

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.

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

RESPONDENTS' UNOPPOSED MOTION FOR DIVIDED ARGUMENT

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Pursuant to this Court’s Rules 21 and 28.4, Respondents Democratic National Committee, the DSCC, and the Arizona Democratic Party (collectively, “DNC Respondents”) and Respondent Katie Hobbs, in her official capacity as Arizona Secretary of State, jointly move for divided argument. The DNC Respondents and Respondent Hobbs respectfully request that the Court divide their argument time evenly so that they may have time to present their distinct perspectives on the questions presented and adequately represent their distinct interests in this case. Petitioners, who have also moved for divided argument, have informed Respondents’ counsel that they do not oppose this motion.

1. In its decision below, the en banc Ninth Circuit held that Arizona’s policy of refusing to count a ballot that is cast outside of a voter’s assigned precinct (the “out-of-precinct” or “OOP” Policy) resulted in a denial or abridgment of the right to vote on account of race or language-minority status in violation of Section 2 of the Voting Rights Act. The court also held that H.B. 2023, an Arizona statute that criminalizes the non-fraudulent collection of another person’s early ballot, violates Section 2 and the Fifteenth Amendment. The questions presented in this case are whether the court correctly applied the Voting Rights Act’s plain text to find that the OOP Policy violates Section 2 and whether the court correctly found that H.B. 2023 violates Section 2 and the Fifteenth Amendment.

2. Respondents have been represented by separate counsel throughout this litigation and continue to be separately represented. DNC Respondents originally filed suit against Petitioner Mark Brnovich in his official capacity as Arizona Attorney General

and Respondent Hobbs' predecessor in the office of Arizona Secretary of State. Respondent Hobbs assumed the office of Secretary of State in January 2019 and inherited this litigation from her predecessor. Notice of Substitution of Party, *DNC v. Hobbs*, 948 F.3d 989 (9th Cir. 2020) (No. 18-15845), ECF No. 82. Respondent Hobbs has never defended H.B. 2023 in court. Following the en banc court's ruling below, she consulted with county officials about the OOP Policy and determined that there was no state interest in maintaining the Policy she would not seek further review of the court's decision. Petitioner Brnovich nonetheless appealed against Respondent Hobbs' wishes.

3. DNC Respondents and Respondent Hobbs have distinct perspectives on the questions presented and represent distinct interests in this case. Although all Respondents support affirmance on both questions presented, they offer distinct arguments in their briefs and are differently positioned to speak to the issues in this case. As plaintiffs below, DNC Respondents are well-positioned to speak to the record they developed in the district court regarding the discriminatory impacts that the OOP Policy and H.B. 2023 have on minority voters in the State. As Arizona's chief elections officer, Respondent Hobbs is the state official responsible for promulgating rules governing the administration of elections in Arizona, including policies like the OOP Policy that govern the counting of ballots in Arizona. Respondent Hobbs is therefore particularly well-suited to speak to the State's interests in election administration and the lack of justification for both the OOP Policy and H.B. 2023. Respondent Hobbs has also made an additional argument that Petitioners lack standing to appeal from the en banc court's ruling regarding the OOP Policy because State law prohibits the Attorney General from

appealing from an adverse ruling against her wishes on the OOP Policy, which is entrusted to her discretion. She therefore has unique interests in preserving her right under Arizona law to determine whether to appeal, as well as her right under Arizona law to determine whether to continue the OOP Policy.

4. The Court has previously granted divided argument where the Arizona Secretary of State and private parties appeared on the same side in a voting rights case. *Harris v. Ariz. Indep. Redistricting Comm'n*, 577 U.S. 1001 (2015) (mem.). More generally, the Court has routinely granted motions for divided argument when private parties and state parties appear on the same side. *See, e.g., Trump v. New York*, No. 20-366, __ S. Ct. __, 2020 WL 6811251 (U.S. Nov. 20, 2020) (mem.) (State of New York and private appellees); *Fulton v. City of Philadelphia*, 141 S. Ct. 230 (2020) (mem.) (City of Philadelphia and private respondent); *Dep't of Com. v. New York*, 139 S. Ct. 1543 (2019) (mem.) (government respondents and private respondents); *Am. Legion v. Am. Humanist Ass'n*, 139 S. Ct. 951 (2019) (mem.) (Maryland-National Capital Park and Planning Commission and private petitioners); *Masterpiece Cakeshop, Ltd. v. Colo. Civ. Rights Comm'n*, 138 S. Ct. 466 (2017) (mem.) (State of Colorado and private respondents). Respondents submit that divided argument is similarly appropriate here.

5. For the foregoing reasons, DNC Respondents and Respondent Hobbs jointly request that the Court divide oral argument time equally between them. Recognizing the distinct interests of state officials and private parties in this case, Petitioners have similarly moved for divided argument. Pet'rs Mot. For Divided Arg.,

Nos. 19-1257, 19-1258 (U.S. Jan. 6, 2021). Respondents do not oppose Petitioners' motion, and they respectfully submit that the Court should grant this Motion for similar reasons.

Respectfully submitted,

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