



Arizona State Legislature

1700 West Washington

Phoenix, Arizona 85007

August 29, 2025

The Honorable Adrian Fontes
Arizona Secretary of State
1700 West Washington Street, Seventh Floor
Phoenix, Arizona 85007

Re: Public Comments on the Draft 2025 Elections Procedures Manual

Dear Secretary Fontes:

Thank you for releasing a draft of the 2025 Elections Procedures Manual (“EPM”) for public comment. While it is unfortunate that it necessitated a court order to secure this transparency,¹ we are pleased that Arizonans have been afforded an opportunity to review and voice their opinions on the proposed regulations that will structure their elections.

As you know, recent editions of the EPM promulgated by you and then-Secretary Hobbs have been marred by illegal edicts that courts have found exceeded the Secretary’s authority,² violated controlling statutes,³ threatened to disenfranchise entire counties,⁴ and infringed citizens’ First Amendment rights.⁵ Given this troubled history of regulatory abuse and overreach, the draft 2025

¹ See *Republican Nat’l Comm. v. Fontes*, 566 P.3d 984 (App. 2025).

² See *McKenna v. Soto*, 250 Ariz. 469 (2021) (unauthorized provisions concerning candidate nomination petition signatures).

³ See *Leibsohn v. Hobbs*, 254 Ariz. 1 (2022) (unlawfully excusing petition circulators from certain registration requirements); *Petersen v. Fontes*, No. CV2024-001942 (Maricopa County Superior Court) (invalidating several EPM provisions as inconsistent with statutes governing voter list maintenance, circulator registrations, and county canvasses); *Ariz. All. for Retired Ams., Inc. v. Crosby*, 256 Ariz. 328 (App. 2023) (invalidating provisions relating to hand count audits)

⁴ *Petersen v. Fontes*, No. CV2024-001942 (invalidating EPM provision that purported to authorize the exclusion of counties from the statewide canvass under some circumstances).

⁵ See *American Encore v. Fontes*, 2024 WL 4333202 (D. Ariz. Sept. 27, 2024) (invalidating EPM provision that purported to dictate speech codes in voting locations, and commenting that “one would hope the last people responsible for disenfranchising voters and suppressing speech would be the very election officials tasked with ensuring fair and accurate elections”).

EPM warrants careful scrutiny. While we appreciate that the draft 2025 EPM has heeded recent court orders in many respects, several provisions continue to directly contravene Arizona law, and numerous others require clarification to conform fully to the underlying statutes.

Specifically, we are concerned that the following five provisions are palpably inconsistent with a superseding statute:

- **Ch. 1, § II(A) [p. 15] – Non-Citizen Voter Registrations:** The draft EPM states that when a database check yields affirmative evidence that an applicant is not a United States citizen, the county recorder “should follow the procedures in” Section II(A)(3) or Section II(A)(6)(a)(ii), which purport to permit the applicant to cure the defective registration as late as 7:00 p.m. on Election Day. But the cure period contemplated by A.R.S. § 16-134(B) applies *only* when a mandated item of information on a registration is “incomplete or illegible.” It does not afford this accommodation when the processing of an application reveals actual indicia of non-citizenship. In those circumstances, the county recorder must summarily reject the application, send a letter to the applicant notifying him or her of its disposition, and refer the facially illegal application to the Attorney General and County Attorney for investigation. Any subsequent compliant registration application by that individual must be submitted no later than the 29th day preceding the election in which the applicant wishes to vote. *See* A.R.S. §§ 16-121.01(C), (E), 16-120.
- **Ch. 1, § II(A)(2) [pp. 7-8] – Failure to Provide Proof of Citizenship:** The draft EPM states that if an applicant using the State Form to register does not furnish documentary proof of citizenship (“DPOC”), the county recorder must attempt to “acquire[] DPOC on the registrant’s behalf, including from AZMVD records or the statewide voter registration database.” This provision collides directly with A.R.S. § 16-121.01(C), which mandates categorically that a county recorder must “reject” any State Form submission that lacks DPOC. As you know, the U.S. Supreme Court has stayed lower court injunctions against A.R.S. § 16-121.01(C)’s implementation, thereby signaling its agreement that the statute is valid and enforceable. *See Republican Nat’l Comm. v. Mi Familia Vota*, 145 S. Ct. 108 (2024).
- **Ch. 1, § IV(C) [p. 26] – Failure to Provide ID Number:** Contrary to the draft EPM’s proclamation that “[i]f the registrant does not list an AZDL/ID# or SSN4 on the State Form, the registrant is nonetheless permitted to register to vote,” Arizona law excuses the omission of this identifying information if, and only if, the registrant provides an “affirmation” that he does not possess any of those identifiers. *See* A.R.S. § 16-121.01(A). To the extent the EPM purports to excuse a State Form registrant from providing either one of the prescribed identifiers *or* an express affirmation, it is inconsistent with A.R.S. § 16-121.01(A).
- **Ch. 2, § V(B) [p. 86] – Early Ballot Challenges:** According to the draft EPM, a voter’s failure to provide DPOC is an “invalid ground[]” for challenging that voter’s early ballot. The Legislature has decided otherwise. Representatives of political parties observing the early ballot board’s activities may challenge an early ballot “on any grounds set forth in § 16-591.” A.R.S. § 16-552(D). Section 16-591, in turn, authorizes challenges on the

grounds that the purported voter has “not qualified under § 16-121.01,” which prescribes the attributes a valid voter registration. Among these prerequisites is the provision of DPOC (at least if the applicant is using the State Form or wishes to register to vote in non-federal elections). *See* A.R.S. § 16-121.01(C) (except for registrations submitted on the Federal Form, “any application for registration shall be accompanied by satisfactory evidence of citizenship”); *see also id.* § 16-101(A)(1) (providing that the provision of “satisfactory evidence of citizenship” is a condition precedent to qualified elector status). A party representative accordingly may challenge an early ballot on the basis that the voter did not provide documentary proof of citizenship and is attempting to vote in non-federal races.⁶

- **Ch. 6, § II(C) [p. 134 fn.7] – Circulator Registrations:** The Legislature has long directed that proponents of initiative and referendum petitions must “strictly comply” with all applicable laws, which in turn must be “strictly construed.” A.R.S. §§ 19-101.01, 19-102.01. Among those mandates are that paid or out-of-state circulators must submit compliant registrations to the Secretary of State before soliciting petition signatures. *See* A.R.S. § 19-118. Defying this critical safeguard and a litany of Arizona Supreme Court decisions ratifying it, the 2023 EPM purported to excuse circulator registrations that contained a “mistake or inconsistency” in statutorily required fields. As you know, we challenged that provision as violative of Arizona law. The court agreed, holding that “[t]here are multiple problems with the language of” that provision, including that it “improperly seeks to excuse the omission of information that is actually required by statute, which is a violation of A.R.S. §§ 19-101.01 and 19-102.01.” Under Advisement Ruling, *Petersen v. Fontes*, Maricopa County Superior Court No. CV2024-001942 (Dec. 16, 2024). Although you have appealed that decision, it remains an extant and binding court order. That the draft 2025 EPM resurrects the same illegal provision in substantially identical form disrespects the judiciary and a derogates the separation of powers. This provision must be deleted or, at the very least, accompanied by a notation that a court has found it invalid and unenforceable.

In addition, the draft EPM contains provisions with imprecise or ambiguous wording that fails to fully implement, or potentially misaligns with, the governing statutes. Specifically:

- **Chain of Custody and Observation:** Documenting an unbroken chain of custody for all voted ballots and ensuring robust rights of observation for political party representatives are cornerstones of a secure elections infrastructure. *See* A.R.S. §§ 16-590, 16-603, 16-621(A), 16-608, 16-551(D). To that end, the relevant EPM provisions should make clear that: (1) even if schedules for dropbox collection are “withheld from the public,” political party organizations nevertheless must receive timely and comprehensive scheduling information, so that they may arrange for courier observers [Ch. 2, § I(H), p. 79]; (2) the chain of custody forms documenting ballot dropbox collections should log the number of ballots retrieved during each pick-up [Ch. 2, § I(H), pp. 79-80]; and (3) party-appointed representatives are entitled to observe any processing, handling, or transferring of ballots

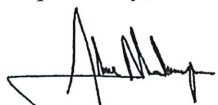
⁶ Individuals who registered to vote prior to January 24, 2005 and have not since re-registered in another Arizona county are excused from the DPOC requirement.

that occurs at the facilities of counties' third-party vendors, and also to observe the setting-up of equipment and supplies at voting locations prior to the opening of the polls [Ch. 8, § III(C)-(D), p. 156].

- **Appointment of Poll Workers:** While recruiting a “diverse pool of poll workers” in an “equitable manner” [Ch. 8, § II(B), p. 148 fn.7] is, in principle, an unobjectionable (if somewhat vaporous) policy, it cannot abridge the statutory right of political party committee chairs to select the individuals whom the county boards of supervisors must appoint to election boards. *See* A.R.S. § 16-531. Similarly, the EPM should clarify that the boards of supervisors *must* (not “may”) constitute the write-in tally boards from among the political party chairs’ timely-submitted nominations [Ch. 10, § II(H), p. 241].
- **Election Officer Certification:** The draft EPM purports to condition certification as an election officer on “sign[ing] the Secretary of State’s Arizona Election Official Code of Conduct” [Ch. 8, § II(A), p. 147]. To the extent the “Code of Conduct’s” terms hew strictly to duly enacted statutes, it may be consistent with verifying that the officer is “competent,” A.R.S. § 16-407(B). The “Code of Conduct” and the certification to which it is linked, however, cannot be wielded as leverage to compel fealty to the Secretary’s own personal policy preferences or to coerce election officers into forfeiting their First Amendment rights.⁷
- **Voting Location Contingency Plans:** The draft EPM provides that “[i]f for any reason, a voting location fails to issue ballots for longer than thirty minutes due to an equipment failure, or the wait time exceeds one hour, the inspector will inform the officer in charge of elections,” who must implement a resolution plan [Ch. 8, § IX(E), p. 190-91]. While determining the thresholds for activating a contingency plan does entail discretionary judgments, *see* A.R.S. § 16-411(K), the widespread ballot printer failures that plagued the 2022 general election in Maricopa County underscored that equipment malfunctions can trigger a cataclysmic snowball effect on wait times, which in turn discourage voter participation and corrode faith in the election process. For that reason, any lapse of ballot issuance capabilities should trigger *immediate* escalation and remediation measures.

Thank you for your consideration of the foregoing comments. We appreciate the work your office has done to prepare this initial draft, and hope that you will take the steps necessary to ensure that the version submitted to the Governor and Attorney General is properly confined to matters within the plain scope of applicable statutory delegations and aligns in all respects with controlling law.

Respectfully,



Steve Montenegro
Speaker of the Arizona House of Representatives



Warren Petersen
President of the Arizona Senate

⁷ The same limitations apply in equal force to any county-level “codes of conduct” that the EPM purports to “encourage[]” [Ch. 8, § II(C), p. 154].