

No. 20-15719

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ARIZONANS FOR FAIR ELECTIONS, et al.,

Plaintiffs-Appellants,

v.

KATIE HOBBS, Arizona Secretary of State; et al.

Defendants-Appellees,

STATE OF ARIZONA,

Intervenor-Defendant-Appellee

On Appeal from the United States District Court for the District of
Arizona

No. 2:20-cv-00658-DWL

RESPONSE OF ARIZONA SECRETARY OF STATE TO AMICUS
BRIEF BY ARIZONA REPUBLICAN PARTY

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The Arizona Secretary of State files this Response for the limited purpose of correcting a misstatement of fact made by the Arizona Republican Party and repeated by the Arizona Attorney General to this Court. As the Secretary explained to the District Court, a registered voter who wishes to sign a petition electronically using E-Qual must first authenticate the voter's identity by entering the voter's name, full date of birth, and either the voter's (i) Arizona driver's license number, or (ii) voter identification number and last four digits of the voter's Social Security number. Resp. of Ariz. Sec'y of State Katie Hobbs to Mot. For TRO and Prelim. Inj. at 1, No. CV-20-00658-PHX-DWL (D. Ariz. Apr. 10, 2020, ECF No. 78).

In its Amicus Brief, the Arizona Republican Party, without citation to any source or authority, states that a voter's name, date of birth, and driver's license number are each public records that "can be obtained by literally anybody" from the Arizona Department of Transportation's Motor Vehicle Division. Amicus Brief (Doc. 28) at 2. The Amicus Brief goes on to assert that "[a]nyone can easily acquire a list of Arizona voter names and corresponding [driver's license] numbers and [dates of birth] from the DMV and enter that information to sign petitions." *Id.* That is

not true, yet the Arizona Attorney General endorses it as fact. *See* Att’y Gen. Response (Doc. 25) at 27 (presenting the Arizona Republican Party’s assertion before the District Court “that *all* of the credentials needed to access the E-Qual system are *public records* obtainable by literally anyone” as undisputed fact).

The Attorney General—who is the State’s chief law enforcement officer and who, in fact, represents the Arizona Department of Transportation—should know better. The release and use of personally identifying information—including a person’s name, full date of birth, and driver’s license number—from the Arizona Department of Transportation is strictly circumscribed under the Driver’s Privacy Protection Act and Arizona law. *See* A.R.S. §§ 28-440–458; 18 U.S.C. §§ 2721–2725. Indeed, the Department may release such information only under a discrete set of limited circumstances, and Social Security numbers may be disclosed in fewer circumstances still. *See* A.R.S. § 28-455(A)(2) (providing that absent express consent, highly restricted personal information, including Social Security numbers, can be disclosed only to government agencies to carry out their public functions; for use by licensed attorneys or private investigators in connection with

civil, criminal, administrative, or arbitral proceedings; to liability insurers for claims investigation activities, antifraud activities, rating, or underwriting; and by employers or their insurers to obtain or verify information about commercial driver's licenses required under federal law); 18 U.S.C. § 2721(a)(2) (same). The only circumstance in which a requestor without a specifically defined professional need for the information may obtain an individual's record is by demonstrating the written consent of the individual. A.R.S. § 28-455(C)(13).

A person requesting a driver record from the Department must “present personal identification and state the reason for making the request.” A.R.S. § 28-449(B). The Department must verify the person's name and address and maintain a record of the request. A.R.S. § 28-449(B), (D). The requestor must certify, under penalty of perjury, “that any records or information obtained pursuant to [the] request will be used solely for the uses indicated on [the request] form, and for no other use.” Ariz. Dep't of Transp. Motor Vehicle Div., *Motor Vehicle Record Request*, <https://apps.azdot.gov/files/mvd/mvd-forms-lib/46-4416.pdf> (last visited May 1, 2020).

The requestor must also ask for each record individually; records may not be disclosed in bulk except with consent or under specifically defined and limited circumstances. A.R.S. § 28-455(E). There is no provision in either Arizona or federal law allowing the bulk release of highly restricted personal information, including social security numbers. And a person who obtains or discloses personal information from a motor vehicle record for any use not expressly permitted by law, or who obtains such information under false pretenses, is subject to civil and criminal liability. A.R.S. § 28-457; 18 U.S.C. § 2722–2724.

Access to personally identifying information from voter records is likewise strictly limited, and improper access or use is punishable as a felony. *See* A.R.S. § 16-168(F) (providing that a voter’s full date of birth, full or partial social security number, and driver’s license number, among other personal data, must not be made accessible except to discretely defined groups of professionals). And, perhaps needless to say, it is a crime fraudulently to sign a candidate nomination or initiative petition—whether on paper or through E-Qual. *See* A.R.S. § 16-1020 (“A person knowingly signing any name other than his own to a nomination petition [except on request by a person with a disability]. . . or who is not at the

time of signing a qualified elector entitled to vote at the election initiated by the petition, is guilty of a class 1 misdemeanor”); *id.* § 19-119.01(C) (providing that “a person who engages or participates in a pattern of petition signature fraud is guilty of a class 4 felony”). If the Attorney General is truly concerned about or aware of persons committing widespread fraud through E-Qual, he, as Arizona’s chief law enforcement officer, has the authority to investigate and bring those perpetrators to justice. There has been no such action by the Attorney General in his six years in office, yet he raises unsubstantiated specters of fraud as an excuse for limiting access to constitutional rights in the midst of a global pandemic.

For these reasons, the Arizona Republican Party and Attorney General are wrong to argue that E-Qual is susceptible to fraud based on the false assertion that a voter’s name, date of birth, driver’s license number, or social security number are each readily accessible to any member of the public. They are not.

Respectfully submitted this 1st day of May, 2020,

By: /s/ Daniel A. Arellano

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CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2020, I electronically filed the foregoing Response with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF System.

I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

By: /s/ Daniel A. Arellano