

No. 12-71

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**In the Supreme Court of the United States**

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STATE OF ARIZONA, ET AL., PETITIONERS

*v.*

THE INTER TRIBAL COUNCIL OF ARIZONA, INC., ET AL.

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*ON WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT*

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**BRIEF FOR THE UNITED STATES  
AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS**

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### QUESTION PRESENTED

The National Voter Registration Act of 1993 (NVRA) provides that “[e]ach State shall accept and use” a form developed by the United States Election Assistance Commission (EAC) “for the registration of voters in elections for Federal office,” 42 U.S.C. 1973gg-4(a)(1), and that the form must require an applicant to affirm her United States citizenship under penalty of perjury, 42 U.S.C. 1973gg-7(b)(2). The question presented is whether the NVRA preempts a requirement under Arizona law to reject an application for voter registration unless the applicant supplies additional proof of United States citizenship beyond the form developed by the EAC.

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## **INTEREST OF THE UNITED STATES**

Under the National Voter Registration Act of 1993 (NVRA), 42 U.S.C. 1973gg *et seq.*, Congress has vested the United States Election Assistance Commission (EAC) with the responsibility of developing a form that States must “accept and use” for the registration of voters for federal elections, 42 U.S.C. 1973gg-4(a)(1), 1973gg-5(a)(4)(A)(iii), 1973gg-7(a)(2). That form must require an applicant to affirm her United States citizenship under penalty of perjury. 42 U.S.C. 1973gg-7(b)(2). This case presents the question whether the NVRA preempts a requirement under Arizona law to reject an application for voter registration unless the applicant supplies additional proof of United States citizenship beyond that form. In addition to its vesting the EAC with responsibility for developing the federal registra-



tion form at issue, the NVRA authorizes the Attorney General to enforce its provisions through civil actions, 42 U.S.C. 1973gg-9(a). The United States therefore has a substantial interest in the resolution of this case.

#### CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

Pertinent constitutional, statutory, and regulatory provisions are reprinted in an appendix to this brief. App., *infra*, 1a-49a.

#### STATEMENT

1. a. The Elections Clause of the Constitution provides that “[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.” U.S. Const. Art. I, § 4, Cl. 1. The clause “gives Congress ‘comprehensive’ authority to regulate the details of elections, including the power to impose ‘the numerous requirements as to procedure and safeguards which experience shows are necessary in order to enforce the fundamental right involved.’” *Foster v. Love*, 522 U.S. 67, 71 n.2 (1997) (quoting *Smiley v. Holm*, 285 U.S. 355, 366 (1932)). In regulating the “Manner” of federal elections, Congress may establish uniform rules for, *inter alia*, “notices, registration, [and] supervision of voting.” *Smiley*, 285 U.S. at 366 (emphasis added); see *Ex parte Siebold*, 100 U.S. 371, 382 (1879) (upholding provisions of Enforcement Act of 1870 regulating registration and voting for federal elections).

b. In 1993, Congress exercised its authority under the Elections Clause to enact the NVRA, which “requires States to provide simplified systems for register-

ing to vote in federal elections.” *Young v. Fordice*, 520 U.S. 273, 275 (1997) (emphasis omitted). Popularly known as the “Motor Voter Act,” the NVRA establishes three methods through which citizens may register to vote: (i) “by application made simultaneously with an application for a motor vehicle driver’s license”; (ii) “by mail application”; and (iii) “by application in person” at a local registration site or government office. 42 U.S.C. 1973gg-2(a).

Congress enacted the NVRA in response to its concern that “discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office.” 42 U.S.C. 1973gg(a)(3). The statute accordingly identifies as its objectives: “increas[ing] the number of eligible citizens who register to vote in elections for Federal office”; “enhanc[ing] the participation of eligible citizens as voters in elections for Federal office”; “protect[ing] the integrity of the electoral process”; and “ensur[ing] that accurate and current voter registration rolls are maintained.” 42 U.S.C. 1973gg(b).

For persons who submit applications to vote in federal elections by mail, the NVRA instructs that “each State shall \* \* \* ensure that any eligible applicant is registered to vote in an election \* \* \* if [a] valid voter registration form of the applicant is postmarked not later than the lesser of 30 days, or the period provided by State law, before the date of the election.” 42 U.S.C. 1973gg-6(a)(1)(B). The NVRA further provides that “[e]ach State shall accept and use the mail voter registration application form prescribed by the [EAC] \* \* \* for the registration of voters in elections for Federal

office.” 42 U.S.C. 1973gg-4(a)(1).<sup>1</sup> States must also make the form developed by the EAC (“Federal Form”), or a form that is “equivalent” to the Federal Form, available for completion at in-person registration sites, 42 U.S.C. 1973gg-5(a)(4)(A) and (6)(A), and, as with mail registration, “ensure that any eligible applicant [who timely submits the form in person] is registered to vote,” 42 U.S.C. 1973gg-6(a)(1)(C).

The NVRA limits the information the EAC may require applicants to furnish on the Federal Form. In particular, the form “may require only such identifying information (including the signature of the applicant) and other information (including data relating to previous registration by the applicant), as is necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process.” 42 U.S.C. 1973gg-7(b)(1). The Federal Form must, however, “include a statement that \* \* \* specifies each eligibility requirement (including citizenship)”; “contains an attestation that the applicant meets each such requirement”; and “requires the signature of the applicant, under penalty of perjury.” 42 U.S.C. 1973gg-7(b)(2). Under the later-enacted Help America Vote Act of 2002 (HAVA), Pub. L. No. 107-252, 116 Stat. 1666, the form must also include two specific questions, along with check boxes, for the applicant to indicate whether she

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<sup>1</sup> As originally enacted in 1993, the NVRA required the Federal Election Commission (FEC) to prescribe the form. The Help America Vote Act of 2002, Pub. L. No. 107-252, 116 Stat. 1666, “transferred to the Election Assistance Commission \* \* \* all functions which the Federal Election Commission exercised under \* \* \* [42 U.S.C.] 1973gg-7(a),” 42 U.S.C. 15532, but neglected to amend a reference to the FEC in Section 1973gg-4.

meets the U.S. citizenship and age requirements to vote, as well as instructions not to complete the form if the answer to either question is no. See 42 U.S.C. 15483(b)(4)(A).

The NVRA additionally authorizes States to develop their own registration forms, which they may provide to citizens as an alternative way to register by mail or in person: “In addition to accepting and using the [Federal Form], a State may develop and use a mail voter registration form that meets all of the criteria [for the Federal Form] for the registration of voters in elections for Federal office.” 42 U.S.C. 1973gg-4(a)(2). A State therefore may, for example, develop a single form through which citizens can register to vote in federal, state, and local elections.

c. The EAC has developed a Federal Form that meets the requirements of the NVRA and HAVA. See Pet. App. 63c; 11 C.F.R. 9428.3-9428.6. The form “consist[s] of three components: [a]n application, which \* \* \* contain[s] appropriate fields for the applicant to provide all of the information required or requested under [EAC rules]; general instructions for completing the application; and accompanying state-specific instructions” that indicate “the address where the application should be mailed and information regarding the state’s specific voter eligibility and registration requirements.” 11 C.F.R. 9428.3(a) and (b). The application portion of the Federal Form “[s]pecific[ies] each eligibility requirement,” including “U.S. Citizenship,” which is “a universal eligibility requirement.” 11 C.F.R. 9428.4(b)(1). To complete the form, an applicant must sign, under penalty of perjury, an “attestation \* \* \* that the applicant, to the best of his or her knowledge and belief, meets

each of his or her state's specific eligibility requirements." 11 C.F.R. 9428.4(b)(2) and (3).

The Federal Form's state-specific instructions for Arizona require an applicant to include the number of a valid Arizona driver's license or non-operating identification license (or, if the applicant does not have a license, the last four digits of her Social Security number if she has one), a requirement of HAVA. See Pet. App. 67c; 42 U.S.C. 15483(a)(5)(A)(i). The instructions also inform applicants of Arizona's eligibility requirements, including that the applicant must "be a citizen of the United States" and "be a resident of Arizona \* \* \* at least 29 days preceding the next election." *Id.* at 68c.

2. In 2004, Arizona voters approved a ballot proposition that amended Arizona's election laws in certain respects. Pet. App. 6c-7c. As relevant here, Section 16-166(F) of the Arizona Revised Statutes now requires applicants for registration to furnish proof of U.S. citizenship beyond the attestation requirement of the Federal Form. See Ariz. Rev. Stat. Ann. § 16-166(F) (2006). A county recorder must "reject any application for registration that is not accompanied by satisfactory evidence of United States citizenship." *Ibid.*

Acceptable proof of citizenship under Section 16-166(F) includes, *inter alia*, the number of a driver's license or non-operating identification license issued after October 1, 1996, by an agency of any U.S. state "if the agency indicates on the \* \* \* license that the person has provided satisfactory proof of United States citizenship"; a photocopy of the applicant's birth certificate or passport; or the applicant's naturalization papers. Ariz. Rev. Stat. Ann. § 16-166(F).

After the ballot initiative's passage, Arizona officials submitted the new requirements to the United States

Department of Justice for “preclearance” under Section 5 of the Voting Rights Act of 1965. See generally *Perry v. Perez*, 132 S. Ct. 934, 939-940 (2012). The Department did not interpose an objection to the registration requirement, but, consistent with the scope of its preclearance authority, did not review Section 16-166(F)’s compliance with any other provision of federal law. See *Reno v. Bossier Parish Sch. Bd.*, 520 U.S. 471, 476-485 (1997).

In December 2005, Arizona asked the EAC to add the registration requirement set forth in Section 16-166(F) to Arizona’s state-specific instructions for the Federal Form. J.A. 181. The agency’s Executive Director responded with a letter concluding that Section 16-166(F) was inconsistent with the NVRA. See *id.* at 181-187. He explained that the “NVRA requires States to both ‘accept’ and ‘use’ the Federal Form,” and that “[a]ny Federal Registration Form that has been properly and completely filled out by a qualified applicant and timely received by an election official must be accepted in full satisfaction of registration requirements.” *Id.* at 186. Accordingly, a “state may not mandate additional registration procedures that condition the acceptance of the Federal Form.” *Ibid.* In July 2006, the four sitting Commissioners considered whether to incorporate the requirements into the Federal Form, with two voting in favor and two against, failing to meet the statutory three-vote requirement for EAC action. *Id.* at 225; see 42 U.S.C. 15328.<sup>2</sup>

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<sup>2</sup> Petitioners repeatedly suggest, incorrectly, that EAC regulations require the EAC to incorporate any new state-law requirements into the Federal Form unless the Commissioners affirmatively vote not to do so. See Arizona Br. 14-15, 18-19, 34-35. The regulation that they cite merely states that “[e]ach chief state election official shall notify

3. a. Respondents filed lawsuits seeking to bar the enforcement of the registration requirement (and other provisions not relevant here). See Pet. App. 7c. After the district court denied their request for a preliminary injunction, the Ninth Circuit enjoined the requirement in light of the imminent 2006 election. See *id.* at 7c-8c. This Court vacated that injunction on the ground that the court of appeals had failed to explain why it had concluded that the district court's ruling was incorrect, emphasizing that it "express[ed] no opinion \* \* \* on the ultimate resolution of these cases." *Purcell v. Gonzalez*, 549 U.S. 1, 5 (2006). On remand from this Court, the court of appeals affirmed the district court's denial of a preliminary injunction. See Pet. App. 8c, 1d-21d. The district court then granted Arizona's motion for summary judgment on the challenge to the registration requirement. See *id.* at 8c. A divided panel of the court of appeals reversed that holding, see *id.* at 1a-106a, and the court of appeals voted to rehear the case en banc, see *id.* at 1b-6b.

b. The en banc court of appeals held that "the NVRA supersedes [Section 16-166(F)] as that provision is applied to applicants using the [Federal] Form to register to vote in federal elections." Pet. App. 6c.

The court first concluded, after canvassing this Court's precedents, that no "presumption against preemption" applies to a statute enacted under Congress's Elections Clause authority. Pet. App. 16c-17c. Rather, a court must ask whether the federal statute "addresse[s] the same subject as the state law" and "has superseded the state act, based on a natural reading of the two laws and viewing the federal act as if it were a

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the Commission, in writing, within 30 days of any change to the state's voter eligibility requirements." 11 C.F.R. 9428.6(c).

subsequent enactment by the same legislature.” *Id.* at 20c (citing *Foster*, 522 U.S. 67; *Siebold*, 100 U.S. 371).

Applying that standard, the court held that the NVRA and Section 16-166(F) “do not operate harmoniously.” Pet. App. 30c. The NVRA, it explained, “requires a county recorder to accept and use the Federal Form to register voters for federal elections, whereas [Section 16-166(F)] requires the same county recorder to reject the Federal Form as insufficient for voter registration if the form does not include proof of U.S. citizenship.” *Ibid.* The court further found that Section 16-166(F) “is discordant with the NVRA’s goal of streamlining the registration process” because “much of the value of the Federal Form in removing obstacles to the voter registration process is lost” if applicants must submit whatever additional documentation a State may require. *Id.* at 36c-37c.

Two members of the en banc court dissented. Pet. App. 100c (Rawlinson, J., concurring in part and dissenting in part). They believed that because the NVRA authorizes States to develop their own registration forms, it “creates a minimum standard through the Federal Form and allows a state to require more.” *Id.* at 102c.

#### SUMMARY OF ARGUMENT

The NVRA prohibits a State from imposing additional requirements on applicants who seek to register for federal elections through the Federal Form.

A. 1. The text of the NVRA requires a State to register an eligible applicant who timely submits a completed Federal Form, and it establishes that the Federal Form supplies the information that state officials need to confirm eligibility. The statute instructs the EAC to develop a “registration application” form that includes



the “information \* \* \* necessary to enable the appropriate State election official to assess the eligibility of the applicant,” 42 U.S.C. 1973gg-7(a)(2) and (b)(1), and provides that States “shall accept and use” that form “for the registration of voters in elections for Federal office,” 42 U.S.C. 1973gg-4(a)(1). It then specifies exactly how a State must “use” the form: “In the administration of voter registration for elections for Federal office, each State *shall \* \* \* ensure that any eligible applicant is registered to vote* in an election \* \* \* if the valid voter registration form of the applicant is [timely mailed].” 42 U.S.C. 1973gg-6(a)(1)(B) (emphasis added). Thus, once state officials receive a timely, completed Federal Form—which the EAC has determined provides them with the information that they need to confirm the applicant’s eligibility—they “shall” register any eligible applicant to vote in federal elections.

Section 16-166(F), which requires Arizona election officials to “reject any application for registration that is not accompanied by” what the State defines as “satisfactory evidence of United States citizenship,” squarely conflicts with the command of federal law and is therefore preempted. Because federal law requires Arizona officials to register voters that Arizona law does not permit them to register—those who submit a properly completed Federal Form indicating their eligibility but who submit no additional information or documentation verifying U.S. citizenship—the officials’ “compliance with both state and federal law is impossible.” *United States v. Locke*, 529 U.S. 89, 109 (2000) (citation omitted).

Petitioners’ interpretation of the NVRA, under which the Federal Form is necessary but not sufficient for registration, would thwart the central purpose of the

statute: to streamline the process of registering to vote for federal office. If each State could supplement the Federal Form with any additional registration requirements it deemed advisable—dozens of pages of additional forms encompassing multiple eligibility requirements, for example—the Federal Form, far from streamlining registration, would instead become a further hurdle to registering to vote beyond whatever requirements States decide to impose. Particularly in a statute designed to remedy States’ “discriminatory and unfair registration laws and procedures,” 42 U.S.C. 1973gg(a)(3), that cannot be what is meant by the command that States “shall accept and use” the Federal Form.

Interpreting the NVRA to permit States to supplement the Federal Form with additional requirements would also be inconsistent with the role the statute assigns to the EAC. Congress has given the EAC authority to determine, after consultation with state officials, what information is necessary to enable state officials to assess the eligibility of applicants, 42 U.S.C. 1973gg-7(a)(2) and (b)(1), and has made clear that such determinations will impose binding legal requirements on the States, 42 U.S.C. 15329. Under petitioners’ view, however, the EAC’s determinations would be effectively advisory.

2. Petitioners’ arguments largely rest on a basic misunderstanding about the States’ role in the statutory scheme. They repeatedly assert that the States may add state-specific registration requirements to the Federal Form—going so far as to describe that proposition as “undisputed,” Arizona Br. 35—but that is a misreading of the statute. As the plain text of the NVRA makes clear, it is the EAC, not Arizona or any other State, that has the authority to determine what information must

be furnished on the Federal Form. 42 U.S.C. 1973gg-7(a)(2) and (b)(1). Although the EAC must include information enabling state officials to assess the applicant's eligibility and must consult state officials in developing the form, it is not bound by a State's conclusion that certain information or documentation is necessary to establish a particular qualification.

3. Petitioners also argue that Section 16-166(F) advances some of the objectives of the NVRA by enhancing the integrity of federal elections. But their interpretation of the statute would frustrate its core purpose, because it would mean that the Federal Form requirement does little to simplify the process of registering to vote. There is no basis for concluding that Congress would have found that result acceptable in exchange for the possibility that some States *might* enact additional requirements enhancing the integrity of federal elections. Rather, the NVRA itself promotes its various objectives, in part through a number of provisions designed to prevent and deter voter fraud.

B. Because Congress enacted the NVRA under its Elections Clause authority, the court of appeals correctly declined to apply any "presumption against preemption." That presumption rests on the principle that it should not lightly be inferred that Congress intended to interfere with the States' traditional police powers. But the States had no power to regulate federal elections before the Constitution delegated it to them. *Cook v. Gralike*, 531 U.S. 510, 522 (2001). That historical backdrop forecloses any justification for applying a special presumption against preemption. In any event, the NVRA's plain text, particularly considered in connection with the statute's purposes, readily overcomes any such presumption.

C. Although the clarity of the enacted text makes resort to the NVRA’s drafting history unnecessary, that history confirms that States may not supplement the Federal Form with additional proof-of-citizenship requirements. The full Congress deleted a provision in the Senate’s version of the bill providing that “[n]othing in this Act shall be construed to preclude a State from requiring presentation of documentary evidence of the citizenship of an applicant for voter registration.” 139 Cong. Rec. 5098 (1993). The conference report explained that the provision was “not necessary or consistent with the purposes of this Act” in part because it could be interpreted to authorize state requirements that impede voter registration. H.R. Rep. No. 66, 103d Cong., 1st Sess. 23 (1993). That history fortifies the conclusion that the NVRA preempts a State from imposing, as a precondition to registration through the Federal Form, additional proof-of-citizenship requirements beyond that form.

D. Petitioners’ constitutional-avoidance argument—that if the NVRA preempts Section 16-166(F), it would infringe the States’ exclusive authority to set voter qualifications—is unfounded. Petitioners misread the text of the pertinent provisions of the Constitution and disregard this Court’s longstanding, “commonsense view” that the Elections Clause power “encompasses matters like \* \* \* ‘registration.’” *Cook*, 531 U.S. at 523 (quoting *Smiley v. Holm*, 285 U.S. 355, 366 (1932)). Indeed, if petitioners are correct that the procedures by which a voter’s qualifications are verified are themselves state-determined “Qualifications” under the relevant provisions of the Constitution, Congress would lack authority under the Elections Clause to promulgate the Federal Form requirement at all.

## ARGUMENT

### THE NVRA PREEMPTS ARIZONA’S IMPOSITION OF ADDITIONAL PROOF-OF-CITIZENSHIP REQUIREMENTS BEYOND THE FEDERAL FORM

The court of appeals correctly concluded that Arizona’s requirement that the Federal Form be rejected unless accompanied by additional information or documentation conflicts with the NVRA and is therefore preempted. Petitioners’ contrary view not only misinterprets the text of the NVRA and the States’ role within the statutory scheme, but it reads a law designed “to provide simplified systems for registering to vote in federal elections” to do little more than erect an additional barrier to registration. *Young v. Fordice*, 520 U.S. 273, 275 (1997) (emphasis omitted).

#### A. Section 16-166(F) Conflicts With The Text, Structure, And Purpose Of The NVRA

The NVRA does not permit a State to impose additional requirements on applicants who seek to register for federal elections through the Federal Form.

1. a. The relevant provisions of the NVRA are straightforward. The statute instructs the EAC to develop a “registration application” form that includes the “information \* \* \* necessary to enable the appropriate State election official to assess the eligibility of the applicant,” 42 U.S.C. 1973gg-7(b)(1), and provides that States “shall accept and use” that form “for the registration of voters in elections for Federal office,” 42 U.S.C. 1973gg-4(a)(1). It then specifies exactly how a State must “use” the form: “In the administration of voter registration for elections for Federal office, each State *shall* \* \* \* *ensure that any eligible applicant is registered to vote* in an election \* \* \* if the valid voter reg-

istration form of the applicant is [timely mailed].” 42 U.S.C. 1973gg-6(a)(1)(B) (emphasis added). Thus, once state officials receive a timely, completed Federal Form—which the EAC has determined provides the information they need to assess the applicant’s eligibility—they “shall” register any eligible applicant to vote in federal elections.

Section 16-166(F) conflicts with that command. Arizona election officials must “reject any application for registration that is not accompanied by satisfactory evidence of United States citizenship” as defined by that provision, including, for certain applicants, additional documentation. Ariz. Rev. Stat. Ann. § 16-166(F) (2006). The officials therefore must “reject” certain applications—those unaccompanied by additional information or documentation—that federal law requires them to “accept and use” by “ensur[ing] that [the] applicant is registered to vote in an election.” This is therefore not merely a case in which the “state law stands as an obstacle to the accomplishment and execution of the full purposes and objective of Congress,” although Section 16-166(F) certainly impedes the simplification goals of the NVRA. *United States v. Locke*, 529 U.S. 89, 109 (2000) (citation omitted). Here, “compliance with both state and federal law is *impossible*” because federal law requires state officials to register applicants who submit a properly completed Federal Form indicating their eligibility without additional proof of citizenship, while state law bars them from doing so. *Ibid.* (citation omitted; emphasis added).

Petitioners appear to read the NVRA to make the Federal Form merely *necessary* for federal voter registration, but not *sufficient* if a State chooses to impose additional requirements. See Arizona Br. 39-40 (arguing

that the Federal Form is not “conclusive of voter eligibility”). To support that view, they argue that in certain linguistic contexts, a statement that one will “accept and use” a document for a given purpose does not necessarily establish that the document is sufficient to achieve that purpose. See *id.* at 3-4, 39-40. But petitioners’ argument ignores that the NVRA specifically identifies what state election officials must do whenever they receive a timely, completed Federal Form indicating an applicant’s eligibility: They must ensure the applicant is registered to vote in federal elections. 42 U.S.C. 1973gg-6(a)(1)(B) and (C). That requirement leaves no room for the State to reject certain applications based on the failure to include additional information or documentation verifying eligibility beyond what the Federal Form requires.

Moreover, the statutory provision that immediately follows the requirement that States “accept and use” the Federal Form, which authorizes a State to “develop and use” an alternative form “[i]n addition to accepting and using” the Federal Form, 42 U.S.C. 1973gg-4(a)(2), confirms the sense in which the statute contemplates that a State will “use” the forms. Given that the state-developed form, like the Federal Form, may require only the information that is essential to determine eligibility and administer the election process, 42 U.S.C. 1973gg-7(b)(1), Congress must have understood that submission of the Federal Form or the state-developed form would be sufficient for registration. Otherwise, the State could condition registration on the submission of information that, even in the State’s own judgment, is not necessary to assess an applicant’s eligibility to vote.

b. Even assuming the command that the States “shall accept and use” the Federal Form could be read

in isolation to allow States to impose additional registration requirements, that interpretation could not be squared with the context and structure of the statute. It is a “fundamental principle of statutory construction (and, indeed, of language itself) that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used,” *Deal v. United States*, 508 U.S. 129, 132 (1993), and “[t]hat is particularly true of a word as elastic as ‘use,’” *Smith v. United States*, 508 U.S. 223, 241 (1993) (Scalia, J., dissenting). The pertinent context here is a statute expressly intended to combat “discriminatory and unfair registration laws and procedures [that] can have a direct and damaging effect on voter participation in elections for Federal office,” 42 U.S.C. 1973gg(a)(3), and that is replete with provisions obviously intended to make it easier for citizens to register to vote in federal elections, such as the requirements that States allow citizens to register through driver’s license applications, 42 U.S.C. 1973gg-3(a)(1), and keep registration periods open until 30 or fewer days before an election, 42 U.S.C. 1973gg-6(a)(1).

If the Federal Form could be supplemented by any further registration requirements that States deemed worthwhile, the statute would thwart rather than advance its central objective of “provid[ing] simplified systems for registering to vote in federal elections.” *Young*, 520 U.S. at 275 (emphasis omitted). The essential function of the Federal Form then would no longer be to streamline voter registration but instead would be to add an additional hurdle to whatever registration requirements the States decide to impose. Indeed, under petitioner’s approach, each State could impose all manner of its own supplemental requirements beyond the Federal



Form. Those requirements could encompass voluminous documentary or informational demands, and could extend to any eligibility criteria beyond citizenship, such as age, residency, mental competence, or felony history.

That cannot be what is meant by the command that States “shall accept and use” the Federal Form. To adopt petitioners’ interpretation, one would have to believe that Congress was more concerned that States were neglecting to solicit information that was necessary to confirm eligibility than that they were erecting “discriminatory and unfair registration laws and procedures.” 42 U.S.C. 1973gg(a)(3). There is no support for that view in the text of the statute; the *National Voter Registration Act*’s principal objective is indisputably to establish a streamlined registration process that avoids undue state-by-state variation. Accordingly, even if the text of the NVRA did not itself establish that submission of the Federal Form is sufficient for registration, that reading is compelled by the statute’s purposes.

c. Petitioners’ reading of the statute is also at odds with the role that the statute assigns to the EAC. The EAC is required, “in consultation with the chief election officers of the States,” to determine what “identifying information \* \* \* and other information \* \* \* is necessary to enable the appropriate State election official to assess the eligibility of the applicant.” 42 U.S.C. 1973gg-7(a)(2) and (b)(1). The statutory scheme thus contemplates that the EAC will have the final word on what information is “necessary” to confirm voter eligibility and that the Federal Form will require submission of that information. Under petitioners’ view, however, each State would be the ultimate arbiter of what information is necessary to assess eligibility, since each State could impose whatever additional requirements it saw fit, rendering the EAC’s principal function effectively advisory. That would be an unacceptable reading of the

statute, particularly given that Congress expressly understood that the EAC’s development of the Federal Form would “impose[] \* \* \* requirement[s] on \* \* \* State[s].” 42 U.S.C. 15329.

For much the same reason, the dissent in the court of appeals erred in concluding that the provision of the NVRA authorizing States to develop their own registration forms permits States to supplement the EAC-developed Federal Form with additional requirements. See Pet. App. 102c. The relevant provision authorizes States to use a state-developed form “[i]n addition to”—not “in conjunction with” or “in lieu of”—“accepting and using the [Federal] [F]orm.” U.S.C. 1973gg-4(a)(2). Thus, a State may develop a form that citizens can use to register for federal elections—for example, a unified form enabling registration for federal, state, and local elections—but it must continue to “accept and use” the Federal Form for citizens who choose to register for federal elections in that way. That States may develop and use their own registration form as an *alternative* to the Federal Form does not suggest that States may impose all manner of additional requirements on an applicant who completes the Federal Form beyond what the EAC has established.

2. Petitioners’ argument that the NVRA permits States to supplement the Federal Form with additional registration requirements reflects a basic misunderstanding about the role of the States in the statutory scheme. Petitioners assert, for example, that “[i]t is undisputed that the NVRA contemplates that the *States* may require that applicants provide state-specific information with the Federal Form.” Arizona Br. 35 (emphasis added); see also *id.* at 27. That is not so. The statute authorizes the EAC, not the States, to create the Federal Form and therefore to determine the “information \* \* \* necessary to enable the appropriate

State election official to assess the eligibility of the applicant.” 42 U.S.C. 1973gg-7(a)(2) and (b)(1). Although the EAC must “consult[] with the chief election officers of the States” in developing the form, 42 U.S.C. 1973gg-7(a)(2), the statutory text could not reasonably be read to authorize States themselves to disagree with the EAC’s determination of what information must be included on the Federal Form.

Petitioners also rely on EAC rules implementing the statutory requirement. See Arizona Br. 35-36. But those rules explain only that the forms must include “state-specific instructions”—*i.e.*, instructions *approved by the EAC* that require an applicant to supply information necessary to establish compliance with state-specific eligibility requirements. 11 C.F.R. 9428.2(a). They do not say that each State itself may impose additional burdens beyond the EAC-developed Federal Form for registration for federal elections. In fact, Arizona was told just the opposite by the Executive Director of the EAC; he explained that “Arizona may not refuse to register individuals to vote in a Federal election for failing to provide supplemental proof of citizenship, if they have properly completed and timely submitted the Federal Registration Form.” J.A. 187; see *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944).

Nor, as petitioners contend, did this Court suggest in *Young v. Fordice*, *supra*, that States have the authority to decide what information must be included on the Federal Form. See Arizona Br. 38. In the passage from *Young* that they quote, the Court was discussing only a State’s “policy choice[s]” in developing its *own* alternative forms under the NVRA, not the Federal Form. See 520 U.S. at 286.

To be sure, States retain discretion to establish, within constitutional bounds, eligibility requirements for their citizens, such as residency requirements (and, in any case, U.S. citizenship is a “universal eligibility requirement” under EAC regulations). 11 C.F.R. 9428.4(b); see Pet. App. 67c-84c. But the “information \* \* \* [that] is necessary to enable the appropriate State election official to assess the eligibility of the applicant” is not itself an eligibility requirement. 42 U.S.C. 1973gg-7(b)(1). Rather, Congress has given the EAC the authority to determine what information is necessary to determine eligibility as part of Congress’s power to establish the procedures for registration in federal elections. See *Smiley v. Holm*, 285 U.S. 355, 366 (1932). The EAC has concluded that the appropriate way to certify compliance with eligibility requirements, including U.S. citizenship, is to require the applicant to submit the relevant identification number under HAVA, make “an attestation on the application that the applicant, to the best of his or her knowledge and belief, meets each of his or her state’s specific eligibility requirements,” and sign the application “under penalty of perjury.” 11 C.F.R. 9428.4(b)(2) and (3); see also 59 Fed. Reg. 32,311 (June 23, 1994) (original promulgation of Federal Form). The NVRA does not leave room for States unilaterally to impose additional prerequisites to registration beyond the Federal Form.<sup>3</sup>

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<sup>3</sup> Petitioners, for similar reasons, err in relying on a provision barring inclusion in the form of any requirement for notarization or formal authentication. See Arizona Br. 27-28; 38-39. Although the fact that the NVRA forbids the EAC from including a notarization requirement in the Federal Form, see 42 U.S.C. 1973gg-7(b)(3), might support the inference that the EAC may require other forms of

3. Petitioners further argue that Section 16-166(F) advances some of the objectives of the NVRA—in particular the goals of “protect[ing] the integrity of the electoral process” and “ensur[ing] that accurate and current voter registration rolls are maintained.” 42 U.S.C. 1973gg(b)(3) and (4); Arizona Br. 41-42. Congress, they contend, would not have intended to preempt any state requirements that purport to promote those objectives.

For the reasons discussed above, however, petitioners’ position would eviscerate the central purpose of the statute to streamline the process of registering to vote; it would mean that all that Congress accomplished through the statute’s mail and in-person registration provisions was to engraft an additional Federal Form requirement onto whatever requirements individual States choose to impose. It is implausible that Congress would have found that result acceptable in exchange for the possibility that some States *might* enact additional requirements enhancing the integrity of federal elections—particularly in a statute designed to remedy States’ perceived “discriminatory and unfair registration laws and procedures.” 42 U.S.C. 1973gg(a)(3). Rather, the NVRA itself promotes the objectives of expanding voter registration and ensuring electoral integrity. The statute does so through, for example, provisions requiring attestation under penalty of perjury, 42 U.S.C. 1973gg-7(b)(2)(A) and (B), instructing each State to “conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters,” 42 U.S.C. 1973gg-6(a)(4), and prescribing criminal penalties for “the procurement or submission of voter registration

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proof, the *States* have no authority to design the Federal Form in the first place.

applications that are known by the person to be materially false, fictitious, or fraudulent,” 42 U.S.C. 1973gg-10(2)(A).

Other provisions of federal law also operate to prevent and deter voter fraud. HAVA requires a person voting for the first time in a State who registers by mail to provide specified identification documents either at the time of voting or with a mail registration form if the State cannot match the person’s driver license or social-security number with state records. 42 U.S.C. 15483(b)(1)-(3). And a number of statutes prescribe criminal and civil penalties for aliens who unlawfully vote or submit false information when attempting to register to vote. See 8 U.S.C. 1227(a)(6); 8 U.S.C. 1182(a)(10)(D); 18 U.S.C. 611; 18 U.S.C. 1015(f); 42 U.S.C. 15544(b). Congress and the EAC could reasonably have concluded that no additional proof requirements are necessary to ensure the integrity of elections in light of these safeguards.

Finally, petitioners speculate that under the court of appeals’ interpretation of the NVRA, state officials would be required to grant registration to any person who submits a completed Federal Form, “even if state officials had documentary proof that the applicant was not a citizen.” Arizona Br. 18. That is incorrect. While submission of a completed Federal Form serves to complete the application for registration, such that the applicant need not supply any additional information, the purpose of the form is “to enable the appropriate State election official to assess the eligibility of the applicant.” 42 U.S.C. 1973gg-7(b)(1). The statute gives the EAC the authority to determine what information is necessary to make that determination, but it contemplates that state officials will use the submitted information to confirm

whether the applicant is eligible to vote—such as by cross-checking it against public records. That is why the statute requires state officials “to send notice to each applicant of the disposition of the application.” 42 U.S.C. 1973gg-6(a)(2). Although state officials may not require an applicant to submit additional information as a precondition to registration, they can deny registration based on information in their possession establishing the applicant’s ineligibility.

**B. No Presumption Against Preemption Applies In The Election Clause Context, But Even If A Presumption Applied, It Would Be Overcome Here**

As this Court has explained, “it is well settled that the Elections Clause grants Congress the power to override state regulations.” *Foster*, 522 U.S. at 69 (internal quotation marks and citation omitted).<sup>4</sup> As a result, any Elections Clause “regulations made by Congress are paramount to those made by the State legislature; and if they conflict therewith, the latter, so far as the conflict extends, ceases to be operative.” *Ibid.* (quoting *Ex parte Siebold*, 100 U.S. 371, 384 (1879)). See, e.g., *Siebold*, 100 U.S. at 382 (upholding federal legislation regulating, *inter alia*, registration). Petitioners argue that, in concluding that Section 16-166(F) conflicts with the NVRA, the court of appeals “aban-

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<sup>4</sup> Although the Elections Clause by its terms refers only to congressional elections, and Article II of the Constitution authorizes state legislatures to “appoint, in such Manner as the Legislature thereof may direct, \* \* \* [presidential] Electors,” U.S. Const. Art. II, § 1, Cl. 2, “this Court in *Burroughs v. United States*, 290 U.S. 534 (1934) \* \* \* reject[ed] a construction of [that provision] that would have curtailed the power of Congress to regulate [presidential] elections.” *Oregon v. Mitchell*, 400 U.S. 112, 124 n.7 (1970) (opinion of Black, J.).

done the principles traditionally governing preemption and fashioned a new approach” for Elections Clause cases. Arizona Br. 29. The court of appeals, however, adhered to the preemption framework set forth in this Court’s precedents.

The court of appeals held that where a federal Elections Clause enactment addresses the same subject as a state law, a court should ask whether the federal law “has superseded the state act, based on a natural reading of the two laws and viewing the federal act as if it were a subsequent enactment by the same legislature” and should invalidate the state act only if “the two statutes do not operate harmoniously in a single procedural scheme for federal voter registration.” Pet. App. 20c. That standard closely tracks this Court’s description of Elections Clause preemption in *Siebold*. See 100 U.S. at 384 (“There is not the slightest difficulty in a harmonious combination into one system of the regulations made by the two sovereignties, any more than there is in the case of prior and subsequent enactments of the same legislature.”); *id.* at 386 (explaining that the state law is valid unless there is a “conflict between them as to prevent their forming a harmonious system perfectly capable of being administered and carried out as such”).

Indeed, the standard articulated by the court of appeals does not appear to differ materially from the ordinary standard for conflict preemption, in which a court asks whether “the state law stands as an obstacle to the accomplishment and execution of the full purposes and objective of Congress.” *Locke*, 529 U.S. at 109 (internal quotation marks and citation omitted). And the court of appeals’ actual holding—that “Arizona’s rejection of every Federal Form submitted without proof of citizenship does not constitute ‘accepting and using’ the Fed-



eral Form”—fits readily within this Court’s conflict-preemption framework. Pet. App. 31c. Although petitioners strenuously argue that the court of appeals established a “new test for analyzing elections preemption [that] does not require an actual conflict between state and federal law,” Arizona Br. 22-23, the decision below ultimately rested on “the conflict between the state and federal procedures,” Pet. App. 34c.

To be sure, the court of appeals did conclude that no “presumption against preemption” or “plain statement rule” should apply in the Elections Clause context. Pet. App. 16c-17c. But that ruling was correct. This Court has never applied a weight on the scale against preemption in its Elections Clause analysis or in other contexts where the subject matter is “inherently federal in character.” *Buckman Co. v. Plaintiffs’ Legal Comm.*, 531 U.S. 341, 347 (2001); see *Foster v. Love*, 522 U.S. 67 (1997); *Siebold*, *supra*. The presumption against preemption rests on the principle that “the historic police powers of the States [a]re not to be superseded \* \* \* unless that was the clear and manifest purpose of Congress.” *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). Unlike other powers exercisable by the States, however, the power to regulate federal elections “had to be delegated to, rather than reserved by, the States” because “[t]he federal offices at stake aris[e] from the Constitution itself,” and “any state authority to regulate election to those offices could not precede their very creation by the Constitution.” *Cook v. Gralike*, 531 U.S. 510, 522 (2001) (internal quotation marks and citation omitted; brackets in original). An Elections Clause enactment thus does not supersede the historic police powers of the States, and therefore no justification exists for courts to demand a clear statement when “Con-

gress sees fit to exercise” its “paramount” power in this area, *Siebold*, 100 U.S. at 384.<sup>5</sup>

Moreover, unlike a federal statute that regulates citizens directly, and therefore may leave open the question whether Congress sought to displace state law addressing the same subject matter, an Elections Clause enactment like the NVRA is designed to regulate the conduct of States themselves in administering federal elections. In that context, there is no sound reason to presume that Congress would be reluctant to displace state law that is inconsistent with the operation or purpose of the federal statute.

In any event, even if a presumption against preemption applied here, Section 16-166(F) could not stand. The terms of the NVRA require a State to register an eligible applicant who submits a timely, completed Federal Form, and the statute makes clear that the Federal Form supplies the information that state officials need to evaluate an applicant’s eligibility. Congress has thus “made clear its desire for pre-emption” of additional state-imposed requirements, overcoming any contrary

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<sup>5</sup> Petitioners misread a passage from *Siebold* in which the Court stated that it was “bound to presume that Congress has [exercised its Elections Clause power] in a judicious manner” as invoking a presumption against preemption. Arizona Br. 31 (quoting 100 U.S. at 393). The Court, in fact, was stating the opposite: that the Judiciary should afford Congress a degree of deference in its determination that the challenged statute did not exceed the bounds of the Elections Clause, in line with the “presumption that [C]ongress will pass no act not within its constitutional power.” *United States v. Harris*, 106 U.S. 629, 635 (1883). And although petitioners rely on what they claim to be this Court’s approval of the Fifth Circuit’s analysis in *Foster*, see Arizona Br. 32-33 & n.6, that opinion did not apply a presumption against preemption either. See *Love v. Foster*, 90 F.3d 1026 (5th Cir. 1996).

presumption. *Egelhoff v. Egelhoff*, 532 U.S. 141, 151 (2001).

**C. Congress Rejected An Amendment That Would Have Authorized States To Add Requirements For Proof Of Citizenship**

Because the text of the NVRA forbids a State from imposing additional registration requirements beyond the Federal Form, there is no need to consult the statute’s drafting history to resolve the question presented. See *Mohamad v. Palestinian Auth.*, 132 S. Ct. 1702, 1709 (2012). But to the extent the Court reviews that history, it confirms that Congress understood the enacted text to foreclose States from conditioning registration on further proof of citizenship.

The NVRA’s legislative reports generally reflect what is obvious from the text: that the core objective of the statute is to make it easier to register to vote in federal elections. The House committee report explains that the principal purpose of the NVRA is to address “difficulties encountered by eligible citizens in becoming registered to vote” and to “make the registration process more accessible,” citing “extensive hearings” in which “the Committee heard a variety of witnesses testify that registration procedures in the United States were not uniform, were not nondiscriminatory and, in some cases, were interpreted in such a manner as to deny eligible citizens their right to vote.” H.R. Rep. No. 9, 103d Cong., 1st Sess. 3-4 (1993) (House Report). The Senate committee report on that chamber’s version of the bill similarly states that the “legislation will provide uniform national voter registration procedures for Federal elections and thereby further the procedural reform intended by the Voting Rights Act.” S. Rep. No. 6, 103d Cong., 1st Sess. 3 (1993) (Senate Report). With respect

to mail registration specifically, each report explains that “[i]n those States that develop their own mail voter registration applications, an applicant may use, and the State must accept, *either* the national form developed by the [EAC] *or* the State’s own form.” House Report 10 (emphases added); see Senate Report 26.

The dissenting members of the Senate committee objected to the bill’s mail-registration provisions precisely because, in their view, the bill would “forbid[] precautions states may take to reduce the chance of the unscrupulous taking advantage of the system,” such as “asking applicants to supply identification to determine that persons registering are who they claim to be or live where they say they do.” Senate Report 52-53. Fraudulent registration by non-citizens in particular, they argued, “might be combated by requiring proof of citizenship at the time of registration,” but “mail registration under this bill would preclude such corrective action.” *Id.* at 55; see also House Report 35 (minority views) (arguing that bill “limit[ed] the state’s ability to confirm independently the information contained in voter registration applications”). The dissenters believed that the bill would preempt preexisting state requirements in Connecticut and New Hampshire requiring a “birth certificate, driver’s license, or Social Security card to be shown at the time of registration.” Senate Report 53.

In response to that concern, once the bill reached the floor of the Senate, a one-sentence amendment was added providing that “[n]othing in this Act shall be construed to preclude a State from requiring presentation of documentary evidence of the citizenship of an applicant for voter registration.” 139 Cong. Rec. 5098 (1993). Senator Simpson, who introduced one of two identical versions of the amendment, stated that the amendment

would “allow[] States to check documents to verify citizenship.” *Ibid.* Citing “several instances where voter registration materials were or may have been used to register noncitizens to vote” in California, he “offer[ed] [the] amendment to try to ensure that States will continue to have the right, if they wish, to require documents verifying citizenship.” *Id.* at 5099.<sup>6</sup>

In reconciling the House and Senate bills, however, the conference committee deleted the Senate’s amendment on the ground that it was “not necessary or consistent with the purposes of this Act.” H.R. Rep. No. 66, 103d Cong., 1st Sess. 23 (1993). The committee was concerned that the amendment would “permit registration requirements that could effectively eliminate, or seriously interfere with, the mail registration program” and could “adversely affect the administration of the other registration programs as well.” *Ibid.*

In light of “Congress’ rejection of the very language that would have achieved the result [Arizona] urges here,” the drafting history of the NVRA “weighs heavily against [petitioners’] interpretation” of the statute. *Hamdan v. Rumsfeld*, 548 U.S. 557, 579-580 (2006) (citing *Doe v. Chao*, 540 U.S. 614, 621-623 (2004)); see also *INS v. Cardoza-Fonseca*, 480 U.S. 421, 442-443 (1987) (“Few principles of statutory construction are more compelling than the proposition that Congress does not intend *sub silentio* to enact statutory language that it has earlier discarded in favor of other language.”) (cita-

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<sup>6</sup> Senator Ford, the bill’s sponsor, objected to the amendment on the ground that, in his view, it was “redundant” since “there is nothing in the bill now that would preclude the State’s requiring presentation of documentary evidence of citizenship.” 139 Cong. Rec. 5099. There is no indication that other members of Congress shared his interpretation.

tion omitted). Congress considered whether to allow States to impose additional proof-of-citizenship requirements and ultimately concluded that doing so would not comport with the central objectives of the legislation.

**D. Petitioners’ Constitutional Arguments Do Not Support Their Reading Of The NVRA**

Petitioners finally contend that this Court must interpret the NVRA to permit States to add registration requirements beyond the Federal Form to avoid a serious constitutional question. See *Arizona Br.* 48-56. Even if the NVRA were open to petitioners’ reading, their constitutional-avoidance argument is without merit. According to petitioners, if the NVRA makes the Federal Form sufficient for voter registration, it would exceed Congress’s power under the Elections Clause and violate the clauses of the Constitution requiring that the “Qualifications” of voters for the House and Senate be the same as the qualifications of voters for the largest house of the state legislature and authorizing state legislatures to appoint presidential electors. See U.S. Const. Art. I, § 2, Cl. 1 (“[T]he Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.”); see also U.S. Const. Amend. XVII; U.S. Const. Art. II, § 1, Cl. 2. Petitioners evidently believe that the term “Qualifications” in the Constitution encompasses not only personal characteristics like age, residency, and mental competency, see 11 C.F.R. 9428.6(a), but also the *means* by which voters prove those characteristics in the registration process.

Petitioners’ constitutional argument has no support in the text of the Constitution, the historical materials they cite, or this Court’s precedents. At the time of the

Founding, as now, the word “qualifications” connoted personal characteristics of voters, not the procedures or evidence by which they demonstrate those characteristics. See, *e.g.*, Noah Webster, *American Dictionary of the English Language* (1st ed. 1828) (Qualification: “Any natural endowment or any acquirement which fits a person for a place, office or employment, or enables him to sustain any character with success”; “Legal power or requisite; as the qualifications of electors.”). The text of the Constitution confirms that meaning. Each house of Congress is given the power to “be the Judge of the \* \* \* Qualifications of its own Members.” U.S. Const. Art. I, § 5, Cl. 1. The procedures that the chambers adopt to “[j]udge” those qualifications—for example, what evidence is required to demonstrate that a representative has “been seven Years a Citizen of the United States,” U.S. Const., Art. I, § 2, Cl. 2—therefore could not be “Qualifications” themselves. Nor do any of the Founding-era documents that petitioners cite indicate that the procedures by which voters verify their qualifications are themselves “Qualifications” that must be defined by state law. See *The Federalist* No. 60 (Alexander Hamilton) (Clinton Rossiter ed., 1961) (explaining that the federal government lacks the power to “prescribe[e] qualifications of property”).

For eighty years, moreover, this Court has expressed the “commonsense view” that the phrase “Manner of holding Elections” in the Elections Clause “encompasses \* \* \* registration.” *Cook*, 531 U.S. at 523 (internal quotation marks and citation omitted); see *Roudebush v. Hartke*, 405 U.S. 15, 24 (1972); *Smiley*, 285 U.S. at 366. The statute upheld in *Siebold*, in fact, regulated both registration and voting in federal elections, and the Court did not suggest that its constitutionality was lim-

ited to the latter. See 100 U.S. at 379-382. In the NVRA, Congress has not established any voter “Qualifications,” but has merely authorized the EAC to determine the information that a person must submit to establish that she meets the applicable state-law qualifications during the registration process. If a State could simply re-characterize such registration procedures as voter “Qualifications,” it could circumvent Congress’s plenary authority under the Elections Clause to set the rules for voter registration in federal elections.

Petitioners’ argument would also prove too much. If the information voters must submit to verify that they meet state eligibility requirements itself constitutes a voter “Qualification[],” and if the authority to set voter qualifications is “assign[ed] \* \* \* to the States exclusively,” Arizona Br. 51, Congress would lack authority to establish the Federal Form requirement at all. The principal contents of the Federal Form are, after all, the “identifying information \* \* \* and other information” that the EAC finds “necessary to enable the appropriate State election official to assess the eligibility of the applicant.” 42 U.S.C. 1973gg-7(b)(1). Were the submission of such information itself properly characterized as a voter “Qualification[]” beyond Congress’s power to prescribe, the entire scheme would be unconstitutional. Nor could Congress, for instance, provide for use of a standard federal form for registration of service members stationed overseas, as Congress has done in the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff(b)(2), 1973ff-1(a)(4). There is no basis for that cramped understanding of Congress’s authority under the Elections Clause.



**CONCLUSION**

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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## APPENDIX

1. Article I, Section 4, Clause 1 of the United States Constitution provides:

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

2. Section 1973gg of Title 42 of the United States Code provides:

### **Findings and purposes**

#### **(a) Findings**

The Congress finds that—

(1) the right of citizens of the United States to vote is a fundamental right;

(2) it is the duty of the Federal, State, and local governments to promote the exercise of that right; and

(3) discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionately harm voter participation by various groups, including racial minorities.

**(b) Purposes**

The purposes of this subchapter are—

- (1) to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office;
- (2) to make it possible for Federal, State, and local governments to implement this subchapter in a manner that enhances the participation of eligible citizens as voters in elections for Federal office;
- (3) to protect the integrity of the electoral process; and
- (4) to ensure that accurate and current voter registration rolls are maintained.

3. Section 1973gg-2 of Title 42 of the United States Code provides:

**National procedures for voter registration for elections for Federal office**

**(a) In general**

Except as provided in subsection (b) of this section, notwithstanding any other Federal or State law, in addition to any other method of voter registration provided for under State law, each State shall establish procedures to register to vote in elections for Federal office—

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(1) by application made simultaneously with an application for a motor vehicle driver's license pursuant to section 1973gg-3 of this title;

(2) by mail application pursuant to section 1973gg-4 of this title; and

(3) by application in person—

(A) at the appropriate registration site designated with respect to the residence of the applicant in accordance with State law; and

(B) at a Federal, State, or nongovernmental office designated under section 1973gg-5 of this title.

**(b) Nonapplicability to certain States**

This subchapter does not apply to a State described in either or both of the following paragraphs:

(1) A State in which, under law that is in effect continuously on and after August 1, 1994, there is no voter registration requirement for any voter in the State with respect to an election for Federal office.

(2) A State in which, under law that is in effect continuously on and after August 1, 1994, or that was enacted on or prior to August 1, 1994, and by its terms is to come into effect upon the enactment of this subchapter, so long as that law remains in effect, all voters in the State may register to vote at the polling place at the time of voting in a general election for Federal office.

4. Section 1973gg-4 of Title 42 of the United States Code provides:

**Mail registration**

**(a) Form**

(1) Each State shall accept and use the mail voter registration application form prescribed by the Federal Election Commission pursuant to section 1973gg-7(a)(2) of this title for the registration of voters in elections for Federal office.

(2) In addition to accepting and using the form described in paragraph (1), a State may develop and use a mail voter registration form that meets all of the criteria stated in section 1973gg-7(b) of this title for the registration of voters in elections for Federal office.

(3) A form described in paragraph (1) or (2) shall be accepted and used for notification of a registrant's change of address.

**(b) Availability of forms**

The chief State election official of a State shall make the forms described in subsection (a) of this section available for distribution through governmental and private entities, with particular emphasis on making them available for organized voter registration programs.

**(c) First-time voters**

(1) Subject to paragraph (2), a State may by law require a person to vote in person if—

5a

(A) the person was registered to vote in a jurisdiction by mail; and

(B) the person has not previously voted in that jurisdiction.

(2) Paragraph (1) does not apply in the case of a person—

(A) who is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act [42 U.S.C. 1973ff et seq.];

(B) who is provided the right to vote otherwise than in person under section 1973ee-1(b)(2)(B)(ii) of this title; or

(C) who is entitled to vote otherwise than in person under any other Federal law.

**(d) Undelivered notices**

If a notice of the disposition of a mail voter registration application under section 1973gg-6(a)(2) of this title is sent by nonforwardable mail and is returned undelivered, the registrar may proceed in accordance with section 1973gg-6(d) of this title.

5. Section 1973gg-5 of Title 42 of the United States Code provides:

**Voter registration agencies**

**(a) Designation**

(1) Each State shall designate agencies for the registration of voters in elections for Federal office.

(2) Each State shall designate as voter registration agencies—

(A) all offices in the State that provide public assistance; and

(B) all offices in the State that provide State-funded programs primarily engaged in providing services to persons with disabilities.

(3)(A) In addition to voter registration agencies designated under paragraph (2), each State shall designate other offices within the State as voter registration agencies.

(B) Voter registration agencies designated under subparagraph (A) may include—

(i) State or local government offices such as public libraries, public schools, offices of city and county clerks (including marriage license bureaus), fishing and hunting license bureaus, government revenue offices, unemployment compensation offices, and offices not described in paragraph (2)(B) that provide services to persons with disabilities; and

(ii) Federal and nongovernmental offices, with the agreement of such offices.

(4)(A) At each voter registration agency, the following services shall be made available:

(i) Distribution of mail voter registration application forms in accordance with paragraph (6).

(ii) Assistance to applicants in completing voter registration application forms, unless the applicant refuses such assistance.

(iii) Acceptance of completed voter registration application forms for transmittal to the appropriate State election official.

(B) If a voter registration agency designated under paragraph (2)(B) provides services to a person with a disability at the person's home, the agency shall provide the services described in subparagraph (A) at the person's home.

(5) A person who provides service described in paragraph (4) shall not—

(A) seek to influence an applicant's political preference or party registration;

(B) display any such political preference or party allegiance;

(C) make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

(D) make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

(6) A voter registration agency that is an office that provides service or assistance in addition to conducting voter registration shall—



(A) distribute with each application for such service or assistance, and with each recertification, renewal, or change of address form relating to such service or assistance—

(i) the mail voter registration application form described in section 1973gg-7(a)(2) of this title, including a statement that—

(I) specifies each eligibility requirement (including citizenship);

(II) contains an attestation that the applicant meets each such requirement; and

(III) requires the signature of the applicant, under penalty of perjury; or

(ii) the office's own form if it is equivalent to the form described in section 1973gg-7(a)(2) of this title,

unless the applicant, in writing, declines to register to vote;

(B) provide a form that includes—

(i) the question, “If you are not registered to vote where you live now, would you like to apply to register to vote here today?”;

(ii) if the agency provides public assistance, the statement, “Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency.”;

(iii) boxes for the applicant to check to indicate whether the applicant would like to register or declines to register to vote (failure to check either box being deemed to constitute a declination to register for purposes of subparagraph (C)), together with the statement (in close proximity to the boxes and in prominent type), “IF YOU DO NOT CHECK EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME.”;

(iv) the statement, “If you would like help in filling out the voter registration application form, we will help you. The decision whether to seek or accept help is yours. You may fill out the application form in private.”; and

(v) the statement, “If you believe that someone has interfered with your right to register or to decline to register to vote, your right to privacy in deciding whether to register or in applying to register to vote, or your right to choose your own political party or other political preference, you may file a complaint with \_\_\_\_\_.”, the blank being filled by the name, address, and telephone number of the appropriate official to whom such a complaint should be addressed; and

(C) provide to each applicant who does not decline to register to vote the same degree of assistance with regard to the completion of the registra-

tion application form as is provided by the office with regard to the completion of its own forms, unless the applicant refuses such assistance.

(7) No information relating to a declination to register to vote in connection with an application made at an office described in paragraph (6) may be used for any purpose other than voter registration.

**(b) Federal Government and private sector cooperation**

All departments, agencies, and other entities of the executive branch of the Federal Government shall, to the greatest extent practicable, cooperate with the States in carrying out subsection (a) of this section, and all nongovernmental entities are encouraged to do so.

**(c) Armed Forces recruitment offices**

(1) Each State and the Secretary of Defense shall jointly develop and implement procedures for persons to apply to register to vote at recruitment offices of the Armed Forces of the United States.

(2) A recruitment office of the Armed Forces of the United States shall be considered to be a voter registration agency designated under subsection (a)(2) of this section for all purposes of this subchapter.

**(d) Transmittal deadline**

(1) Subject to paragraph (2), a completed registration application accepted at a voter registration

agency shall be transmitted to the appropriate State election official not later than 10 days after the date of acceptance.

(2) If a registration application is accepted within 5 days before the last day for registration to vote in an election, the application shall be transmitted to the appropriate State election official not later than 5 days after the date of acceptance.

6. Section 1973gg-6 of Title 42 of the United States Code provides:

**Requirements with respect to administration of voter registration**

**(a) In general**

In the administration of voter registration for elections for Federal office, each State shall—

(1) ensure that any eligible applicant is registered to vote in an election—

(A) in the case of registration with a motor vehicle application under section 1973gg-3 of this title, if the valid voter registration form of the applicant is submitted to the appropriate State motor vehicle authority not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(B) in the case of registration by mail under section 1973gg-4 of this title, if the valid voter registration form of the applicant is postmarked not

later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(C) in the case of registration at a voter registration agency, if the valid voter registration form of the applicant is accepted at the voter registration agency not later than the lesser of 30 days, or the period provided by State law, before the date of the election; and

(D) in any other case, if the valid voter registration form of the applicant is received by the appropriate State election official not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(2) require the appropriate State election official to send notice to each applicant of the disposition of the application;

(3) provide that the name of a registrant may not be removed from the official list of eligible voters except—

(A) at the request of the registrant;

(B) as provided by State law, by reason of criminal conviction or mental incapacity; or

(C) as provided under paragraph (4);

(4) conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of—

(A) the death of the registrant; or

(B) a change in the residence of the registrant, in accordance with subsections (b), (c), and (d) of this section;

(5) inform applicants under sections 1973gg-3, 1973gg-4, and 1973gg-5 of this title of—

(A) voter eligibility requirements; and

(B) penalties provided by law for submission of a false voter registration, application; and

(6) ensure that the identity of the voter registration agency through which any particular voter is registered is not disclosed to the public.

**(b) Confirmation of voter registration**

Any State program or activity to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office—

(1) shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.); and

(2) shall not result in the removal of the name of any person from the official list of voters registered to vote in an election for Federal office by reason of the person's failure to vote, except that nothing in this paragraph may be construed to prohibit a State from using the procedures described in subsections (c) and (d) of this section to remove an individual from the official list of eligible voters if the individual—

(A) has not either notified the applicable registrar (in person or in writing) or responded during the period described in subparagraph (B) to the notice sent by the applicable registrar; and then

(B) has not voted or appeared to vote in 2 or more consecutive general elections for Federal office.

**(c) Voter removal programs**

(1) A State may meet the requirement of subsection (a)(4) of this section by establishing a program under which—

(A) change-of-address information supplied by the Postal Service through its licensees is used to identify registrants whose addresses may have changed; and

(B) if it appears from information provided by the Postal Service that—

(i) a registrant has moved to a different residence address in the same registrar's jurisdiction in which the registrant is currently registered, the registrar changes the registration records to show the new address and sends the registrant a notice of the change by forwardable mail and a postage prepaid pre-addressed return form by which the registrant may verify or correct the address information; or

(ii) the registrant has moved to a different residence address not in the same registrar's

jurisdiction, the registrar uses the notice procedure described in subsection (d)(2) of this section to confirm the change of address.

(2)(A) A State shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters.

(B) Subparagraph (A) shall not be construed to preclude—

(i) the removal of names from official lists of voters on a basis described in paragraph (3)(A) or (B) or (4)(A) of subsection (a) of this section; or

(ii) correction of registration records pursuant to this subchapter.

**(d) Removal of names from voting rolls**

(1) A State shall not remove the name of a registrant from the official list of eligible voters in elections for Federal office on the ground that the registrant has changed residence unless the registrant—

(A) confirms in writing that the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered; or

(B)(i) has failed to respond to a notice described in paragraph (2); and

(ii) has not voted or appeared to vote (and, if necessary, correct the registrar's record of the registrant's address) in an election during the pe-



riod beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice.

(2) A notice is described in this paragraph if it is a postage prepaid and pre-addressed return card, sent by forwardable mail, on which the registrant may state his or her current address, together with a notice to the following effect:

(A) If the registrant did not change his or her residence, or changed residence but remained in the registrar's jurisdiction, the registrant should return the card not later than the time provided for mail registration under subsection (a)(1)(B) of this section. If the card is not returned, affirmation or confirmation of the registrant's address may be required before the registrant is permitted to vote in a Federal election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice, and if the registrant does not vote in an election during that period the registrant's name will be removed from the list of eligible voters.

(B) If the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered, information concerning how the registrant can continue to be eligible to vote.

(3) A voting registrar shall correct an official list of eligible voters in elections for Federal office in accordance with change of residence information obtained in conformance with this subsection.

**(e) Procedure for voting following failure to return card**

(1) A registrant who has moved from an address in the area covered by a polling place to an address in the same area shall, notwithstanding failure to notify the registrar of the change of address prior to the date of an election, be permitted to vote at that polling place upon oral or written affirmation by the registrant of the change of address before an election official at that polling place.

(2)(A) A registrant who has moved from an address in the area covered by one polling place to an address in an area covered by a second polling place within the same registrar's jurisdiction and the same congressional district and who has failed to notify the registrar of the change of address prior to the date of an election, at the option of the registrant—

(i) shall be permitted to correct the voting records and vote at the registrant's former polling place, upon oral or written affirmation by the registrant of the new address before an election official at that polling place; or

(ii)(I) shall be permitted to correct the voting records and vote at a central location within the same registrar's jurisdiction designated by the registrar where a list of eligible voters is main-

tained, upon written affirmation by the registrant of the new address on a standard form provided by the registrar at the central location; or

(II) shall be permitted to correct the voting records for purposes of voting in future elections at the appropriate polling place for the current address and, if permitted by State law, shall be permitted to vote in the present election, upon confirmation by the registrant of the new address by such means as are required by law.

(B) If State law permits the registrant to vote in the current election upon oral or written affirmation by the registrant of the new address at a polling place described in subparagraph (A)(i) or (A)(ii)(II), voting at the other locations described in subparagraph (A) need not be provided as options.

(3) If the registration records indicate that a registrant has moved from an address in the area covered by a polling place, the registrant shall, upon oral or written affirmation by the registrant before an election official at that polling place that the registrant continues to reside at the address previously made known to the registrar, be permitted to vote at that polling place.

**(f) Change of voting address within a jurisdiction**

In the case of a change of address, for voting purposes, of a registrant to another address within the same registrar's jurisdiction, the registrar shall correct the voting registration list accordingly, and the registrant's name may not be removed from the official

list of eligible voters by reason of such a change of address except as provided in subsection (d) of this section.

**(g) Conviction in Federal court**

(1) On the conviction of a person of a felony in a district court of the United States, the United States attorney shall give written notice of the conviction to the chief State election official designated under section 1973gg-8 of this title of the State of the person's residence.

(2) A notice given pursuant to paragraph (1) shall include—

- (A) the name of the offender;
- (B) the offender's age and residence address;
- (C) the date of entry of the judgment;
- (D) a description of the offenses of which the offender was convicted; and
- (E) the sentence imposed by the court.

(3) On request of the chief State election official of a State or other State official with responsibility for determining the effect that a conviction may have on an offender's qualification to vote, the United States attorney shall provide such additional information as the United States attorney may have concerning the offender and the offense of which the offender was convicted.

(4) If a conviction of which notice was given pursuant to paragraph (1) is overturned, the United States attorney shall give the official to whom the notice was given written notice of the vacation of the judgment.

(5) The chief State election official shall notify the voter registration officials of the local jurisdiction in which an offender resides of the information received under this subsection.

**(h) Omitted**

**(i) Public disclosure of voter registration activities**

(1) Each State shall maintain for at least 2 years and shall make available for public inspection and, where available, photocopying at a reasonable cost, all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters, except to the extent that such records relate to a declination to register to vote or to the identity of a voter registration agency through which any particular voter is registered.

(2) The records maintained pursuant to paragraph (1) shall include lists of the names and addresses of all persons to whom notices described in subsection (d)(2) of this section are sent, and information concerning whether or not each such person has responded to the notice as of the date that inspection of the records is made.

**(j) “Registrar’s jurisdiction” defined**

For the purposes of this section, the term “registrar’s jurisdiction” means—

- (1) an incorporated city, town, borough, or other form of municipality;
- (2) if voter registration is maintained by a county, parish, or other unit of government that governs a larger geographic area than a municipality, the geographic area governed by that unit of government; or
- (3) if voter registration is maintained on a consolidated basis for more than one municipality or other unit of government by an office that performs all of the functions of a voting registrar, the geographic area of the consolidated municipalities or other geographic units.

7. Section 1973gg-7 of Title 42 of the United States Code provides:

**Federal coordination and regulations****(a) In general**

The Election Assistance Commission—

- (1) in consultation with the chief election officers of the States, shall prescribe such regulations as are necessary to carry out paragraphs (2) and (3);
- (2) in consultation with the chief election officers of the States, shall develop a mail voter registration application form for elections for Federal office;

(3) not later than June 30 of each odd-numbered year, shall submit to the Congress a report assessing the impact of this subchapter on the administration of elections for Federal office during the preceding 2-year period and including recommendations for improvements in Federal and State procedures, forms, and other matters affected by this subchapter; and

(4) shall provide information to the States with respect to the responsibilities of the States under this subchapter.

**(b) Contents of mail voter registration form**

The mail voter registration form developed under subsection (a)(2) of this section—

(1) may require only such identifying information (including the signature of the applicant) and other information (including data relating to previous registration by the applicant), as is necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process;

(2) shall include a statement that—

(A) specifies each eligibility requirement (including citizenship);

(B) contains an attestation that the applicant meets each such requirement; and

(C) requires the signature of the applicant, under penalty of perjury;

(3) may not include any requirement for notarization or other formal authentication; and

(4) shall include, in print that is identical to that used in the attestation portion of the application—

(i) the information required in section 1973gg-6(a)(5)(A) and (B) of this title;

(ii) a statement that, if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes; and

(iii) a statement that if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

8. Section 15328 of Title 42 of the United States Code provides:

**Requiring majority approval for actions**

Any action which the Commission is authorized to carry out under this chapter may be carried out only with the approval of at least three of its members.



9. Section 15329 of Title 42 of the United States Code provides:

**Limitation on rulemaking authority**

The Commission shall not have any authority to issue any rule, promulgate any regulation, or take any other action which imposes any requirement on any State or unit of local government, except to the extent permitted under section 1973gg-7(a) of this title.

10. Section 15483 of Title 42 of the United States Code provides:

**Computerized statewide voter registration list requirements and requirements for voters who register by mail**

**(a) Computerized statewide voter registration list requirements**

**(1) Implementation**

**(A) In general**

Except as provided in subparagraph (B), each State, acting through the chief State election official, shall implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State and assigns a unique identifier to each legally registered voter

in the State (in this subsection referred to as the “computerized list”), and includes the following:

(i) The computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the State.

(ii) The computerized list contains the name and registration information of every legally registered voter in the State.

(iii) Under the computerized list, a unique identifier is assigned to each legally registered voter in the State.

(iv) The computerized list shall be coordinated with other agency databases within the State.

(v) Any election official in the State, including any local election official, may obtain immediate electronic access to the information contained in the computerized list.

(vi) All voter registration information obtained by any local election official in the State shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official.

(vii) The chief State election official shall provide such support as may be required so that local election officials are able to enter information as described in clause (vi).

(viii) The computerized list shall serve as the official voter registration list for the conduct of all elections for Federal office in the State.

**(B) Exception**

The requirement under subparagraph (A) shall not apply to a State in which, under a State law in effect continuously on and after October 29, 2002, there is no voter registration requirement for individuals in the State with respect to elections for Federal office.

**(2) Computerized list maintenance**

**(A) In general**

The appropriate State or local election official shall perform list maintenance with respect to the computerized list on a regular basis as follows:

(i) If an individual is to be removed from the computerized list, such individual shall be removed in accordance with the provisions of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.), including subsections (a)(4), (c)(2), (d), and (e) of section 8 of such Act (42 U.S.C. 1973gg-6).

(ii) For purposes of removing names of ineligible voters from the official list of eligible voters—

(I) under section 8(a)(3)(B) of such Act (42 U.S.C. 1973gg-6(a)(3)(B)), the State shall coordinate the computerized list with State agency records on felony status; and

(II) by reason of the death of the registrant under section 8(a)(4)(A) of such Act (42 U.S.C. 1973gg- 6(a)(4)(A)), the State shall coordinate the computerized list with State agency records on death.

(iii) Notwithstanding the preceding provisions of this subparagraph, if a State is described in section 4(b) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-2(b)), that State shall remove the names of ineligible voters from the computerized list in accordance with State law.

**(B) Conduct**

The list maintenance performed under subparagraph (A) shall be conducted in a manner that ensures that—

(i) the name of each registered voter appears in the computerized list;

(ii) only voters who are not registered or who are not eligible to vote are removed from the computerized list; and

(iii) duplicate names are eliminated from the computerized list.

**(3) Technological security of computerized list**

The appropriate State or local official shall provide adequate technological security measures to prevent the unauthorized access to the computerized list established under this section.

**(4) Minimum standard for accuracy of State voter registration records**

The State election system shall include provisions to ensure that voter registration records in the State are accurate and are updated regularly, including the following:

(A) A system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters. Under such system, consistent with the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.), registrants who have not responded to a notice and who have not voted in 2 consecutive general elections for Federal office shall be removed from the official list of eligible voters, except that no registrant may be removed solely by reason of a failure to vote.

(B) Safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.

**(5) Verification of voter registration information**

**(A) Requiring provision of certain information by applicants**

**(i) In general**

Except as provided in clause (ii), notwithstanding any other provision of law, an application for voter registration for an election for Federal office may not be accepted or processed by a State unless the application includes—

(I) in the case of an applicant who has been issued a current and valid driver's license, the applicant's driver's license number; or

(II) in the case of any other applicant (other than an applicant to whom clause (ii) applies), the last 4 digits of the applicant's social security number.

**(ii) Special rule for applicants without driver's license or social security number**

If an applicant for voter registration for an election for Federal office has not been issued a current and valid driver's license or a social security number, the State shall assign the applicant a number which will serve to identify the applicant for voter registration purposes. To the extent that the State has a computerized list in effect under this subsection and the list assigns unique identifying numbers to

registrants, the number assigned under this clause shall be the unique identifying number assigned under the list.

**(iii) Determination of validity of numbers provided**

The State shall determine whether the information provided by an individual is sufficient to meet the requirements of this subparagraph, in accordance with State law.

**(B) Requirements for State officials**

**(i) Sharing information in databases**

The chief State election official and the official responsible for the State motor vehicle authority of a State shall enter into an agreement to match information in the database of the statewide voter registration system with information in the database of the motor vehicle authority to the extent required to enable each such official to verify the accuracy of the information provided on applications for voter registration.

**(ii) Agreements with Commissioner of Social Security**

The official responsible for the State motor vehicle authority shall enter into an agreement with the Commissioner of Social Security under section 405(r)(8) of this title (as added by subparagraph (C)).

**(C) Omitted**

**(D) Special rule for certain States**

In the case of a State which is permitted to use social security numbers, and provides for the use of social security numbers, on applications for voter registration, in accordance with section 7 of the Privacy Act of 1974 (5 U.S.C. 552a note), the provisions of this paragraph shall be optional.

**(b) Requirements for voters who register by mail****(1) In general**

Notwithstanding section 6(c) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4(c)) and subject to paragraph (3), a State shall, in a uniform and nondiscriminatory manner, require an individual to meet the requirements of paragraph (2) if—

(A) the individual registered to vote in a jurisdiction by mail; and

(B)(i) the individual has not previously voted in an election for Federal office in the State; or

(ii) the individual has not previously voted in such an election in the jurisdiction and the jurisdiction is located in a State that does not have a computerized list that complies with the requirements of subsection (a) of this section.



**(2) Requirements****(A) In general**

An individual meets the requirements of this paragraph if the individual—

(i) in the case of an individual who votes in person—

(I) presents to the appropriate State or local election official a current and valid photo identification; or

(II) presents to the appropriate State or local election official a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter; or

(ii) in the case of an individual who votes by mail, submits with the ballot—

(I) a copy of a current and valid photo identification; or

(II) a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.

**(B) Fail-safe voting****(i) In person**

An individual who desires to vote in person, but who does not meet the requirements of

subparagraph (A)(i), may cast a provisional ballot under section 15482(a) of this title.

**(ii) By mail**

An individual who desires to vote by mail but who does not meet the requirements of subparagraph (A)(ii) may cast such a ballot by mail and the ballot shall be counted as a provisional ballot in accordance with section 15482(a) of this title.

**(3) Inapplicability**

Paragraph (1) shall not apply in the case of a person—

(A) who registers to vote by mail under section 6 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4) and submits as part of such registration either—

(i) a copy of a current and valid photo identification; or

(ii) a copy of a current utility bill, bank statement, government check, paycheck, or government document that shows the name and address of the voter;

(B)(i) who registers to vote by mail under section 6 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4) and submits with such registration either—

(I) a driver's license number; or

(II) at least the last 4 digits of the individual's social security number; and

(ii) with respect to whom a State or local election official matches the information submitted under clause (i) with an existing State identification record bearing the same number, name and date of birth as provided in such registration; or

(C) who is—

(i) entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act [42 U.S.C. 1973ff et seq.];

(ii) provided the right to vote otherwise than in person under section 1973ee-1(b)(2)(B)(ii) of this title; or

(iii) entitled to vote otherwise than in person under any other Federal law.

**(4) Contents of mail-in registration form**

**(A) In general**

The mail voter registration form developed under section 6 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4) shall include the following:

(i) The question “Are you a citizen of the United States of America?” and boxes for the applicant to check to indicate whether the

applicant is or is not a citizen of the United States.

(ii) The question “Will you be 18 years of age on or before election day?” and boxes for the applicant to check to indicate whether or not the applicant will be 18 years of age or older on election day.

(iii) The statement “If you checked ‘no’ in response to either of these questions, do not complete this form.”.

(iv) A statement informing the individual that if the form is submitted by mail and the individual is registering for the first time, the appropriate information required under this section must be submitted with the mail-in registration form in order to avoid the additional identification requirements upon voting for the first time.

**(B) Incomplete forms**

If an applicant for voter registration fails to answer the question included on the mail voter registration form pursuant to subparagraph (A)(i), the registrar shall notify the applicant of the failure and provide the applicant with an opportunity to complete the form in a timely manner to allow for the completion of the registration form prior to the next election for Federal office (subject to State law).

**(5) Construction**

Nothing in this subsection shall be construed to require a State that was not required to comply with a provision of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.) before October 29, 2002, to comply with such a provision after October 29, 2002.

**(c) Permitted use of last 4 digits of social security numbers**

The last 4 digits of a social security number described in subsections (a)(5)(A)(i)(II) and (b)(3)(B)(i)(II) of this section shall not be considered to be a social security number for purposes of section 7 of the Privacy Act of 1974 (5 U.S.C. 552a note).

**(d) Effective date****(1) Computerized statewide voter registration list requirements****(A) In general**

Except as provided in subparagraph (B), each State and jurisdiction shall be required to comply with the requirements of subsection (a) of this section on and after January 1, 2004.

**(B) Waiver**

If a State or jurisdiction certifies to the Commission not later than January 1, 2004, that the State or jurisdiction will not meet the deadline described in subparagraph (A) for good cause and

includes in the certification the reasons for the failure to meet such deadline, subparagraph (A) shall apply to the State or jurisdiction as if the reference in such subparagraph to “January 1, 2004” were a reference to “January 1, 2006”.

**(2) Requirement for voters who register by mail**

**(A) In general**

Each State and jurisdiction shall be required to comply with the requirements of subsection (b) of this section on and after January 1, 2004, and shall be prepared to receive registration materials submitted by individuals described in subparagraph (B) on and after the date described in such subparagraph.

**(B) Applicability with respect to individuals**

The provisions of subsection (b) of this section shall apply to any individual who registers to vote on or after January 1, 2003.

11. Section 9428.2 of Title 11 of the Code of Federal Regulations provides:

**Definitions.**

As used in this part:

(a) *Form* means the national mail voter registration application form, which includes the registration application, accompanying general instructions for completing the application, and state-specific instructions.

(b) *Chief state election official* means the designated state officer or employee responsible for the coordination of state responsibilities under 42 U.S.C. 1973gg-8.

(c) *Active voters* means all registered voters except those who have been sent but have not responded to a confirmation mailing sent in accordance with 42 U.S.C. 1973gg-6(d) and have not since offered to vote.

(d) *Inactive voters* means registrants who have been sent but have not responded to a confirmation mailing sent in accordance with 42 U.S.C. 1973gg-6(d) and have not since offered to vote.

(e) *Duplicate registration application* means an offer to register by a person already registered to vote at the same address, under the same name, and (where applicable) in the same political party.

(f) *State* means a state of the United States and the District of Columbia not exempt from coverage under 42 U.S.C. 1973gg-2(b).

(g) *Closed primary state* means a state that requires party registration as a precondition to vote for partisan races in primary elections or for other nominating procedures.

12. Section 9428.3 of Title 11 of the Code of Federal Regulations provides:

**General information.**

(a) The national mail voter registration form shall consist of three components: An application, which shall contain appropriate fields for the applicant to provide all of the information required or requested under 11 CFR 9428.4; general instructions for completing the application; and accompanying state-specific instructions.

(b) The state-specific instructions shall contain the following information for each state, arranged by state: the address where the application should be mailed and information regarding the state's specific voter eligibility and registration requirements.

(c) States shall accept, use, and make available the form described in this section.

13. Section 9428.4 of Title 11 of the Code of Federal Regulations provides:

**Contents.**

(a) *Information about the applicant.* The application shall provide appropriate fields for the applicant's:

(1) Last, first, and middle name, any suffix, and (optional) any prefix;

(2) Address where the applicant lives including:



street number and street name, or rural route with a box number; apartment or unit number; city, town, or village name; state; and zip code; with instructions to draw a locational map if the applicant lives in a rural district or has a non-traditional residence, and directions not to use a post office box or rural route without a box number;

(3) Mailing address if different from the address where the applicant lives, such as a post office box, rural route without a box number, or other street address; city, town, or village name; state; and zip code;

(4) Month, day, and year of birth;

(5) Telephone number (optional); and

(6) Voter identification number as required or requested by the applicant's state of residence for election administration purposes.

(i) The application shall direct the applicant to consult the accompanying state-specific instructions to determine what type of voter identification number, if any, is required or requested by the applicant's state.

(ii) For each state that requires the applicant's full social security number as its voter identification number, the state's Privacy Act notice required at 11 CFR 9428.6(c) shall be reprinted with the instructions for that state.

(7) Political party preference, for an applicant in a closed primary state.

(i) The application shall direct the applicant to

consult the accompanying state-specific instructions to determine if the applicant's state is a closed primary state.

(ii) The accompanying instructions shall state that if the applicant is registering in a state that requires the declaration of party affiliation, then failure to indicate a political party preference, indicating "none", or selecting a party that is not recognized under state law may prevent the applicant from voting in partisan races in primary elections and participating in political party caucuses or conventions, but will not bar an applicant from voting in other elections.

(8) Race/ethnicity, if applicable for the applicant's state of residence. The application shall direct the applicant to consult the state-specific instructions to determine whether race/ethnicity is required or requested by the applicant's state.

(b) *Additional information required by the Act.* (42 U.S.C. 1973gg-7(b)(2) and (4)). The form shall also:

(1) Specify each eligibility requirement (including citizenship). The application shall list U.S. Citizenship as a universal eligibility requirement and include a statement that incorporates by reference each state's specific additional eligibility requirements (including any special pledges) as set forth in the accompanying state instructions;

(2) Contain an attestation on the application that the applicant, to the best of his or her knowledge and

belief, meets each of his or her state's specific eligibility requirements;

(3) Provide a field on the application for the signature of the applicant, under penalty of perjury, and the date of the applicant's signature;

(4) Inform an applicant on the application of the penalties provided by law for submitting a false voter registration application;

(5) Provide a field on the application for the name, address, and (optional) telephone number of the person who assisted the applicant in completing the form if the applicant is unable to sign the application without assistance;

(6) State that if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes; and

(7) State that if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

(c) *Other information.* The form will, if appropriate, require an applicant's former address or former name or request a drawing of the area where the applicant lives in relation to local landmarks.

14. Section 9428.5 of Title 11 of the Code of Federal Regulations provides:

**Format.**

(a) The application shall conform to the technical specifications described in the Commission's National Mail Voter Registration Form Technical Specifications.

(b) *Size.* The application shall consist of a 5" by 8" application card of sufficient stock and weight to satisfy postal regulations. The application card shall be attached by a perforated fold to another 5" by 8" card that contains space for the information set forth at 11 CFR 9428.4(c).

(c) *Layout.* (1) The application shall be sealable.

(2) The outside of the application shall contain an appropriate number of address lines to be completed by the applicant using the state information provided.

(3) Both sides of the application card shall contain space designated "For Official Use Only."

(d) *Color.* The application shall be of ink and paper colors of sufficient contrast to permit for optical scanning capabilities.

(e) *Signature field.* The application shall contain a signature field in lieu of a signature line.

(f) *Type size.* (1) All print on the form shall be of the largest practicable type size.

(2) The requirements on the form specified in 11 CFR 9428.4(b)(1), (6), and (7) shall be in print identical to that used in the attestation portion of the application required by 11 CFR 9428.4(b)(2).

15. Section 9428.6 of Title 11 of the Code of Federal Regulations provides:

**Chief state election official.**

(a) Each chief state election official shall certify to the Commission within 30 days after July 25, 1994:

(1) All voter registration eligibility requirements of that state and their corresponding state constitution or statutory citations, including but not limited to the specific state requirements, if any, relating to minimum age, length of residence, reasons to disenfranchise such as criminal conviction or mental incompetence, and whether the state is a closed primary state.

(2) Any voter identification number that the state requires or requests; and

(3) Whether the state requires or requests a declaration of race/ethnicity;

(4) The state's deadline for accepting voter registration applications; and

(5) The state election office address where the application shall be mailed.

(b) If a state, in accordance with 11 CFR 9428.4(a)(2), requires the applicant's full social security

number, the chief state election official shall provide the Commission with the text of the state's privacy statement required under the Privacy Act of 1974 (5 U.S.C. 552a note).

(c) Each chief state election official shall notify the Commission, in writing, within 30 days of any change to the state's voter eligibility requirements or other information reported under this section.

16. Section 16-166 of the Arizona Revised Statutes provides:

A. Except for the mailing of sample ballots, a county recorder who mails an item to any elector shall send the mailing by nonforwardable first class mail marked with the statement required by the postmaster to receive an address correction notification. If the item is returned undelivered, the county recorder shall send a follow-up notice to that elector within three weeks of receipt of the returned notice. The county recorder shall send the follow-up notice to the address that appears in the general county register or to the forwarding address provided by the United States postal service. The follow-up notice shall include a registration form and the information prescribed by § 16-131, subsection C and shall state that if the elector does not complete and return a new registration form with current information to the county recorder within thirty-five days, the elector's registration status shall be changed from active to inactive.

B. If the elector provides the county recorder with a new registration form, the county recorder shall change the general register to reflect the changes indicated on the new registration. If the elector indicates a new residence address outside that county, the county recorder shall forward the voter registration form to the county recorder of the county in which the elector's address is located. If the elector provides a new residence address that is located outside this state, the county recorder shall cancel the elector's registration.

C. The county recorder shall maintain on the inactive voter list the names of electors who have been removed from the general register pursuant to subsection A or E of this section for a period of four years or through the date of the second general election for federal office following the date of the notice from the county recorder that is sent pursuant to subsection E of this section.

D. On notice that a government agency has changed the name of any street, route number, post office box number or other address designation, the county recorder shall revise the registration records and shall send a new verification of registration notice to the electors whose records were changed.

E. The county recorder on or before May 1 of each year preceding a state primary and general election or more frequently as the recorder deems necessary may use the change of address information supplied by the postal service through its licensees to identify regis-

trants whose addresses may have changed. If it appears from information provided by the postal service that a registrant has moved to a different residence address in the same county, the county recorder shall change the registration records to reflect the new address and shall send the registrant a notice of the change by forwardable mail and a postage prepaid preaddressed return form by which the registrant may verify or correct the registration information. If the registrant fails to return the form postmarked not later than thirty-five days after the mailing of the notice, the elector's registration status shall be changed from active to inactive. If the notice sent by the recorder is not returned, the registrant may be required to provide affirmation or confirmation of the registrant's address in order to vote. If the registrant does not vote in an election during the period after the date of the notice from the recorder through the date of the second general election for federal office following the date of that notice, the registrant's name shall be removed from the list of inactive voters. If the registrant has changed residence to a new county, the county recorder shall provide information on how the registrant can continue to be eligible to vote.

F. The county recorder shall reject any application for registration that is not accompanied by satisfactory evidence of United States citizenship. Satisfactory evidence of citizenship shall include any of the following:

1. The number of the applicant's driver license or nonoperating identification license issued after October



1, 1996 by the department of transportation or the equivalent governmental agency of another state within the United States if the agency indicates on the applicant's driver license or nonoperating identification license that the person has provided satisfactory proof of United States citizenship.

2. A legible photocopy of the applicant's birth certificate that verifies citizenship to the satisfaction of the county recorder.

3. A legible photocopy of pertinent pages of the applicant's United States passport identifying the applicant and the applicant's passport number or presentation to the county recorder of the applicant's United States passport.

4. A presentation to the county recorder of the applicant's United States naturalization documents or the number of the certificate of naturalization. If only the number of the certificate of naturalization is provided, the applicant shall not be included in the registration rolls until the number of the certificate of naturalization is verified with the United States immigration and naturalization service by the county recorder.

5. Other documents or methods of proof that are established pursuant to the immigration reform and control act of 1986.

6. The applicant's bureau of Indian affairs card number, tribal treaty card number or tribal enrollment number.

G. Notwithstanding subsection F of this section, any person who is registered in this state on the effective date of this amendment to this section is deemed to have provided satisfactory evidence of citizenship and shall not be required to resubmit evidence of citizenship unless the person is changing voter registration from one county to another.

H. For the purposes of this section, proof of voter registration from another state or county is not satisfactory evidence of citizenship.

I. A person who modifies voter registration records with a new residence ballot shall not be required to submit evidence of citizenship. After citizenship has been demonstrated to the county recorder, the person is not required to resubmit satisfactory evidence of citizenship in that county.

J. After a person has submitted satisfactory evidence of citizenship, the county recorder shall indicate this information in the person's permanent voter file. After two years the county recorder may destroy all documents that were submitted as evidence of citizenship.