

ARIZONA SUPREME COURT

**ARIZONA REPUBLICAN PARTY,**  
a recognized political party; and  
**YVONNE CAHILL,** an officer and  
member of the Arizona Republican  
Party and Arizona voter and  
taxpayer.

**Petitioners,**

v.

**KATIE HOBBS,** in her official  
capacity as Arizona Secretary of  
State; and **STATE OF ARIZONA,** a  
body politic,

**Respondents.**

No. CV-22-0048-SA

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***AMICUS CURIAE* BRIEF OF KELLY TOWNSEND SUPPORTING  
APPLICATION FOR ISSUANCE OF WRIT UNDER EXERCISE OF  
ORIGINAL JURISDICTION**

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Senator Kelly Townsend, by and through counsel undersigned, hereby files this Amicus Brief in support of granting the Petition for Review.

Senator Kelly Townsend (“Amicus”) is Chair of the Arizona State Senate Committee on Government, which is heavily involved in writing election policy. Amicus therefore has a unique perspective and interest in this matter and can provide information, perspective, and argument beyond what the parties or their counsel can provide.

Amicus urges the Court to accept jurisdiction to determine the constitutional limitations on methods of voting because this will assist the legislature in writing policy and constitutional election laws. In particular, Petitioners Arizona Republican Party and Yvonne Cahill (“**Petitioners**”) make a “cert-worthy” argument that the decision of the Pennsylvania Court of Appeals to invalidate Pennsylvania’s own statutory mail-in voting scheme could be applied to Arizona. *See McLinko v. Dep’t of State*, 244 M.D. 2021, 2022 WL 257659 (Pa. Commw. Ct. Jan. 28, 2022). Amicus urges the Court to resolve the “cloud” of uncertainty this creates over Arizona’s own mail-in voting scheme. For the legislature to legislate effectively, it must know whether laws are legal and whether the current election laws need to be changed to make them legal.

Mail-in voting lacks the extensive legal safeguards built in for voting at polling places — e.g., there are several statutes governing in-person voting, including extensive restrictions on who can be in or near the polling place, and what they can do or say. But there is only one fairly unrestrictive statute that governs mail-in voting. On the other hand, approximately 90% of Arizonans have historically

voted by mail, clearly making it a subject ripe for future legislation. While there are numerous safeguards to ensure the integrity of in-person voting, not the least of which is the presence of observers and other legally authorized persons, the safeguards on mail-in voting are slight, essentially just a single verification of the subject envelope signature that is performed by a non-expert with minimal training or effort. *See* A.R.S. § 16-550.

Moreover, this Court determining the constitutionality of Arizona’s mail-in voting scheme is essential for future legislation, which could incorporate the technology—such as voting via a web portal or even via email. The Arizona Secretary of State has already incorporated E-Qual, which allows votes to “show [their] support for a candidate from the comfort of [their] home or anywhere internet access is available.” *See Welcome to E-Qual*, <https://apps.azsos.gov/equal/>. In authorizing registered voters sign online petitions, the concept of allowing registered voters to cast their votes “from the comforts of their comfort of [their] home or anywhere internet access is available[,]” is not far-fetched. However, if this Court determines that Arizona’s statutory scheme for mail-in voting is illegal because it lacks the required safeguards, as described in the Petition for Review, or for any other reason, then logically, any proposed or contemplated legislature involving the use of an online portal to cast votes will have the same fate. But as long as this issue remains unresolved, there is no telling what future legislation may be enacted.

And of course, if this Court finds that the statutory scheme for mail-in voting is unconstitutional, then it is unconstitutional – no matter how accustomed to it

people may have become. History is replete with examples of laws that achieved “customary” status, only to be rightly stricken as unconstitutional.

With respect to the issues raised regarding the Election Procedures Manual (“EPM”): Amicus notes that while A.R.S. § 41-194.01 provides a mechanism by which members of the legislature can obtain from this Court a determination on the constitutionality of the rules of a municipal agency, there is no equivalent mechanism for the rules of a state agency like the EPM. A Petition for Review such as the one before the Court is the only reasonable means of obtaining such determinations. This also weighs in favor of granting review.

### **CONCLUSION**

Amicus Curiae Kelly Townsend respectfully requests that this Court grant the Petition for Review and grant the relief requested therein.

**RESPECTFULLY SUBMITTED** the 15th day of March 2022.

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