No. 24A164

In the Supreme Court of the United States

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

REPLY IN SUPPORT OF 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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INTRODUCTION

Respondents only highlight the dangers of the Ninth Circuit's retooling of the *Purcell* principle. They present a version of *Purcell* that requires courts to make a freestanding assessment of whether enforcement or nonenforcement of state election law is more likely to cause confusion. But that's not all—Respondents' version of *Purcell* would also instruct federal courts to examine state enforcement practices and find that the *status quo* weighs in favor of an injunction if enforcement has not been vigorous enough. And it would instruct federal courts to weigh *Purcell* in favor of an injunction if enough state election officials would prefer that result—even when other state officials would enforce state law. This new version of *Purcell* looks nothing like a principle meant to reduce "federal intrusion on state lawmaking processes." *DNC v. Wis. State Legislature*, 141 S. Ct. 28, 28 (2020) (Roberts, C.J., concurring). Allowing the Ninth Circuit's weaponization of *Purcell* against state election law to stand will only encourage more last-minute injunctions by federal courts.

Respondents fare no better when they turn to the merits. The only Respondents' brief to address the LULAC consent decree does not deny that a change in the underlying law ordinarily controls over the terms of decree. Non-U.S. Pls' Br. 32. The Nongovernmental Respondents instead insist that this principle applies only to changes in federal law. *Id*. But they never explain why a state legislature would be barred from enacting any effective change to state law even when the law supporting a consent decree was state law, as it was in the LULAC decree. Nor does any Respondent offer a convincing defense of the expansion of the National Voter

Registration Act to cover mail voting rules or explain how it could constitutionally reach presidential elections.

Time is short. The Attorney General and Secretary of State confirm that August 22 is the ballot-printing deadline for some counties. Affidavit of Adrian Fontes ¶14; Ariz. Att'y Gen. Br. 7 n.11. And the Attorney General explains that "a stay after August 22 … could disrupt administration of the general election." Ariz. Att'y Gen. Br. 7 n.11. This Court should stay the district court's injunction pending appeal and certiorari.

ARGUMENT

I. *Purcell* cannot be invoked to bar state enforcement of state election laws.

No Respondent offers a direct defense of the Ninth Circuit's novel use of *Purcell* to bar enforcement of state law based on a general interest in avoiding confusion. But they repeat many of the same errors. *See* App. 15-17. *Purcell*, they argue, instructs federal courts not to cause confusion. Ariz. Att'y Gen. Br. 10-12; Ariz. Sec'y Br. 7-8; Non-U.S. Pls.' Br. 14-17. Since state officials were not enforcing HB 2492's state-form registration rules before the Ninth Circuit entered its initial stay, they argue that the *status quo* is no enforcement of Arizona's documentary proof of citizenship requirement. *E.g.*, Ariz. Att'y Gen. Br. 2, 8. They add that some state officers prefer the district court's injunction, and that implementing state election law could be burdensome. *E.g.*, Ariz. Sec'y Br. 10-11. This transformation of *Purcell* into a tool for federal courts to halt enforcement of state election law "would turn *Purcell* on its

head." *DNC*, 141 S. Ct. at 31-32 (Kavanaugh, J., concurring). It "obviously is not the law." *Id.*

First, this Court has never treated *Purcell* as a license for a freestanding judicial inquiry into which election rules might be more administrable or less confusing. The Court has repeatedly instructed that federal courts ordinarily should not enjoin enforcement of state election laws close to an election. This instruction has been directed to "lower federal courts" that would bar state officials from enforcing election laws. *RNC v. DNC*, 589 U.S. 423, 424 (2020) (per curiam); *see also DNC*, 141 S. Ct. at 30 (Kavanaugh, J., concurring) ("This Court has repeatedly emphasized that federal courts ordinarily should not alter state election laws in the period close to an election."); *Andino v. Middleton*, 141 S. Ct. 9, 10 (2020) (Kavanaugh, J., concurring) ("[F]or many years, this Court has repeatedly emphasized that federal courts ordinarily should not alter state election rules in the period close to an election."). Admonitions that "the rules of the road should be clear and settled" have come in the context of protecting the State's primary role in ensuring clear rules for an election without judicial tinkering near an election. *DNC*, 141 S. Ct. at 31. *Purcell* confirmed the State's "compelling interest in preserving the integrity of its election process." *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam). So "it is one thing for a State … to toy with its election laws close to" an election. *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring). "But it is quite another thing for a federal court to swoop in." *Id.*

Respondents fail to muster a single example where this Court applied *Purcell* to bar enforcement of state election law to avoid confusion. For good reason—there is none. "Correcting an erroneous lower court injunction of a state election rule cannot itself constitute a *Purcell* problem." *DNC*, 141 S. Ct. at 31-32 (Kavanaugh, J., concurring). This Court's decisions uniformly show that "appellate courts must step in" when a lower court wrongfully enjoins state law close to an election. *Id*. at 32; *see, e.g.*, *Purcell*, 549 U.S. at 4; *Andino*, 141 S. Ct. at 10; *Merrill*, 142 S. Ct. at 879; *RNC*, 589 U.S. at 424. For this reason, this Court has "[a]llowed the modification of election rules" by States close to election day "but not" by lower federal courts. *DNC*, 141 S. Ct. at 28 (Roberts, C.J., concurring). State-imposed changes "present[] different issues" than "federal intrusion on state lawmaking processes." *Id*. "Different bodies of law and different precedents" apply when federal courts interfere in state election law, namely the *Purcell* principle. *Id.*

Second, the Respondents' attempt to redefine the *status quo* fails for the same reason. They argue that because state officials chose not to enforce HB 2492 until the Ninth Circuit partially stayed the district court's judgment, an injunction preserves the *status quo*. Ariz. Att'y Gen. Br. 12. This argument "backs into self-contradiction" since it admits that the *status quo* was no injunction barring the application of the documentary proof of citizenship requirement. App. 40-41 (Bumatay, J., dissenting). And this argument also runs headlong into the basic principle that state officials are primarily charged with deciding the rules for an election. Whatever *status quo* might mean in other contexts, *e.g.*, *Labrador v. Poe ex rel. Poe*, 144 S. Ct. 921, 930-31 (2024)

(Kavanaugh, J., concurring), this Court has been clear about its meaning for *Purcell*: it is a status where "federal courts" do not "alter state election laws," *DNC*, 141 S. Ct. at 30 (Kavanaugh, J., concurring). That understanding explains why the Court has not deployed *Purcell* to bar state-imposed changes to election law. *Id.* at 28 (Roberts, C.J., concurring). And here, there is no dispute that some state officials would enforce state election law if this Court restores that *status quo*, since they did so when the Ninth Circuit issued a partial stay. App. 17. Respondents' alternative definition of the *status quo* would invite lower courts to comb through state enforcement practices to decide whether to bar state officers from enforcing election law. That approach is hardly the avoidance of "federal intrusion" that *Purcell* urges. *DNC*, 141 S. Ct. at 28 (Roberts, C.J., concurring). Respondents again fail to muster any example from this Court to support that rewriting of the *Purcell* principle.

Third, Respondents offer no support for their position that *Purcell* gives some subset of state officials—here, the Attorney General and Secretary of State—a judicially enforceable veto over state election law. *See* Ariz. Att'y Gen. Br. 12-13; Ariz. Sec'y Br. 14-15. The Court has declined to apply *Purcell* when "no state official has expressed opposition" to an injunction. *RNC v. Common Cause R.I.*, 141 S. Ct. 206 (2020). But here, the Legislative Leaders—acting with authority to represent both the State and the Legislature—have asked this Court for relief. It is the "state legislatures" that "bear primary responsibility for setting election rules." *DNC*, 141 S. Ct. at 29 (Gorsuch, J., concurring). And this Court has approved stays under *Purcell* when only the state legislature sought relief. *Id.* at 28. Moreover, some state

officials would enforce state election law with a stay, even if the Secretary of State and Attorney General would prefer not to. County registrars were enforcing the documentary proof of citizenship requirement before the Ninth Circuit reinstated the district court's injunction. App. 17. *Purcell* reflects deference to state lawmakers and the state officials charged with enforcing election laws. It is not an invitation to decide state election law through judicial head-counting.

In any event, the Attorney General and Secretary of State overstate the "destabilizing" effect of a stay. Ariz. Att'y Gen. Br. 8. The Secretary of State assumes that a stay "will require" him to implement the enjoined provisions. Ariz. Sec'y Br. 10. But a stay will merely remove the district court's injunction. That removal will permit state election officials to implement state law—as county registrars did when the Ninth Circuit issued a partial stay. App. 17. But it will not impose any new obligation on state officers. State officers will retain any discretion they have to consider practical difficulties. For her part, the Attorney General urges this Court to leave the injunction in place to spare state officials from "hard questions" about the implementation of state election law. Ariz. Att'y Gen. Br. 9-10. But *Purcell* recognizes that it is state officials—not federal courts—who should be addressing difficult questions of election administration in the run up to elections. *Purcell* does not shield state officers who "can be held accountable by the people" from those difficult questions. *DNC*, 141 S. Ct. at 29 (Gorsuch, J., concurring).

Nor is there anything to the allegation that it is "too late" to remove federal courts from changing Arizona's election rules close to the election. Ariz. Sec'y Br. 9.

The Attorney General and Secretary do not contend that implementing state election law would be impossible. After all, county registrars quickly implemented the documentary proof of citizenship requirement for state-form registrants just weeks ago. App. 17. But the Secretary of State argues that complying with state election law would require "significant time and resources." Ariz. Sec'y Br. 10. And as an example of a "hard question[]" that state officials might face, the Attorney General notes that some voters prohibited from voting by mail have already received a notice telling them when their general election ballot will be mailed to them and voted by mail in the primary election. Ariz. Att'y Gen Br. 9-10. But this Court has stayed last-minute injunctions of state election law even when votes have been cast while the injunction was in place. In *Merrill* and *Andino*, plaintiffs and lower courts argued that an injunction of absentee voting rules should not be stayed because ballots had been cast during the injunction. *See People First of Ala. v. Sec'y of State for Ala.*, 815 F. App'x 505, 515 (11th Cir. 2020); Respondents' Br. 4, *Andino v. Middleton*, No. 20A55. This Court issued a stay in both cases. *Merrill v. People First of Ala.*, 141 S. Ct. 190 (2020); *Andino*, 141 S. Ct. at 9-10. The Attorney General and Secretary of State don't hint at any administrative questions even approaching the removal of an injunction after ballots have been cast.

II. Applicants are likely to prevail on the merits of each argument.

A. Applicants are likely to succeed on their claim that the LULAC consent decree does not displace the Arizona Legislature's power to regulate state-form applications.

Only the Nongovernmental Respondents defend the Ninth Circuit's reversal of course on whether the LULAC consent decree barred the Arizona Legislature's requirement that state-form registrants provide documentary proof of citizenship. Non-U.S. Pls.' Br. 29-34. The Nongovernmental Respondents do not dispute that whether a consent decree entered by the Secretary of State could permanently bar the Legislature from setting new requirements for state-form registrants is a certworthy question. Instead, they insist that the district court was correct to find that the consent decree deprived Arizona's Legislature of the ability to require state-form applicants to provide documentary proof of citizenship.

The Nongovernmental Respondents first insist that the ordinary rule that consent decrees must yield to changes in statutory law applies only to changes in federal law. Non-U.S. Pls.' Br. 31-33. In support of this conclusion, they contend that this Court's cases addressing changes in law have focused on changes in federal law. But they offer no reason that "changes [in] the law underlying a judgment awarding prospective relief" should be treated differently just because the change was to state law. *Miller v. French*, 530 U.S. 327, 347 (2000). Their approach would mean that even a consent decree entered entirely on the basis of a state statute would make any legislative changes departing from the decree ineffective.

Here, the "law underlying" the LULAC consent decree was state law. *Id.* Federal courts have long understood state law to cabin consent decrees. For example, consent decrees cannot allow state officials to "evade state law" in the absence of a violation of federal law. *See League of Residential Neighborhood Advocs. v. City of Los Angeles*, 498 F.3d 1052, 1055 (9th Cir. 2007). The Ninth Circuit has explained that "*potential* violation[s] of federal law" are not enough to allow a state officer to ignore state statutes. *Id.* at 1058. A court must find "an *actual* violation." *Id.* But the LULAC decree does not find an actual violation of federal law; it instead relies on the Secretary of State's representation that the decree's terms are "consistent with the provisions of Arizona law." Non-U.S. Pls.' Supp. App. 137, 141. The Nongovernmental Respondents' argument would mean that the entry of this decree permanently barred the Arizona Legislature from changing that law. It would allow an officer to evade statutory obligations so long as a decree issues before enactment. They are unlikely to succeed on that claim.

Without a reason to treat state statutes differently, the Nongovernmental Respondents insist that the LULAC decree's terms are compelled by the NVRA. But they are even less likely to prevail on this argument. They argue that the NVRA's requirements that identifying information must be "necessary to enable the appropriate State election official to assess the eligibility of the applicant," 52 U.S.C. §20508(b)(1), and that the state form must be "equivalent to the [federal] form," *id.* §20506(a)(6)(A)(ii), bar the state from asking for more than what the federal form requires. Non-U.S. Pls.' Br. 36-39. This Court, however, has already recognized that

"state-developed forms may require information the Federal Form does not." *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 12 (2013). The Nongovernmental Respondents provide no reason to depart from that understanding. They offer no reason why the Federal Form's reliance on a citizenship affidavit renders any requirement of documentary proof of citizenship unnecessary. Nor do they offer any support for their assumption that "equivalent" forms must be identical.

The Nongovernmental Respondents last attempt to salvage the LULAC decree is to argue that its terms are mandated by the Equal Protection Clause. They insist that any different treatment of state and federal form registrants is arbitrary. Non-U.S. Pls.' Br. 40-41. This argument would have come as a surprise to this Court when it instructed that "States retain the flexibility to design and use their own registration forms" that require more information. *Inter Tribal Council*, 570 U.S. at 12. This Court was right: the presence of the Federal Form as a "backstop" does not mandate that any deviation from that minimum is arbitrary. *Id.*

B. Applicants are likely to succeed on their claims that the NVRA doesn't apply to mail-voting procedures or presidential elections.

The United States and Nongovernmental Respondents argue that the NVRA—a statute that governs "procedures to register to vote in elections"—displaces Arizona's documentary proof of citizenship requirement for voting by mail. 52 U.S.C. §20503(a). But not one of their arguments is likely to establish that this voter-registration statute federalizes voting by mail.

The Respondents primarily rely on the requirement that States must "accept" the federal form "for the registration of voters." 52 U.S.C. §20505(a)(1). They argue that this requirement prohibits any different treatment of federal-form voters in the voting process. U.S. Br. 19. That argument extends the requirement to "accept" the federal form far beyond its statutory confines. The NVRA mandates only that States "accept" the federal form "*for the registration of voters*." 52 U.S.C. §20505(a)(1) (emphasis added); *see also Inter Tribal Council*, 570 U.S. at 10 ("accept" must be read "in the context of an official mandate to accept and use something for a given purpose"). This language confirms that qualified federal form registrants must be permitted to vote. But nothing about "registration of voters" implicates additional requirements imposed on voters seeking the privilege of mail voting.

The Respondents' only other argument is a repetition of the district court's conclusion that an NVRA provision permitting States to limit mail-in voting for first-time voters prohibits any other limits on mail voting. Like the district court, the Respondents assume that Congress quietly barred all mail voting rules when it clarified that mail-in registration did not prohibit a requirement for in-person voting. But they offer no reason to think that Congress buried a nationwide ban on all regulations of mail voting except for one in a statute regulating voter registration enacted long before mail voting became commonplace. *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001) ("Congress … does not, one might say, hide elephants in mouseholes."). This single provision of the NVRA cannot plausibly be interpreted to impose no-excuse mail voting nationwide.

As for presidential elections, no party disputes that the NVRA's voter-registration provisions purport to regulate the "manner" of appointing presidential electors. *See Cook v. Gralike*, 531 U.S. 510, 523-24 (2001) (The term "'manner' of elections" "encompasses matters like … registration"). But "the state legislature's power to select the manner for appointing electors is plenary." *Bush v. Gore*, 531 U.S. 98, 104 (2000) (per curiam). That means that the NVRA's voter-registration provisions cannot constitutionally preempt state law governing presidential elections. The Respondents try to shift the Court's attention away from the Electors Clause and towards more nebulous congressional powers. But none of those powers negates the constitutional text, which gives Congress authority only to "determine the Time" of choosing presidential Electors, while leaving power over the "Manner" of presidential elections to the state legislatures. U.S. Const. art II, §1. "One cannot read the Elections Clause as treating implicitly what these other constitutional provisions regulate explicitly." *Inter Tribal Council*, 570 U.S. at 16.

The United States *begins* its defense of the NVRA with a "resort[] to the last, best hope of those who defend ultra vires congressional action, the Necessary and Proper Clause." *Printz v. United States*, 521 U.S. 898, 923 (1997). The United States depends on Justice Black's solo opinion in *Oregon v. Mitchell*, U.S. Br. 12-13, because he was the only Justice who thought that "the Necessary and Proper Clause" gave Congress limitless authority "to make election regulations in national elections," *Oregon v. Mitchell*, 400 U.S. 112, 120 (1970) (op. of Black, J.). But when a law "violates the principle of state sovereignty reflected in the various constitutional provisions …

it is not a 'Law proper for carrying into Execution'" Congress's enumerated powers. *Printz*, 521 U.S. at 923-24 (cleaned up); *accord United States v. Comstock*, 560 U.S. 126, 135 (2010); *New York v. United States*, 505 U.S. 144, 166 (1992). The United States argues that States still retain a vestige of sovereignty to regulate their own elections. U.S. Br. 13 (citing *Trump v. Anderson*, 601 U.S. 100, 110 (2024)). But the States' authority "reflected in the various constitutional provisions," *Printz*, 521 U.S. at 923, includes "the state legislature's power to select the manner for appointing [presidential] electors," *Bush*, 531 U.S. at 104. And that power is "plenary." *Id.*

The Respondents' reliance on *Burroughs* and *Ex parte Yarbrough* just rehashes Justice Black's solo views in *Oregon v. Mitchell*. *See* Non-U.S. Pls.' Br. 22-24; U.S. Br. 11-14. Justice Black wasn't able to convince anyone else of his reading of those cases, but Respondents try it again here. *Mitchell*, 400 U.S. at 149-50 (op. of Black, J.). That's because *Burroughs* addressed whether a federal campaign-finance law *violated* the Electors Clause, not whether Congress had power to *enact legislation* under the Electors Clause. In fact, *Burroughs*'s holding rests on the premise that when a federal law "interfere[s]" with the "exclusive state power" to "appoint electors," it is unconstitutional. *Burroughs v. United States*, 290 U.S. 534, 544-45 (1934). And in "*Ex parte Yarbrough* and *United States v. Classic*," this Court was "careful to observe that it remained with the States to determine the class of qualified voters." *Mitchell*, 400 U.S. at 213-14 (op. of Harlan, J.) (citations omitted).

Finally, the Reconstruction Amendments cannot save the NVRA because Congress did not develop evidence of discrimination in the congressional record.

Contra U.S. Br. 15-18; Pls.' Br. 20-22. The Respondents rely on *South Carolina v. Katzenbach*, but that case proves that the NVRA doesn't come close to the legislative findings necessary to enact remedial legislation. 383 U.S. 301, 308 (1966). In *Katzenbach*, the Supreme Court upheld the 1965 Voting Rights Act (VRA), "explaining that it was justified to address 'voting discrimination where it persists on a pervasive scale.'" *Shelby Cnty. v. Holder*, 570 U.S. 529, 538 (2013) (quoting *Katzenbach*, 383 U.S. at 308). After months of hearings and volumes of findings, Congress tailored the VRA to apply "where Congress found 'evidence of actual voting discrimination.'" *Id.* at 546. "Multiple decisions since have reaffirmed the [VRA]'s 'extraordinary' nature." *Id.* at 555. The Plaintiffs' citation to three pages in the congressional reports as "an extensive record of discrimination" rebuts itself. Pls. Br. 21. That bare evidence is orders of magnitude less than what supported the Religious Freedom Restoration Act, which suffered from a fatal "lack of support in the legislative record." *City of Boerne v. Flores*, 521 U.S. 507, 531 (1997).

Without a strong argument on the merits, the United States argues that this Court wouldn't grant certiorari. U.S. Br. 20-22. The United States doesn't dispute that this Court reviews important questions about election law even without a circuit split. *See* App. 11. Nor does the United States deny that this case presents the kind of important questions that merit this Court's review. That argument would be difficult anyway since 24 States have explained that the district court's conclusions are a "direct threat" to their ability to secure elections. *Amicus* Br. of Kansas, West Virginia, and 22 Other States 7. Instead, the United Sates argues that this Court is

unlikely to grant certiorari because of the "cursoriness" of the discussion in the stay application. U.S. Br. 22. But the lone support for this argument declined to address an argument when parties "did not meaningfully present the issue in their petition for certiorari or in their [merits] briefing, nor did they press the matter at oral argument." *Moore v. Harper*, 600 U.S. 1, 36 (2023). In any event, the United States never explains how the discussion in the stay application fails to provide this Court with enough information to assess the certworthiness of the question.

III. Irreparable harm and other equitable considerations support a stay.

The Nongovernmental Respondents insists that the Legislature is not irreparably injured when a federal court enjoins its laws. And several Respondents insist that the Legislative Leaders cannot represent the State. Both arguments are wrong.

The Constitution grants state legislatures primary responsibility for setting election rules. U.S. Const. art. I, §4. Given this constitutional allocation of powers, it is unsurprising that most of the oppositions do not contest that the Arizona Legislature has suffered an irreparable harm by having its election rules enjoined. The Attorney General even admits that "[a] stay would serve the State's law-making interests." Ariz. Att'y Gen. Br. 1-2. But the Nongovernmental Respondents turn the Legislature's constitutional power to regulate elections into a mere drafting obligation—with no interest in whether a federal court deprives the rules of any real-world effect. *See* Non-U.S. Pls.' Br. 44-45. That is not the approach this Court has taken. Instead, it has stayed injunctions of state election laws because of the unique

roles of state legislatures. Last-minute injunctions of state election rules "usurp[] the proper role of the state legislature." *DNC*, 141 S. Ct. at 31 (Kavanaugh, J., concurring). For this reason, this Court has approved stays of lower court injunctions of election laws even when the state legislature was the only party seeking relief. *Id.* at 28. Respondents offer no reason to distinguish the harm in that case from the Arizona Legislature's harm here.

In any event, Respondents never dispute that the State suffers irreparable harm when its laws are enjoined; they argue only that the Legislative Leaders cannot assert those harms. Ariz. Att'y Gen. Br. 12-14; Non-U.S. Pls.' Br. 43-46. But Arizona has "empower[ed] multiple officials," including the Legislative Leaders, "to defend its sovereign interests in federal court." *Cameron v. EMW Women's Surgical Ctr.*, 595 U.S. 267, 277 (2022). Federal courts must respect that decision. *See Berger v. N.C. State Conf. of the NAACP*, 597 U.S. 179, 191-93 (2022). Respondents dispute whether Arizona law authorizes the Legislative Leaders to act on behalf of the state in federal court. *E.g.*, Non-U.S. Pls.' Br. 43-44. But Arizona law gives the Legislative Leaders the same authority as the Attorney General to "intervene as a party" or "file briefs" in "*any proceeding*" for declaratory relief "in which a state statute … is alleged to be unconstitutional." Ariz. Rev. Stat. §12-1841 (emphasis added). Federal courts have recognized that this statute grants authority to defend the State in federal court. In fact, the district judge here recognized that "the Speaker and the President are authorized to defend Arizona's statutes," citing *Berger* and *Cameron*. *Mi Familia Vota v. Fontes*, 691 F. Supp. 3d 1105, 1112 (D. Ariz. 2023). Other federal decisions have

similarly noted the "unique stature that resembles that of the Attorney General" that Arizona law confers on the Legislative Leaders. *Arizonans for Fair Elections v. Hobbs*, 335 F.R.D. 269, 274 (D. Ariz. 2020). At a minimum, "it would be surprising to hold in this truncated proceeding—for the first time—that the Arizona House Speaker and Arizona Senate President lack the ability to assert injury in federal cases on behalf of the State." App. 40 (Bumatay, J., dissenting).

The Attorney General points to another Arizona statute requiring her to "[r]epresent" Arizona "in any action in a federal court" to argue that only she can represent the State. Ariz. Att'y Gen. Br. 12 (citing Ariz. Rev. Stat. §41-193(A)(3)). But this Court has already found that an indistinguishable statute did not grant exclusive power to represent the State. In *Berger*, a North Carolina statute made it "the duty of the Attorney General … to appear for the State … in any cause or matter … in which the State may be a party or interested" and "[t]o represent all State departments, agencies, institutions, commissions, bureaus or other organized activities of the State." N.C. Gen. Stat. §114-2(1)-(2). North Carolina's Attorney General invoked this statute in his brief, *see* State Respondents' Br. 37, *Berger v. NAACP*, No. 21-248, and this Court acknowledged the statute, *Berger*, 597 U.S. at 186. But this Court had no trouble concluding that North Carolina's legislative leaders had also been authorized "to defend the State's practical interests in litigation of this sort." *Id.* at 193. For good reason: inferring that an Attorney General's duty to defend the State must be exclusive would make it impossible for the State to "allocate

authority among different officials who do not answer to one another." *Id.* at 191. The Attorney General gives no reason to adopt that inference here.

Nor do Respondents provide any meaningful response to the RNC's irreparable competitive harm from the Ninth Circuit's removal of the stay. They don't dispute that the district court's injunction will remake the electorate in ways that harm the RNC's chances of victory. But the United States and Nongovernmental Plaintiffs insist that the RNC is not harmed because registration of new voters is a "laudable objective." U.S. Opp. 23. The RNC agrees that registering new, eligible voters is laudable. But that is not the question here. The question is whether a party facing reduced prospects of success because of a remaking of the electorate through a federal court's removal of lawful election-integrity measures has been irreparably harmed. No Respondent offers an answer to that question. And this Court's admonition that a political party does not have an adequate interest in removal of an injunction when "state election officials support the challenged decree, and no state official has expressed opposition" is not applicable. *RNC*, 141 S. Ct. at 206. Here, the Legislative Leaders join in opposition, and state officials were enforcing state law before the Ninth Circuit merits panel removed the partial stay.

Turning to other equitable considerations, most of Respondents' arguments turn on their mistaken merits arguments. U.S. Br. 23-24; Ariz. Att'y Gen. Br. 11-12; Ariz. Sec'y Br. 13-15; Non-U.S. Pls.' Br. 47-49. But the Secretary of State argues that Applicants' delay weighs against a stay. Ariz. Sec'y Br. 7-9. His argument rests on a misleading presentation of the timeline in this litigation. He notes that the district

court issued a partial summary judgment ruling on September 14, 2023, but he omits that the district court rejected the RNC's request for a partial, appealable final judgment in October 2023. *See* Dkt. 710. He similarly notes that the district court entered an opinion on February 29, 2024, and that various proceedings took place before Applicants sought a stay from the district court on May 17. Ariz. Sec'y Br. 9. But he omits that the district court did not enter an appealable judgment until May 2, 2024. App. 191.

The United States similarly faults the Applicants for not asking the Ninth Circuit merits panel to reconsider the stay denial on the NVRA claims. U.S. Br. 8. But a stay is not binding on a merits panel because the panel must "come to its own determination … at the merits stage." App. 24 (Bumatay, J., dissenting). Reconsideration by the merits panel "is not meant to be a second bite at the apple." App. 20 (Bumatay, J., dissenting). The Legislative Leaders and RNC cannot be faulted for not seeking that "highly irregular" relief. *Id.*

CONCLUSION

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

Respectfully submitted,

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