

ARIZONA SUPREME COURT

MARICOPA COUNTY RECORDER
STEPHEN RICHER, in his Official
Capacity,

Petitioner,

v.

ARIZONA SECRETARY OF STATE
ADRIAN FONTES, in his Official
Capacity,

Respondent.

No.

**EMERGENCY PETITION
FOR SPECIAL ACTION**

**(Special Action Relief,
Declaratory Judgment)**

**EXPEDITED REVIEW
REQUESTED**

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INTRODUCTION

It is a fundamental principle of United States democracy that only those individuals who are qualified to vote may vote for our elected political leaders. “Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy.” *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006). In Arizona, all individuals registering to vote must provide documentary proof of citizenship (“DPOC”) to cast a Full Ballot (*e.g.*, all elections for local, state, and federal office). A.R.S. § 16-166(F). Those who do not provide DPOC, but are otherwise qualified to register to vote, are permitted to vote a Federal Only Ballot.

Approximately one week ago, the Maricopa County Recorder’s Office discovered a non-citizen who was not only registered to vote, but was registered to vote as a Full Ballot Voter, meaning that he had somehow been identified as having provided DPOC. While the non-citizen had not cast any ballots in prior elections, the discovery prompted an urgent, collaborative review among county and state officials into how such a registration occurred in light of Arizona’s DPOC requirement.

The investigation revealed a compatibility error that has existed since 2005 between the State’s voter registration system and the Arizona Department of Transportation (“ADOT”). One way to present DPOC is to list a driver license number issued after October 1, 1996, that would then be verified by ADOT as having

provided DPOC. Due to the compatibility error, however, the State voter registration system has inaccurately labeled approximately 100,000 voters across the State as having provided DPOC when, in fact, they have not (the “Affected Voters”).

Maricopa County Recorder Richer and Secretary of State Adrian Fontes agree that for elections after 2024, the Affected Voters must present DPOC to cast a Full Ballot. However, Recorder Richer and Secretary Fontes take different and conflicting legal positions with respect to how the Affected Voters should be handled for the fast-approaching General Election on November 5, 2024.

Today, on September 17, 2024, the Secretary issued verbal guidance to the 15 County Recorders directing them to allow the Affected Voters to cast a Full Ballot in the 2024 General Election, notwithstanding the lack of DPOC on file (the “Guidance”). Though the Secretary recognizes that this Guidance does not comport with Arizona law, the Secretary cited the *Purcell* doctrine and determined that maintaining the status quo justified delaying correction of the voter rolls. *Purcell*, 549 U.S. at 6; *see also Merrill v. Milligan*, 142 S. Ct. 879, 880-81 (2022) (courts should avoid taking actions that could lead to “disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others.”). On the other hand, Recorder Richer contends that, absent court direction to the contrary, Arizona law requires that the Affected Voters vote the Federal Only ballot.

Recorder Richer appreciates the practical challenges of the situation, but the

Secretary's Guidance conflicts with Arizona law and has created an actual controversy. Recorder Richer thus brings this special action to obtain clarity and certainty regarding which competing interpretation, as applied to the Affected Voters in the 2024 General Election, is correct. Because Arizona's General Election begins this *Saturday, September 21, 2024*, upon issuance of Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") ballots, immediate finality from this Court is necessary. This Court should (a) grant special action jurisdiction, (b) conclude that the Secretary's Guidance is contrary to law and, thus, exceeds his authority, and (c) declare that the Affected Voters may only cast a Federal Only ballot unless and until the voter presents DPOC. This Court should further direct the parties to take reasonable efforts to provide notification to the Affected Voters to maximize their ability to present DPOC and vote a Full Ballot.

STATEMENT OF MATERIAL FACTS

I. Legal Background

Arizona law requires that, to be a "Full Ballot Voter" eligible to vote in state and local elections, voters must submit voter registration applications that are accompanied by DPOC. Ariz. Const. art. VII, § 2(A); A.R.S. §§ 16-101(A)(1), 16-166(F); *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 6, 12-20 (2013). Those who register to vote and attest that they are United States citizens, but whose registrations are not accompanied by DPOC, are only eligible to vote in federal

elections and may not vote in state or local elections unless and until they submit DPOC. *Inter Tribal*, 570 U.S. at 20; Sec’y of State, *State of Arizona 2023 Elections Procedures Manual* (“EPM”) § 1(II)(A)¹; A.R.S. § 16-452.

A voter registrant’s driver license number is satisfactory evidence of citizenship (*i.e.*, DPOC) if the number was issued after October 1, 1996—the date on which Arizona began requiring DPOC for citizens to obtain certain domestic driver licenses. A.R.S. § 16-166(F)(1). Voter registrants who have driver licenses typically write their license number on their voter registration applications. *See, e.g.*, APP-0026 ¶ 9; APP-0038–41. The County Recorders, including Recorder Richer, then verify with ADOT that the license number provided is assigned to the voter registrant and was issued with the necessary DPOC. APP-0026 ¶ 9.

II. The ADOT-State Voter Registration System Error

In early September 2024, the Maricopa County Recorder’s Office discovered that in 2022, an individual had registered to vote using an Arizona driver license number with a facial issuance date after October 1, 1996, even though the registrant had initially obtained a license before that date. *Id.* ¶ 11. Although the individual has not voted since registering, the registrant is not a United States Citizen. APP-0026–27 ¶ 12.

¹ https://apps.azsos.gov/election/files/epm/2023/EPM_20231231_Final_Edits_to_Cal_1_11_2024.pdf.

Further investigation revealed a systemic issue with the state voter registration system’s interface with ADOT’s driver license issuance system. APP-0027 ¶¶ 13–16. Specifically, when ADOT was issuing replacement driver licenses, the state voter registration system read the *replacement date* as the license issuance date, rather than the license’s original date of issuance. *Id.* ¶¶ 14–15. As a result, when the Recorder queried the state voter registration system, the “year field” of the voter’s driver license registration would inappropriately refresh to the date the license was replaced (rather than the date issued)—thereby allowing the applicant to clear the state voter registration systems’ DPOC checks. *Id.* ¶ 15. Because some replacement licenses were issued after October 1, 1996, those applicants were reported as having DPOC on file, even though the original license was issued prior to October 1, 1996, and in actuality did not have DPOC on file. *Id.* ¶¶ 15–17. Under those circumstances, the state voter registration system, using data from ADOT, should not have indicated that the applicant’s driver license satisfied § 16-166(F)’s requirements. *Id.* ¶ 17.

Relying on the information provided by the state voter registration system, the Maricopa County Recorder’s Office concluded that such registrants had provided DPOC to ADOT to receive their driver license and, therefore, the Recorder made these registrants Full Ballot Voters. APP-0027–28 ¶ 18. Because of the ADOT-state voter registration system error, however, this conclusion was incorrect; due to the lack of DPOC on file, each Affected Voter qualifies to be a Federal Only Voter.

APP-0027 ¶ 17. They are not authorized to vote for Arizona state or local elections. Before the recent discovery, Recorder Richer had no way to know that certain registrants' license numbers were actually issued *before* October 1, 1996. APP-0027–28 ¶ 18.

III. Secretary's Resolution

After investigating the issue, the Secretary determined that there are 53,445 Affected Voters in Maricopa County, and 97,688 statewide. APP-0028 ¶ 19. Each of the Affected Voters obtained a driver license and number *before* October 1, 1996, and a replacement license *after* that date. APP-0027–28 ¶¶ 16, 19. After obtaining the replacement license, each submitted a voter registration application. APP-0027 ¶ 16. Each registrant also had their license number checked by Recorder Richer (or one of the other County Recorders) using the state voter registration system, and through it, ADOT to verify that the registrant held a driver license issued after October 1, 1996. APP-0026–28 ¶¶ 9, 16, 18. And for each registrant, the check indicated that their license was issued after October 1, 1996—even though ADOT had actually issued the driver license number *prior* to that date. APP-0027–28 ¶¶ 15–19.

After discovering the discrepancy, the Secretary, alongside the Governor's Office, has worked with ADOT to ensure that this systemic issue is corrected moving forward. APP-0028 ¶ 20. That is, replacement driver licenses issued by ADOT in

the future will allow the fifteen County Recorders to know whether the driver license number associated with that license was issued before October 1, 1996. *Id.*

However, there are still just under 100,000 Affected Voters in Arizona who are currently Full Ballot Voters, when Arizona law requires that they be Federal Only Voters unless and until they provide DPOC to confirm their citizenship. APP-0028 ¶ 19. The Secretary agrees with this reading of the law. APP-0028–29 ¶¶ 20, 24. However, relying on the *Purcell* doctrine, the Secretary hosted a teleconference on September 17, 2024, with the fifteen County Recorders, directing them to leave the Affected Voters as Full Ballot Voters until after the 2024 General Election, thereby allowing them to vote for state and local races for which they should be ineligible. *Id.* ¶ 23; APP-0043–44. The Secretary supplemented the verbal Guidance with a written letter, explaining that “main question is one of timing,” and that “[e]ven if requesting DPOC from [the affected voters] is not considered routine, systemic maintenance, prohibited during this time under NVRA, [the Secretary was] unwilling to disenfranchise this many voters by limiting them suddenly, and with little notice, to a federal only ballot when none of them had notice of or blame for this issue.” APP-0029 ¶ 24; APP-0043. Further, he raised possible due process and equal protection concerns with respect to the affected voters. APP-0029 ¶ 25; APP-0044.

IV. This Case

Although Recorder Richer and the Secretary agree on the application of the law *after* the 2024 election, they disagree on how to implement the law as to the Affected Voters for the 2024 General Election. Because Arizona law requires that Affected Voters be made Federal Only unless and until they provide DPOC, and because the Secretary has issued conflicting Guidance, only this Court can resolve this controversy and provide the necessary certainty for the 2024 General Election.

Although guidance from the Secretary is not binding upon the County Recorders, such guidance is traditionally afforded great weight. *Id.* ¶ 26. Because uniform application of election laws is of utmost statewide importance, Recorder Richer requests expedited special action review of this case to address the issues before UOCAVA ballots are transmitted this Saturday (September 21, 2024), and before early voting begins on October 9, 2024. *See id.* ¶ 28.

STATEMENT OF THE ISSUES

1. Whether election officials are required to enforce A.R.S. § 16-611(F)'s DPOC requirement as to Affected Voters in the 2024 General Election cycle?
2. Did the Secretary exceed his jurisdiction or legal authority by issuing Guidance that:
 - a. instructed County Recorders to allow Affected Voters without DPOC to cast Full Ballots, when applicable law only permits those voters to cast

Federal Only Ballots?

b. instructed County Recorders to maintain status quo for the Affected Voters under the *Purcell* doctrine, despite statutory instruction otherwise?

c. causes Affected Voters to be treated differently from other voters in the State, potentially in violation of the equal protection clause of the United States Constitution and/or equal privileges and immunities clause of the Arizona Constitution?

JURISDICTIONAL AND RULE 7(B) STATEMENTS

I. This Court Has Jurisdiction to Resolve a Purely Legal Issue of Statewide Importance.

This Court has original and discretionary special action jurisdiction to consider the issues raised in this Petition, Ariz. Const. art. 6, § 5(1), (6); *City of Surprise v. Arizona Corp. Comm'n*, 246 Ariz. 206, 209 ¶6-7 (2019); Ariz. R. P. Spec. Act. 3(b)–(c), 4(a), and grant the requested relief, Ariz. R. P. Spec. Act. 1(a)–(b); *see Forty-Seventh Legislature of State v. Napolitano*, 213 Ariz. 482, 485 ¶ 10 (2006) (a party seeking relief under Ariz. Const. art. 6, § 5 “must proceed by way of a special action”).

In particular, the Secretary’s Guidance to various County Recorders effectively sets aside A.R.S. § 16-166(F) for the 2024 election. Because this Guidance is contrary to law, the Secretary has acted “in excess of [his] jurisdiction or legal authority.” Ariz. R. P. Spec. Act. 3(b)–(c). This Court has jurisdiction to

“determine the extent of a state official’s legal duties,” and should grant jurisdiction to provide clarity regarding the status of certain identified voters who did not provide DPOC during the voter registration process. *Arizonans for Second Chances, Rehabilitation & Pub. Safety v. Hobbs*, 249 Ariz. 396, 404 ¶ 19 (2020); *see also id.* ¶¶ 15–16 (noting that directing state officers to take or refrain from certain actions also fall within traditional extraordinary writs under Ariz. Const. art. 6, § 5(1) of the Arizona Constitution); *Dobson v. State*, 233 Ariz. 119, 121 ¶¶ 6–7 (2013).

In determining whether to accept special action jurisdiction, this Court considers several factors, including (1) whether the issues presented are of statewide significance; (2) whether the petition involves pure questions of law; (3) whether the case concerns responsibilities of state officials; and (4) whether the petitioner lacks an equally plain, speedy, and adequate remedy by appeal. *See Quality Educ. & Jobs Supporting I-16-2012 v. Bennett*, 231 Ariz. 206, 207 ¶ 2 (2013); *Haywood Sec., Inc. v. Ehrlich*, 214 Ariz. 114, 115 ¶ 6 (2007); *Ariz. Indep. Redistricting Comm’n v. Brewer*, 229 Ariz. 347, 351 ¶ 14 (2012) (“We exercised our discretion to accept special action jurisdiction because the legal issues raised required prompt resolution and are of first impression and statewide importance.”). There are at least four factors here that, taken together, warrant the acceptance of special action jurisdiction by this Court.

1. **Statewide Importance.** Generally, this Court will accept jurisdiction

over a special action that “raises issues of statewide importance that are likely to recur.” *Forty-Seventh Legislature*, 213 Ariz. at 485 ¶ 11; *see also Arizona Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 61 (2020) (when a case involves election and statutory issues of statewide importance, special action jurisdiction pursuant to article 6, section 5(3) of the Arizona Constitution is appropriate); *Ariz. Indep. Redistricting Comm’n v. Brewer*, 229 Ariz. 347, 351 ¶ 14 (2012) (“We exercised our discretion to accept special action jurisdiction because the legal issues raised required prompt resolution and are of first impression and statewide importance”); *Randolph v. Groscost*, 195 Ariz. 423, 425 ¶ 6 (1999) (similar); *Dobson v. State ex rel., Comm’n on Appellate Court Appointments*, 233 Ariz. 119, 121 ¶¶ 7–8 (2013) (similar).

This Petition is of statewide importance because it involves a dispute between two government entities with vast authority over election administration: Maricopa County (the largest County in this State, by far) and the Secretary of State. This Petition is thus easily distinguishable from many other election actions filed by private litigants directly in this Court seeking to alter or amend election procedure.

This Petition also presents an important legal question of first impression: whether the Secretary may unilaterally determine that certain voters who did not provide proof of citizenship may nonetheless participate in a non-federal elections due to (a) a processing error by a state agency and (b) the proximity of the

discovery of this error to the election. As this question implicates the fundamental voting rights of approximately 100,000 potential voters from across Arizona, the resolution of this controversy necessarily carries significant implications for the 2024 General Election, including the efficient, uniform, and equitable election administration by Arizona’s election officials. This is undoubtedly an issue of substantial public importance.

2. Purely Legal Questions. This Court will also grant special action review when “the issue presented . . . is purely a question of law.” *Piner v. Superior Court (Jones)*, 192 Ariz. 182, 185 ¶ 10 (1998) (quoting *In re Denton*, 190 Ariz. 152, 154 (1997)); see also *State ex rel. Woods v. Block*, 189 Ariz. 269, 272 (1997) (“This case involves a purely legal issue, which is appropriate for resolution by special action in this court.”); *Univ. of Arizona Health Scis. Ctr. v. Superior Court of State in & for Maricopa County*, 136 Ariz. 579, 581 (1983) (exercising special action jurisdiction is appropriate when “[t]he question . . . turns entirely on legal principles rather than controverted issues of fact...”). Here, the dispute is purely legal, and no fact discovery is necessary to address the issues presented to this Court.

3. Concerns the Responsibilities of State Officials. Ensuring that state constitutional officers carry out their duties is another reason that the Court traditionally accepts special action appeals. See *Forty-Seventh Legislature*, 213 Ariz. at 485 ¶ 11. This factor is specifically implicated here, in which Recorder Richer

seeks clarity so the Secretary and County Recorders, in light of their contradictory interpretations of the application of the law to the 2024 General Election, will “know where they stand and can take such action as they determine necessary . . .” *See Hull v. Albrecht*, 192 Ariz. 34, 36 (1998).

4. Need for Immediate Resolution. Finally, given the importance of the issues raised in this Petition and the short time until the 2024 General Election begins, traditional trial and appellate court avenues fail to afford the necessary prompt and immediate redress. *See generally* Ariz. R. P. Spec. Act 3. Recorder Richer immediately brought suit within hours of receiving the Secretary’s Guidance, and the underlying legal issue was first discovered less than a week ago. *Cf. Dobson*, 233 Ariz. at 122 ¶ 7 (granting special action review where the Commission on Appellate Court Appointments would be subject to the contested statute on the same day the Court enjoined its effect). And here, time is certainly of the essence.

The legal issues presented concern the implementation of A.R.S. § 16-166(F) to Affected Voters for the 2024 General Election. That election begins this weekend. As UOCAVA ballots are expected to be mailed this Saturday, September 21, 2024, there is simply no time available to bring an action in superior court, get an order, and then seek special action or appeal to this Court. Accordingly, the need for immediate clarity is paramount to ensure the integrity of the election system and consistency across different counties. This Court alone is capable of providing the

legal resolution needed on the unusually-compressed timeline presented. This Court also “can best serve the public interest and principles of judicial economy by resolving fundamental legal questions regarding the [Secretary’s] power at this time.” *Arizona Corp. Comm’n v. State ex rel. Woods*, 171 Ariz. 286, 288 (1992) (accepting special action jurisdiction, even though the case could have been initiated in the superior court).

For all these reasons, this Court should exercise its discretion to accept the current appeal. Ariz. R. P. Spec. Act. 7(b).

II. The Maricopa County Recorder Has Standing to Bring this Petition.

The Arizona Constitution has no case or controversy requirement. *Mills v. Ariz. Bd. of Tech. Registration*, 253 Ariz. 415, 423 ¶ 23 (2022). Rather, justiciability is only a prudential “matter of judicial restraint to ensure courts ‘refrain from issuing advisory opinions, that cases be ripe for decision and not moot, and that issues be fully developed between true adversaries.’” *Id.* (citation omitted). Thus, a party has standing if it “has incurred an injury” *or* “there is an actual controversy between the parties.” *Brush & Nib Studio, LC v. City of Phoenix*, 247 Ariz. 269, 280 ¶ 36 (2019); *Mills v. Ariz. Bd. of Tech. Registration*, 253 Ariz. 415, 423 ¶ 24 (2022).

Here, Recorder Richer easily satisfies both of these tests. The dispute between Recorder Richer and the Secretary has created a “distinct and palpable injury” because, under the Secretary’s directive, Recorder Richer is prohibited from

complying with his obligations under A.R.S. § 16-166(F). *See, e.g., Ariz. Ass'n of Providers for Persons with Disabilities v. State*, 223 Ariz. 6, 13 ¶¶ 17–18 (App. 2009) (finding a party’s injury sufficient for standing because it was subject to the challenged statute’s 10 percent rate reductions). Likewise, the Secretary and Recorder Richer, both charged under Arizona law in administering elections, have an actual controversy related to the enforcement of A.R.S. § 16-166(F). *Mills*, 253 Ariz. at 424–25 ¶ 30 (actual controversies exist when claims “relate to an existing threat” or there is “a real and present need to know” the law’s validity); *Ariz. Sch. Bds. Ass’n, Inc. v. State*, 252 Ariz. 219, 224–25 ¶¶ 16, 20 (2022) (plaintiff merely need show its “rights, status or other legal relations are affected by a statute” (quotations omitted)). Plaintiff thus has standing to bring the claims asserted.

But even if this were not the case, this Court may still consider the merits of a case in exceptional circumstances involving issues of substantial importance to the State. *Rios v. Symington*, 172 Ariz. 3, 5 (1992). As discussed above, Recorder Richer’s challenge to the Secretary’s Guidance presents an issue of statewide importance that implicates both the administration of the upcoming election and the interests of nearly of 100,000 registered voters. *See State Comp. Fund v. Symington*, 174 Ariz. 188, 192 (1993); *Hull v. Albrecht*, 192 Ariz. 34, 36 (1998). And the timely resolution of this dispute is critical, as the General Election will begin in just a few days with the issuance of UOCAVA ballots.

Moreover, creating a uniform interpretation of a law is directly supported by the text of the Uniform Declaratory Judgments Act. *See* A.R.S. § 12-1842 (“[The] purpose [of this article] is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations; and is to be liberally construed and administered.”); A.R.S. § 12-1845 (“This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it . . .”). The Secretary’s Guidance as to the implementation of A.R.S. § 16-166(F) creates uncertainty regarding how Recorder Richer must address individuals who, through no fault of their own but rather due to a system error, have not provided the necessary proof of citizenship. This exceedingly important issue demands this Court’s prompt resolution.

ARGUMENT

I. Arizona Law Requires Affected Voters to Submit DPOC Before They Can Vote a Full Ballot.

There is no dispute that Arizona law requires that each voter provide DPOC to cast a Full Ballot or that registrants lacking DPOC may cast a Federal Only ballot. Ariz. Const. art. VII, § 2(A); A.R.S. §§ 16-101(A)(1), 16-166(F); *Inter Tribal Council*, 570 U.S. at 12-20 (2013); EPM § 1(II)(A); APP-0028–29 ¶¶ 23–25; APP-0043–44.

Federal law does not require a different result. Under the National Voter Registration Act, 52 U.S.C. § 20501 *et seq.*, Arizona “shall complete, not later than

90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters.” 52 U.S.C. § 20507(c)(2)(A). The ninety-day deadline does not preclude “the removal of names from official lists of voters” to “*correct[] registration records* pursuant to this chapter.” *Id.* § 20507(c)(2)(B) (emphasis added). Here, designating Affected Voters as Federal Only voters unless and until they provide DPOC simply corrects the registration records, consistent with the NVRA and Arizona law.

II. The Secretary Acted in Excess of His Authority in Issuing the Guidance.

The Secretary, like all state officials, takes an oath to support the “laws of the State of Arizona.” A.R.S. § 38-231(E). Even though the Secretary agrees that Arizona law requires that the Affected Voters be Federal Only Voters unless and until they provide DPOC to confirm their citizenship, APP-0028–29 ¶¶ 20, 24, the Secretary has instructed the County Recorders to permit the Affected Voters to vote a Full Ballot in the 2024 General Election. APP-0028 ¶ 23; APP-0043–44. This Guidance was issued “in excess of [the Secretary’s] jurisdiction or legal authority” for three reasons. Ariz. R. P. Spec. Act. 3(b).

First, if the Secretary issues guidance contrary to Arizona statute, the Secretary exceeds the scope of his authority. *Cf. Ariz. All. for Retired Ams., Inc. v. Crosby*, 537 P.3d 818, 823–24 ¶ 18 (Ariz. App. 2023) (reasoning that if one of the

Secretary's rules "directly conflicts with the express and mandatory procedures of" a statute, "it exceeds the scope of its statutory authorization, and is therefore void"). Because the Secretary's Guidance that A.R.S. § 16-166(F)'s DPOC requirement does not impact Affected Voters for the 2024 General Election is contrary to Arizona law, that Guidance is in excess of his authority.

Second, the Secretary relies on the *Purcell* doctrine to justify why Arizona's election officials should not correct the Affected Voters' designations from Full Ballot voters to Federal Only voters prior to the 2024 election. APP-0028-29 ¶¶ 23-24. While it is true that the *Purcell* doctrine usually permits states to maintain the status quo and "not alter [] election rules on the eve of an election," *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423, 424 (2020), *Purcell* is a judicially-created doctrine that applies to courts evaluating a state's election laws and procedures. *Id.* at 425. *Purcell* does not apply to an election official's determination of what rules to follow. In other words, because reliance on the *Purcell* doctrine is a judicial function, only courts can make this determination. As such, the Secretary exceeded his authority in relying on the *Purcell* doctrine to avoid application of State election law. If the *Purcell* doctrine does in fact preclude application of A.R.S. § 16-166(F) to Affected Voters in the 2024 General Election, then a court should make that determination.

Third, the Secretary's proposal treats Affected Voters different than all other

registrants for the 2024 General Election.² By not consistently applying voter registration requirements, there is a concern that such actions treat potential voters differently in violation of the equal protection clause of the United States Constitution and equal privileges and immunities clause of the Arizona Constitution. “[T]he right to vote is ‘the protected right, implicit in our constitutional system, to participate in state elections on an equal basis with other qualified voters.’” *Ariz. Minority Coal. for Fair Redistricting v. Ariz. Indep. Redistricting Comm’n*, 211 Ariz. 337, 346 (App. 2005) (quoting *San Antonio Sch. Dist. v. Rodriguez*, 411 U.S. 1, 35 n.78 (1973)). Voters who are treated differently potentially have an equal protection claim. *See Bush v. Gore*, 531 U.S. 98, 104-05 (2000) (“Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote over that of another.”); *see also Harper v. Va. Bd. of Education*, 383 U.S. 663, 665 (1966). Thus, when Arizona’s requirement to provide DPOC prior to voting a Full Ballot is not applied consistently, it potentially constitutes an equal protection violation. *See Miller v. Picacho Elem. Sch. Dist. No. 33*, 179 Ariz. 178, 178 (1994) (“In this case we hold that absentee ballots procured in violation of our absentee ballot law are invalid, and if the ballots affect the

² Recorder Richer acknowledges that the County is not a “citizen,” so it does not have standing to assert an equal protection claim. *E.g., John C. Lincoln Hosp. & Health Corp. v. Maricopa Cnty.*, 208 Ariz. 532, 543, n. 9 (App. 2004). However, he acknowledges that applying election laws in a manner that does not offend voters equal protection rights is an important consideration.

outcome, the election must be set aside.”). Acting in a manner inconsistent with the equal protection clause of the United States Constitution and equal privileges and immunities clause of the Arizona Constitution would be in excess of the Secretary’s authority.³

For these reasons, special action relief is appropriate.

III. Declaratory Relief Is Necessary.

Despite agreeing on the general application of Arizona law to correct ADOT’s error in future elections, Recorder Richer and the Secretary disagree on the proper application of the law to the Affected Voters for the 2024 General Election. There are three potential legal resolutions to the situation presented.

First, the Court could apply the *Purcell* doctrine and stay any changes to the voter roll (*i.e.*, allow the Affected Voters to vote Full Ballots this cycle despite failure to provide DPOC). In other words, the Court would excuse the administrative error, even if it does not comply with Arizona law because it might impact voters’ constitutional rights. *Cf. Leibsohn v. Hobbs*, 254 Ariz. 1, 3, 9 (2022) (“[T]he

³ While Recorder Richer is not aware of the citizenship status of all Affected Voters, based on information and belief, most of the Affected Voters likely are citizens. Accordingly, while the Secretary’s Guidance may have equal protection implications, an opposite conclusion may present procedural due process concerns. *See, e.g., In re Matter of Wood*, 551 P.3d 1163, 1171 ¶ 24 (Ariz. App. 2024) (due process requires a petitioner to make a proper evidentiary showing before a court that a person lacks the capacity to vote “before terminating a person’s fundamental right to vote.”); *Mi Familia Vota v. Fontes*, No. CV-22-00509-PHX-SRB, 2024 WL 862406 at *47 (Feb. 29, 2024) (explaining the legal framework for analyzing whether a person’s right to vote was violated for a violation of procedural due process rights).

Secretary made it impossible for the Committee to comply with § 19-118(B)(5) regarding circulators who had previously registered and uploaded affidavits concerning other initiative petitions. Consequently, although some of the Committee’s circulators did not strictly comply with § 19-118(B)(5), we conclude § 19-118(A) is unconstitutional as applied in the specific circumstances here and cannot be invoked to disqualify signatures.”); *see also Moore v. City of Page*, 148 Ariz. 151, 156 (1986) (finding that even where ineligible voters remained on the voter roll, the outcome of the election remained unchanged because the plaintiff failed to establish that any ineligible citizens actually voted in the election or that, even if they had, the outcome would have been different).

Second, consistent with A.R.S. § 16-166(F), the Court could declare that Affected Voters may vote Federal Only ballots unless and until the voters provide DPOC. *Cf. Ariz. Pub. Integrity All. v. Fontes (“AZPIA”)*, 250 Ariz. 58, 64 (2020) (holding then-Recorder Fontes’ decision to issue ballot instructions was contrary to law and without authorization and enjoining actions to the contrary).

Third, and combined with the second option, the Court could conclude that election and other state officials, including ADOT, have some level of an affirmative duty to provide notice to the Affected Voters and seek to obtain the missing DPOC.

While the Secretary has adopted the first interpretation and Recorder Richer has adopted the second, as election officers, both parties have duties to support the

uniform implementation of Arizona election law. As a result, it is appropriate for this Court to issue a declaratory judgment regarding the proper implementation of Arizona law as to the Affected Voters. A.R.S. § 12-1832.

CONCLUSION

For the foregoing reasons, Maricopa County Recorder Richer respectfully requests that this Court grant special action jurisdiction, conclude that the Secretary's Guidance exceeds his authority, and declare that Arizona law requires election officials to permit Affected Voters to vote Federal Only ballots, unless and until the voters provide DPOC.

RESPECTFULLY SUBMITTED this 17th day of September, 2024.

SNELL & WILMER L.L.P.

By: /s/ Brett W. Johnson

Brett W. Johnson
Patricia Lee Refo
Tracy A. Olson
Charlene A. Warner
One East Washington Street
Suite 2700
Phoenix, Arizona 85004-2202

ARIZONA SUPREME COURT

MARICOPA COUNTY RECORDER
STEPHEN RICHER, in his Official
Capacity,

Petitioner,

v.

ARIZONA SECRETARY OF STATE
ADRIAN FONTES, in his Official
Capacity,

Respondent.

No.

**APPENDIX IN SUPPORT OF
EMERGENCY PETITION
FOR SPECIAL ACTION**

Brett W. Johnson (#021527)
Patricia Lee Refo (#017032)
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County Recorder Stephen Richer*

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DECLARATION OF STEPHEN RICHER

I, Stephen Richer, declare as follows:

1. I am over 18 years of age, of sound mind, and capable of making this declaration.

I have personal knowledge of the matters set forth herein. If called as a witness to testify as to the matters set forth here, I could and would testify competently with respect thereto.

2. I am the 30th Recorder of Maricopa County and have held that office since January 2021. I am responsible for, among other things, maintaining the voter registration database and administering early ballots in all Maricopa County elections.

3. Recently, my office uncovered a system flaw in the Arizona Department of Transportation (“ADOT”) Motor Vehicle Division’s (“MVD”) interface with the statewide voter registration database (“AVID”) that affects Arizona’s documented proof of citizenship (“DPOC”) requirement for registered voters. [See Ex. 1, Sept. 16–17, 2024, Emails between Recorder Richer, Governor Hobbs, and Secretary Fontes.]

4. Beginning in July 1996, the MVD began requiring all Arizona voter registrants to establish that they are “lawfully present in the United States in order to obtain an Arizona driver or identification license.” 2005 Ariz. Op. Att’y Gen. No. I05-001 (Feb. 4, 2005). Those who are lawfully present, but not citizens, would receive a “Type F” license. *Id.*

5. Prior to October 1, 1996, Arizonans did not have to provide DPOC to receive a driver license. [See Ex. 1.]

6. In 2004, Arizona voters passed Proposition 200 which, among other things, required that Arizona voters provide DPOC to vote a full ballot (i.e., a ballot that includes both state and federal races). Under this new provision, persons registered to vote in Arizona on January 24, 2005, when the voting provisions of Prop 200 took effect, were “deemed to have provided

[DPOC] and shall not be required to resubmit evidence of citizenship unless the person is changing voter registration from one county to another.” A.R.S. § 16-166(G).

7. In 2013, the United States Supreme Court concluded that the DPOC requirement violated the National Voter Registration Act (the “NVRA”) as applied to federal elections. In response, Arizona implemented a unique bifurcated voter registration system by which voters who complete a voter registration form and attest under penalty of perjury that they are United States citizens, but who do not provide DPOC, are registered as “federal-only” voters. Federal-only voters receive ballots containing federal races, but may not vote for state or local offices or ballot measures.

8. Since I took office in January 2021, the vast majority of registrants have satisfied the DPOC requirement through the MVD, with the most commonly used form of DPOC being a driver license or nonoperating identification license number issued after October 1, 1996. [*See id.*]

9. Voter registrants who have driver licenses typically write their license number on their voter registration applications. The county recorder then verifies with AVID, which queries ADOT, that the license number provided is assigned to the registrant and was issued after October 1, 1996. [Ex. 2, Sample Voter Registration Form.]

10. Because the MVD requires DPOC for all non-Type F driver license, any voter registrant with a non-Type F driver license after October 1, 1996, would clear the DPOC check when queried by the voter registration system. [*See Ex. 1.*]

11. In early September 2024, however, my office received documentation that a person had registered to vote in 2022 using an Arizona driver license with an issue date after October 1, 1996. [*See id.*]

12. Although this registrant had passed his “HAVA Check”—meaning that according

to AVID, he had DPOC on file with MVD—he was *not* a United States citizen and should not have been able to register to vote without providing DPOC. The registrant has not participated in any Arizona elections. [*See id.*]

13. On September 6, 2024, my office immediately presented this anomaly to the MVD, the Secretary of State, and the Governor’s Office, who promptly investigated why AVID marked this voter as having documented proof of citizenship on file with MVD. [*See id.*]

14. Upon investigation, we discovered that the MVD had designed its system such that the license issuance year would reset if the registrant received a duplicate license—e.g., in the case of losing or damaging a license. When this happens, the voter would simply get a new replacement license printed rather than “applying” for a new driver license. [*See id.*]

15. But although the applicant for a duplicate license would not have provided DPOC at this point (as would happen if somebody got a license for the first time after October 1, 1996), the “year field” in AVID’s records would inappropriately refresh to a post 1996 year. In turn, the applicant would clear the voter registration systems’ HAVA checks. [*See id.*]

16. Effectively, this means that since 2004, any prospective voter registrant in any of the fifteen counties who (a) received an Arizona driver license before October 1, 1996, but received an updated copy of his Arizona driver license after October 1, 1996, and registered to vote for the first time, or (b) registered to vote in a new county after the effective date of Proposition 200, would be erroneously understood by voter registration systems to have passed HAVA checks.

17. Thus, although most of these voters are likely United States citizens, they would not technically qualify as “full” (i.e., both state and federal) voters because they do not fall into the pre-Proposition 200 exemption, and they have not provided DPOC.

18. Nevertheless, by relying on the information provided by AVID, my office had

incorrectly concluded that such registrants had provided DPOC to ADOT to receive their driver license, and were classified as full ballot voters. Before the recent discovery, my office had no way to know that certain registrants' license numbers were actually issued *before* October 1, 1996.

19. My office understands that after receiving information about this system flaw, the Secretary of State and MVD have identified 97,688 registered voters, including 53,445 in Maricopa County, who were erroneously identified as full ballot eligible, despite never having provided DPOC.

20. I also understand the Secretary of State agrees with this reading of the law, and that the Governor's Office, Secretary of State, and MVD have remedied the situation for future elections. Specifically, replacement driver licenses issued by ADOT will allow county recorders to know whether a driver license number was issued before October 1, 1996.

21. In the meantime, however, the Secretary has directed the county recorders not to change the 97,688 voters affected by the system flaw from full-ballot to federal-only status until after the November 5, 2024, election, and to wait to obtain those voters' DPOC until after the November 5, 2024, election. [See Ex. 3, September 17, 2024, Email from Secretary Fontes to Recorder Richer.]

22. Accordingly, on September 16, 2024, my office sent an email to Secretary Fontes and Governor Hobbs regarding whether the law requires that these voters submit documented proof of citizenship in order to vote a full ballot for the November 2024. [See Ex. 1.]

23. In response, on September 17, 2024, Secretary Fontes issued guidance, relying on the *Purcell* doctrine, reiterating that the fifteen county recorders must treat all registrants affected by the system flaw as full-ballot voters—thereby allowing them to vote for state and local races for which they should be ineligible. [Ex. 3 at 1.]

24. Specifically, Secretary Fontes explained that “main question is one of timing ... Even if requesting DPOC from [the affected voters] is not considered routine, systemic maintenance, prohibited during this time under NVRA, I am unwilling to disenfranchise this many voters by limiting them suddenly, and with little notice, to a federal only ballot when none of them had notice of or blame for this issue.” [*Id.* at 2.]

25. Secretary Fontes also raised possible due process and equal protection concerns with respect to the affected voters. [*Id.*]

26. Although guidance from the Secretary is not binding upon the County Recorders, such guidance is traditionally afforded great weight.

27. If Secretary Fontes’ guidance is followed, it is possible that individuals who have not provided documented proof of citizenship, but are registered Arizona voters, will actually vote a full ballot in the 2024 General Election.

28. As the Maricopa County Recorder, I am obligated to seek declaratory judgment and certainty as to the administration of the 2024 General Election. Time is of the essence, as Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”) ballots will be transmitted on September 21, 2024, and early voting begins on October 9, 2024.

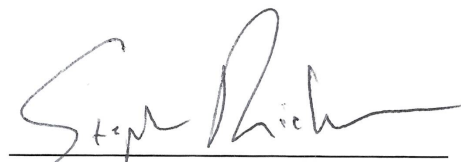
29. Although I appreciate Secretary Fontes’ valid concerns that it is too close to the 2024 General Election to address the past MVD voter registration issues, there are other options available to address the issue as to the known registered voters impacted. These options include (1) only allowing such registered voters to vote the “federal only” ballot, for which they are entitled to vote without providing DPOC, and/or (2) ordering the Secretary, in conjunction with the county recorders and MVD, to provide notice of error to the impacted registered voters and provide an opportunity for them to provide DPOC, in much the same way as election officials work to cure

mail-in ballots that do not meet the statutory requirements.

30. As the Maricopa County Recorder, I am acutely aware of the various unproven conspiracy theories that have unfortunately festered in Arizona in the past two election cycles. Such unfounded theories have caused significant damage to the integrity of the administration of elections. To ensure the community's faith and trust in the election system, immediate judicial oversight and declaratory judgement is not only necessary, but vital, in addressing the applicability of A.R.S. § 16-166(F).

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: September 17, 2024

A handwritten signature in dark ink, appearing to read "Stephen Richer", written over a horizontal line.

Stephen Richer
Maricopa County Recorder

EXHIBIT 1

From: Bo Dul <bdul@az.gov>
Sent: Tuesday, September 17, 2024 7:54 AM
To: Stephen Richer (MCRO)
Cc: Adrian Fontes; Keely Varvel; Amy Chan; khobbs@az.gov; ccampbell@az.gov; klorick@az.gov; C.Murphy Hebert; cslater@az.gov; Darron Moffatt (MCRO); Abby Raddatz (MCRO); Johnson, Brett W. (PHX); Spencer, Eric H.; Ahler, Colin; Steinwall, Dana
Subject: Re: Documented proof of citizenship item.

[EXTERNAL] bdul@az.gov

Dear Secretary Fontes and Recorder Richer,

As Recorder Richer noted, as soon as Maricopa County brought the anomalous record to our attention, the Governor's Office and MVD worked quickly and prioritized running down the root of the issue, identifying a solution, and developing and implementing that solution in coordination and with sign-off from the SOS team.

As you both know, MVD completed work for the programming change for the AVID/MVD interface in record time, clearing all internal MVD testing as of yesterday, and it is currently being tested by the SOS and county users. As soon as the SOS and counties complete testing and the SOS approves, the MVD and SOS teams can move it to production and it will go live. We urge the SOS and counties to move as swiftly as MVD has on this remaining testing, so that a forward-looking fix can be implemented as quickly as possible.

As to the Recorder's question regarding how to handle existing impacted records and whether those registrants must be required to provide DPOC before being registered as full-ballot voters, as we have reiterated from the beginning, the Governor urges the SOS and counties to work to obtain swift judicial resolution of the legal questions involved in advance of when counties must send their early voting lists to ballot printers—which we understand could be October 3 or earlier for some counties. To protect the integrity of our elections, the State needs and deserves such clarity and certainty—so that all eligible Arizonans can be provided the correct ballot and ensure their voices are heard in the upcoming General Election. And, to ensure equal treatment of all Arizonans, it is critical that all 15 counties handle these impacted records consistently and uniformly.

As always, the Governor's Office will continue to provide support and assistance towards these important shared goals. Please don't hesitate to reach out if we can be of further assistance.

Sincerely,

Bo Dul (she/her)
General Counsel
bdul@az.gov
(602) 769-7540



On Mon, Sep 16, 2024 at 6:05 PM Stephen Richer (MCRO) <sricher@risc.maricopa.gov> wrote:

Dear Governor Hobbs and Secretary Fontes,

ASK: Therefore, I respectfully request an opinion whether the law requires that these voters submit documented proof of citizenship in order to vote a full ballot for the November 2024 election. If so, it is my recommendation that the Secretary, Records, and ADOT work collaboratively to make this happen immediately to ensure the efficient administration of the 2024 General Election and make certain that those who are lawfully allowed to vote have the opportunity to cast their ballot, whether it is a statewide ballot or a federal election only ballot.

Background:

As you know, my office recently uncovered a system flaw in the statewide voter registration database's interface with the Arizona Motor Vehicle Division (MVD) that affects Arizona's documented proof of citizenship requirement for registered voters.

We discovered this flaw upon receiving documentation that one of our registered voters is *not* a United States citizen. That registrant, when he first registered to vote in 2022, had passed his "HAVA Check" – meaning that according to the statewide voter registration database, he had documented proof of citizenship on file with MVD. But that should have been impossible given that he is not a United States citizen. The registrant has not participated in any Arizona elections.

We immediately presented this anomaly to the MVD and to the staff of Governor Katie Hobbs. We asked them to investigate this voter record.

Governor Hobbs's staff worked quickly over the weekend of September 7-8 to discover the cause of the problem.

I now understand the system flaw as such:

Prior to October 1, 1996, Arizonans did not have to provide documented proof of citizenship to receive a driver's license. After October 1, 1996, MVD required documented proof of citizenship to obtain a driver's license.

In 2004 (effective December 8, 2004), Arizona voters passed Proposition 200 which, among other things, required that Arizona voters provide documented proof of citizenship. Those voters registered who had been registered before December 8, 2004 were exempted from this requirement. But after December 8, 2004, all new Arizona voter registrants, or Arizona voters registering in a new county, had to provide documented proof of citizenship to vote a full ballot.

Since I took office in January 2021, the vast majority of registrants have satisfied the documented proof of citizenship requirement through the MVD. Because the MVD requires documented proof of citizenship (except for certain, specifically designated license types), almost any voter registrant with driver's license issued after October 1, 1996 would clear the documented proof of citizenship check when queried by the voter registration system.

Unfortunately, in 2005, when the Secretary of State tailored the voter registration systems to meet the new requirements, the voter registration systems queried MVD for the driver's license issuance date – a date that meant one thing to MVD and another thing to the voter registration system. As was intended by MVD, the issuance year would repopulate if the licensee received a duplicate license – e.g., in the case of losing a license. However, the voter registration systems has used this duplicate date as the date of the original issuance.

This means that any prospective voter registrant who received an Arizona driver's license prior to October 1, 1996, but received an updated copy of his Arizona driver's license after October 1, 1996, and registered to vote for the first time, or registered to vote in a new county, after the effective date of Proposition 200, would be erroneously understood by voter registration systems to have passed HAVA checks.

This would be true for all 15 counties. And it would have been true since 2004.

I know that Governor Hobbs's staff, MVD staff, and the Secretary's staff worked diligently throughout the week of September 9 to resolve this issue moving forward. I greatly appreciate those efforts.

I also know that the Secretary's staff has identified the number of affected voter records in both Maricopa County and statewide.

I am now soliciting the Secretary's legal opinion on how to handle existing registrants who have been erroneously marked as having provided documented proof of citizenship when they have not provided documented proof of citizenship.

I understand that these voters have done nothing wrong.

I know that the vast majority of these voters are United States citizens who can provide documented proof of citizenship.

Nonetheless, they do not fall into the pre-Proposition 200 exemption, and I do not believe I have satisfactory documented proof of citizenship.

Therefore, I respectfully request an opinion whether the law requires that these voters submit documented proof of citizenship in order to vote a full ballot for the November 2024 election. If so, it is my recommendation that the Secretary, Records, and ADOT work collaboratively to make this happen immediately to ensure the efficient administration of the 2024 General Election and make certain that those who are lawfully allowed to vote have the opportunity to cast their ballot, whether it is a statewide ballot or a federal election only ballot.

Thank you.

Stephen

Maricopa County Recorder

P.S. Please note that the Maricopa County Attorney's Office has assigned representation on this matter to the Snell & Wilmer LLP law firm (Brett Johnson, Eric Spencer, Colin Ahler, Dana Steinwall copied above).

EXHIBIT 2



Arizona Voter Registration Instructions

Instrucciones para el Registro Electoral de Arizona

Use this form to register to vote in Arizona or update your voter registration. You must update your registration whenever you move, change your name, or change your political party affiliation.

Make sure your application is complete

- Register at least 29 days before the election
- Read the ID requirements for Boxes 8 - 11
- Read the proof of citizenship and residency requirement on Page 2
- Place a check in the correct box for citizenship in Box 22
- Complete required boxes 2,3,4,5,6,12,22, signature and date signed

WARNING: Executing a false registration is a class 6 felony.

To register to vote in Arizona, you must be:

- A U.S. citizen
- A **resident** of Arizona and the county listed on your registration
- 18 years** of age or more by the next regular General Election
- Provide proof of Citizenship and Residency** (required to vote a "full ballot")

You cannot register to vote in Arizona if:

- You have been found **mentally incapacitated** by a court and your voting rights were not preserved; or
- You have been **convicted of a felony** and have not had your civil rights restored.
 - Civil rights are automatically restored if you have only one felony conviction, completed your sentence, parole, or probation, and paid any victim restitution.
 - You **can** register to vote if you have **only misdemeanor convictions** or you are in **pretrial detention** and are otherwise eligible.

Complete and return this form

- To mail your registration form, write your County Recorder's mailing address on the "To" lines on the envelope.
- Mail or deliver** your completed, signed form to your County Recorder or person designated to receive registration forms. The County Recorder will send you a confirmation of registration within 4-6 weeks.
- You can also register online at azmvdnow.gov/VR
- Call your county recorder's office with any questions about voter registration.**

Registration deadline

- You must register at least 29 days before the election (or the next business day if that deadline falls on a holiday) to vote in that election.
- If you mail your application, it must be:
 - Postmarked by the deadline and received by the County Recorder by 7:00 p.m. on Election Day **OR**
 - Dated on or before the deadline and received by the County Recorder no later than 5 days after the deadline.

About your application

- The location where you submit your registration form, or if you decide not to register to vote, is confidential.
- If you have a disability, you can contact your County Recorder or Elections Department about early or accessible voting and other accommodations.
- If you move to a new county in Arizona or permanently move to another state, your previous voter registration will be canceled. Please inform your County Recorder's Office when you move.
- Fill in your political party preference in Box 14. If you leave this box blank as a first-time registrant, your party will be none or "No Party Designated." If you are already registered and you leave this box blank, you will keep your prior party preference. If you pick "Other," write the full name of your preferred party on the line provided.

Use esta forma para registrarse para votar en Arizona o para actualizar su registro electoral. Usted debe actualizar su registro cada vez que se mude, cambie su nombre, o cambie su afiliación de partido político.

Asegúrese de que su solicitud esté completa

- Regístrese por lo menos 29 días antes de la elección
- Lea los requisitos de identificación para las Casillas 8 - 11
- Lea el requisito de prueba de ciudadanía y residencia en la Página 2
- Marque la casilla correcta para la ciudadanía en la Casilla 22
- Complete las casillas requeridas 2,3,4,5,6,12,22, firme y anote la fecha de la firma

ADVERTENCIA: Ejecutar un registro falso es un delito grave de la clase 6.

Para registrarse para votar en Arizona, usted debe:

- Ser **ciudadano/a** de los E.U.A.
- Ser **residente** de Arizona y del condado listado en su registro
- Tener **18 años** de edad o más en ó antes de la próxima Elección General
- Proveer prueba de Ciudadanía y Residencia** (se requiere para votar una "boleta electoral completa")

Usted no puede registrar para votar en Arizona si:

- Una corte dictaminó que usted está **mentalmente incapacitado/a** y no se conservaron sus derechos de voto; o
- A usted se le ha **condenado por un delito grave** y no se le han restaurado sus derechos civiles.
 - Los derechos civiles se restauran automáticamente si usted sólo tiene una **condena por un delito grave**, ha completado su sentencia, libertad condicional, o régimen probatorio, y ha pagado cualquier restitución a la víctima.
 - Usted **se puede** registrar para votar si **sólo tiene condenas por delitos menores** o está en **detención previa al juicio** y de otra forma es elegible para votar.

Llene y regrese esta forma

- Para enviar por correo postal su forma de registro, anote el domicilio postal del Registrador de su Condado en las líneas "Para" en el sobre.
- Envíe por correo postal o entregue** su forma llena y firmada al Registrador de su Condado o a la persona designada para recibir las formas de registro. El Registrador del Condado le enviará una confirmación del registro dentro de 4-6 semanas.
- Usted también se puede registrar en línea en azmvdnow.gov/VR
- Llame a la oficina del registrador de su condado si tiene cualquier pregunta sobre el registro electoral.**

Fecha límite para el registro

- Usted se debe registrar por lo menos 29 días antes de la elección (o al siguiente día hábil si la fecha límite cae en un día festivo) para ser elegible para votar en esa elección.
- Si usted envía su solicitud por correo postal, debe:
 - Tener un sello postal fechado en o antes de la fecha límite y ser recibida por el Registrador del Condado antes de las 7:00 p.m. del Día de la Elección ó
 - Estar fechada en o antes de la fecha límite y ser recibida por el Registrador del Condado no más tarde de 5 días después de la fecha límite.

Sobre su solicitud

- El lugar donde usted presente su forma de registro, o si decide no registrarse para votar, es confidencial.
- Si usted tiene una discapacidad, puede comunicarse con el Registrador del Condado o con el Departamento de Elecciones con respecto a la votación temprana o accesible y otras adaptaciones.
- Si usted se muda a un condado nuevo en Arizona o se muda permanentemente a otro estado, su registro electoral previo será cancelado. Por favor infórmele a la Oficina del Registrador de su Condado cuando usted se mude.
- Llene su preferencia de partido político en la Casilla 14. Si usted deja en blanco esta casilla al registrarse por primera vez, su partido será ninguno o "Ningún Partido Designado." Si ya se ha registrado y deja esta casilla en blanco, usted mantendrá su preferencia previa de partido político. Si usted elige "Otro," anote el nombre completo de su partido de preferencia en la línea provista.

Proof of Residence requirements

To be eligible to vote a “full ballot” (except for a UOCAVA applicant):

- You must provide documentation or affirmation (box 22) of the location of your residence.
- A “full ballot” includes all federal, state, county, and local races and ballot questions for which you are eligible to vote.
- Provide a house number, street name, and zip code, or drawing or description of your address. If no street address, describe location using cross streets, parcel #, subdivision name/lot, or landmarks.
Draw a map and/or write the mile posts, village name, latitude/longitude, or geocodes.
- Tribal members or other Arizona residents are not required to have a standard street address. A.R.S. § 16-123.
- Any of the identifying documents listed below are satisfactory proof of location of residence. A.R.S. § 16-579(A)(1)
 - **Valid unexpired AZ driver's license or nonoperating ID**
 - **Any Tribal identification document**, such as a census card, an ID card issued by a tribal government, or a tribal enrollment card, regardless of whether the Tribal identification document contains a photo, a physical address, a P.O. Box, or no address
 - **Utility bill** of the elector dated within 90 days of registration.
 - **Bank or credit union statement** dated within 90 days of registration
 - **Valid Arizona Vehicle Registration**
 - **Property tax statement** of the elector's residence
 - **Valid United States federal, state, or local government-issued identification**, including a voter registration card issued by the County Recorder
 - Any mailing to the elector marked “**Official Election Material**”
 - If you do not live in a fixed, permanent, or private structure, you must submit a “No Residence Address Confirmation” form. Download the form at azsos.gov/files/elections/noresidence

Proof of Citizenship requirement

- To be eligible to vote a “full ballot,” you must submit proof of citizenship with your registration form or by 5:00 p.m. on the Thursday before Election Day.
- A “full ballot” includes all federal, state, county, and local races and ballot questions for which you are eligible to vote.
- If you do not submit proof of citizenship and we cannot acquire your proof of citizenship from the Arizona Motor Vehicle Division or the statewide voter registration database, you will receive a “federal-only” ballot, which has only federal races and no state, county, or local races or initiatives/referendums.
- If you are updating your name, party affiliation, or address after moving within the state, you don't need to resubmit proof of citizenship if you submitted it with your original registration.

Valid forms of Proof of Citizenship

If you have an **Arizona driver's license or non-operating license issued after October 1, 1996**, write the number in Box 9. This will serve as proof of citizenship and no additional documents are needed.

- If you were not a U.S. citizen when your license was issued, but later became a U.S. citizen, complete Box 11 or provide another form of proof of citizenship.

Other acceptable proof of citizenship (only one is needed):

- Legible copy of a birth certificate that verifies citizenship. If the name on the birth certificate is not the same as your current legal name, submit supporting documents (e.g. marriage certificate)
- Legible copy of the pertinent pages of your passport
- Presentation to the County Recorder of U.S. naturalization documents, or your Alien Registration Number, Naturalization Certificate Number, or Citizenship Certificate Number (Box 11)
- Indian Census Number, Bureau of Indian Affairs Number, Tribal Treaty Card Number, or Tribal Enrollment Number (Box 10)
- Legible copy of your Tribal Certificate of Indian Blood or Tribal or Bureau of Indian Affairs Affidavit of Birth

Do not send original documents. If applicable, make a printed copy of your proof of citizenship and/or proof of residency documents. Mail the printed copies with your completed registration form to your County Recorder.

A County Recorder may not reject a voter registration that does not contain a checkmark in Box 22 when the person provides documentary proof of citizenship and is otherwise eligible to vote.

Requisitos de la Prueba de Residencia

Para ser elegible para votar una “boleta electoral completa” (salvo para un/a solicitante de UOCAVA)

- Debe aportar documentacion o declaracion (casilla 22) de la ubicacion de sur residencia
- Una “boleta electoral completa” incluye a toda contienda federal, estatal, del condado y local y las cuestiones en la boleta electoral para las que usted sea elegible para votar.
- Provea el número de la casa, el nombre de la calle, y el código postal, o un dibujo o la descripción de su domicilio. Si no tiene domicilio, describa la ubicación usando calles transversales, # de parcela, nombre/ote de la subdivisión, o puntos de referencia.
Dibuje un mapa y/o anote los postes marcadores de millas, el nombre del pueblo, la latitud/longitud, o los códigos geográficos.
- No se requiere que los miembros tribales u otros residentes de Arizona tengan un domicilio postal estándar. A.R.S. § 16-123.
- Cualquiera de los documentos de identificación listados abajo son pruebas satisfactorias de la ubicación de la residencia. A.R.S. § 16-579(A)(1)
 - **Licencia de manejo válida y vigente de AZ o identificación no operativa**
 - **Cualquier documento de identificación Tribal**, tal como una tarjeta del censo, una tarjeta de identificación emitida por un gobierno tribal, o una tarjeta de inscripción tribal, independientemente de que el documento de identificación Tribal contenga una fotografía, un domicilio físico, un apartado postal, o no tenga domicilio.
 - **Factura de servicios públicos** del/la elector/a fechada dentro de 90 días del registro.
 - **Estado de cuenta bancario** o de una unión de crédito fechado dentro de 90 días del registro.
 - **Registro Vehicular Válido de Arizona**
 - **Declaración del impuesto sobre bienes raíces** sobre la residencia del/la elector/a
 - **Identificación válida emitida por el gobierno federal, estatal o local de los Estados Unidos**, incluyendo una tarjeta de registro electoral emitida por el Registrador del Condado
 - Cualquier correspondencia al/la elector/a marcada como “**Material Electoral Oficial**”
 - Si usted no vive en una estructura fija, permanente, o privada, debe presentar una forma de “Confirmación de Domicilio Sin Residencia”. Descargue la forma en azsos.gov/files/elections/noresidence

Requisito de Prueba de Ciudadanía

- Para ser elegible para votar usando una “boleta electoral completa”, usted debe presentar prueba de ciudadanía con su forma de registro o antes de las 5:00 p.m. del jueves previo al Día de la Elección.
- Una “boleta electoral completa” incluye a toda contienda federal, estatal, del condado y local y las cuestiones en la boleta electoral a las que usted sea elegible para votar.
- Si usted no presenta prueba de ciudadanía y nosotros no podemos adquirir dicha prueba de la División de Vehículos Motorizados de Arizona o de la base de datos del registro electoral del estado, usted recibirá una boleta electoral “sólo federal”, la cual contiene sólo contiendas federales y no las contiendas del estado, condado, o locales o iniciativas/referendums.
- Si usted está actualizando su nombre, afiliación de partido, o domicilio después de mudarse dentro del estado, no necesita volver a presentar un comprobante de ciudadanía si lo envió con su registro original.

Formas válidas de Prueba de Ciudadanía

Si usted tiene una **licencia de manejo o licencia no operativa de Arizona emitida después del 1º de octubre de 1996**, anote el número en la Casilla 9. Esto servirá como prueba de ciudadanía y no se necesitarán documentos adicionales.

- Si usted no era ciudadano/a de los E.U.A. cuando se emitió su licencia, pero después se convirtió en ciudadano/a de los E.U.A., complete la Casilla 11 ó provea otra forma de prueba de ciudadanía.

Otras pruebas aceptables de ciudadanía (sólo necesita una):

- Copia legible de un certificado de nacimiento que verifique la ciudadanía. Si el nombre en el certificado de nacimiento no es el mismo que su nombre legal actual, presente documentación legal de apoyo (ej.: certificado de matrimonio)
- Copia legible de las páginas pertinentes de su pasaporte
- Presentación al Registrador del Condado de los documentos de naturalización de los E.U.A., o su Número de Registro de Extranjero/a, Número del Certificado de Naturalización, o Número del Certificado de Ciudadanía (Casilla 11)
- Número de los Censos Indios, Número de la Oficina de Asuntos Indios, Número de la Tarjeta del Tratado Tribal, o Número de la Inscripción Tribal (Casilla 10)
- Copia legible de su Certificado Tribal de Sangre India o Affidávit de Nacimiento Tribal o de la Oficina de Asuntos Indios

No envíe documentos originales. Si es aplicable, haga una copia impresa de su prueba de ciudadanía y/o documentos de prueba de residencia. Envíe por correo postal las copias impresas con su forma llena de registro al Registrador de su Condado.

Un Registrador del Condado no puede rechazar un registro electoral que no contenga una marca de verificación en la Casilla 22 cuando la persona provee prueba documental de ciudadanía y de otra forma es elegible para votar.



Arizona Voter Registration Form

Forma de registro electoral en Arizona

Use this form to register to vote or update your registration. You must provide proof of citizenship and residency to vote a "full ballot." **Red shaded boxes are required.** Use a blue or black pen. Use esta forma para registrarse para votar o actualizar su registro. Usted debe proveer prueba de ciudadanía y de residencia para votar una "boleta electoral completa". **Se requiere que llene las casillas sombreadas en rojo.** Use una pluma con tinta azul o negra.

Register online
Regístrese en línea
www.azmvdnow.gov/VR
For more information
Para más información
www.azsos.gov



1-877-THE-VOTE

BOX FOR OFFICE USE ONLY
CASILLA SÓLO PARA EL USO DE LA OFICINA

S 00

- 1 Active Early Voting List (AEVL) - Receive your early ballot by mail!**
Lista Activa de Votación Temprana "AEVL" - ¡Reciba su boleta electoral para la votación temprana por correo postal!
Yes Sí Yes I want to be added to the AEVL. Send me an early ballot by mail automatically for every election for which I am eligible. Quiero que me agreguen a la lista AEVL y recibir automáticamente una boleta de votación temprana por correo para cada elección.
No I do not want to be added to the AEVL. Remove me from the list if I am already on it.
Yo no quiero que se me agregue a la lista AEVL. Remuévanme de la lista, si ya estoy en ella.

2 Last name Apellido	First name Nombre	Middle name Segundo nombre	Jr., Sr., III
--------------------------------	-----------------------------	--------------------------------------	----------------------

3 Residence Address or description of where you live (no P.O. Box/business address)
Domicilio residencial o descripción del lugar donde usted vive (no un apartado postal/domicilio comercial)

4 Apt. or Unit Apto o Unidad	5 City Ciudad	6 Zip code Código Postal
--	-------------------------	------------------------------------

7 Address where you get mail Domicilio donde usted recibe su correo postal
Same as Box 3 Igual que en la Casilla 3

i To be eligible to vote a "full ballot" complete box 9, 10, or 11, or provide other proof of citizenship and residency. See page 2 of instructions.
Para ser elegible para votar con una "boleta electoral completa" llene las casillas 9, 10 u 11, o proporcione otra prueba de ciudadanía y residencia. Vea las instrucciones en la página 2.

8 Last 4 digits of your SSN Últimos 4 dígitos del Núm. de Seg. Social	9 AZ Driver License or Nonoperating License # Licencia de Manejo o Tarjeta de Identificación de Arizona	10 Tribal ID # Identificación Tribal #
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11 Alien Registration, Naturalization Certificate, or Citizenship Certificate # Registro de Extranjero, Certificado de Naturalización, o Certificado de Ciudadanía #	12 Date of birth (MM-DD-YYYY) Fecha de Nacimiento (MM-DD-AAAA)	13 State or Country of Birth Estado o País de Nacimiento
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14 Party Preference Preferencia de Partido Republican Republicano Democratic Demócrata Other Otro _____ None or No Party Ningún o Sin Partido	15 Telephone Number Número de Teléfono This is a cellphone. Éste es un teléfono celular.	16 Occupation Ocupación
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17 If you were registered in another county or state, list the address, including county or state. Si usted estaba registrado/a en otro condado o estado, anote el domicilio, incluyendo el condado o el estado.	18 Former Name(s) (if applicable) Nombre/s Previo/s (si es aplicable)
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19 Father's Name or Mother's Maiden Name Nombre de su Padre o Nombre de Soltera de su Madre	20 Are you willing to work at a polling place on Election Day? ¿Está usted dispuesto/a a trabajar en un lugar de votación el Día de la Elección? Yes Sí No	21 E-Mail Correo Electrónico
---	--	--

22 Are you a citizen of the United States of America? Yes Sí No
¿Es usted ciudadano/a de los Estados Unidos de América?
Will you be at least 18 years old by Election Day? Yes Sí No
¿Usted tendrá por lo menos 18 años de edad para el Día de la Elección?

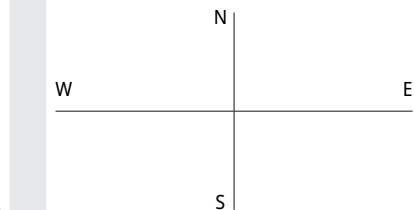
If you checked "No" to either of these questions, DO NOT submit this form. Si usted marcó "No" a cualquiera de estas preguntas, NO presente este formulario.

23 If no street address, draw a map and/or write the mile posts, village name, latitude/longitude, or geocodes. Si no tiene un domicilio de calle, dibuje un mapa y/o anote los postes de la milla, el nombre del pueblo, la latitud/longitud, o los códigos geográficos.

Voter Declaration - By signing below, I swear or affirm that the above information is true, that I am a RESIDENT of Arizona, I have NOT been convicted of a FELONY (or my civil rights have been restored - see instructions for details), and I have NOT been adjudicated INCAPACITATED with my voting rights revoked. I authorize my voter registration at any other address to be cancelled. **Declaración del/la Elector/a** - Al firmar abajo, yo juro o afirmo que la información anterior es verdadera, que soy RESIDENTE de Arizona, que NO se me ha condenado por un DELITO GRAVE (o que mis derechos civiles han sido restituidos - vea los detalles en las instrucciones), y que NO se me ha dictaminado INCAPACITADO/A revocando mis derechos electorales. Yo autorizo que se cancele mi registro electoral en cualquier otro domicilio.

Signature **X**
Firma

Date
Fecha _____



24 If you are unable to complete or sign the form, the form can be completed at your direction. The person who assisted you must sign here.
Si usted no puede llenar o firmar la forma, puede dirigir a otra persona para que la llene bajo su dirección. La persona que le haya asistido debe firmar aquí.

Signature of person assisting **X**
Firma de la persona asistiendo

Date _____
Fecha _____

Arizona Secretary of State
Revised May 2024

Doble, selle con cinta adhesiva, y envíela por correo postal al Registrador de su Condado.
No use grapas. Los domicilios de los Registradores de los condados están listados arriba.

Fold, tape shut, and mail to your County Recorder.
Do not use staples. County Recorder mailing addresses are listed on this page.

Fold here Doblar aquí

Your address
Su domicilio

Place First-class
stamp here



To: Your County Recorder's mailing address
Para: La dirección postal del Registrador de su Condado

Fold here Doble aquí

County Recorder Addresses Domicilios de los Registradores de los Condados

Apache County Recorder
St. Johns, AZ 85936
(928) 337-7516 (TDD# 711)

Cochise County Recorder
Bisbee, AZ 85603
(520) 432-8358 (TDD# 711)

Coconino County Recorder
Flagstaff, AZ 86001
(928) 679-7860 (TDD# 711)

Gila County Recorder
Globe, AZ 85501
(928) 402-8740 (TDD# 711)

Graham County Recorder
Safford, AZ 85548
(928) 428-3560 (TDD# 711)

Greenlee County Recorder
Clifton, AZ 85533
(928) 865-2632 (TDD# 711)

La Paz County Recorder
Parker, AZ 85344
(928) 669-6136 (TDD# 711)

Maricopa County Recorder
Phoenix, AZ 85003
(602) 506-1511 (TDD# 711)

Mohave County Recorder
Kingman, AZ 86402
(928) 753-0767 (TDD# 711)

Navajo County Recorder
Holbrook, AZ 86025
(928) 524-4192 (TDD# 711)

Pima County Recorder
Tucson, AZ 85702
(520) 724-4330 (TDD# 711)

Pinal County Recorder
Florence, AZ 85132
(520) 866-6854 (TDD# 711)

Santa Cruz County Recorder
Nogales, AZ 85621
(520) 375-7990 (TDD# 711)

Yavapai County Recorder
Prescott, AZ 86305
(928) 771-3248 (TDD# 711)

Yuma County Recorder
Yuma, AZ 85364
(928) 373-6034 (TDD# 711)

Arizona Secretary of State
Revised May 2024

EXHIBIT 3



September 17, 2024

Via Email

Honorable Arizona County Recorders:

An issue recently came to my attention that we need to address with alacrity.

As you are aware, voter-approved Proposition 200 implemented a proof of citizenship requirement in order to register to vote in Arizona. The proposition language stated that any Arizona driver license or identification card with an issue date on or after October 1, 1996, would suffice as documentary proof of citizenship (DPOC). Recorder Richer's office recently learned of an error in the MVD database. In partnership with the Recorder's office and MVD, we determined that the issuance date field in the MVD database was changed for those individuals who originally obtained a license issued before October 1, 1996 – and subsequently obtained a duplicate license – to the duplicate license issue date. Therefore, there is a group of approximately 98,000 registrants who all attested to their U.S. citizenship (which is the only current requirement for registration in all other 49 states) but *may* not have provided the additional DPOC.

The main question is one of timing. We are well within the 90-day NVRA prohibition on list maintenance. Even if requesting DPOC from these voters within 90 days of the General Election is not considered routine, systemic maintenance, prohibited during this time under NVRA, I am unwilling to disenfranchise this many voters by limiting them suddenly, and with little notice, to a federal only ballot when none of them had notice of or blame for this issue. The deadline for UOCAVA ballots is in a few short days, with early ballots to be issued on October 9. Second, these voters reasonably believe, because they have been voting full state ballots, they do not lack DPOC. This raises a due process and equal protection concern. These people are mostly ages 45-60; the majority are registered Republicans, followed by Democrats

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APP0043

and then OTH voters, similar to the statewide distribution for that age group. The number per county also generally track with voter population.

The bottom line is that we have identified the issue, and we are continuing to work with MVD to accurately assess the issue and ensure that the agency updates its database. I hope you will join us in encouraging the public to put country before reactionary rhetoric, and recognize that, while humans and systems are fallible, if we come together, we can quickly develop solutions to address even the greatest challenges.

Sincerely,

A handwritten signature in green ink, appearing to read 'Adrian P. Fontes', with a stylized flourish at the end.

ADRIAN P. FONTES
SECRETARY OF STATE