

Nos. 19-1257 & 19-1258

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

MARK BRNOVICH, IN HIS OFFICIAL CAPACITY AS ARIZONA  
ATTORNEY GENERAL, ET AL.,

*Petitioners,*

v.

DEMOCRATIC NATIONAL COMMITTEE, ET AL.,

*Respondents.*

ARIZONA REPUBLICAN PARTY, ET AL.,

*Petitioners,*

v.

DEMOCRATIC NATIONAL COMMITTEE, ET AL.,

*Respondents.*

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*On Writs of Certiorari to the United States  
Court of Appeals for the Ninth Circuit*

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**BRIEF OF AMICUS CURIAE HELEN PURCELL  
IN SUPPORT OF PETITIONERS**

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## INTERESTS OF AMICUS CURIAE

Helen Purcell is a private citizen residing in Maricopa County, Arizona. She was elected Maricopa County Recorder in 1988, was re-elected six times, served a total of 28 years, and left office on December 31, 2016. The office of Maricopa County Recorder administers voter registrations and elections in Maricopa County, by far Arizona’s largest county. Because of her 28 years of service, Ms. Purcell has historical knowledge related to voting registration and elections in Arizona that may prove useful to the Court.<sup>1</sup> Ms. Purcell was the plaintiff in *Purcell v. Gonzalez*, 549 U.S. 1 (2006), from which the eponymous “Purcell Principle” derived, which makes a presumption against last-minute changes of elections procedures.

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<sup>1</sup> Pursuant to Rule 37.6, *amicus* certifies that no party’s counsel authored the brief in whole or in part, no party and no party’s counsel made a monetary contribution intended to fund the preparation of the brief, but the Arizona Attorney General has paid or will pay the printer’s charges for printing and serving the brief. Pursuant to Rule 37.3(a), *amicus* certifies that the parties, as reflected on the Clerk’s electronic docket sheet, granted blanket consent to the filing of *amicus* briefs at the merits stage.

## SUMMARY OF ARGUMENT

The Court should reverse the *en banc* decision of the Ninth Circuit in *Democratic National Committee v. Hobbs*, 948 F.3d 989 (2020), and reinstate the judgment of the District Court in *Democratic National Committee v. Reagan*, 329 F.Supp.3d 824 (D.Ariz. 2018), as to both ballot-harvesting and the precinct-based voting system.

During Ms. Purcell's 28 years of service to the citizens of Maricopa County, Arizona, a combination of technological advances and legislative innovations has made it easier than ever for Arizona's citizens to register to vote and to cast a ballot.

In addition to the traditional means of signing a voting affidavit at the County Recorder's office, or before a deputy registrar, an Arizona citizen can register to vote online, while obtaining a driver's license, or when applying for government assistance. Voter Registration page, Arizona Department of Transportation ("ADOT") web page, accessible at: <https://azdot.gov/motor-vehicles/driver-services/driver-license-information/voter-registration>.

Early voting and mail-in ballots came to Arizona more than 20 years ago. Arizona maintains a permanent early voting list, and Arizona's county recorders mail out ballots to all persons who have asked to be placed on the list, as well as to voters who specially request a mail-in ballot. Arizona Secretary of State's voting by mail page, accessible at: <https://azsos.gov/votebymail>. Voters who are not on the permanent list can request a mail-in ballot online or by regular mail, email, or telephone. *Id.* The use of vote

centers, in lieu of the old precinct voting, is now permitted by Arizona law and occurs throughout Arizona.

Against this background, it is fair to say that Arizona is a leader among the 50 states in making it simple and easy for its citizens to register to vote and to cast a ballot.

Yet it remains a compelling state interest for Arizona to maintain the integrity of its voting process. To that end, the precinct-voting rule has been in place for at least 50 years in Arizona, and possibly longer. Under this rule, an Arizonan who chooses to go to the polls on election day must show up at the polling place designated for the precinct in which the voter resides, and ballots cast in the wrong precinct will not be counted for any office. Arizona Citizens Clean Elections Commission, Polling Place page, accessible at: <https://www.azcleelections.gov/how-to-vote/election-day/polling-place>. The precinct-voting rule is an historical legacy of the days before computer technology expanded and made the use of vote centers feasible. It is neutral on its face, is neutral in its administration, and has served Arizona fairly over generations. Its use should not violate Section 2 of the Voting Rights Act.

As further means of protecting the integrity of Arizona elections, and of preserving the rights of Arizona voters to cast their ballots in secrecy and without coercion, the Arizona Legislature outlawed the practice of ballot harvesting in ARIZ. REV. STAT. § 16-1005(H), with exceptions provided in ARIZ. REV. STAT. § 16-1005(I) relating to a voter's family member, caregiver, or household member. For similar reasons,



the ballot harvesting law should not violate Section 2. It also is neutral on its face, is neutrally administered, and serves the compelling state interest of protecting Arizona voters against any attempt by ballot harvesters to coerce voters, especially the elderly, infirm, disabled, or otherwise vulnerable.

## ARGUMENT

### I. Arizona' Steady Expansion of Voter Registration.

Arizona's recent history shows a steady expansion of the means of voter registration available to its citizens. To illustrate, at the 1982 general election, Arizona voters approved Proposition 202, a "motor-voter" law that allowed Arizonans to register to vote when they applied for a driver's license. *See* Arizona Secretary of State's 1982 General Election Official Canvass, accessible at: <https://azsos.gov/sites/default/files/canvass1982ge.pdf>. This motor-voter law is now codified at ARIZ. REV. STAT. §§ 16-111 and 16-112. It preceded similar action at the federal level by nine years. Congress waited until 1993 to pass the National Voter Registration Act, which instituted federal motor-voter registration procedures.

In 1994, Arizona amended its motor-voter law to provide for online voter registration, administered by ADOT. 1994 ARIZ. SESS. LAWS Ch. 378, § 1 (41<sup>st</sup> Ariz. Leg., 2d Reg. Sess.), codified at ARIZ. REV. STAT. § 16-112(B)(4). Arizona currently implements this requirement by means of its EZ Voter program. ARIZONA SECRETARY OF STATE'S 2019 ELECTION PROCEDURES MANUAL, at 23 (December 2019)

(“ELECTIONS MANUAL”).<sup>2</sup> EZ Voter came into use in Arizona in 2002, and it pioneered online voter registration among the 50 states. See Matt A. Barreto *et al.*, *Online Voter Registration (OLVR) Systems in Arizona and Washington*, at 1 (2010).<sup>3</sup>

To keep its motor-voter and online registration procedures current, the Legislature has required the ADOT Director and the Secretary of State to “consult at least every two years regarding voter registration at driver license offices.” ARIZ. REV. STAT. § 16-112(B). It further requires both to consult with the county recorders to implement the motor-voter system. *Id.*

Apart from motor-voter and online registration, the Legislature, in 1994, required all Arizona public assistance agencies to provide voter registration opportunities to applicants at the time they register for benefits. 1994 ARIZ. SESS. LAWS Ch. 378, § 8 (41<sup>st</sup> Ariz. Leg., 2d Reg. Sess.), codified at ARIZ. REV. STAT. § 16-140.

Besides these three innovations, Arizona provides multiple, traditional means of voter registration, set forth in ARIZ. REV. STAT. § 16-131:

A. The county recorder, a justice of the peace or a deputy registrar shall supply, without charge,

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<sup>2</sup> Accessible at: [https://azsos.gov/sites/default/files/2019\\_ELECTIONS\\_PROCEDURES\\_MANUAL\\_APPROVED.pdf](https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf).

<sup>3</sup> Accessible at: [https://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs\\_assets/2010/onlinevoterregpdf.pdf](https://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2010/onlinevoterregpdf.pdf).

a registration form to any qualified person requesting registration information.

B. The county recorder shall distribute state mail in registration forms at locations throughout the county such as government offices, fire stations, public libraries and other locations open to the general public.

C. Information regarding the qualifications necessary to register to vote, registration deadlines for qualifying to vote at an election, penalties for false registration and locations where additional voter registration information may be obtained shall be attached to or distributed with the state mail in registration form.

D. A county recorder may appoint deputy registrars to assist in distributing registration forms, to assist in registering voters and to accept completed registration forms. A deputy registrar shall be a qualified elector and shall serve without pay.

E. The county recorder may provide voter registration forms in quantity to groups and individuals that request forms for conducting voter registration drives.

## **II. Arizona Has Steadily Made It Easier to Vote.**

As it has made it easier and simpler for Arizonans to register to vote, Arizona also has made it easier for its citizens to cast their ballots. In 1984, the

Legislature allowed Arizona voters to request an absentee ballot at the same time for both the primary and general elections. 1984 ARIZ. SESS. LAWS Ch. 254 (36<sup>th</sup> Leg., 2d Reg. Sess.), now codified at ARIZ. REV. STAT. § 16-542.

Early voting came to Arizona in 1997. *See* 1997 ARIZ. SESS. LAWS Ch. 5, § 3 (43d Leg., 2d Spec. Sess.), now codified at ARIZ. REV. STAT. §§ 16-541 through 16-552. Arizona provides for one-time early ballot requests, a permanent early voting list, and on-site early voting. ELECTIONS MANUAL at Ch. 2. Early ballots can be returned by mail, by drop-off at specified collection locations, or in person on election day. *Id.* The Legislature passed the permanent-early-voting-list law in 2007. *See* 2007 ARIZ. SESS. LAWS Ch. 183, § 5 (48<sup>th</sup> Leg., 1<sup>st</sup> Reg. Sess.), now codified at ARIZ. REV. STAT. § 16-544.

Arizona also allows in-person early voting at a county recorder's office, or at designated vote centers, up to 5:00 p.m., the Friday before election day. ELECTIONS MANUAL at 63.

Arizona makes special provisions for accommodating voters with disabilities, including the use of elections boards to go out to the voter. ELECTIONS MANUAL at Ch. 2.

It also provides for emergency voting. Some basic rules regarding emergency voting include the following: An emergency "means any unforeseen circumstance that would prevent the voter from voting at the polls." *Id.* at 65. "Qualified electors who experience an emergency between 5:00 p.m. on the Friday preceding

the election and 5:00 p.m. on the Monday preceding the election may request to vote at an emergency voting center in the manner prescribed by the Board of Supervisors of their respective county.” *Id.*

In ARIZ. REV. STAT. § 16-411(A), the Legislature authorized the Boards of Supervisors of Arizona’s 15 counties to designate voting precincts (the traditional means of voting) or the use of designated vote centers or both. To the extent a Board of Supervisors elects to designate voting precincts, it must publish the list of precincts and their boundaries no later than October 1st of the year preceding the general election. *Id.* Maricopa County designated both and provided for 107 voting centers throughout the county. Az Family.com News Staff, *FAQs: Everything you need to know for Election Day 2020*.<sup>4</sup>

### **III. Arizona’s Precinct-Voting and Section 2 of the Voting Rights Act.**

Ms. Purcell fully supports the Voting Rights Act and at all times tried to comply with its requirements in the administration of her election responsibilities. It is beyond the scope of her Brief to re-weigh and re-analyze the application to this case of the factors summarized in the Report of the Senate Judiciary Committee accompanying the 1982 amendments to the Voting Rights Act, quoted in *Thornburg v. Gingles*, 478 U.S. 30, 36-37 (1986).

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<sup>4</sup> Accessible at: [https://www.azfamily.com/news/politics/election\\_headquarters/voter\\_resources/faqs-everything-you-need-to-know-for-election-day-2020/article\\_523ac728-ff38-11ea-9aee-eb33bd4d4be6.html](https://www.azfamily.com/news/politics/election_headquarters/voter_resources/faqs-everything-you-need-to-know-for-election-day-2020/article_523ac728-ff38-11ea-9aee-eb33bd4d4be6.html).

Yet, for several reasons, her view is that the precinct-voting rule in use in Arizona does not violate Section 2's totality-of-the-circumstances test. *Id.* at 50-51. First, the rule is neutral on its face and is neutral in its administration. Second, it is long-standing in Arizona. Third, it serves the goals of efficiency and policing against election fraud. Thus, it falls outside the factor, quoted in *Gingles*, relating to “whether the policy underlying the state or political subdivision’s use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.” 478 U.S. at 37.

#### **IV. Arizona’s Anti-Ballot Harvesting Law and Section 2.**

The ballot harvesting law, ARIZ. REV. STAT. § 16-1005(H), makes it illegal, with specified exceptions, for someone to return another person’s ballot. The exceptions include a voter’s family member, caregiver, or household member. ARIZ. REV. STAT. § 16-1005(I). Ms. Purcell has a similar view of this law. It is neutral on its face, is administered neutrally, and promotes compelling state interests.

As the history recounted above demonstrates, Arizona has vastly expanded opportunities to register and to vote over the last 40 years. It has authored special provisions for accommodating persons with disabilities and for emergency voting. Yet, Arizona retains its interest in preserving the integrity of its voting process. When considered in this context, the ballot harvesting law makes a sensible means of protecting Arizona voters against any attempt by ballot

harvesters to coerce voters, especially the elderly, infirm, disabled, or otherwise vulnerable.

### CONCLUSION

The foregoing historical review of voting over the last 30 years gives additional perspective to the Ninth Circuit's *en banc* opinion and details a record of steady innovation and technological evolution that makes voting in Arizona simpler, easier, and more convenient, and that allows more voting access to Arizona citizens, than ever before. The Court accordingly should reverse the *en banc* decision of the Ninth Circuit, and reinstate the judgment of the District Court as to both ballot-harvesting and the precinct-based voting system.

DATED on December 7, 2020.

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