

Syllabus

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SUPREME COURT OF THE UNITED STATES

Syllabus

**ARIZONA ET AL. v. INTER TRIBAL COUNCIL OF
ARIZONA, INC., ET AL.****CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT**

No. 12–71. Argued March 18, 2013—Decided June 17, 2013

The National Voter Registration Act of 1993 (NVRA) requires States to “accept and use” a uniform federal form to register voters for federal elections. 42 U. S. C. §1973gg–4(a)(1). That “Federal Form,” developed by the federal Election Assistance Commission (EAC), requires only that an applicant aver, under penalty of perjury, that he is a citizen. Arizona law, however, requires voter-registration officials to “reject” any application for registration, including a Federal Form, that is not accompanied by documentary evidence of citizenship. Respondents, a group of individual Arizona residents and a group of nonprofit organizations, sought to enjoin that Arizona law. Ultimately, the District Court granted Arizona summary judgment on respondents’ claim that the NVRA pre-empts Arizona’s requirement. The Ninth Circuit affirmed in part but reversed as relevant here, holding that the state law’s documentary-proof-of-citizenship requirement is pre-empted by the NVRA.

Held: Arizona’s evidence-of-citizenship requirement, as applied to Federal Form applicants, is pre-empted by the NVRA’s mandate that States “accept and use” the Federal Form. Pp. 4–18.

(a) The Elections Clause imposes on States the duty to prescribe the time, place, and manner of electing Representatives and Senators, but it confers on Congress the power to alter those regulations or supplant them altogether. See *U. S. Term Limits, Inc. v. Thornton*, 514 U. S. 779, 804–805. This Court has said that the terms “Times, Places, and Manner” “embrace authority to provide a complete code for congressional elections,” including regulations relating to “registration.” *Smiley v. Holm*, 285 U. S. 355, 366. Pp. 4–6.

(b) Because “accept and use” are words “that can have more than

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one meaning,” they “are given content . . . by their surroundings.” *Whitman v. American Trucking Assns., Inc.*, 531 U. S. 457, 466. Reading “accept” merely to denote willing receipt seems out of place in the context of an official mandate to accept and use something for a given purpose. The implication of such a mandate is that its object is to be accepted as sufficient for the requirement it is meant to satisfy. Arizona’s reading is also difficult to reconcile with neighboring NVRA provisions, such as §1973gg–6(a)(1)(B) and §1973gg–4(a)(2).

Arizona’s appeal to the presumption against pre-emption invoked in this Court’s Supremacy Clause cases is inapposite. The power the Elections Clause confers is none other than the power to pre-empt. Because Congress, when it acts under this Clause, is always on notice that its legislation will displace some element of a pre-existing legal regime erected by the States, the reasonable assumption is that the text of Elections Clause legislation accurately communicates the scope of Congress’s pre-emptive intent.

Nonetheless, while the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form, it does not preclude States from “deny[ing] registration based on information in their possession establishing the applicant’s ineligibility.” Pp. 6–13.

(c) Arizona is correct that the Elections Clause empowers Congress to regulate *how* federal elections are held, but not *who* may vote in them. The latter is the province of the States. See U. S. Const., Art. I, §2, cl. 1; Amdt. 17. It would raise serious constitutional doubts if a federal statute precluded a State from obtaining the information necessary to enforce its voter qualifications. The NVRA can be read to avoid such a conflict, however. Section 1973gg–7(b)(1) permits the EAC to include on the Federal Form information “necessary to enable the appropriate State election official to assess the eligibility of the applicant.” That validly conferred discretionary executive authority is properly exercised (as the Government has proposed) to require the inclusion of Arizona’s concrete-evidence requirement if such evidence is necessary to enable Arizona to enforce its citizenship qualification.

The NVRA permits a State to request the EAC to include state-specific instructions on the Federal Form, see 42 U. S. C. §1973gg–7(a)(2), and a State may challenge the EAC’s rejection of that request (or failure to act on it) in a suit under the Administrative Procedure Act. That alternative means of enforcing its constitutional power to determine voting qualifications remains open to Arizona here. Should the EAC reject or decline to act on a renewed request, Arizona would have the opportunity to establish in a reviewing court that a mere oath will not suffice to effectuate its citizenship requirement and that the EAC is therefore under a nondiscretionary duty to in-

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clude Arizona’s concrete-evidence requirement on the Federal Form.
Pp. 13–17.

677 F. 3d 383, affirmed.

SCALIA, J., delivered the opinion of the Court, in which ROBERTS, C. J., and GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined, and in which KENNEDY, J., joined in part. KENNEDY, J., filed an opinion concurring in part and concurring in the judgment. THOMAS, J., and ALITO, J., filed dissenting opinions.

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SUPREME COURT OF THE UNITED STATES

No. 12–71

ARIZONA, ET AL., PETITIONERS *v.* THE INTER
TRIBAL COUNCIL OF ARIZONA, INC., ET AL.

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

[June 17, 2013]

JUSTICE SCALIA delivered the opinion of the Court.

The National Voter Registration Act requires States to “accept and use” a uniform federal form to register voters for federal elections. The contents of that form (colloquially known as the Federal Form) are prescribed by a federal agency, the Election Assistance Commission. The Federal Form developed by the EAC does not require documentary evidence of citizenship; rather, it requires only that an applicant aver, under penalty of perjury, that he is a citizen. Arizona law requires voter-registration officials to “reject” any application for registration, including a Federal Form, that is not accompanied by concrete evidence of citizenship. The question is whether Arizona’s evidence-of-citizenship requirement, as applied to Federal Form applicants, is pre-empted by the Act’s mandate that States “accept and use” the Federal Form.

I

Over the past two decades, Congress has erected a complex superstructure of federal regulation atop state voter-registration systems. The National Voter Registration Act of 1993 (NVRA), 107 Stat. 77, as amended, 42

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U. S. C. §1973gg *et seq.*, “requires States to provide simplified systems for registering to vote in *federal* elections.” *Young v. Fordice*, 520 U. S. 273, 275 (1997). The Act requires each State to permit prospective voters to “register to vote in elections for Federal office” by any of three methods: simultaneously with a driver’s license application, in person, or by mail. §1973gg–2(a).

This case concerns registration by mail. Section 1973gg–2(a)(2) of the Act requires a State to establish procedures for registering to vote in federal elections “by mail application pursuant to section 1973gg–4 of this title.” Section 1973gg–4, in turn, requires States to “accept and use” a standard federal registration form. §1973gg–4(a)(1). The Election Assistance Commission is invested with rulemaking authority to prescribe the contents of that Federal Form. §1973gg–7(a)(1); see §15329.¹ The EAC is explicitly instructed, however, to develop the Federal Form “in consultation with the chief election officers of the States.” §1973gg–7(a)(2). The Federal Form thus contains a number of state-specific instructions, which tell residents of each State what additional information they must provide and where they must submit the form. See National Mail Voter Registration Form, pp. 3–20, online at <http://www.eac.gov> (all Internet materials as visited June 11, 2013, and available in Clerk of Court’s case file); 11 CFR §9428.3 (2012). Each state-specific instruction must be approved by the EAC before it is included on the Federal Form.

To be eligible to vote under Arizona law, a person must be a citizen of the United States. Ariz. Const., Art. VII, §2; Ariz. Rev. Stat. Ann. §16–101(A) (West 2006). This case concerns Arizona’s efforts to enforce that qualification. In

¹The Help America Vote Act of 2002 transferred this function from the Federal Election Commission to the EAC. See §802, 116 Stat. 1726, codified at 42 U. S. C. §§15532, 1973gg–7(a).

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