benefit provided to [one] but not to others necessarily advantages the former … at the expense of the

latter." *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 218-29 (2023). The district court's order requires including individuals in the presidential electorate who have failed to satisfy the minimum state-law requirements to confirm their identity and citizenship. That "'illegally structure[d] competitive environment'" harms the RNC. *Mecinas v. Hobbs*, 30 F.4th 890, 898 (9th Cir. 2022).

C. A stay would not inflict any countervailing harms on the plaintiffs or the public interest. The district court found no evidence that Arizona's documentary proof of citizenship requirement "will in fact impede any qualified voter from registering to vote or staying on the voter rolls." App. 138. It further concluded that the challenged laws "do not impose an excessive burden on any specific subgroup of voters." App. 141.

The Ninth Circuit relied heavily on the *Purcell* principle to reverse an order allowing state officials to enforce state law. Its reasoning, however, "backs into self-contradiction." App. 41. The *Purcell* principle protects state election-integrity measures from last-minute interference. *See Wis. State Legislature*, 141 S. Ct. at 31 (Kavanaugh, J., concurral) ("It is one thing for state legislatures to alter their own election rules in the late innings and to bear the responsibility for any unintended consequences. It is quite another thing for a federal district court to swoop in and alter carefully considered and democratically enacted state election rules when an election is imminent."). The Arizona Legislature enacted the relevant statutes more than two years ago. But the Ninth Circuit order stopped state officials from enforcing

the law. Since the Ninth Circuit erroneously enjoined a valid state election statute, this Court "should correct that error." *RNC*, 589 U.S. at 425; *see also Merrill v. Milligan*, 142 S. Ct. 879, 882 n.3 (2022) (Kavanaugh, J., concurral) ("Correcting an erroneous lower court injunction of a state election law does not itself constitute a *Purcell* problem."). As the dissent observed, a stay "would just return to the status quo before the district court's injunction." App. 41.

Worse yet, the panel majority's *Purcell* errors compound its misconstruction of Arizona law. Specifically, the majority relied heavily on the incorporation of the LULAC Consent Decree's terms in the Secretary's 2023 Elections Procedures Manual ("EPM"), a compendium of binding regulations. *See* App. 16-17. But the dissent rightly pointed out that the Secretary has stipulated in other proceedings that the EPM merely summarizes court rulings in effect at the time of its issuance; it does not infuse into them any independent legal force. *See* App. 25. More fundamentally, "an EPM regulation that contradicts statutory requirements does not have the force of law." *Leibsohn v. Hobbs*, 517 P.3d 45, 51 (Ariz. 2022). In other words, the EPM could never, as a matter of state law, furnish a colorable excuse for disregarding an otherwise valid statute.

CONCLUSION

This Court should issue the requested stay before August 22, 2024.

Respectfully submitted,

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