Elections going to court

cnav.news/2022/12/14/accountability/judicial/elections-court/

By Terry A. Hurlbut December 14, 2022

The courts, federal and State, are more involved than ever before in elections. This reflects directly the shattering of confidence in elections following the Elections of 2020 and 2022. *CNAV* recommended a week after Midterms that conservatives turn to the courts, as liberals did long ago. Now Kari Lake in Arizona, and Raland Brunson and his brothers in Utah, are showing American patriots across the land how it is done. Anyone, whatever outcome they favor in the elections or in these lawsuits, should thank the Framers of the Constitution. They separated the legislative, executive, and judicial powers into separate departments. Without that, confidence in justice of government, once shattered, would be as irreparable as Thomas Jefferson found it in 1776. And for many of the same reasons.

Elections in Arizona

Of all the Midterm elections that took place in November 2022, that in Arizona justly gets the most attention. Reportage on this election and its aftermath comes variously from *The Gateway Pundit*, *The Epoch Times*, and *CNAV* itself. As *CNAV* reported, Maricopa County, Arizona ran a disaster of an election. Your editor, as an Officer of Election, can neither

imagine nor accept the excuses the Maricopa County Boards of Elections and Supervisors offer for an election so bad that the only way to certify it was to adopt the unwritten Twitter Rule by which Twitter finally threw Donald J. Trump off their platform:

> What we say, goes.

That goes double for Secretary of State Katie Hobbs, who threatened members of the *Mojave* County Board of Supervisors with *arrest* if they did not certify election results. As Ron Gould, Chairman of the Mojave County Board of Supervisors, has specifically charged.

Katie Hobbs certified the elections – including her own as Governor. Immediately her opponent, Kari Lake, sued to challenge the results. On Monday afternoon, *The Gateway Pundit* summarized her demands. Chief among these are that the Court:

- Declare Kari Lake the winner in the Governor's race, per A.R.S. § 16-676, or else:
- Set the results aside (per A.R.S. § 16-676 or 42 U.S.C. § 1983) and then redo the election, "excluding all improper votes" and having a special master run it, and in any case:
- Forbid Katie Hobbs or Maricopa Recorder Steve Richer to have anything to do with new elections.

What grounds does Kari Lake have?

Lake cites the following grounds, according to *The Gateway Pundit*:

- Fifty-nine percent of voting machines in Maricopa County failed.
- Runbeck Election Services of Phoenix, Arizona, actually receives mail-in ballots from Maricopa County. A whistleblower there revealed that Runbeck received nearly 300,000 ballots with *no* chain of custody. Witnesses described appalling sloppiness in the handling of ballots at that facility. Among other things, floor supervisors let employees add family members' ballots without documentation of any kind.
- Maricopa County counted tens or hundreds of thousands of mail-in ballots with *mismatched signatures*, in violation of the law. Katie Hobbs "won" that election by 17,177 votes.
- Officials added more than 25,000 ballots to the total *after* Election Day, citing neither law nor rule to permit it.

If Lake can show either of the last three points alone, then she can throw the outcome into doubt. One can read her 70-page lawsuit at this link, courtesy of the clerk of the court.

Judge Peter Thompson held an emergency hearing on the matter yesterday. At that hearing, the judge:

- Docketed the case for December 19, and

- Gave Maricopa County until tomorrow to file a motion to dismiss.

Incredibly Katie Hobbs was a no-show at this hearing, though the judge had ordered her to appear.

The Gateway Pundit shared these tweets and threads:

> The @KariLake court schedule is:
> Motions to dismiss must be filed by Thur. Lake's response is due Sat. Replies due Sun. Oral argument on 12/19. Trial set for 12/21 and 12/22.
>
> — Christina Bobb (@christina_bobb) December 13, 2022

> Breaking in @KariLake lawsuit: Maricopa County asks judge to seal evidence of signature verification from public. Judge grants request, as he says, "errors on the side of caution." @katiehobbs @stephen_richer & @billgatesaz don't want you to see what they allowed!@RealAmVoice pic.twitter.com/SGR28OhPIN
>
> — Ben Bergquam – Real America's Voice (RAV-TV) News (@BenBergquam) December 13, 2022

> That Cardinals game must have really tuckered you out, @katiehobbs.
>
> — Kari Lake War Room (@KariLakeWarRoom) December 13, 2022

> .@katiehobbs legal team & @maricopacounty are desperately trying to get this case dismissed before the judge & all counsels can review the evidence.
>
> The judge continues to note the shear volume of the evidence that was collected.
>
> — Kari Lake War Room (@KariLakeWarRoom) December 13, 2022

> They illegally outsourced chain of custody and signature verification to a third party. Those ballots are compromised.
>
> That's why they don't want us to look at them.
>
> — Kari Lake War Room (@KariLakeWarRoom) December 13, 2022

> Did you like how her team insisted on calling her "Governor Elect?"
>
> — Kari Lake War Room (@KariLakeWarRoom) December 13, 2022

The Supreme Court elections case

While Kari Lake pursues her case in Arizona, and North Carolina House Speaker Tim Moore pursuies his "independent legislature theory" case before the U.S. Supreme Court, the Supreme Court has actually agreed to accept a *pro se* filing for its Friday morning conference next year. The case is *Brunson v. Adams* (Docket No. 22-380).

Watch Video At: https://youtu.be/D6FVCSxIiwU

The Brunson Brothers initially filed in district court, seeking to overturn the Presidential Election of 2020. The district court ruled they lacked standing. A year later (October 2022), the Tenth Circuit Court of Appeals affirmed. So Raland Brunson filed an 18-page petition for Supreme Court review, with a 71-page appendix.

Solicitor General Elizabeth Prelogar, on November 23, waived her right to respond. The Court then put the matter on the agenda for the next Friday morning conference. This conference will take place on January 6, 2023 – two years to the day after the Great Event. This timing might or might not be significant – for after all, the Court generally reserves Friday mornings for its conferences. The Court, furthermore, is in Christmas recess, with no activity on its calendar *until* January 6.

Why did the Court bother with this case?

Nevertheless, law professor Tim Canova offered some interesting reasons why the Supreme Court would bother with a *pro se* case. Technically, anyone can sue *in pro se* – that is, without asking an attorney to plead for him. But court clerks commonly judge such case filings harshly, citing every petty stylistic error as reason enough for their employers on the bench to dismiss such cases out of hand. Which they usually do.

But not this time! According to Canova, the Court almost had to take this case because it raises a national security concern. The Brunson Brothers, of course, seek to remove President Biden and Vice-President Harris from office. Furthermore they seek to remove the 291 Representatives and 94 Senators who voted to certify those results.

The Brunson Brothers have two serious, perhaps insurmountable, obstacles. First, Presidents and Vice-Presidents are subject to removal from office only by impeachment. Likewise, only each chamber of Congress may expel members from that chamber. Second, the Court already turned down one big challenge to the Presidential election. This was *Texas v. Pennsylvania*, which challenged the appointments of Presidential Electors in Pennsylvania and six other States.

About that Texas case…

Rumor – never verified – had a low-level Supreme Court employee pressing his ear to the door of the Court's conference room when the *Texas* case came to conference. (Whether anyone would have been able to hear voices through a closed door is an open question. That's even allowing that some of the Justices might have raised their voices.) According to this "source," Chief Justice John Roberts harangued his colleagues, gestured out a window, and roared that the Court risked riots on First Avenue East if they granted review in that case. Justice Clarence Thomas wistfully said, "Then that's the end of democracy, John." In the end the Court voted 7-2 to deny review. Justices Thomas and Samuel A. Alito cast the dissenting votes. The "source" further said that when the Justices filed out of the conference room, most of them, including Justice Amy Coney Barrett, were smiling.

Nearly a year and a half after summarily disposing of that case, the Court took up the case of *Dobbs v. Jackson Women's Health Organization.* We all know about the Great Leak, the final result, and the protests outside of Justices' homes. These included the homes of Justices Barrett and Brett Kavanaugh. In fact, Kavanaugh faced the more serious threat of Justicial assassination.

All of which to say that the circumstances under which the Brunson case has come to Supreme Court conference are anything but normal.

Possible reasons to consider granting review

Thus far the Brunson case is on a conference schedule, nothing more. Four Justices must vote to grant review, if review is to happen at all. So why schedule a conference – and why might four Justices grant review?

Prof. Canova points to the outside-the-home protests ever since *Dobbs*. He also suggests that Democrats, knowing they *will not* be able to legislate next year, might push laws to:

- Limit the term of service of Justices of the Supreme Court (or any federal court),

- Mandate that judges and Justices retire from hearing all cases by a certain age, and
- Enlarge the Court from, say, nine Justices to thirteen – one for each Circuit plus the District of Columbia.

Now look at the Court's current membership. A retirement age of 70 would force Justices Thomas and Alito to retire immediately. Chief Justice Roberts would have only two years and one month left. Enlarging the Court would further create four instant vacancies. Sonia Sotomayor would have to retire in 2024, but President Biden would still be in office. These changes would give Biden (or Ambassador Susan Rice) six or seven Court vacancies to fill immediately. Another Court vacancy would present itself after the second inauguration. Of the conservative contingent, only three Justices would remain.

As one could well imagine, Justices Thomas and Alito would argue forcefully to head those changes off at the pass. "Conferencing" *Brunson v. Adams* could be one way to tell the Democrats: "Don't even think about it."

From elections to Constitutional crisis?

Prof. Canova also offers reasons why Justices Alito, Barrett, Kavanaugh, Thomas, and Neil Gorsuch might want to take up *Brunson* on its merits. The lawsuit alleges, *not* that fraud definitely decided the Presidential election, but that Congress knew perfectly well that serious questions existed, not only of fraud but also of election interference by a foreign power or powers, *and did not bother to investigate*. That, says Canova, puts them in violation of their oath to

> support and defend the Constitution of the United States against all enemies, foreign and domestic…

We also see Big Tech firms being State actors, which recent Twitter Files releases now confirm. And: did Chief Justice Roberts really worry about Democratic constituencies exploding out of southeastern Washington, D.C. to riot outside the Supreme Courthouse door? Maybe he did, and maybe he didn't. But if he did, how much more might he fret about civil disorder coming from the opposite direction? Now imagine Clarence Thomas saying, "I told you so, John," or words to that effect.

What could happen?

Even Prof. Canova has not shown by what authority the Supreme Court could remove a sitting President, Vice-President, and 385 Members of Congress from office. But a finding in favor of the Brunson Brothers would be the sharpest rebuke yet to a broken civil system. Even granting review would hit like a thunderclap. Surely the Court knows this, and that they would receive a motion to submit the case *without oral argument*. But would they dare grant such a motion?

The following is a “war game,” which Prof. Canova did not play. It actually begins this week, before Congress adjourns *sine die*. The House passes the very measures Prof. Canova fears. The Senate takes them up. And enough RINOS vote *in favor* – perhaps the same ones who voted for the (Dis)Respect for Marriage Act. So they pass, and Biden signs them in a Rose Garden ceremony.

The Supreme Court, five of whose Members would be in almost mind-clouding fury, confer on January 6, 2023. Apart from other cases on their agenda, they decide to:

- Grant review in *Brunson* and schedule it for oral argument,and
- Issue a peremptory order to invalidate Congress’ new court tenure and enlargement laws as unconstitutional.

Promptly on January 9, they publish those orders on their Monday Morning Order List.

Briefing and argument

Apoplectic legal commentators scream and yell about the Court getting out of its jurisdiction. Meanwhile, the briefs come in – five hundred or more of them, from the defendants in the original lawsuit and over a hundred Friends of the Court. (And the Court *does* request a response from General Prelugar.)

The case comes to argument, maybe on March 28. Chief Justice Roberts, not wanting a disorderly public display, closes oral argument to all but parties and their attorneys. Raland Brunson need not necessarily make a total fool of himself in the argument session. No doubt one of his Friends of the Court could coach him. But he must stand before the Court and face a withering storm of scathing not-quite-reprimand from Justices Ketanji Brown Jackson, Elena Kagan, and Sotomayor, all asking in so many words, “Howwwww DARRRRRE YOUUUUUUU?” But that’s only because he must argue first. General Prelugar must argue next – and face an even worse storm from Justices Thomas, Alito, and possibly the other three Conservatives on why no investigation of possible fraud and even more probable Chinese interference. *And* what about Twitter and Facebook being State actors.

Finally, Roberts intones, “The case is submitted.” And millions of people, listening live over the Internet, gasp.

Decision – and what next?

For the next month, not a whisper comes from the Court. Then on May 1, 2023, the same source that “broke” the Great *Dobbs* Leak, breaks *another* leak! The date is doubly significant: May Day, the day socialists still observe to demonstrate against capitalism. And also the common pronunciation of the international radio distress call, *M’aidez!* Tellingly, the leak begins with “THOMAS J, delivering the Opinion of the Court,” and ends:

> The decision of the Court of Appeals for the Tenth Judicial Circuit is REVERSED, and the case is REMANDED for further consideration in light of the above. SO ORDERED.

Senator Ted Cruz (R-Texas) gloats, “I told you so!” Senator Mitch McConnell (RINO-Ky.) tries to hold a press conference, only to have his audience cry “BOO!” on him. He shuffles off the stage in shame. What sort of display happens on the House side, depends entirely on the bid by Rep. Andy Biggs (R-Ariz.) to be Speaker instead of Rep. Kevin McCarthy (D-Calif.).

Sadly, the game must end here, because the outcome is unpredictable. To be sure, not all the defendants in *Brunson* will still be in office. Many retired or lost reelection at Midterms. And the Arizona Senate delegation might change. Still, the outcome the Brunsons desire, depends on:

- Many mass resignations in the House and Senate,
- A key change in the Speakership (with the reminder that the Speaker need not be a Member), and
- Impeachment, then a Senate trial.