

No. 20-1243

Supreme Court, U.S.
FILED
MAR - 3 2021
OFFICE OF THE CLERK

In The
Supreme Court of the United States

STACI BURK, a single woman representing herself,

Petitioners,

v.

DOUG DUCEY, in his official capacity as Governor of Arizona, KATIE HOBBS, in her official capacity as Secretary of State, CLINT HICKMAN, JACK SELLERS, STEVE CHUCRI, BILL GATES, STEVE GALLARDO, in their official capacities, ADRIAN FONTES, in his official capacity, DOES I-X.

Respondents.

***On Petition For Writ Of Certiorari
To The ARIZONA SUPREME COURT***

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did the Arizona Supreme Court violate Petitioner's right to Equal Protection when it denied remand for an evidentiary hearing of Petitioner's constitutional claims of vote denial through the cancellation of her registration, while registrations of unqualified people remained, and those votes were counted?
2. Did the Arizona Supreme Court violate stare decisis because its 2021 opinion contradicted its 2010 opinion involving the same Petitioner regarding whether she met the definition of "elector" to bring an election challenge, even though neither her voter registration status nor the statutory definition of "elector" had changed?
3. Did the court clerk's admittedly improper rejection of Petitioner's verification filed on December 7, 2020, constitute plain error?
4. Did the Court violate Petitioner's First Amendment rights to petition for redress and Due Process by considering her illegally cancelled voter registration where she had not been given an opportunity for an evidentiary hearing to present evidence regarding her attempts to reinstate it?

PARTIES TO THE PROCEEDINGS

All parties to the proceedings are named in the caption.

CORPORATE DISCLOSURE STATEMENT

*Neither Petitioner nor any other party to this case is a non-governmental corporation.
Rule 29.6 does not apply.*

STATEMENT OF RELATED CASES

Mi Familia Vota, et al. vs. Hobbs, (2020 U.S. Dist. LEXIS 184397, October 5, 2020), sought an emergency Temporary Restraining Order (“TRO”) to enjoin Respondent Hobbs from enforcing the voter registration cutoff set forth in A.R.S. 16-120, of October 5, 2020, and to extend the deadline until 5pm October 23, 2020, citing COVID as justification. District Court Judge Steven Logan granted the TRO and extended the deadline for Hobbs to accept voter registration applications.

On October 13, 2020, the Ninth Circuit Court of Appeals (977 F.3d 948, October 13, 2020) reversed the District court and ordered a stay on the extension, arguing that registration could be accomplished online or by mail. The Ninth Circuit ordered a two-day grace period before its order went into effect (closing the registration deadline in Arizona as of October 15, 2020).

Peterson et al. v. Purcell (CV2010-023871), Petitioner Staci Burk and David Peterson filed an election challenge of candidate Adeladia Severson. In that case, it was argued for purposes of standing to bring an election challenge, one did not need to prove they were a registered voter to qualify as an “elector,” but instead required to prove Plaintiffs met each of the criteria of being “eligible to register” to vote. Plaintiffs met those criteria, and the Trial Court agreed. The Arizona Supreme Court affirmed the lower court and held Petitioner Staci Burk was a qualified elector able to bring the election challenge (even though her voter registration had apparently been cancelled several weeks prior).

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions for a Writ of Certiorari to review the final decision order, and denial of reconsideration by the Arizona Supreme Court.

OPINIONS BELOW

The Arizona Supreme Court reported its decision order at *Burk v. Ducey, Arizona Supreme Court No. CV-20-0349-AP/E.L. (Ariz. Jan. 5, 2021)*. The Pinal County Superior Court case number is CV2020-01869, and the decision is attached. (Appendix A, C).

STATEMENT OF JURISDICTION

The Arizona Supreme Court entered a decision order on January 5, 2021 and entered an amended decision order on January 6, 2021. It denied Petitioner's Motion for Reconsideration on January 26, 2021. This Court has jurisdiction under 28 U.S.C. § 1257(a).

Under the U.S. Const. art. III, § 2, cl. 1 (amended 1795). Federal courts may not redress a grievance unless there is an actual case or controversy. A Petitioner must have suffered direct harm, and the stake in the outcome must be personal. Otherwise, an aggrieved person's remedy is through the legislative branch's political process rather than the Court. When shared by all or a large class of citizens, generalized harm is generally insufficient to confer standing. *Bennett v. Napolitano*, 81 P.3d 311, 316 (Ariz. 2003) (legislators failed to prove palpable injury personal to themselves),

Lujan, 504 U.S. at 577, *Bowyer v. Ducey*, No. CV-20-02321-PHX-DJH, 2020 WL 7238261 (D. Ariz. Dec. 9, 2020) (electors failed to prove palpable injury personal to themselves).

Article III standing requires a Plaintiff, “(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” U.S.C.A. Const. Art. 3, 28 U.S.C. § 2, cl. 1. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016). The “line of causation” between the Respondents’ actions and alleged harm must be more than “attenuated.” *Allen*, 468 U.S. at 757; *Maya*, 658 F.3d at 1070.

Here, Petitioner has a distinct and palpable injury expressed by clear implication when Respondents failed to verify in their records in 2010 Petitioner was a protected address voter under Ariz. Rev. Stat. § 16-153. This lack of verification resulted in the illegal cancellation of her registration and disenfranchisement of her vote while illicit votes were counted. The Court denied Petitioner’s right to redress her grievance in the form of an election contest because Respondents canceled her voter registration. As further discussed below, the Court can redress her direct harm through the equitable injunctive relief requested.

This case does not present a non-justiciable political question. Here, the Respondent Governor and Arizona legislature assert they have explicitly delegated the power and authority to the courts to review any election fraud or challenge filed by any “elector.”

See tweet dated November 30th and copy submitted as evidence by Respondent Governor in lower Court in this case (Appendix J, T).

Thus, Petitioner presents more than a simple non-justiciable generalized grievance, or political question and this Court has jurisdiction to hear her constitutional and election challenge-related claims.

MOOTNESS EXCEPTION

Petitioner's complaint is not moot merely because the 2020 election has passed. This case presents issues of widespread public importance. Her claims fall under the long-held mootness exception because they are, "capable of repetition, yet evading review." *Roe v. Wade*, 410 U.S. 113 (1973), holding modified by *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), see also *Ferrara v. Belanger*, 18 Cal. 3d 253, 259 (1976) (completed election did not moot the matter given the critical need to interpret election statutes).

In *Roe*, the Court held the natural termination of Roe's pregnancy did not moot her suit. If litigation involves a set of circumstances that are, "capable of repetition, yet evading review,' it is an exception to the usual federal rule that an actual controversy must exist at review stages and not merely when the action is initiated." *Id.* at 113. Much like in *Roe*, where the gestation period of pregnancy was so short that circumstances effectively denied any type of appellate review, the same is true with

an election cycle and dis-enfranchisement of a citizen's vote. Should these circumstances reoccur, resulting in the same harm, there is no circumstance where an appellate review of these could occur before her grievance could be reviewed. It is possible the events could reoccur because Petitioner's protected address info is withheld in the public record from regular election office workers, and the Court has made it clear in its ruling that the definition of "elector" is "unclear."

A declaratory relief action about the constitutionality of a statute may not be dismissed where "there remain material questions" and the relief granted would "encompass future and contingent legal rights." *Eye Dog Found. v. State Bd. of Guide Dogs for the Blind*, 67 Cal. 2d 536, 541 (1967). Doing "complete justice" means not leaving unresolved questions that "would preclude a party from litigating its liability on an issue still in controversy." *Viejo Bancorp, Inc. v. Wood*, 217 Cal. App. 3d 200, 205 (1989). This case provides an opportunity to address the constitutional issues that will likely reoccur in the future.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the Constitution provides in pertinent part: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person . . . due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. Amend. XIV.

All relevant Arizona Statutes in Appendix U.

STATEMENT OF THE CASE

This action is brought to secure equitable relief resulting from Defendants' unlawful deprivation of Plaintiff's rights, privileges, and immunities guaranteed by the Equal Protection and Due Process Clause of the U.S. Const. Amend. XIV, the U.S. Const. Amend. I, and the laws of Arizona and the United States. Petitioner contends the juxtaposition of unqualified voters having their vote counted in the 2020 election, while a real person (Petitioner) was illegally denied her voice is the heart of her constitutional and election challenge claims.

The State illegally canceled her voting registration, resulting in her inability to cast a vote legally. The Court later denied her the right to redress her grievances and to access the paper ballots for review and verification as part of her election challenge. In line with Ariz. Rev. Stat. § 16-677 of the election contest statutes, Petitioner may legally access the paper ballots to verify how widespread an election fraud issue may be. This information is vital to enabling her to fully participate as a member of the political community for future elections and communicate any concerns to her appropriate elected representatives. Under Ariz. Rev. Stat. § 16-625, these paper ballots are held unopened and unaltered for 22 months, allowing time for an election challenge case to go through the entire appellate process before they are destroyed.

The Arizona Supreme Court did not dismiss Petitioner's case on the merits and specifically affirmed such in its ruling. Instead, the Court declined to remand for an

evidentiary hearing based on the inconsistent opinion that she was not an “elector” qualified to bring an election challenge because she did not provide proof of attempts to re-register, and the Court process is not how a person registers to vote. This opinion seems to have missed the point. Petitioner was illegally denied her right to vote, along with her right to bring forth an election contest.

Whether or not she attempted to register again after her illegal cancellation, while the Court system was arbitrarily moving around the registration deadlines, was irrelevant and to the question before the Arizona Supreme Court. However, she contends if the Ninth Circuit had not modified the voter registration deadline, the Petitioner could have registered, cast her vote, and brought her election challenge with no question about her status as an “elector.”

The question before the Court was whether her case was properly dismissed by summary judgment without an opportunity for an evidentiary hearing. At an evidentiary hearing, Petitioner would have presented evidence of her attempts to re-register along with her case. Petitioner contends pre-evidentiary dismissal was inappropriate and amounted to a grave intrusion on her right to redress.

Additionally, the Supreme Court opined she did not qualify to bring her challenge as an elector in 2021. In 2010, the same Arizona Supreme Court, in a case involving the same Petitioner, without a change in her voter registration status or the statutory definition of an elector, opined she was qualified as an elector to bring a challenge. The doctrine of stare decisis should have precluded the Court from arbitrarily

changing the definition of “elector” based on judicial whims and personal preferences, especially without a reasonable explanation for its departure from prior precedent.

The State election challenge statutes do not use the term “qualified elector.” In other subsections of Arizona’s election statutes, including the election statute at issue, the language merely uses the term “elector” without the modifier “qualified.” In 2010, the Arizona Supreme Court affirmed the trial court’s ruling that Petitioner had proved she was an “elector” by merely proving that she was eligible to register to vote under the criteria in *id.* § 16-101 (LexisNexis). Petitioner proved her eligibility as an “elector” by proving the elements of being “qualified to register” in both her 2010 and 2020 election challenges in the same manner with an affidavit. Yet, the ruling of the Arizona Supreme Court in 2021, was the exact opposite of its 2010 ruling involving the same set of facts.

This case involves not only the unreasonable deprivation of Petitioner's right to vote and Fourteenth Amendment Equal Protection and Due Process, but also denial of her First Amendment right to redress and verify the actions of her Government through the prescribed process for transparency (an election challenge filed properly within five days of certification of the States election). This case strikes at the heart of our Republic’s foundational principles: respect for individual rights, free and fair elections, transparent Government, access to the Courts for a meaningful hearing, judicial integrity, and the rule of law.

ARGUMENT

A. PETITIONERS BACKGROUND

Petitioner is a single mother of five children and two grandchildren who participates in the statutorily enacted Arizona Address Confidentiality Program to protect herself from her former husband, who perpetrated multiple domestic violence incidents upon her and was responsible for the death of one of her children. Petitioner has an Americans with Disabilities Act (“A.D.A.”) qualifying disability resulting from her medical condition known as Pulmonary Arterial Hypertension (“PAH”). Her PAH requires supplemental oxygen and limits her functional ability, which results in frequent and sometimes extended periods of hospitalization and disability.

Petitioner was a licensed nurse for 26 years and worked for the Arizona Department of Health Services, conducting medical facility licensing surveys and investigations as a Federal SMQT Surveyor. She earned a bachelor’s in social work and attended graduate school in social work. She is also the former President of the Gilbert Unified School District Governing Board. She has engaged in numerous community service projects and front-line disaster work. In 2014, after serving two years on an education advisory committee, Petitioner was officially recognized by Congress for her “outstanding and invaluable service to the community.” She is also attending law school part-time and is in her third year.

B. ADDRESS CONFIDENTIALITY PROGRAM AND “PROTECTED ADDRESS”

Respondent Secretary of State Hobbs administers the Arizona Address Confidentiality Program (“A.C.P.”) and oversees elections. The ACP protects crime victims, judges, and law enforcement personnel who have verified safety concerns from their physical addresses in voter registration and other public records. Participants use a “substitute address,” which serves as the person's legal address in public records to ensure safety. A protected address voter cannot register online for this status. The person must mail paperwork or appear in person, and the particular process delays registration by approximately one to two weeks.

Between 2006 and 2015, Petitioner met the criteria and was registered as a protected address voter under Ariz. Rev. Stat. § 16-153 directly through the County elections department. Ariz. Rev. Stat. § 16-153 only protects voter registration records, while the ACP protects all government records and offers more comprehensive services and support to crime victims.

After having her voter record protected for several years under 16-153, in 2015, Petitioner enrolled in the A.C.P. program under Ariz. Rev. Stat. § 41-166(D) voter registration records. At no time shall a voter registered to vote under either statute protecting registration records be subject to cancellation under Ariz. Rev. Stat. § 16-165 for being “unable to verify the physical address,” since Ariz. Rev. Stat. § 41-168 strictly prohibits disclosure of an eligible participant’s physical address.

When registering to vote as a protected address voter, all participants are informed they must always vote for a “provisional” ballot unless they request a mail-in ballot because a polling place will not be able to access their voter record to verify their address. Unlike a typical voter, who would be alerted at the polls, there is a problem with their record if they did not show up on the rolls, a protected address voter would not. Thus, a protected address voter may have their vote disenfranchised over multiple elections until the person is overtly made aware of the problem.

Respondents asserted in the trial court by affidavit that Petitioner’s voter registration was canceled as of July 22, 2010, and thus she was not registered to vote. Even though Respondents assert that Petitioner’s voter registration was canceled in July 2010, Petitioner received a mail-in ballot for the November 2, 2010 election. This confirms that despite her registration being canceled without her knowledge, Petitioner cast an illegal vote in the November 2010 election as well as in the subsequent elections when she cast a provisional ballot leading up to finding out she was not registered in 2020. Unbeknownst to Petitioner, until she found out in 2020, her own vote for herself in the 2010 school board election was also likely disenfranchised. Regardless, she was elected, served a four-year term in office but did not seek re-election.

Shortly before the 2020 election cycle, Merri Tiseth at Respondent Secretary of State’s office notified Petitioner and stated that her voter registration had been inappropriately canceled as being “unable to verify address,” and that should not have occurred. A “protected address” cannot be verified. Ariz. Rev. Stat. § 41-165 prohibits

requiring verification of a protected address voter's address. Tiseth told Petitioner she would have to re-register. However, due to Petitioner's medical condition resulting in an extended hospitalization and incapacitation, she was unable to re-register complying with the special process for protected address voters before the 2020 deadline.

The trial court dismissed Petitioner's Fourteenth Amendment Equal Protection, Due Process, and 42 U.S.C. § 1983 claims, which alleged that the statutes' unconstitutional application had deprived her of her right to vote in the 2020 election. As a result of the unconstitutional denial of her right to vote, the Courts then denied her First Amendment right to redress using the cancellation of her voter registration and inconsistent definition of "elector" as justification for denying her standing to bring an election challenge. An unconstitutional application of the statute denying her right to vote, should not preclude her from bringing forth an election contest, especially when this did not prevent her in a prior case.

C. DENIAL OF PETITIONERS DUE PROCESS

"No right is more precious in a free country than that of having a voice in the election of those who make the laws..." *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). Qualified citizens' right to vote in a state election involving federal candidates is recognized as a fundamental right under the *Harper v. Virginia State Board of Electors*, 383 U.S. at 665; see also *Reynolds*, 377 U.S. at 554 (The Fourteenth Amendment protects the right of all qualified citizens to vote in State as well as in Federal elections.).

Additionally, “[t]he right to vote freely for the candidate of one’s choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.” *Democratic Nat’l Comm. v. Hobbs*, 948 F.3d 989 (9th Cir. 2020)

Since 2002, Respondent Secretary of State has received several large Federal grants to implement the Help America Vote Act (“HAVA”). In relevant part, the HAVA 42 USC 15483, 28 U.S.C. § 303(4), ensures “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: (B) Safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.” (see appendix T). As part of the conditions of accepting these large Federal grants, including \$8,397,299 on January 30, 2020, Respondent agreed to maintain ongoing compliance with all sections of the Act (Appendix L). Respondents failed to comply with the section ensuring safeguards protecting eligible voters like Petitioner, from being removed in error off the official eligible voters list. As a direct result of Respondents’ non-compliance, Petitioner’s vote was disenfranchised.

The Trial Court dismissed Petitioner’s claims of denial of her right to vote under Equal Protection and election contest without an evidentiary hearing because she did not vote. (see Appendix C, F, H). It is a violation of Ariz. Rev. Stat. § 16-120, for a person to knowingly vote in an election for which they are not registered. Petitioner learned just before the election in 2020 that her registration had been canceled. It

would have been illegal for Petitioner to vote in the election. Yet, the Trial Court granted Respondents' Motion to Dismiss ("MTD") because Petitioner did not vote when Petitioner asserted, she was making claims of denial of Equal Protection on the grounds she was deprived of her right to vote (Appendix H, Appendix L pp451, line 8, pp422, line 10, 390, pp418 line 23).

Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986), when deciding a summary judgment motion, the Judge's function is not to weigh the evidence and determine the matter's truth to determine whether there is a genuine issue for trial. Fed. R. Civ. P. 56(c), 28 U.S.C.A. A Petitioner asserted at the time, when deciding whether to grant Respondents' MTD, the Court shall view the record in a light most favorable to the party opposing the motion. *Scott v. Harris*, 550 U.S. 372, 378 (2007). The trial court did not adhere to this standard. Petitioner appealed the summary dismissal to the Arizona Supreme Court.

The Arizona Supreme Court upheld the trial court's pre-evidentiary dismissal. The Court analyzed that her case should not be remanded because she did not present evidence of attempts to seek reinstatement of her illegally canceled voter registration. Petitioner did not present evidence of her attempts to re-register because the Judge gave "explicit" instruction that she could not present any evidence if the Respondents did not raise the issue in their MTD (See appendix L, transcript pp399, line 12). Respondents specifically requested that the Judge instruct Petitioner that she could not raise any issues or present any evidence that Respondents' did not raise in their

MTD, and the Judge did so. Defendants did not raise in their MTD that Plaintiff did not seek reinstatement of her voter registration. Thus, she did not present such evidence.

If the Trial Court allowed an evidentiary hearing and had not restricted her presentation of evidence to only those issues the Respondents brought forward in their MTD, Petitioner would have presented she was a “protected address” voter under Ariz. Rev. Stat. § 16-153, when her voter registration was apparently cancelled in 2010.

When the Arizona Supreme Court asserted it was relevant whether Petitioner attempted to re-register after the illegal cancellation, the Petitioner filed a Motion for Reconsideration. She filed this evidence even though she had been restricted from raising it in the lower Court, and believed that she was not allowed to introduce new evidence to the Supreme Court unless the Respondents raised that particular issue as she had been instructed by the Court below (Appendix L, pp 399, line 12). The Arizona Supreme Court denied re-hearing on January 26, 2021.

In her motion, Petitioner presented evidence that shortly after learning of the illegal cancellation of her voter record, Petitioner was incapacitated and hospitalized as a result of her qualifying Americans with Disabilities Act (“ADA”) disability and as a result was unable to re-register under the specialized process and extended timeframe required for “protected address” voters. If the Ninth Circuit had not stayed the voter registration extension granted by the District Court, Petitioner could have

registered and even planned to do so during that period (Appendix B). When the Ninth Circuit granted only a two-day grace period, she was unable to re-register during that time through the longer and more involved process required by the address confidentiality program (Appendix B).

Thus, the Arizona Supreme Court procedurally denied Petitioner's right to Due Process.

D. THE ARIZONA SUPREME COURT INCONSISTENTLY APPLIED THE DEFINITION OF STANDING AS A QUALIFIED "ELECTOR" IN TWO SEPARATE ELECTION CASES INVOLVING THE SAME PETITIONER

In August 2010, Petitioner filed an election challenge related to a school board candidate, Adeladia Severson. Severson sought to dismiss on the grounds that Petitioner was not an "elector." There was a dispute whether "elector" meant simply proving the qualifications to register listed in Ariz. Rev. Stat. § 16-101 (LexisNexis), such as being over eighteen, able to make a mark, not adjudicated incompetent, and not having a felony. Petitioner proved in a supplemental motion that she was qualified to register to vote (Appendix D). The Court held in that case by proving that Petitioner was qualified to register, she had established her qualification as an "elector" to bring the challenge. In this 2010 case, the County Elections department supported Petitioner's side of the case.

On August 30, 2010, several weeks after Respondents show Petitioner's voter registration had already been canceled, she was deemed by the Trial Court and

affirmed by the Supreme Court, as an “elector,” with qualified standing to bring the election contest. Severson appealed the August 30, 2010, lower court ruling. At that time, the Arizona Supreme Court held that Petitioner was qualified as an “elector” with standing to bring the election contest.

Between September 9, 2010, Arizona Supreme Court ruling affirming the Trial Court’s holding that Petitioner met the definition of “elector,” and its January 5, 2021, ruling that she was not an “elector,” neither the language in Ariz. Rev. Stat. § 16-672 (LexisNexis) nor had Petitioner’s voter registration status changed according to Respondents’ own affidavit.

In *Galloway v. Vanderpool*, 69 P.3d 23, 27 (Ariz. 2003), the Arizona Supreme Court held that “[t]he doctrine of stare decisis, which requires us to give weight to previous decisions addressing the same issue, seeks to promote reliability so that parties can plan activities knowing what the law is.” See *White v. Bateman*, 358 P.2d 712 (Ariz. 1961). “Stare decisis has even greater weight where the precedent relates to the interpretation of a statute.” *State v. Hickman*, 68 P.3d 418, 427 (Ariz. 2003); *Walker v. Walker*, 178 S.E.2d 46, 46 (Ga. Ct. App. 1970).

Here, based on the 2010 decision, Petitioner relied on qualifying as an “elector” for an election challenge, meaning she needed only to prove they were qualified to register to vote under Ariz. Rev. Stat. § 16-101, and had done so. Petitioner argued at the Trial Court during the oral argument on Respondents’ MTD, that in the prior 2010 ruling, she had been deemed qualified as an elector. (see appendix D, and transcript

appendix L). She also entered the 2010 ruling and her evidence of being eligible to register, as part of her response to Respondents' affidavit and "notice" provided to Petitioner forty-five minutes before scheduled oral argument when one of the nine lawyers on the Government side inadvertently forgot to include Petitioner on their filings with the Court.

Petitioner contends the Trial Court ruled correctly in 2010 because interpreting "elector" as anyone who is qualified to register to vote aligns with legislative intent for citizens to fully participate in the political community, whether or not they exercise their right to vote, should be able to bring forth an election challenge alleging fraud or misconduct, just as anyone can file a police report should they witness a crime. To interpret "elector" to mean only registered voters who exercise their rights, especially when the word "qualified" does not precede "elector" in the statute as it does in other places. This could create an avenue where tyranny and abuse could run rampant. Whether the County Election Officials intentionally or unintentionally cancel a citizen's voter registration, reading "qualified" into the statute, may further deprive that person from bringing forth an election contest should they witness a fraud or simply desire accountability through those statutes designed for transparency.

When analyzing whether or not Petitioner could file her amendment, the Arizona Supreme Court cited *Grounds v. Lawe*, 67 Ariz. 176, 187 (1948), "we are not permitted to read into" the election challenge statutes "what is not there." The word "qualified"

isn't there in id. § 16-672 (LexisNexis). The Court contradicted itself between its 2010 opinion when it supported the trial court not reading the word "qualified" into the statute upholding Petitioners standing as an elector. Petitioner was not registered to vote at that time, according to Respondent's own affidavit. In 2021, the Court read into the statute that Petitioner needed to be a "qualified elector" under the definition which would require the voter to be registered.

Finally, in the same decision, the Court held the definition of "elector" in the statute is "unclear." What is "unclear" is the Court's decision and the lack of explanation for its inconsistency. Since the underlying relevant facts hadn't changed between the opinions, the Court seems to change its definition of "elector" depending on which side of the case the Government aligns itself with. To avoid this confusion, the doctrine of stare decisis suggests the Court should cite its supporting rationale for a departure from prior precedent, especially when the underlying facts and circumstances haven't changed.

Thus, Petitioner requests the Court uphold the doctrine of stare decisis and interpret "elector" for standing the same way in 2021 as it did in 2010, regarding the same Petitioner, regardless of whether or not the Government supports her in the case.

***E. BACKGROUND OF 2020 ELECTION CONTEST ALLEGING
WIDESPREAD ELECTION FRAUD***

Voters have a "right to cast a ballot in an election free from the taint of intimidation and fraud," *Burson v. Freeman*, 504 U.S. at 211. Preserving the integrity of the

electoral process, preventing corruption, and sustaining the active, alert responsibility of the individual citizen in a democracy for the wise conduct of Government are interests of the highest importance; preserving the individual citizen's confidence in Government is equally important. *First Natl Bank v. Belotti*, 435 U.S. 765 (1978).

The purpose of the laws protecting voter registration through the protected address process allows citizens such as Petitioner to safely protect their address while participating in the voting and electoral process, ensuring government accountability through election contest statutes.

As Respondent Ducey in his MTD, suggested by his "tweet," the election contest statutes allows any citizen elector to contest an election within five days of its certification and to access the ballots for verification under the conditions outlined in State law to preserve individual citizens confidence in their Government.

a. WHISTLEBLOWER INVOLVEMENT

A whistleblower contacted the petitioner through a friend in her pulmonary hypertension community. This Whistleblower is a Supervisor at a Seattle FedEx airport facility and has worked at the facility for six years. With a desire to remain anonymous if possible, she wanted to report what she witnessed in time for authorities to access the facility's video recordings and data logs. She had not been successful in making contact with local Federal authorities.

The Whistleblower reported that more than a thousand pounds of a suspicious shipment, labeled as election mail ballots in canvas bags, came through in what she described as a "ghost shipment." A ghost shipment meant that when scanned, it "triple beeped," showing it was not properly processed through the U.S. Postal Service or tracked through the process. This shipment arrived on an unscheduled truck after a suspicious man had been in the secure area inquiring about ballots. She confirmed her local processing facility does not directly process or receive international mail or military ballots. Those are processed or transferred in a separate area on the tarmac and do not come through her facility.

The Whistleblower's Seattle FedEx facility shares a tarmac area with the dock for Hanjin Global. Hanjin Global owns South Korean Air Cargo (Appendix T, pp1031). Routine FedEx policy is to keep the mail moving regardless of tracking status. Therefore, Whistleblower instructed her staff to quickly load the suspicious ballots onto the flight bound for the FedEx Memphis, Tennessee hub. The questionable ballots came through starting November 5, 2020 and continued to move through her facility on a daily basis for another week. The ballots were dropped off by unscheduled trucks and once by a private vehicle. Whistleblower reported that once mail arrives at Memphis from her facility, the cargo is then transferred to an outside private ground semi-truck carrier on the tarmac, usually Matheson Postal Services final destination to areas such as Georgia, Pennsylvania, and the Carolinas.

On November 7, 2020, an aide to an outspoken, well-known Democrat supporter (who wished to stay anonymous because his children were later threatened), gave a tip to a journalist Ryan Hartwig, that a South Korean airplane carrying illegal ballots had arrived at Sky Harbor Airport **on November 5** and had been unloaded. The plane came from Seoul, South Korea, bypassing customs on specific order from the Department of Homeland Security (Appendix T, pp 1041). Upon information and belief, all routine customs restrictions on certain planes had been lifted so COVID-related PPE could be expeditiously transported. Although this aide was reporting the tip on the 7th, he said the plane that brought the illegal ballots on November 5, 2020, was still at Sky Harbor airport and would be leaving that night for Seattle, Washington.

That night on the 7th, several individuals, including journalist Ryan Hartwig (former Project Veritas Facebook content moderator whistleblower), Tom Van Flein (congressman Gosar's chief of staff), Josh Barnett (District 7 congressional candidate), Marko Trickovic, and others, went to the airport (Appendix T, pp1037 and 1038). They recorded the plane's video, capturing the tail number and several individuals loading cargo onto the aircraft. Josh Barnett and another witness followed the men from the tarmac to their house and recorded the address. While still at the airport on the 7th, Marko Trickovic contacted Pinal County Sheriff Mark Lamb to report the suspicious plane and let him know there was video evidence. Trickovic later told Lamb that the video of the aircraft was given to Petitioner, and she had positively identified one of the men on the tarmac and ran a criminal background

check on him, which included narcotics and weapons charges (Appendix T, pp 1034). Trickovic was contacted by a man named John Shattuck and he was put in touch with Petitioner.

b. Common Affiliations of Scott Koch (Man Who Confessed to Illegal Ballot Fraud Scheme)

Sheriff Mark Lamb is a close associate of both Scott Koch and Shawn Wilson, owner of Mayhem Security Solutions, an international security company that does contract work for the Department of Defense (“DOD”) under Homeland Security (Appendix T, pp 1040). Shawn Wilson confirmed that Scott Koch is credible, does have DOD “security clearance” to access planes at the airport, and was a former Sheriff’s deputy. Shawn Wilson, Scott Koch, and Tim Foley, and Mark Lamb, work closely with the Department of Homeland Security doing reconnaissance work with cartels and child sex trafficking at the Mexican border. Wilson confirmed Koch is also a pilot and flies helicopters and planes listed in “trusts” or chartered planes as part of their border reconnaissance work.

John Shattuck told Petitioner that he is in frequent communication with Pentagon officials and acts as a liaison between the Department of Defense and the border reconnaissance group that Wilson is involved with. Wilson and Kochs associations and professional ties with law enforcement and top level government officials also confirm the reliability of Koch’s statements.

After providing video evidence of the plane and photos of the ballots taken at the FedEx facility to Mark Lamb, Wilson and Koch were told that Petitioner had “video recordings of guys on the tarmac with the plane,” had “identified at least one of the guys on the tarmac,” and had a “whistleblower at FedEx with photos and security camera evidence.”

c. KOCH CONFESSION

Scott Koch then sought out Petitioner to meet with her in person to discuss her “security.” He mentioned he was aware of her involvement and the plane. Petitioner agreed to meet with Koch. An associate of both Trickovic and Koch, told Petitioner that Koch was a member of the Koch family and worked for the Department of Defense (“DOD”).

When arranging to meet with Petitioner, Koch erroneously believed Petitioner had video evidence implicating him and his associates in their criminal activity at the plane. He thought Petitioner's Whistleblower worked at the Phoenix FedEx and either witnessed or had surveillance video of him and his guys taking the illegal ballots to the Phoenix FedEx, as well as to the Maricopa County Election Center.

Upon meeting with Koch, operating on the belief Petitioner already knew about his criminal involvement in the election rigging, he confessed that he and “his guys” provided security services as illegal ballots were removed from a plane, which were sent to Nevada via FedEx and U.S.P.S., while the remainder were then transported to the Maricopa County ballot tabulation

center and inserted into the election. (Petitioner audio recorded this conversation on her phone. See partial transcript Appendix Q. Full recording is available).

**Note several eyewitnesses present at the Maricopa County Election center positively identified Scott Koch and Shawn Wilson at the ballot tabulation center “behind the secure line” while ballots were being received and counted (Appendix R).

Petitioner's home security system captured Koch at her home and the metadata from her audio recording corroborates it was Koch who confessed during the lengthy conversation in which he outlined details of the fraud scheme along with others' involvement and motive. He explained the illegal ballots rigged the election in Biden's favor.

Koch's recorded statement regarding his direct involvement is admissible to prove the truth of the matter stated under hearsay exception Fed. R. Civ. P. 804(3). Subjecting oneself to criminal liability qualifies as a statement against interest for purposes of *Fed. R. Civ. P. 804(3)*. *Ariz. R. Evid. 804(b)(3)*;

“Statement Against Interest. A statement that:

(A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to

invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability." Fed. R. Civ. P. 804(3)

During Petitioner's conversation with Koch on November 16, 2020, Koch asserted the plane, from which he and his team unloaded the illegal ballots was in the care of the Arizona National Guard. He indicated the plane was still at the Phoenix Sky Harbor National Guard and would be departing that Thursday, November 19th.

At all relevant times, Respondent Governor Doug Ducey controlled the Arizona National Guard planes. Koch asserted the South Korean Cargo plane was owned by the United Arab Emirates. A private investigator confirmed that the UAE Express had leased the South Korean Air cargo plane. Koch claimed that 419,000 Koch asserted illegal ballots were delivered nationwide via multiple planes.

During Petitioner's recorded conversation time stamped on November 16, 2020, Koch said that nobody can stop the election rigging because "those [elite] families with power and money controlling this are capable of ruining Trump financially." He stated that Trump's loans with Deutsche Bank would be called due if he did not comply. On January 9, 2021, Deutsche Bank announced it was severing ties with Trump due to his involvement in the January 6, 2021, events at the Capitol.

Koch alleged with the power of the government faction behind it, using its justification of the need for "national security," there would be an intelligence-gathering effort to uncover who has direct knowledge of the fraud in order to neutralize that information.

Koch said if Americans knew their votes didn't count, and those elites with money and power controlled elections on both sides of the aisle, it would result in mass public outrage and instability. He emphasized that damage control was necessary for national security. Koch said after gathering intelligence, those powers will modify and neutralize the records so that "national security" could be maintained.

Koch stated that those in power will continue to get away with election rigging because they have power and resources to alter government records and ensure they will not get caught. Koch said the Petitioner gathered evidence that "could not be changed," and that is dangerous.

Koch threatened if Petitioner did not stop and look the other way, she would be killed in a car accident or staged suicide, arrested on false charges, or discredited in some other way. Koch said the "businessmen" directing him and others were very powerful and capable of carrying out the threats. Koch warned he worked for the DOD on behalf of a "faction" of the U.S. government who believed they were doing what was right in running illegal ballots and they wanted Trump out because he did not "play fair."

Koch said, "to get away with a fraud; one has to expose a fraud." He said those in power will admit to and present evidence of fraud in a controlled way so that everyone will agree there was fraud, but it was just not enough to overturn the election. Koch asserted the Courts will support the narrative as this will be part of the plan to calm

the people. Koch asserted on audio recording that the U.S. Supreme Court is “not an unbiased third party” and will “go along with it [the plan].”

All attempts to report this information to authorities by Petitioner and others involved has been thwarted. Local law enforcement refused to investigate, asserting they do not investigate election fraud. Multiple calls to the F.B.I. resulted in one return call with no message left. Petitioner filed a complaint with the Arizona Attorney General’s election integrity unit in early November 2020, and there was no follow-up or investigation (Appendix T, pp1036).

After hitting one roadblock after another with the executive branch, Petitioner approached multiple Arizona Senators and Representatives in both November and December 2020. Several Legislators at that time including House Speaker Rusty Bowers and Senator Warren Petersen, told Petitioner that evidence of “election fraud” was not for the Legislature to review because it did not have the means to hold evidentiary hearings. Senator Petersen told Petitioner that authority to investigate things such as this, had been delegated to the Courts through the Arizona election contest statutes.

Petitioner's efforts to contact authorities did catch the attention of Senior National Security Analyst, Jim Penrose. Penrose reportedly has seventeen years of meritorious service with the National Security Administration (“NSA”) and served in key leadership roles as Chief of the NSA Operational Discovery Center, Technical

Director for Counterterrorism, and Mission Manager for the NSA/CSS Threat Operations Center.

Penrose expressed concern for Petitioner's safety and provided operational management for a security team of approximately thirteen top military and law enforcement professionals who came to Petitioner's home for seven weeks, providing round the clock security (captured on Petitioner's home security system and archived).

Early on, Petitioner was offered up to \$100,000 if she would provide her audio recordings of Koch and cooperate. Petitioner declined the financial offer asserting she did not want any monetary exchange to affect her credibility in a future Court case. She was also offered positions on boards to help advance her legal career, in exchange for her cooperation.

At the end of December, Petitioner's iPhone (used to record Koch's confession and other involved parties), was forcibly taken by a member of her security detail. On January 11, 2020, Petitioner was sent photographic evidence that her phone identified by a picture of her and her grandson as the screen saver was at the Willard Hotel in Washington D.C. in a room where Penrose and other high profile individuals were present. Petitioner no longer felt safe with the security detail and relocated to a more secure setting.

Petitioners evidence of the widespread election fraud contained in this petition, including audio recordings, were backed up and securely transferred prior to the theft of her phone.

**d. VOTER INTEGRITY PROJECT AND VOTER RECORD
IRREGULARITIES**

Petitioner's case is supported by a large bipartisan grassroots effort of many hardworking citizens who set out to assess whether or not there was voter fraud.

The data analyzed in the effort was obtained from Arizona Secretary of State, Pima County and Maricopa County Recorder's voter rolls, as well as through extensive neighborhood canvassing efforts.

To date, these volunteers visited over 3000 addresses and acquired over 1,500 affidavits documenting voter irregularities. (52% necessitated an affidavit). These voting irregularities include, but are not limited to:

- Unknown voters registered and voting from the address canvassed
- From one extra ballot to as many as 200 ballots received at one address canvassed,
- Registered address is an empty lot, undeveloped land, non-existent address, commercial property, church, high school, government building, etc.,

- Voter was unregistered and without their knowledge did not vote but a vote was cast in their name,
- Was registered and voted but their vote was not counted,
- Multiple poll workers who experienced/witnessed irregularities and attempted to report to authorities but received no response.

Comparison and analysis of the canvassing data and the above-mentioned voter rolls prove that nonexistent and ineligible voters cast votes in the 2020 election and that they were counted by the Maricopa County Recorder. (Appendix P). This information was cross referenced and verified by data from Respondents Secretary of State's database.

The Respondent's own data, provided by the Maricopa County Recorder's Office, post-election (dated 12/4/20, 1/11/21, 2/5/21) prove that "modifications" were being made to voter records. These alterations are further corroborated by evidence found in the extensive canvassing effort.

Voters were illegally registered after the Ninth Circuit deadline of October 15, 2020, and Respondents records show those votes were cast and counted (Appendix V). When comparing snapshots of Respondents voter databases, several individual records show backdated voter registrations with modification dates remaining the same. In addition, several voters with same names and birth years, at the same address, having two different voter id numbers and both recorded as voted. Evidence

of duplicate profiles of the same voter registered at different addresses, also show the having voted more than once. See Appendix P, Summary of Findings updated Mar 2, 2021, pp841)

Thus, Petitioner asserts the backdating and modification of voter registrations, duplicate registrations and twice counted votes, as well as votes from vacant lots, along with the illegal ballots inserted into the election as asserted by Koch, demonstrate Respondents intent to arbitrarily and without just cause, deny Petitioner, *a real person who just wanted to vote*, Equal Protection of the law under the Fourteenth Amendment of the U.S. Constitution.

F. COMPLAINT VERIFICATION AFFIDAVIT

Under the doctrine of “plain error,” the Supreme Court may reverse where: (1) there was an error; (2) the error was obvious; (3) the error affected substantial rights; and, (4) the error seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *Claiborne v. Blauser*, 934 F.3d 885, 893 (9th Cir. 2019). *Baldwin v. Fannon*, 810 F. App'x 578, 581 (9th Cir. 2020), *Bird v. Glacier Elec. Coop., Inc.*, 255 F.3d 1136, 1148 (9th Cir. 2001).

Petitioner asserts she submitted a timely complaint to the Pinal County Superior Court filing counter on December 7, 2020, along with an affidavit on a separate document verifying the facts contained in the complaint were true, and an election

challenge summons. The language of these documents presented to the filing clerk mirrored the Arizona statute, but were not documents the clerk was familiar with. According to the filing counter supervisor, Art Lopez, election contest cases were new to that Court and there was a "learning curve." When Petitioner presented the documents at the counter on December 7, 2020 at 4:49pm, the clerk accepted the complaint but mistakenly rejected her verification and summons which mirrored A.R.S. 16-672, and said it needed to be on court forms and the clerk gave Petitioner a Court summons form. The following morning on December 8, 2020 and before Respondents were served, Petitioner filed an "amended complaint" with the complaint verification embedded at the end of her complaint and filed a new summons that looked more like a legal summons but still mirrored the statute. (see Appendix H).

Within a day or so, the clerk and her supervisor realized the error of mistakenly rejecting Petitioner's filings at the counter and the supervisor Art Lopez reached out to Petitioner to let her know that the clerk should not have rejected her documents on the 7th. He said if she had those documents, she could bring them back and they would be included as filed on the 7th. Petitioner told Lopez that she might have shredded those originals because she filed an amended complaint the next day embedding the verification and writing a more official looking summons. When scanning Petitioner's complaint filed on the 7th, the clerk left the record "incompletely scanned," only scanning half of the complaint into the record. Lopez told Petitioner this was done so that they could include those originals if she brought

them back. (Appendix B). Petitioner was unable to locate those originals and likely discarded them after they were rejected by the clerk and she filed her amended complaint.

Here, Petitioner asserts this admitted error by the filing clerk and her supervisor is undisputed and should fall under the plain error doctrine for appellate review. The error of rejecting Petitioner's verification affidavit and summons was plain enough that it did not need to be brought to the attention of the clerk or her supervisor. The error was discovered on the Court staff's own volition and it was the supervisor who contacted Petitioner. Due to no fault of her own, Petitioner could not return the original document because it had been discarded and Petitioner believed that the filing of her amended complaint the following day had ensured her filing met the requirement. The clerk's error substantially affected Petitioner's rights because her case was dismissed at the Arizona Supreme Court as a direct result of the error (Petitioner's affidavit of verification not being included in the filing on the 7th). It should be noted that the day before the Arizona Supreme Court entered its final decision the Pinal County Superior Court re-scanned a "corrected" complaint filed on the 7th (Appendix E).

Thus, Petitioner has presented evidence satisfying the elements showing the plain error of the clerk, admitting to her mistake, resulting in the dismissal of Petitioner's case on the ground that this verification was not timely filed when it was. Dismissal of her case seriously affects Petitioner's fundamental right to redress and hold her

Government accountable and undermines the fairness, integrity, and public reputation of judicial proceedings.

Thus, in the interest of preserving integrity of the judicial process, especially since this case is of widespread public interest, the Court should grant her petition and correct such plain error already admitted by the Court clerk and her supervisor.

G. REQUESTED RELIEF

“To obtain the injunctive relief [Petitioner] must demonstrate; (1) actual success on the merits; (2) that they have suffered an irreparable injury; (3) there exists no adequate remedy at law; (4) the balance of the hardships justifies a remedy in equity; and (5) that the public interest would not be disserved by a permanent injunction.” *Independent Training & Apprenticeship Program v. California Dept of Indus. Relations*, 730 F.3d 1024, 1032 (9th Cir. 2013) (citing *eBay Inc. v. MerchExch., LLC*, 547 U.S. 388, 391 (2006)).

Here, even the Arizona Supreme Court agreed Petitioners case was not dismissed on merit. Her underlying case is strong and has substantial national significance. Because of the Respondents actions, she has suffered direct harm and irreparable injury by the disenfranchisement of her vote.

Petitioner suffered irreparable injury when her election contest was dismissed and she was unable to redress her grievances prior to the certification of the election. There is

no alternative remedy available to the Petitioner to hold her Government accountable to transparent, free, and fair elections other than by the granting of injunctive relief.

The balance of hardship favors Petitioner because any disenfranchisement of one's vote is of paramount public importance and should not be brushed aside. Every legal vote matters.

Petitioner seeks to enjoin Respondents compliance with its HAVA grant agreement ensuring no voters are removed the voting rolls in error, especially those similarly situated like Petitioner with address protection.

Petitioner also seeks an injunction that for future elections Respondents safeguard compliance with the Arizona Constitution requiring that **only legal votes be counted**.

Once Respondents knew Petitioner planned to file this Petition, Respondents postured to conduct "audits." It is believed by many on both sides of the aisle, that this after the fact "audit" effort is being done solely for what Koch described as public appeasement and for legal posturing related to this case, so they can argue there is no need for the Court to allow Petitioner to conduct her own review or access the paper ballots under A.R.S. 16-677.

Respondents refused to conduct an audit during the HAVA 90-day "safe harbor period" after the election in which the hardware and software of the voting machines legally could not be tampered with and any audits must comply with National Institute of

Standards and Technology (“N.I.S.T.”) and Cybersecurity and Infrastructure Security Agency (“C.I.S.A.”) standards.

Instead, on February 2, 2021, the first day following the expiration of the “safe harbor period,” Respondents conducted an audit in which they manipulated the software and hardware in ways that did not comply with these standards. When Petitioner observed auditors taking apart livestream cameras at the election center, the auditors removed hardware from the machines and ran software overnight when they left the election center. Petitioner engaged a team of individuals with experience and training in Information Technology to record the livestream footage of the audit and analyze the legitimacy of the audit. These individuals provided affidavits and a report. (Appendix S pp1000-1028).

Given the allegations made by Koch, that those with “money and power” will use government resources to gather intelligence and alter evidence in support of the widespread election rigging, along with witness evidence contained in appendix P, of Respondents “modifying” over 10,800 voter records between the November 4, 2020 election and the filing of this petition, Petitioners respectfully ask that the Court consider the Respondents audit data and efforts are not trusted by Petitioner or the citizens supporting this case. Petitioner is not an elected official with something to gain or prove regarding election fraud. She is just an average citizen seeking the truth so that she can fully engage in her civic responsibilities.

Thus, Petitioner also requests the Court remand for a citizen led review of the ballots in compliance with A.R.S. 16-677, followed by an evidentiary hearing.

CONCLUSION

The fundamental underpinnings of our democracy are at stake when even one vote is disenfranchised. According to Koch's confession, there were 417,000 illegal ballots inserted into the election in Arizona and other States that were counted. The right to cast a legitimate vote is sacred. Many Americans have fought and died to preserve this right. In a Country based on principles of freedom and liberty, the vital importance of free and fair elections cannot be overstated.

Petitioner and the many bipartisan average Americans who stand behind her, are asking for just one thing; transparent, honest, free and fair elections, where individual rights are honored and respected.

Thus, Petitioner respectfully requests this Court grant her Writ of Certiorari.

I, Staci Burk, under penalty of perjury hereby declare the information contained in the above petition is true and correct to the best of my knowledge.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Staci Burk". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

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In proprium persona

March 3, 2021