

August 15, 2023

Secretary of State Adrian Fontes
1700 W Washington
Phoenix, AZ 85004

Secretary Adrian Fontes,

The Arizona Free Enterprise Club respectfully submits the following concerns with your draft Elections Procedures Manual (Draft EPM) issued pursuant to [A.R.S § 16-452](#). We believe many of the provisions included in this draft conflict with Title 16, and thus violate the requirement that the EPM “achieve and maintain the maximum degree of correctness, impartiality, uniformity and efficiency on the procedures for early voting and voting, and of producing, distributing, collecting, counting, tabulating and storing ballots.” It was made clear very recently by the Arizona Supreme Court that any provision of the Draft EPM that conflicts with state law is trumped by that state law.

Your office provided a narrow window for review and public comment. We concur with the issues identified by Arizona Senate President Warren Petersen and Arizona House Speaker Ben Toma in their public letter dated August 14, 2023. For efficiency, we have attempted to highlight different provisions that conflict with state law. We strongly request that you make changes to your Draft in accordance with the issues identified by the Legislature, other organizations, and those identified below in this letter to ensure only a lawful EPM is approved.

Documentary Proof of Citizenship

Although we agree with the Arizona Senate and House that Voter Registration procedures are not within the statutory purview of the EPM, we do want to identify the problems in this Chapter in your Draft. In 2022, the Arizona legislature passed, and the Governor signed into law, [HB2492](#), restoring and strengthening proof of citizenship requirements in the voter registration process. Unfortunately, Chapter 1 of your Draft EPM is riddled with provisions that are in direct conflict with requirements enshrined in statute by this duly enacted bill.

Of primary concern, your Draft EPM fails to distinguish between *state* voter registration forms and *federal* voter registration forms. However, HB2492 established a different process based on the type of application submitted, as expressly permitted by the *Inter-Tribal Council* court, stating that “states retain the flexibility to design and use their own forms,” and as was the practice in Arizona up until 2019.

Specifically, [A.R.S § 16-121.01\(C\)](#) requires that “Except for a form produced by the United States election assistance commission... the county recorder or other officer in charge of elections *shall reject* any application for registration that is not accompanied by satisfactory evidence of citizenship.” This is a clear and express requirement to reject all voter registration forms not accompanied by DPOC, except only for applications made on a form produced by the Election Assistance Commission (federal form) for which the county recorder must conduct a series of database checks before rejecting.

However, these forms are not distinguished in the following provisions of your Draft EPM:

- Chapter 1, Part II, Subpart A, Section 2: “*Regardless of the type of voter registration form submitted, a County Recorder must make a registrant a “full ballot” voter for the next election if*” (page 6).
- Chapter 1, Part II, Subpart A, Section 2(a): “This attempt to acquire DPOC must be completed *in all cases* where a new registrant fails to provide DPOC with the voter registration form.” (page 6)
- Chapter 1, Part II, Subpart A, Section 2: “‘Federal-Only’ Voter Designation” section in its entirety (beginning on page 8).
 - This section not only fails to distinguish the requirements for a state form, it also implies that a “Federal Only” voter can obtain a ballot-by-mail, even though [A.R.S § 16-127](#) (and Chapter 2, Part I, Subpart A, on page 48 of *this* Draft EPM) prohibits a voter who has not submitted DPOC from voting early by mail entirely. This prohibition should be made clear here too.

The distinction is made in Chapter 1, Part IV, Subpart C, where the statutory language is included verbatim. However, it conflicts with the sections outlined above which creates confusion and could lead to disparate and misapplications of the law. The provisions above must be reworded to be consistent with the language provided in this section of the Draft EPM and what is codified in [A.R.S § 16-121.01](#).

Additionally, HB2492 requires the County Recorder, in specified situations, to notify the County Attorney or Attorney General of an individual who has attempted to register or is registered to vote and is not a U.S. Citizen. For example, when an individual is disqualified from jury duty because the individual indicated on the juror questionnaire that the individual is not a U.S Citizen and fails to respond to a notice from the County Recorder within 35 days, [A.R.S § 16-165\(A\)\(10\)](#) requires the County Recorder to notify the County Attorney and Attorney General. Chapter 1, Part VIII, Subpart B, Section 4 fails to include this requirement, as does Chapter 1, Part II, Subpart A, Section 3.

Registering to vote, or attempting to register to vote, as a noncitizen is a felony. Additionally, falsely attesting under penalty of perjury, as is required on the voter registration form, that an applicant is a U.S Citizen, would also constitute a felony. Fairly enforcing the law helps to protect the integrity of our voter registration system, which is the bedrock of our election process.

Voter List Maintenance

In 2022, the Arizona legislature also enacted several new requirements to ensure regular voter list maintenance is completed by the counties in a uniform, nondiscriminatory manner so that only qualified electors are actively registered to vote. This Draft EPM contains provisions that conflict with the requirements of these new laws.

Specifically, footnote 6 on page 5 purports to prohibit counties from using the SAVE database for *any* list maintenance purpose. However, this conflicts with [A.R.S § 16-165\(I\)](#) which requires the county recorder to, if practicable, each month compare those who are registered to vote who have not provided satisfactory evidence of citizenship with the SAVE database, which would constitute utilizing the database for list maintenance.

Further, the Draft EPM requires the use of the NVRA removal process for certain voters who have moved and no longer reside in Arizona, contrary to the requirements of statute. When an individual is disqualified from jury duty as a result of indicating on the juror questionnaire that the individual is not a resident of the county, [A.R.S § 16-165\(A\)\(9\)\(b\)](#) requires: 1) that a notice be sent by *forwardable* mail, and 2) that if the registrant fails to return the notice within 35 days, the registrant's record must be *cancelled*. The Draft instead attempts to require a notice to be sent by *nonforwardable* mail and, if the person fails to return the notice within 35 days, place the individual's registration in inactive status.

Additional Issues

On-Site Tabulation

In 2022, the Arizona legislature enacted SB1312, allowing for the on-site tabulation of early ballots. If implemented by counties, this would provide more options to voters who, if they prefer, can visit a polling location on election day with their completed early ballot and, after showing valid identification, tabulate the ballot themselves. This Draft EPM does not mention this or establish any uniform procedures for implementation, should the counties choose to offer it to voters, and instead maintains only the process for a voter to obtain a provisional ballot.

Federal Only Provisional Ballots

Chapter 10, Part II, Subpart F, Section 1(f)(i) directs the Provisional Ballot Board to duplicate and then count votes for Presidential Electors from a "full ballot" cast by a Federal Only Voters. This directly conflicts with [A.R.S § 16-127](#) which establishes that individuals who have not provided satisfactory evidence of citizenship are *not* eligible to vote in Presidential elections.

Official Ballot Report Form – Number of Early Ballots

Chapter 9, Part VIII, Subpart B requires the number of early ballots received by the voting location to be included in the Official Ballot Report form "unless ballots are transported in a secure and sealed transport container to the central counting place to be counted there." Although this does not conflict with statute, it does create a vulnerability in the election day procedure. Counting the number of early ballots received by the voting location *before* transporting them to

the central counting place provides transparency and confidence to the electorate, ensuring the same number of ballots that were deposited by voters at a polling place are delivered to the central counting place.

Polling Place Locations

Chapter 8, Part I, Subpart E includes, “Whenever possible, voting locations should not be placed inside of police stations, court houses, or other locations with a regular uniformed police presence, unless the voting location is specifically intended to serve eligible incarcerated voters.” This was included in the 2021 Draft EPM that failed to get approval and never went into effect, showing up as a last-minute addition, *after* the public comment period. It does not exist in statute and seemingly plays into political motivations from organizations that are anti-police.

Signature Verification

Chapter 2, Part VI, Subpart A, Section 1 requires that “the County Recorder should also consult additional known signatures from other official election documents in the voter’s registration record, such as signature rosters or early ballot/AEVL request forms, in determining whether the signature on the early ballot affidavit was made by the same person who is registered to vote.” This conflicts with the plain language of [A.R.S § 16-550](#) which requires the signature on the affidavit envelope to be compared to the signature (*singular*) of the elector in the elector’s voter registration record. Further, records from the signature roster or early ballot request forms do *not* constitute registration records and should therefore not be utilized in the signature verification process.

Voter Registration Cards

Chapter 1, Part IV, Subpart I allows for a voter registration card to be labelled either a *Voter Identification Card* or a *Voter Registration Card*. Voter registration cards are not Voter ID cards and labelling them as such can create confusion. Although a *voter registration card* may be used as one of *two* forms of identification pursuant to [A.R.S § 16-579\(A\)\(1\)\(b\)](#), it is not itself a Voter ID card.

These are some examples of many problems that have been identified with this Draft EPM, again with just a short window for members of the public and organizations like ours to review it. Arizonans want elections that are both accessible and secure – where it is easy to vote and hard to cheat. It is the duty of the Legislature to craft and pass bills to ensure this, the Governor to sign them into law, and the Attorney General to enforce them. The EPM is intended to be an administrative manual providing impartial direction to county recorders to ensure uniform and correct implementation of election law. We respectfully request that you take the necessary action to produce a neutral EPM that is consistent with state law.

Respectfully,



Scot Mussi
President, Arizona Free Enterprise Club

cc: Arizona Senate President Warren Petersen
Arizona House Speaker Ben Toma