



March 30, 2016

The Honorable Michelle Reagan
Office of the Secretary of State
1700 W. Washington Street, 7th Floor
Phoenix, AZ 85007-2808

Dear Secretary Reagan:

We write to you as a coalition of civil rights and civic engagement organizations to express our grave concerns regarding the negative experiences many Arizona voters encountered during the March 22 presidential preference election. While we understand that you are taking steps to launch a statewide review of county election policies and procedures, much work remains to be done to safeguard access to the ballot box for all voters in Arizona. We therefore urge you to require that Arizona county election officials immediately adopt Election Administrative Plans (EAPs) as a first step to improving the election process. We believe that a comprehensive and thoughtful approach to planning, conducting and administering elections will help increase voter access to the ballot and prevent the wide-spread disenfranchisement of voters that we witnessed last week.

Through on-the-ground field volunteers and the non-partisan Election Protection voter hotline, we received hundreds of reports from Arizona voters who encountered significant obstacles or were denied the right to vote and participate in last week's election. For instance, voters reported to the hotline that they endured up to five hour-long lines in Maricopa County, while other voters were forced to leave the polling site without casting a ballot because of work or family obligations. The problems experienced by voters in Maricopa County coincided with the County's recent decision to replace use of precinct based polling sites with a smaller number of mega-vote centers, which reduced the number of available voting locations from 210 in the 2012 presidential preference election to just 60 sites this year.

In addition, we received numerous reports from Independent voters who were confused because they were not aware they were unable to vote in this election because the presidential preference primary had switched from an open to a closed primary in 2016. We also heard from voters who reportedly used the state's online voter registration system to register or change their party affiliation. However, when these voters went to vote they were informed that the state's system did not identify them as affiliated with one of the three parties eligible to vote in the presidential preference primary. Many of those same voters reported confusion and irregularities in the way

poll workers issued provisional ballots in those circumstances. It is our understanding that the law requires that provisional ballots are provided to voters for the following reasons: 1) voter does not provide identification; 2) voter's name and address on the registration list are not the same as the name and address on voter's identification; 3) voter moved to a new precinct within the county; 4) voter's name changed since registration; 5) voter was challenged as a qualified voter; and 6) voter requested an early ballot but did not vote an early ballot. More work must be done to ensure that poll workers are trained to impart accurate and consistent information to all voters, regardless of their partisan affiliation.

Under Arizona code, the secretary of state's office oversees many of the details regarding Arizona's elections. For instance, ARS § 16-452 requires the Secretary of State's office to "consult[] with each county board of supervisors or other officer in charge of elections... [and] prescribe rules to 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." ARS § 16-452 also provides the secretary with broad authority and responsibility to set forth rules through an Election Procedures Manual to ensure that elections are run correctly. Indeed, with respect to presidential preference election, the manual appears to contemplate that significant changes, like the polling place reduction plan in Maricopa County, would not happen without your office's knowledge and approval: "The Secretary of State is permitted to allow a county to modify the procedures used to administer a presidential preference election if those procedures are more efficient and designed to reduce the cost of the election. A County Recorder or officer in charge of elections may submit a written plan to the Secretary of State for administering their duties in the conduct of the presidential election pursuant to this provision." To the extent that Maricopa County provided notice to the secretary of state and provided a written plan outlining the polling place reduction that you reviewed and approved, we ask that you provide a copy. It is important that the public understand the methodology underlying Maricopa County's decision, and the state's approval, to move to the use of mega-centers. As you know, Maricopa County is home to significant numbers of minority voters, many of whom are without access to public transportation and vehicles, making travel to and from the few number of mega-centers difficult.

More generally, the provisions of ARS § 16-452, including the Secretary of State's Election Procedures Manual, provide a vehicle for requiring counties to develop and implement EAPs as a means of improving election administration. The Election Procedures Manual requires counties to adopt plans with respect to discrete issues, and the experience during last week's election makes clear that Maricopa County should develop a comprehensive plan at once that is submitted to the Secretary of State for review.

The experience in Ohio reflects the value of having comprehensive EAPs. After the myriad problems in Ohio in the 2004 election, the Lawyers' Committee for Civil Rights Under Law and others filed a lawsuit, *League of Women Voters v. Brunner*, alleging that Ohio had violated the constitutional rights of voters in the way it administered elections. A central component of the subsequent settlement was to require the Secretary of State to direct each county to implement an EAP prior to every general election and federal primary election that addresses the following areas: resource allocation; security; Election Day communication; education materials and ballots; Election Day contingencies; poll worker recruitment; training, and accountability; voter

registration; absentee ballots; and the production of a master calendar. In Ohio, county election administration has vastly improved since the implementation of EAPs. Although there was initial resistance to the EAPs, counties in Ohio have continued to use EAPs after the settlement agreement expired in 2014. Indeed, in 2015, the Ohio secretary of state issued a directive to require board of elections to develop and submit EAPs.

The experience in Ohio is instructive. If Arizona counties were required to produce EAPs, the problems from last week may have been minimized or even prevented. The Election Day communications component of an EAP would provide specific guidance to the county recorder on how to communicate with the secretary of state, the media, the public, and poll workers if and when issues arise. Clear and transparent Election Day communication protocols and emergency procedures would have greatly helped poll workers, elections officials and ultimately voters during last week's election. An EAP for Maricopa County would also helped prevent some of the long lines that formed, as an EAP would have required Maricopa County to take action to ensure that mega-centers were allocated adequate numbers of polling machines and poll workers, both of which appear to have been in short supply during this election. We note that the Election Procedures Manual has a provision requiring counties to have a contingency plan if voter wait times are longer than an hour but there is no requirement that this plan be in writing or that it be shared with your office. Clearly, any plan that Maricopa County might have had, whether written or otherwise, was grossly inadequate.

We urge you to consider and adopt the recommendations outlined above, particularly in advance of any additional elections this year. While we are encouraged by the high turnout rates among Arizona voters, we know that much more could be done to run elections in a more efficient and effective manner to increase access to the ballot. Arizona voters deserve no less. We believe that an EAP plan can be implemented expeditiously and will benefit both voters and election workers in Arizona. Please contact Maria Peralta at the Lawyers' Committee at mperalta@lawyerscommittee.org or 202-662-8352 to discuss this matter further.

Sincerely,

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Law

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