No. 14-1164

In The Supreme Court of the United States

KRIS W. KOBACH, Kansas Secretary of State; MICHELE REAGAN, Arizona Secretary of State; STATE OF KANSAS; STATE OF ARIZONA,

Petitioners,

v.

UNITED STATES ELECTION ASSISTANCE COMMISSION, *et al.*,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

BRIEF OF *AMICUS CURIAE* LANDMARK LEGAL FOUNDATION IN SUPPORT OF PETITIONERS

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STATEMENT OF INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae Landmark Legal Foundation is a national public interest law firm committed to preserving the principles of limited government, separation of powers, federalism, advancing an originalist approach to the Constitution and defending individual rights and responsibilities. Specializing in Constitutional history and litigation, Landmark presents herein a unique perspective concerning the legal issues and national implications of the Tenth Circuit's improper interpretation of the states' power to set qualifications for electors under U.S. Const. art. I, sec. 2, cl. 1.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case concerns the balance between Congress and the States under the Elections and Voter Qualifications Clauses and whether that balance was properly determined by the executive director of a

[1] The parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission. The parties were notified ten days prior to the due date of this brief of the intention to file.

federal agency functioning without a quorum. In *Arizona v. Inter Tribal Council of Arizona, Inc.*, 133 S. Ct. 2247 (2013) ("*ITCA*") this Court held that language in the National Voter Registration Act ("NVRA"), 52 U.S.C. § 20501 *et seq*.,[2] directing States to "accept and use" a Federal Form for voter registration precluded Arizona from requiring additional proof of citizenship. Id. at 2260.

This Court carefully read the NVRA to avoid a conflict with the States' constitutional power under the Voter Qualifications Clause. Section 20508(b)(1) provided that the Federal Form "may require" only such additional information "as is necessary to enable the appropriate State election official to assess the eligibility of the applicant. . . ."[3] This Court acknowledged that "it would raise serious constitutional doubts if a federal statute precluded a State from

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[2] The NVRA, formerly 42 U.S.C. § 1973gg *et seq.*, was reclassified to 52 U.S.C. § 20501 *et seq*.

[3] The statute provides:

> Contents of mail voter registration form. The mail voter registration form developed under subsection (a)(2) –
>
> (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. . . .

52 U.S.C. § 20508(b)(1).

obtaining the information necessary to enforce its voter qualifications." *ITCA*, 133 S. Ct. at 2258-59. This Court thus stated that "it is surely permissible if not requisite for the Government to say that necessary information which *may* be required *will* be required." Id. at 2259 (emphasis in original). This Court even highlighted how the NVRA provides "another means by which Arizona may obtain information needed for enforcement": a request to the EAC to alter the Federal Form and if denied, a challenge of that denial under the Administrative Procedure Act. Id.

Arizona (and Kansas) followed the roadmap provided by this Court to seek federal cooperation from the EAC to ensure that only qualified citizens were registered to vote in their states. The states requested anew that the U.S. Election Assistance Commission ("EAC") include proof of citizenship requirements on the Federal Form's state-specific instructions. The EAC rejected the States' requests, because the modifications were not "necessary." The reviewing district court ordered the EAC to implement the changes immediately, but the Tenth Circuit reversed the decision of the district court, thereby establishing that the EAC's discretionary power trumps the States' constitutional prerogative to enforce the qualifications of their voters.

The constitutional conflict this Court attempted to avoid in *ITCA* has thus resurfaced. This Court should grant certiorari because the Tenth Circuit's decision distorts the separation of powers between the Federal government and the States. The States'

ability to prevent or correct noncitizen voter registration has been materially impaired by the Tenth Circuit's decision as well as by recent actions of the Executive Branch and must be restored well in advance of the 2016 elections.

ARGUMENT

I. The Elections Clause Does Not Trump the Voter Qualifications Clause, But Must Operate in Harmony With State Prerogatives.

This case revisits the tension inherent between the Constitution's Voter Qualifications Clause and the Elections Clause. "[T]he Elections Clause empowers Congress to regulate how federal elections are held, but not who may vote in them." *ITCA*, 133 S. Ct. at 2257. The Elections Clause states, "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." U.S. Const. art. I, sec. 4. This power to regulate *how* elections are held is broad. As Chief Justice Hughes wrote:

> It cannot be doubted that these comprehensive words embrace authority to provide a complete code for congressional elections, not only as to times and places, but in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and

> corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns; *in short, to enact the numerous requirements as to procedure and safeguards which experience shows are necessary in order to enforce the fundamental right involved.*

Smiley v. Holm, 285 U.S. 355, 366 (1932) (emphasis added).

However, the Framers established that the States, and not Congress, set voter qualifications for congressional elections. Qualifications for voters in federal legislative elections correspond to those for voters in the "most numerous Branch of the State Legislature." U.S. Const. art. I, sec. 2, cl. 1. (The Seventeenth Amendment provides the same framework for senatorial elections.) As James Madison wrote in Federalist No. 52,

> The definition of the right of suffrage is very justly regarded as a fundamental article of republican government. It was incumbent on the convention, therefore, to define and establish this right in the Constitution. To have left it open for the occasional regulation of the Congress, would have been improper for the reason just mentioned.

The Federalist No. 52, at 326 (J. Madison) (C. Rossiter ed. 1961). The Voter Qualifications Clause clearly establishes the states' authority to regulate *who* may vote in elections. As Justice Douglas wrote, "The States have long been held to have broad powers

to determine the conditions under which the right of suffrage may be exercised, *Pope v. Williams*, 193 U.S. 621, 633; *Mason v. Missouri*, 179 U.S. 328, 335, absent of course the discrimination which the Constitution condemns." *Lassiter v. Northampton County Bd. of Elections*, 360 U.S. 45, 50-51 (1959) (superseded by statute).

The regulation of voting in the United States has become more uniform through the passage of Amendments to the Constitution: Fifteenth, Seventeenth, Nineteenth, Twenty-Fourth and Twenty-Sixth. The original framework at the nation's founding, however, displays deference to the States in the determination of voter qualifications. As Justice Joseph Story wrote,

> [The qualifications of electors] were various in the different States. In some of them, none but freeholders were entitled to vote; in others, only persons, who had been admitted to the privileges of freemen; in others, a qualification of property was required of voters; in others, the payment of taxes; and in others, again, the right of suffrage was almost universal. This consideration had great weight in the Convention; and the extreme difficulty of agreeing upon any uniform rule of voting, which should be acceptable to all the States, induced the Convention, finally, after much discussion, to adopt the existing rule in the choice of Representatives in the popular branch of the State legislatures. Thus, the peculiar wishes of each State, in the

> formation of its own popular branch, were consulted; and some not unimportant diversities were introduced into the actual composition of the national House of Representatives. All the members would represent the people, but not exactly under influences precisely of the same character.

Joseph Story, A Familiar Exposition of The Constitution of the United States, § 69, 74-75, Regnery Publishing (1986). This framework remains intact since Justice Story's Commentary. Although as a Nation we have expanded the franchise to former slaves, women, and 18 year olds by Constitutional Amendment, the States still have diversity of opinion over voter qualifications, such as the voting rights of felons or the mentally incompetent. *See* Hans A. von Spakovsky and Roger Clegg, "Felon Voting and Unconstitutional Congressional Overreach," The Heritage Foundation, February 11, 2015, http://www.heritage.org/research/reports/2015/02/felon-voting-and-unconstitutional-congressional-overreach; Bazelon Center for Mental Health Law & National Disability Rights Network, A Guide to the Voting Rights of People with Mental Disabilities 41-66 (2008).

A State's power to establish qualifications, according to its peculiar and diverse wishes, must include a power to enforce them. As this Court stated, "Since the power to establish voting requirements is of little value without the power to enforce those requirements, . . . it would raise serious constitutional doubts if a federal statute precluded a State from

obtaining the information necessary to enforce its voter qualifications. *ITCA*, 133 S. Ct. at 2258-59.

In this case, the Tenth Circuit's decision allows Congress, through indirect means, to restrict Kansas and Arizona's authority to determine their Voter Qualifications. The Federal Form requires prospective voters only to check a box to signify their eligibility to vote as U.S. citizens and sign under penalty of perjury. 52 U.S.C. § 21083(b)(4)(A)(i); 52 U.S.C. §§ 20504, 20505, 20508(b). No other proof of U.S. citizenship is required by the form for registration by mail, which, as Arizona and Kansas determined and sought to remedy, makes it susceptible to fraud. In *United States Term Limits v. Thornton,* 514 U.S. 779, 829 (1995), this Court held that Arkansas's restriction on qualifications for service in Congress was "an indirect attempt to accomplish what the Constitution prohibits Arkansas from accomplishing directly." Justice Stevens noted that "'constitutional rights would be of little value if they could be . . . indirectly denied.' . . . The Constitution 'nullifies sophisticated as well as simple-minded modes' of infringing on constitutional protections." (internal citations omitted) Id.

This violation of the Voter Qualifications Clause, if left standing, would upset the delicate balance of the federalist system. As Justice Kennedy wrote in his concurring opinion in *U.S. Term Limits v. Thornton*, "That the States may not invade the sphere of federal sovereignty is as incontestable, in my view, as the corollary proposition that the Federal Government must be held within the boundaries of

its own power when it intrudes upon matters reserved to the States." Id. at 841.

The lax standards of proof of citizenship on the Federal Form, in conjunction with Arizona's unique situation as a border state, a main gateway for illegal immigration, and a state with one of the highest percentages of illegal immigrants among its total population, undermine Arizona's constitutional prerogative to set the qualifications for its voters. Indeed, although all states have some presence of illegal immigrants, the illegal immigrant population is unevenly distributed throughout the country. It stands to reason states with large illegal immigration populations would need to take precautionary measures to guarantee the integrity of the vote.

It should also be noted that illegal immigrants may sometimes seek voter registration without concern for voting. A voter registration card can be used to help an individual establish his identity, which is necessary when obtaining a driver's license or proving authorization to work in the U.S. John Fund and Hans von Spakovsky, *Who's Counting: How Fraudsters and Bureaucrats Put Your Vote At Risk* (New York: 2012) 90. Pursuant to the Immigration Reform and Control Act (IRCA), 8 U.S.C. § 1324a *et seq.* and accompanying regulations, 8 C.F.R. § 274a.2, prospective employees must establish their identities and ability to work in the U.S. by filling out a Form I-9, Employment Eligibility Verification, provided by the U.S. Citizenship and Immigrations Services. (Available at http://www.uscis.gov/sites/default/files/

files/form/i-9.pdf.) Among the form's "Lists Of Acceptable Documents" used to establish identity is a voter's registration card. Id. at 9; 8 C.F.R. § 274a.2(b)(v)(B)(1)(iii). Thus, the laxity of the Federal Form's required proof of citizenship along with the need to seek work authorizations provides aliens with the means, motive and opportunity for fraudulent voter registration.

The notion that the states are mere bystanders in the conduct of elections is incompatible with the ratification debates and this Court's decisions. As James Madison stated at Virginia's ratifying convention,

> It was found impossible to fix the time, place, and manner, of the election of representatives, in the Constitution. *It was found necessary to leave the regulation of these, in the first place, to the state governments, as being best acquainted with the situation of the people, subject to the control of the general government,* in order to enable it to produce uniformity, and prevent its own dissolution. And, considering the state governments and general government as distinct bodies, acting in different and independent capacities for the people, it was thought the particular regulations should be submitted to the former, and the general regulations to the latter. Were they exclusively under the control of the state governments, the general government might easily be dissolved. *But if they be regulated properly by the state legislatures, the congressional control will very probably never be exercised.*

3 J. Elliot's Debates on the Federal Constitution 367 (1876) (emphasis added). Furthermore, as Justice Kennedy observed in *United States Term Limits v. Thornton*, the states are not completely without power in the conduct of elections. He wrote:

> [B]ecause the Framers recognized that state power and identity were essential parts of the federal balance, see The Federalist No. 39, the Constitution is solicitous of the prerogatives of the States, even in an otherwise sovereign federal province. The Constitution *. . . grants States certain powers over the times, places, and manner of federal elections (subject to congressional revision), Art. I, § 4, cl. 1.*

United States Term Limits v. Thornton, 514 U.S. 779, 841-42 (1995) (Kennedy, J., concurring) (emphasis added).

Furthermore, this Court's opinions show that while congressional power is paramount, the federal regulation preempts state statutes only as far as they conflict. "The 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." *Ex parte Siebold*, 100 U.S. 371, 384 (1880). It must also be noted that congressional power to regulate elections under the Election Clause is not for mere convenience but is intended to safeguard rights.

Returning to Justice Hughes's discussion in *Smiley*, supra, Congress has 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." *Smiley v. Holm*, 285 U.S. 355, 366 (1932). In this case, the fundamental rights of many different parties have been implicated.

Congress sought to promote the voting rights of prospective registrants through the NVRA. However, not only do Arizona and the other states have a right to determine their voter qualifications, but the individual voters of Arizona themselves have the right to have their votes counted without being diluted by unqualified voters. "Every voter in a federal primary election, whether he votes for a candidate with little chance of winning or for one with little chance of losing, has a right under the Constitution to have his vote fairly counted, without its being distorted by fraudulently cast votes." *Anderson v. United States*, 417 U.S. 211, 227 (1974).

An underlying purpose of the Election Clause, it must be emphasized, is to protect the people's right of suffrage. Its wide scope provides the ability "to enact the numerous requirements as to procedure and safeguards which experience shows are necessary *in order to enforce the fundamental right involved*." *Smiley v. Holm*, 285 U.S. 355, 366 (1932) (emphasis added).

At the Virginia ratifying convention, James Monroe asked Madison to explain why the Framers gave general power over congressional elections to

the national government. Madison responded that the national government needed a remedy to correct disproportionate representation within a state, suggesting an attempt to prevent the imitation of Britain's "rotten boroughs" where electoral districts with tiny populations diluted the power of larger districts. He said:

> [I]t was thought that the regulation of time, place, and manner, of electing the representatives should be uniform throughout the continent. Some States might regulate the elections on the principles of equality, and others might regulate them otherwise. This diversity would be obviously unjust. Elections are regulated now unequally in some states, particularly South Carolina, with respect to Charleston, which is represented by thirty members. *Should the people of any state by any means be deprived of the right of suffrage, it was judged proper that it should be remedied by the general government.*

3 J. Elliot's Debates on the Federal Constitution 367 (1876) (emphasis added). Other state ratifying conventions discussing the issue stressed "that the House of Representatives was meant to be free of the malapportionment then existing in some of the state legislatures . . . and argued that the power given Congress in Art. I, § 4, was meant to be used to vindicate the people's right to equality of representation in the House." *Wesberry v. Sanders*, 376 U.S. 1, 16 (1964) (internal citations omitted). In other words, the framers were concerned with the potential for

improper dilution of the vote. This Court should grant certiorari to ensure the States maintain the power to prevent the dilution of the vote by noncitizens.

II. The States' Interest in Protecting Ballot Integrity Has Become More Compelling in Light of Federal Executive Agency Actions That Will Grant Work Authorizations to Millions of Noncitizens.

The original dispute over the content of the Federal Form was prompted by the large presence of illegal immigrants in Arizona and lax standards in the issuance of identity cards.[4] Ariz. Proposition 200 § 2 (2004), http://apps.azsos.gov/election/2004/Info/PubPamphlet/english/prop200.pdf. These issues have not

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[4] Proposition 200 stated within its "Findings and declaration":

> This state finds that illegal immigration is causing economic hardship to this state and that illegal immigration is encouraged by public agencies within this state that provide public benefits without verifying immigration status. This state further finds that illegal immigrants have been given a safe haven in this state with the aid of identification cards that are issued without verifying immigration status, and that this conduct contradicts federal immigration policy, undermines the security of our borders and demeans the value of citizenship. Therefore, the people of this state declare that the public interest of this state requires all public agencies within this state to cooperate with federal immigration authorities to discourage illegal immigration.

been resolved. Instead, they have been exacerbated by a recent surge of border crossing as well as actions taken by the federal government over the past several years. As a result, Kansas and Arizona's interest in verifying citizenship during voter registration has become more compelling since this Court's opinion in *ITCA*.

In June 2014, news reports indicated that there was an "unprecedented surge of families crossing illegally into the U.S., drawn by reports circulating throughout Central America that parents with children are allowed to stay in the United States indefinitely, according to Guatemalan consular officials and parents who are making these trips." Cindy Carcamo, "Rumors of U.S. haven for families spur rise in illegal immigration," *Los Angeles Times*, June 6, 2014, p. A1. These illegal immigrants may have been prompted in part by the Obama Administration's Deferred Action for Childhood Arrivals program ("DACA"). Joel Gehrke, "DHS Blames Border Surge on DACA Confusion in Spanish Language op-ed," *National Review*, August 8, 2014, http://www.nationalreview.com/corner/385060/dhs-blames-border-surge-daca-confusion-spanish-language-op-ed-joel-gehrke. DACA, implemented by the Department of Homeland Security ("DHS") in 2012, granted relief from deportation for illegal immigrants brought to the United States as children who also met certain administrative requirements. Those granted deferred action could apply for work authorizations as well. Memorandum from Secretary Janet Napolitano on DACA, (June 15, 2012), http://

www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf.

In addition, in November, 2014, the Obama Administration awarded "legal presence status" to over four million illegal aliens through the Deferred Action for Parents of Americans and Lawful Permanent Residents ("DAPA"). This policy, implemented by DHS Secretary Jeh Johnson, also expanded DACA. Memorandum from Secretary Jeh Charles Johnson on DAPA (November 20, 2014), http://www.dhs.gov/sites/default/files/publications/14_1120_memo_deferred_action.pdf . Although DAPA has been temporarily stayed by *State of Texas, et al. v. United States, et al.*, No. 1:14-cv-00254, 4-5 (S.D. Tex. February 16, 2015),[5] its potential effect on voter registration is significant.

In February, 2015, two state election officials, Ohio Secretary of State John Husted and Kansas Secretary of State Kris Kobach testified before Congress that DAPA threatens ballot integrity. Transcript, "The President's Executive Actions on Immigration and Their Impact on Federal and State Elections," House Subcommittees on National Security and Health Care, Benefits & Administrative Rules, February 12, 2015 ("House Subcommittee Transcript"), http://oversight.house.gov/wp-content/uploads/2015/02/2015-02-12-SC-NS-HCBAR-Pres.-Exec.-Actions-on-Immigration.HGO043060.pdf. As noted in *The*

[5] Kansas and Arizona are plaintiffs, along with twenty-four other states, seeking to prevent implementation of DAPA.

Washington Times, states will not be properly equipped to verify the citizenship of aliens who register to vote if they have driver's licenses and Social Security numbers.

> President Obama's temporary deportation amnesty will make it easier for illegal immigrants to improperly register and vote in elections, state elections officials testified to Congress on Thursday, saying that the driver's licenses and Social Security numbers they will be granted create a major voting loophole.
>
> While stressing that it remains illegal for noncitizens to vote, secretaries of state from Ohio and Kansas said they won't have the tools to sniff out illegal immigrants who register anyway, ignoring stiff penalties to fill out the registration forms that are easily available at shopping malls, motor vehicle bureaus and in curbside registration drives.
>
> Anyone registering to vote attests that he or she is a citizen, but Ohio Secretary of State Jon Husted said mass registration drives often aren't able to give due attention to that part, and so illegal immigrants will still get through.

Stephen Dinan, "Obama amnesty creates loophole for illegal immigrants to vote in elections," *The Washington Times*, Feb. 12, 2015, http://www.washingtontimes.com/news/2015/feb/12/obama-amnesty-creates-loophole-for-illegal-immigra/#ixzz3XWTxAS4q.

According to Secretary Husted, Ohio will have no way to validate attestations of citizenship on federal registration forms if noncitizens have a valid Social Security number or a driver's license. He stated, "The issue becomes especially complicated in states like Ohio where millions of dollars are spent on third-party voter registration drives where no election official would be present to make clear the eligibility requirements for voting." House Subcommittee Transcript, Statement of Husted. In his prepared remarks, Secretary Kobach added:

> [I]t is a certainty that the [Obama] Administration's executive actions will result in a large number of additional aliens registering to vote throughout the country, in violation of state and federal law. These are irreversible consequences, because *once an alien registers to vote, it is virtually impossible to detect him and remove him from the list of registered voters*.

Testimony of Kris W. Kobach, "The President's Executive Actions on Immigration and Their Impact on Federal and State Elections," House Subcommittees on National Security and Health Care, Benefits & Administrative Rules, February 12, 2015, http://oversight.house.gov/wp-content/uploads/2015/02/Kobach-Testimony-House-OGR-21215.pdf.

Since their testimony, the extent to which the original DACA illegal immigrants, known as "Dreamers," have obtained Social Security numbers has been released by Acting Social Security Commissioner

Carolyn W. Colvin. Elizabeth Harrington, "Feds Have Issued 541,000 to Illegal Aliens," *The Washington Free Beacon*, April 16, 2015, http://freebeacon.com/issues/feds-have-issued-541000-ssns-to-illegal-aliens/; Letter from Acting Commissioner Carolyn W. Colvin, Social Security Administration (April 10, 2015), http://freebeacon.com/wp-content/uploads/2015/04/SSA-Letter.pdf. As reported in *The Washington Times*,

> The administration has granted about 541,000 Social Security numbers to illegal immigrants under President Obama's original 2012 deportation amnesty for Dreamers, officials told Congress in a letter made public Wednesday.
>
> . . .
>
> Social Security numbers are considered one of the gatekeepers for being able to live and work in the U.S., and some experts have said granting them to illegal immigrants makes it easier for them to access rights reserved only for citizens, such as voting.

Stephen Dinan, "Obama amnesty granted 500,000 Social Security numbers to illegal immigrants," *The Washington Times*, April 15, 2015, http://www.washingtontimes.com/news/2015/apr/15/obama-amnesty-granted-more-500k-ssn/.

In short, the recent surge in illegal immigration, as well as a dramatic expansion of the issuance of Social Security numbers to noncitizens, places the integrity of the ballot at greater risk than before

ITCA commenced. Kansas and Arizona both have taken reasonable steps to protect ballot integrity. The EAC should not be given this Court's imprimatur to erect unconstitutional barriers to the exercise of these states' authority.

III. This Court Should Grant Certiorari to Avoid Voter Confusion and Provide Clear Guidance to States Conducting Elections Before the Elections of 2016.

Finally, this Court should grant certiorari to resolve the extant issues in voter registration well in advance of the 2016 elections. As time passes, more individuals will "age in" to the DACA program and qualify to apply for deferred action and receive work authorizations. There are estimates suggesting that when all qualified individuals reach the age threshold, there will be approximately 1.7 million people eligible under the program. *State of Texas*, at 9-10. Implementation of the more recent DAPA program, moreover, has been stayed only temporarily and could resume by order of the Fifth Circuit. Michael D. Shear, "Appeals Panel Weighs Obama Immigration Actions," *The New York Times*, April 18, 2015, p. A11. More aliens with driver's licenses and Social Security numbers will most likely lead to more noncitizen registration and voting.

Even if states were able to quickly identify any new noncitizen registrants (and the Secretaries of State of Kansas and Arizona have indicated they

would not), they would have a short window to remove them from the voter rolls. The process by which the states can remove ineligible voters from voter rolls is regulated by the National Voter Registration Act ("NVRA") 52 U.S.C. § 20501 *et seq*. Under the NVRA, a purge of the voter rolls may only be accomplished not later than 90 days prior to the date of a primary or general election for Federal office. 52 U.S.C. § 20501(c)(2). Presidential primary elections will begin in early 2016 and be conducted in the states as late as June, 2016. Reid Wilson, "As the 2016 political slates solidifies, the primary calendar remains in flux," *The Washington Post*, March 16, 2015, http://www.washingtonpost.com/politics/as-the-2016-political-slates-solidifies-the-primary-calendar-remains-in-flux/2015/03/16/94e28bc8-cb5f-11e4-8c54-ffb5ba6f2f69_story.html.

There are special considerations relating to elections disputes, as this Court noted in *Purcell v. Gonzalez*, 549 U.S. 1 (2006). First there is a potential for voter confusion that may dampen turnout at the polls. "Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase." *Purcell v. Gonzalez*, at 4-5. In addition, there is "necessity for clear guidance" to a state conducting an impending election. Id. at 5. This Court should grant certiorari and provide that clear guidance to those states requiring proof of citizenship upon registration. By so doing, the states will avoid the inherent

confusion and disorder arising from having two sets of electors – federal and state – while conducting Presidential, congressional and state elections.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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