



November 8, 2018

**VIA ELECTRONIC MAIL & FACSIMILE**

Dear Secretary Reagan and County Recorders,

We are writing on behalf of the Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee"), a non-partisan, nonprofit organization, formed in 1963 at the request of President John F. Kennedy to enlist the private bar's leadership and resources in combatting racial discrimination and the resulting inequality of opportunity. The Lawyers' Committee leads the nation's largest non-partisan voter protection effort, the Election Protection program, and is deeply committed to ensuring that all eligible voters have an equal opportunity to participate in the electoral process. The Election Protection coalition includes more than 100 local, state and national partners and its hotline (866-OUR-VOTE) fields tens of thousands of calls from voters every election. We work with a team of non-partisan voting rights attorneys and other voting rights specialists who have decades of experience with state and federal election laws.

On November 4, 2018, the Arizona Republican Party sent a letter to county recorders regarding two issues: (1) "misuse of 'emergency' early voting," and (2) "post-election rehabilitation of facially defective early ballots." Because that letter provided inaccurate and incomplete descriptions of key provisions of the Arizona Election Code and was sent by a partisan organization, we wanted to offer your offices a more robust summary of those provisions.<sup>1</sup>

**1. Emergency Early Voting**

We wanted to first provide a few clarifications concerning early voting procedures:

- ARIZ. REV. STAT. §16-542

First, we wish to clarify what ARIZ. REV. STAT. §16-542, cited by the November 4<sup>th</sup> letter, requires. Nothing in ARIZ. REV. STAT. §16-542(E) states unequivocally that "in-person early voting must terminate 'no later than 5:00 p.m. on the Friday preceding the election.'" November 4, 2018

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<sup>1</sup> The Arizona Republican Party followed their letter with a lawsuit filed on November 7<sup>th</sup> concerning these same issues.



letter at 1. Rather, §16-542(E) sets out procedures for requesting an early ballot by mail and makes clear that requests for early ballots may also be made in person. §16-542(E) is a statutory guarantee that in-person requests for early ballots made by 5:00 pm on the Friday before Election Day must be honored:

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“An elector who appears personally no later than 5:00 p.m. on the Friday preceding the election at an on-site early voting location that is established by the county recorder or other officer in charge of elections shall be given a ballot and permitted to vote at the on-site location.”

Moreover, §16-542(H) provides that “qualified electors may request to vote early in the manner prescribed by the county recorder of their respective county” as “a result of an emergency occurring between 5:00 p.m. on the second Friday preceding the election and 5:00 p.m. on the Monday preceding the election.” *See also* 2014 Election Procedures Manual at 58.<sup>2</sup> The term “emergency” is defined broadly as “*any unforeseen circumstances* that would prevent the elector from voting at the polls.” §16-542(G) (emphasis added).

- No requirement that a voter “articulate” an emergency

The November 4<sup>th</sup> letter also incorrectly avers that in order to exercise her right to vote under this provision, an elector must declare an “articulable ‘emergency’” and prove that it would be “impossible” for her to vote on Election Day. However, this requirement does not appear in state election law or Election Procedures Manual. There is no indication that election officials are required, or even permitted, to inquire as to the emergency

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<sup>2</sup> This section of the 2014 Election Procedures Manual states, in its entirety:

Emergency Early Voting

"Emergency" means any unforeseen circumstances that would prevent the elector from voting at the polls. Electors who encounter an emergency occurring between:

5:00 p.m. on the second Friday before the election *and*  
 5:00 p.m. on the Monday before the election

may request to vote in the manner prescribed by the County Recorder of their respective county.



that causes the voter to cast his or her ballot via emergency early voting procedures.

2. **Signature Verification and Rehabilitation of Early Ballots**

We also wish to first provide clarification concerning Arizona’s requirements concerning “rehabilitation” of defective early ballots:

- **ARIZ. REV. STAT. § 16-550(A) and Timing of Voter Contact**

ARIZ. REV. STAT. § 16-550(A) requires that the County Recorder compare the signature on the ballot affidavit with that on the voter’s registration form “[u]pon receipt.” Contrary to the information presented in the November 4<sup>th</sup> letter, there is no mention of a requirement that such comparison occur “immediately.”

Both the state election procedures manual and the state statute give county recorders discretion for determining the reasonable period in which to contact voters about any deficiencies in their early vote ballots. *See* 2014 Election Procedures Manual at 60 and ARIZ. REV. STAT. § 16-550. Any assertion that a county recorder can “only” contact electors in the case of unsatisfactorily comparable signatures “if time permit[s]”, as the November 4<sup>th</sup> letter asserts, reads additional conditions into state law that are not supported by the text of Arizona’s election code or election procedures manual.

- **ARIZ. REV. STAT. § 16-551(C) and Processing of Early Ballots**

Ariz. Rev. Stat. § 16-551(C) is not cited accurately in the November 4<sup>th</sup> letter. Rather than requiring that early ballots “be received *and* processed by the county recorder’s offices no later than 7:00pm on Election Day,” as described in the letter, this section of Arizona code states “[a]ll early ballots” and “original affidavits of the voter” “received by the county recorder” before 7:00 p.m. on election day “be delivered to the early election boards *for* processing...”<sup>3</sup> In other words, while the letter is

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<sup>3</sup> The relevant sentence in § 16-551 reads in its entirety: “All early ballots received by the county recorder or other officer in charge of elections before 7:00 p.m. on election day and the original affidavit of the voter shall be delivered to the early election boards *for* processing as provided in the rules of the secretary of state.” (emphasis added).

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accurate in stating that the early ballots must be *received* by 7:00pm on Election Day, it is not accurate to say that the ballots and affidavits must also be *processed* (i.e., have their signatures verified) by 7:00 pm on Election Day.

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We hope that this letter helps clarify any confusion concerning processing of early vote ballots. Please contact Ezra Rosenberg, Co-Director of the Voting Rights Project of the Lawyers' Committee for Civil Rights Under Law at [erosenberg@lawyerscommittee.org](mailto:erosenberg@lawyerscommittee.org) if you have any questions.

Thank you,

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