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*San Carlos Apache Tribe, and Inter Tribal*  
*Council of Arizona, Inc.*

14 \_\_\_\_\_  
15 **SUPERIOR COURT OF ARIZONA**

16 **COUNTY OF MARICOPA**

17  
18 WARREN PETERSEN, in his official  
capacity as President of the Arizona Senate;  
19 BEN TOMA, in his official capacity as  
Speaker of the Arizona House of  
20 Representatives,,  
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Plaintiffs,

v.

22  
23 Adrian Fontes, in his official capacity as  
Arizona Secretary of State,  
24

Defendant,  
25  
26  
27  
28

Case No. CV2024-001942

**MOTION FOR LEAVE TO FILE  
AMICI CURIAE BRIEF OF LIVING  
UNITED FOR CHANGE IN  
ARIZONA, LEAGUE OF UNITED  
LATIN AMERICAN CITIZENS,  
ARIZONA STUDENTS'  
ASSOCIATION, SAN CARLOS  
APACHE TRIBE AND INTER  
TRIBAL COUNCIL OF ARIZONA,  
INC. IN SUPPORT OF DEFENDANTS**  
\_\_\_\_\_

1 Living United for Change in Arizona (LUCHA), League of United Latin American  
2 Citizens (LULAC), Arizona Students' Association (ASA), the San Carlos Apache Tribe  
3 and Inter Tribal Council of America, Inc. (ITCA) respectfully move, pursuant to this  
4 Court's inherent authority, to file a brief as *amici curiae* to emphasize the importance of  
5 the Election Procedures Manual (EPM) and its incorporation of binding judicial rulings.

6 **I. Arizona trial courts have the authority to accept *amicus curiae* briefs.**

7 Courts have "inherent power to do all things reasonably necessary for the  
8 administration of justice." *Schavey v. Royston*, 8 Ariz. App. 574, 575 (1968). Consistent  
9 with this principle, Arizona trial courts have accepted *amicus curiae* briefs to assist the  
10 court even in the absence of a specific trial court rule granting such permission. *See Home*  
11 *Builders Ass'n of Cent. Ariz. v. City of Apache Junction*, 198 Ariz. 493, 496 n.4 (App.  
12 2000) ("Several *amici* have appeared, both here and in the trial court, supporting the  
13 respective positions advanced by the appellants, the City, and the District.").

14 **II. Interests of the *amici*.**

15 LUCHA is a nonpartisan, nonprofit membership organization based in Arizona  
16 fighting for social, racial, and economic justice. LUCHA advocates on behalf of  
17 approximately 2,000 members and over 90,000 supporters. LUCHA and its sister  
18 organization Arizona Center for Empowerment organize voter registration drives and  
19 educate voters on election deadlines, the voting process, and the importance of protecting  
20 the right to vote.

21 LULAC is the Arizona-based branch of the nation's oldest and largest Latino civil  
22 rights organization. LULAC members live across the state, and LULAC has local councils  
23 throughout Arizona, including in Phoenix, San Luis, Tucson, Tempe, Yuma, and other  
24 smaller communities. LULAC is committed to increasing the civic participation of its  
25 members and Arizona voters, and devotes time and resources to voter education and  
26 registration in Arizona.

27 ASA is a nonpartisan, nonprofit membership organization based in Arizona. ASA  
28

1 is student led and represents the collective interests of over 140,000 university students and  
2 over 400,000 community college students in Arizona. ASA advocates at the local, state,  
3 and national levels for the interests of students and encourages students to make their  
4 voices heard through their vote. To that end, ASA engages in statewide voter registration  
5 and voter education campaigns.

6 ITCA is a nonpartisan, nonprofit inter-tribal consortium of 21 federally recognized  
7 Indian Tribes with lands located across the State of Arizona. Since 1952, ITCA's Member  
8 Tribes have worked together to advocate for regional, state, and national issues affecting  
9 Tribes. ITCA works to address the historical and modern barriers members of ITCA's  
10 Member Tribes face when attempting to access the ballot. ITCA provides non-partisan  
11 support to enable Native American voters' participation in local, state, and federal elections  
12 in the form of voter registration, voter education, Get-Out-the-Vote efforts, and Election  
13 Protection.

14 The San Carlos Apache Tribe (Tribe) is a federally recognized Indian Tribe  
15 organized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48  
16 Stat. 984), with approximately 17,000 enrolled members. 86 Fed. Reg. 7554. The Tribe  
17 comes from the Ndee or Western Apache Nation. The Ndee have lived and traveled  
18 throughout present-day Arizona for more than a thousand years. Many members of the  
19 Tribe are eligible voters, and the Tribe has engaged in extensive voter education,  
20 registration, and engagement activities for its members to facilitate participation in  
21 nontribal elections.

22 Together, *amici* help tens of thousands of citizens in Arizona register to vote, check  
23 their registration status, update their information, and navigate in-person and mail-in  
24 voting. They have litigated in federal court many times to protect their right to vote. *See*  
25 *e.g., Mi Familia Vota, v. Fontes*, No. CV-22-00509-PHX-SRB, 2024 WL 862406, at \*7,  
26 42 (D. Ariz. Feb. 29, 2024); *LULAC v. Reagan*, No. 2:17-cv-04102-DGC (D. Ariz.).  
27 Plaintiffs' request to void much of the EPM threatens Arizona's elections and the rights of  
28

1 *amici*'s members. *Amici* have an interest in ensuring election officials have uniform and  
2 correct guidelines for election administration, that voter registration and voter advocacy  
3 organizations, like *amici*, have notice on the operation of election statutes, and that *amici*'s  
4 rights vindicated through litigation have real-world effect. *Amici* believe their history of  
5 promoting and protecting democracy lend them a unique perspective.

6 **III. Accepting this brief will assist the court.**

7 *Amicus* briefs may be filed where a court determines that *amici* "can provide  
8 information, perspective, or argument that can help the appellate court beyond the help that  
9 the parties' lawyers provide." Ariz. R. Civ. App. P. 16(b)(1)(C)(iii). This rule, though not  
10 binding on the Court, provides guidance for determining when to accept *amicus curiae*  
11 briefs. As organizations working on all aspects of the voting process, from registration to  
12 casting a ballot, amici are well-positioned to provide this Court with helpful information  
13 on election administration and the needs of voters.

14 **IV. Conclusion**

15 *Amici* respectfully request that this Court grant the motion for leave to file the  
16 accompanying brief.

17  
18 Dated: March 22, 2024

Respectfully submitted,

19  
20 */s/ James E. Barton II*  
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# **EXHIBIT 1**

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14 **SUPERIOR COURT OF ARIZONA**  
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17 WARREN PETERSEN, in his official  
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18 BEN TOMA, in his official capacity as  
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21 v.

22 Adrian Fontes, in his official capacity as  
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23 Defendant,  
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Case No. CV2024-001942

**BRIEF OF PROPOSED AMICI  
CURIAE LIVING UNITED FOR  
CHANGE IN ARIZONA, LEAGUE OF  
UNITED LATIN AMERICAN  
CITIZENS, ARIZONA STUDENTS'  
ASSOCIATION, SAN CARLOS  
APACHE TRIBE AND INTER  
TRIBAL COUNCIL OF ARIZONA,  
INC. IN SUPPORT OF DEFENDANTS**

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1           The League of Women Voters of Arizona (LWVAZ), Living United for Change in  
2 Arizona (LUCHA), League of United Latin American Citizens (LULAC), and Arizona  
3 Students' Association (ASA) respectfully submit this amicus brief in support of Defendant  
4 Arizona Secretary of State Adrian Fontes' motion to dismiss and urges the Court to deny  
5 plaintiffs' motion for preliminary injunction.  
6

7  
8           **I.       INTRODUCTION**

9           The Election Procedures Manual (EPM) is a comprehensive document providing  
10 detailed guidance that allows County Recorders and Election Administrators to apply state  
11 and federal law—including binding decisions from state and federal courts—in a uniform  
12 manner across the state. County election officials have lacked thorough and updated  
13 guidance on changes made to Arizona's election laws since 2019—the last time an Election  
14 Procedures Manual (EPM) was issued. The 2023 EPM is a necessary tool for both election  
15 officials and voters that provides orderly, navigable, and uniform procedures for the  
16 administration of elections in Arizona that comply with federal and state laws.

17           Plaintiffs' wide-ranging complaint alleges that the Secretary of State (Secretary) has  
18 exceeded his authority by using the EPM to issue election rules that override statutes. But  
19 in fact, it is plaintiffs who attempt to override statutory and judicial authority by  
20 invalidating the lawfully enacted EPM, which operationalizes Arizona's election statutes  
21 and incorporates binding rulings from state and federal courts. This Court should reject  
22 plaintiffs' attempts to disrupt the election process and sow voter confusion by challenging  
23 the Secretary's statutory authority to issue implementing regulations and ensure uniform  
24 administration of elections via the EPM.

25           **II.       ARGUMENT**

26           **A. The EPM is an important tool to safeguard the security of Arizona's elections**  
27           **and ensure uniformity in election administration across the State.**

28           The Secretary is Arizona's chief election officer and is responsible for ensuring fair,

1 accessible, and secure elections. A.R.S. §§ 16-142 (Secretary as Chief Elections Officer  
2 responsible for coordinating state responsibilities under the NVRA and UOCAVA); 41-  
3 121(A)(6) (SOS certifies election results); 16-407 (SOS responsible for certifying and  
4 training local election officers). To accomplish these goals, the Secretary is charged by  
5 statute to “prescribe rules to achieve and maintain the maximum degree of correctness,  
6 impartiality, uniformity, and efficiency on the procedures for early voting and voting, and  
7 of producing, distributing, collecting, counting, tabulating, and storing ballots” in the form  
8 of an EPM issued biannually in consultation with county election officials and with the  
9 approval of the governor and attorney general. A.R.S. § 16-452.

10         The Arizona legislature unequivocally delegated this rulemaking authority to the  
11 Secretary because it *intended* for the Secretary to issue comprehensive election  
12 administration regulations via the EPM. *See e.g., id.* (“the secretary of state shall prescribe  
13 rules”; A.R.S. § 16-315(D) (“The secretary of state *shall* establish in the instructions and  
14 procedures manual issued pursuant to § 16-452 a procedure for registering circulators and  
15 receiving service of process.”); A.R.S. § 16-551 (early ballot processing will follow rules  
16 provided by the Secretary). In 2019, the legislature amended A.R.S. § 16-452, changing  
17 the deadline for the issuance of the EPM from 30 days before an election to December 31  
18 in the year prior to a general election to ensure that election administrators would have  
19 sufficient time to implement and train their staff and volunteers on election procedures. *See*  
20 *Laws 2019, Ch. 99 § 1 (H.B. 2238)*. *Id.* Notably, in recognition of the fact that “election  
21 laws play an important role in protecting the integrity of the electoral process,” violation  
22 of the EPM's provisions is a misdemeanor. *Arizona Pub. Integrity All. v. Fontes*, 250 Ariz.  
23 58, 61 (2020); A.R.S. § 16-452. That the legislature chose to prioritize certainty and  
24 uniformity in election administration, knowing that there might be subsequent election law  
25 changes following the issuance of the EPM, further reinforces the EPM’s important role in  
26 the electoral process.

27         There are two sources of authority the Secretary must incorporate into the EPM—  
28

1 statutes and court orders (both Arizona and federal). Regarding statutory text, the EPM  
2 cannot reproduce the statutes with no additional language; otherwise, its production would  
3 be superfluous. The EPM is meant to explain, construe, or implement the requirements of  
4 Arizona law, and it is the Secretary’s responsibility to use his statutorily granted  
5 rulemaking authority to provide guidance to county election officials on how to implement  
6 election rules consistent with state and federal law.

7         As Arizona’s chief election official, the duty to implement certain federal election  
8 laws rests with the Secretary. *See, e.g.*, 52 U.S.C. § 20505(b) (“The chief State election  
9 official of a State shall make the forms described in subsection (a) available for distribution  
10 through governmental and private entities...”); § 20509 (the chief state election official  
11 will be “responsible for coordination of State responsibilities under this chapter.”). Indeed,  
12 the procedures outlined in the EPM help prevent Arizona from violating federal law. *See*  
13 *Mi Familia Vota, v. Fontes*, No. CV-22-00509-PHX-SRB, 2024 WL 862406, at \*7, 42 (D.  
14 Ariz. Feb. 29, 2024) (“the 2023 EPM adequately informs county recorders of how to  
15 address” list maintenance in a way that is uniform, nondiscriminatory, and in compliance  
16 with federal laws.)

17         Similarly, the EPM “serves a ‘gap-filling function’” for Arizona statutes, which  
18 does not violate the law, but rather helps to effectuate and enforce it. *Id.* at \*4; *see also*  
19 *Duncan v. A.R. Krull Co.*, 57 Ariz. 472, 478 (1941) (“A legislature...may expressly  
20 authorize an administrative commission...to provide rules and regulations for the complete  
21 operation and enforcement of the law within its expressed general purpose.”). For example,  
22 in 2021, the legislature passed SB 1485 which ended Arizona’s permanent early voter list  
23 and created the new “Active” early voting list (AEVL), effective in 2024. S.B. 1485, Fifty-  
24 fifth Leg., 1<sup>st</sup> Sess. (Ariz. 2021). The Secretary’s instructions to county election officials  
25 in the 2023 EPM are critical not only to operationalize the AEVL for the 2024 primary and  
26 general elections, but also to ensure that removal of voters from this list is conducted in a  
27 manner that complies with federal law and is not arbitrary, inconsistent, or discriminatory.  
28

1 *See Bush v. Gore*, 531 U.S. 98, 107 (2000).

2       The Secretary is bound, not only by Arizona statutory authority, but by the U.S.  
3 Constitution and federal law to maintain uniformity among Arizona’s counties when it  
4 comes to the administration of elections. *See* 52 U.S.C.A. § 20507(b)(1) (National Voter  
5 Registration Act of 1993) (maintenance of voter registration rolls shall be uniform,  
6 nondiscriminatory, and in compliance with the Voting Rights Act of 1965); 52 U.S.C.A. §  
7 21081(a)(6) (Help America Vote Act of 2002 (HAVA)) (“Each State shall adopt uniform  
8 and nondiscriminatory standards that define what constitutes a vote and what will be  
9 counted as a vote for each category of voting system used in the State.”); *Richardson v.*  
10 *Ramirez*, 418 U.S. 24, 56 (1974) (lack of uniformity by counties in enforcement of election  
11 statutes implicates the equal protection clause); *Bush v. Gore*, 531 U.S. 98, 107 (2000)  
12 (“varying procedures” and “disparate treatment to voters in [] different counties” led to a  
13 violation of the Equal Protection Clause). HAVA was enacted in response to the election  
14 administration issues in the wake of the 2000 Presidential Election and set out to create  
15 “national standards for election administration.”<sup>1</sup> Arizona enacted its own statutes to  
16 effectuate HAVA. *Chavez v. Brewer*, 222 Ariz. 309, 312, 214 P.3d 397, 400 (Ct. App. 2009).  
17 The EPM’s robust guidance helps secure the uniformity required by law.

18       Without uniform guidance from the Secretary, county election officials would be  
19 left to determine for themselves how to implement Arizona’s election statutes and court  
20 orders, which would likely lead to multiple disparate procedures among the counties for  
21 registration, voting, canvassing, and tabulation. In recent years, county authorities have  
22 attempted to gap-fill areas not addressed by statute which, absent judicial intervention,  
23 would have led to disparate treatment of voters and chaos for election administration. *See*  
24 *Arizona Pub. Integrity All.*, 250 Ariz. at 58 (county recorder issued their own overvote  
25 instruction, resulting in different procedures for counting ballots in different counties);  
26

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27 <sup>1</sup> Karen L. Shanton, *The Help America Vote Act of 2002 (HAVA): Overview and*  
28 *Ongoing Role in Election Administration Policy*, Congressional Research Service (May  
8, 2023).

1 *Arizona All. for Retired Americans, Inc. v. Crosby*, 537 P.3d 818, 821 (Ariz. Ct. App. 2023)  
2 (County Recorder attempted to do a full hand-count audit in violation of state law).  
3 Moreover, county clerks could unknowingly interpret a state statute in a way that violates  
4 federal law. In *Mi Familia Vota*, the court ruled that Section 6 of the National Voter  
5 Registration Act preempted Arizona’s documentary proof of residence requirement in H.B.  
6 2492. No. CV-22-00509-PHX-SRB, 2023 WL 8181307, at \*5. The proof of residence  
7 requirement disproportionately burdened Native American, Latino, and language minority  
8 voters’ access to the ballot box. Without corresponding guidance in the EPM, one or more  
9 county clerks could have required voters to provide such documentation in violation of  
10 federal law and disenfranchised Native American, Latino, and language minority voters.  
11 County election officials have acknowledged that a centralized manual is crucial for  
12 accurate implementation.<sup>2</sup>

13 Finally, having a single, centralized source for uniform guidance protects Arizona’s  
14 voters. Uniformity regarding rules for registration and casting a ballot enables orderly  
15 procedures,<sup>3</sup> minimizes voter confusion,<sup>4</sup> supports accessibility for voters,<sup>5</sup> and prevents  
16 voters from being unfairly criminalized for unknowingly violating statutory directives.<sup>6</sup>  
17 Second, such rules reduce uncertainty related to election results based on differing  
18 procedures between counties. *See Purcell*, 549 U.S. at 4 (“Confidence in the integrity of  
19 our electoral processes is essential to the functioning of our participatory democracy.”).  
20

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21 <sup>2</sup> Yavapai County Recorder Leslie Hoffman said, “The manual...is really beneficial for  
22 newer elections officials. *See Yvonne Wingett Sanchez, Reagan hit with new complaint*  
23 *over 'Election Bible'*, *azcentral* (June 8, 2016),  
[https://www.azcentral.com/story/news/politics/elections/2016/06/08/reagan-wont-issue-](https://www.azcentral.com/story/news/politics/elections/2016/06/08/reagan-wont-issue-updated-manual-election-workers/85577418/)  
[updated-manual-election-workers/85577418/](https://www.azcentral.com/story/news/politics/elections/2016/06/08/reagan-wont-issue-updated-manual-election-workers/85577418/).

24 <sup>3</sup> *See Mi Familia Vota v. Hobbs*, 492 F. Supp. 3d 980, 988 (D. Ariz. 2020) (states have an  
25 interest in orderly elections and minimizing voter confusion).

26 <sup>4</sup> *Id.*

27 <sup>5</sup> *Chavez v. Brewer*, 222 Ariz. 309, 311 (Ct. App. 2009) (Arizona has created a legislative  
28 scheme to mimic HAVA and ensure accessibility).

29 <sup>6</sup> Kira Lerner, ‘A witch-hunt’: how Arizona jailed a grandmother for ballot collecting, *The*  
30 *Guardian* (Feb. 11, 2023), [https://www.theguardian.com/us-news/2023/feb/11/arizona-](https://www.theguardian.com/us-news/2023/feb/11/arizona-ballot-collecting-law-guillermina-fuentes)  
[ballot-collecting-law-guillermina-fuentes](https://www.theguardian.com/us-news/2023/feb/11/arizona-ballot-collecting-law-guillermina-fuentes)

1 Uniform guidance and procedures reduce post-election litigation and decrease the burden  
2 on election administrators.

3 LWVAZ, LUCHA, LULAC, and ASA(amici) are invested in ensuring a detailed,  
4 accurate, and updated EPM is provided to Arizona election officials and voters. This  
5 guidance is not only essential to dependably and successfully running Arizona’s elections,  
6 but also to voter education. Amici use the EPM to educate Arizona citizens on the entire  
7 voting process, from registration to casting a ballot. Further, as an authoritative source for  
8 accurate election rules and procedures, the EPM is a potent tool for countering election  
9 mis- and dis-information. Amici were committed to production of an accurate EPM and  
10 many encouraged their members to publicly comment on the Secretary’s draft version, to  
11 attend a hearing on the EPM, and to sign a petition demanding that the EPM include  
12 policies that protect the right to vote. Some members also asked for the EPM to provide  
13 notice regarding provisions subject to litigation which protected amici members’  
14 vindication of rights against disparate treatment in court.

15 **B. The EPM properly includes rules based on binding court rulings.**  
16

17 Plaintiffs claim that “the EPM incorporates certain non-final and non-injunctive  
18 rulings from ongoing legal proceedings . . . while rejecting others.”. Compl. ¶110.  
19 However, the Secretary has not overstepped his authority, but has properly incorporated  
20 judicial rulings interpreting various election statutes into the EPM. It is precisely within  
21 the Secretary’s scope of authority, and in fact is his directive, to implement such rulings  
22 into the EPM.<sup>7</sup>

23 When a court concludes that an Arizona statute is unlawful, the Secretary has a duty  
24 to communicate that decision to county election officials via the EPM. As plaintiffs  
25 concede, “it is [the] Court’s role...to interpret [the] meaning” of statutes; therefore, the  
26 Secretary cannot disregard final judicial rulings. Compl. ¶ 112; *Leibsohn*, 254 Ariz. 1, 7 ¶

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27 <sup>7</sup> Further, explained by Proposed Intervenors, plaintiffs have failed to identify a viable  
28 cause of action in Count VI of their complaint, instead simply expressing frustration with  
the EPM’s treatment of court rulings. [cite Intervenors’ MTD at 15-16).

1 22 (2022). Once a court makes a binding decision, the Secretary must create administrative  
2 rules that reflect the law as it stands. To do otherwise would be to defy judicial authority.

3 While plaintiffs concede that it is appropriate for the “EPM to note the pendency of  
4 legal proceedings in order to increase awareness (and . . . to ensure compliance with  
5 preliminary injunctions and final injunctions that are not stayed pending appeal),” they  
6 argue that the Secretary has “cherry-pick[ed]” non-final and non-injunctive rulings to adopt  
7 in the EPM. Compl. ¶¶ 110; 113; 115. This is false. The Secretary has correctly  
8 incorporated final judicial rulings into the EPM and noted litigation was pending when a  
9 decision on the related issue had not yet been reached.

10 Overall, the EPM makes 20 references to judicial cases that would affect  
11 interpretation of election statutes. 2023 Election Procedures Manual.<sup>8</sup> Eight of the  
12 references relate to an issue that was being litigated and not yet decided at the time of the  
13 EPM’s issuance. 2023 Election Procedures Manual at 3 n.5, 12 n.8, at 15 n.13, at 22 n.19,  
14 at 40 n.25 & n.26, at 41 n.27, and at 83 n. 42<sup>9</sup> (“Litigation is pending on the statutory  
15 provisions in this paragraph.”). The Secretary properly raised that litigation was pending  
16 on the issue so that election workers and the public would be aware that the rule could  
17 change.

18 The remaining twelve references relate to an issue that has been decided by a court.  
19 2023 Election Procedures Manual at 12 n.9, at 14 n.11, at 15 n.14 & n.15, at 22 n.20, at 74  
20 n.40, at 118 n.56, at 119 n.57, at 194 n.82, at 221 n.86, at 259 n.92, and at 260 n.94. In  
21 these instances, the Secretary appropriately and accurately issued an administrative rule  
22 based on the related court ruling and cited the respective order or opinion.

23  
24 \_\_\_\_\_  
25 <sup>8</sup> Citations to “2023 Election Procedures Manual” are to the Elections Procedures  
26 Manual, issued on December 30, 2023 and published on the Secretary’s website at:  
[https://apps.azsos.gov/election/files/epm/2023/20231230\\_EPM\\_Final\\_Edits\\_406\\_PM.pdf](https://apps.azsos.gov/election/files/epm/2023/20231230_EPM_Final_Edits_406_PM.pdf)

27 <sup>9</sup> Since issuance of the EPM, a federal court resolved the issues related to Footnotes 5, 8,  
28 13, 19, 25, 26, and 27 on February 29, 2024. *Mi Familia Vota*, No. CV-22-00509-PHX-  
SRB, 2024 WL 862406.

1 Five of these twelve references relate to partial summary judgment orders granted  
2 in *Mi Familia Vota*. See 2023 Election Procedures Manual at 12 n.9, at 14 n.11, at 15 n.14  
3 & n.15, at 22 n.20. Plaintiffs appear to suggest that grants of summary judgment are “non-  
4 final” and therefore inappropriate for inclusion in the EPM. Compl. ¶ 110. But there is no  
5 question that under federal law, a summary judgment decision either partially or fully  
6 resolving a case is a final and binding decision from a trial court on a specific question of  
7 law. See, e.g., *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 7 (1980) (holding that  
8 summary judgment ruling was an “ultimate disposition of an individual claim”) (quotation  
9 marks omitted). In other words, a grant of summary judgment “ends the litigation on the  
10 merits” of a particular issue and “leaves nothing for the court to do but execute the  
11 judgment.” *Pfefferman v. Blair*, 934 F.2d 324, 1991 WL 89999 at \*1, n. 1 (9th Cir. 1991).<sup>10</sup>

12 The only sense in which a partial grant of summary judgment could be considered  
13 non-final is on the question of whether it is immediately appealable, or only appealable at  
14 the conclusion of trial on remaining claims. See *Curtiss-Wright Corp.*, 446 U.S. at 7. But  
15 that question is wholly divorced from the central concern here: whether a summary  
16 judgment ruling is a final statement of law from the trial court. Plaintiffs do not, and cannot,  
17 dispute that it is. And in any event, as the Secretary’s brief points out, final judgment has  
18 been now been entered in *Mi Familia Vota*, resolving any manufactured concern about the  
19 finality of the summary judgment order. Def. Motion to Dismiss at 17.

20 Moreover, the Secretary may not simply ignore a summary judgment ruling from a  
21 trial court because it *might* be reversed on appeal, see Compl. ¶ 115—he is obligated to  
22 follow the law as it is at the time the EPM is issued. Under plaintiffs’ opposite view, no law  
23 could be included in the EPM because it is always subject to change: an intermediate  
24 appellate court’s ruling could be reversed by a high court, and a statute could be changed  
25

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26  
27 <sup>10</sup> Indeed, an intervenor-defendant in *Mi Familia Vota* recognized the finality of the court’s  
28 summary judgment decision when requesting a Rule 54(b) judgment, explaining that “[t]he  
Court fully resolved the claims on which it granted summary judgment.” 22-CV-00509-  
SRB, Dkt. No. 557 at 1.

1 by subsequent legislative action. But it is self-evident that rulemaking must always account  
2 for changes in the law due to statutory changes or court orders.

3 Further, contrary to plaintiffs’ suggestion, the inclusion of a rule in the EPM decided  
4 by partial summary judgment does not “abrogate . . . appellate rights.” Compl. ¶ 115.  
5 Parties to a suit can still appeal a decision that was decided on partial summary judgment  
6 even if that decision was incorporated into the EPM. If an appellate court were to reverse  
7 the trial court, the Secretary would simply issue a supplement to the EPM modifying his  
8 previous guidance to comport with the new judicial order. Consent Decree at 8-16, No.  
9 CV17-4102-PHX DGC (D. Ariz. June 18, 2018), ECF No. 37 (agreeing to issue  
10 supplemental guidance to County Recorders); Exhibit A, *League of United Latin Am.*  
11 *Citizens Arizona v. Reagan*, No. CV17-4102 PHX DGC (D. Ariz. Nov. 12, 2018), ECF 40-  
12 2 [attach].

13 Indeed, Arizona election officials have long adapted their practices to changes in the  
14 law. They are well-versed in following an EPM that is only issued every two years and  
15 modifying practices based on subsequent revisions or changes in the law. For example,  
16 when an EPM was not produced in 2021, election officials “follow[ed] the 2019 EPM while  
17 adhering to any changes [] since its submission.” *Brnovich v. Hobbs*, Case. No.  
18 P1300CV202200269 at 4 (June 17, 2022) (suit challenging the failure to produce a 2021  
19 EPM) (see discussion of S.B. 1485 authorizing AEVL above).

20 Unsurprisingly, executive branch officials outside of Arizona frequently do just  
21 what the Secretary did here: incorporate trial court decisions, including summary judgment  
22 orders, into the rulemaking process in order to stay compliant with the law as it is. *See,*  
23 *e.g.*, 87 Fed. Reg. 229, 73595-99 (Nov. 30, 2022) (proposed Bureau of Land Management  
24 rule explicitly taking summary judgment decision into account).

25 The EPM’s remaining references to judicial decisions are proper as well: five refer  
26 to a decision order (Footnotes 56, 82, 86, 92, and 94), and two relate to a stipulated  
27 temporary restraining order and an under advisement ruling, both of which are final  
28

1 judgments. *See* 2023 Election Procedures Manual at 74 n.40 (referencing a TRO related to  
2 voter intimidation) and at 119 n.57 (under advisement ruling related to the Voters’ Right to  
3 Know Act). In *Arizona All. for Retired Americans v. Clean Elections USA*, a judge issued  
4 a temporary restraining order against defendants whose actions were alleged to be voter  
5 intimidation. No. CV-22-01823-PHX-MTL, 2022 WL 17088041, at \*1 (D. Ariz. Nov. 1,  
6 2022). To give notice to election officials and voters of the current state of voter  
7 intimidation law, in footnote 40, the Secretary clarified that the actions engaged in by  
8 defendants in *Arizona Alliance For Retired Americans*, *could* constitute voter intimidation.  
9 *See* 2023 Election Procedures Manual at 74 n.40. The Secretary himself did not interpret  
10 the law and never declared that the defendants’ actions in the related case were *de facto*  
11 illegal. Finally, even if an under advisement ruling could be considered non-final, this  
12 particular under advisement ruling included Ariz. R. Civ. P. 54(b) language declaring the  
13 judgment final. *Leibsohn v. Hobbs*, CV 2022-009709, Ariz. Super. Ct., Maricopa County  
14 (Aug. 18, 2022).

15 In sum, the Secretary has not invalidated or amended statutory requirements outside  
16 of his role—he has abided by court orders. Rather, plaintiffs seek to sweep aside binding  
17 court rulings that do not align with their policy preferences. Because the Secretary has only  
18 implemented final judicial rulings, the EPM has not overridden statutory authority.  
19

## 20 **VI. Conclusion**

21 The EPM is an important and necessary document that protects the security of  
22 Arizona’s elections, ensures consistent and equal treatment of voters across the state of  
23 Arizona, and effectuates all law-making, from both the legislature and the courts. For the  
24 foregoing reasons, this Court should deny the plaintiffs’ request for declaratory and  
25 injunctive relief.  
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Dated: March 22, 2024

Respectfully submitted,

*/s/ James E. Barton II*  
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Living United for Change in Arizona,  
League of United Latin American  
Citizens, Arizona Students' Association,  
San Carlos Apache Tribe, and Inter Tribal  
Council of Arizona, Inc.*

*\* Pro hac vice forthcoming*

# **EXHIBIT A**

# **EXHIBIT A**

# FW: Implementation Guidance for LULAC Consent Decree

La Rue, Joseph <Joseph.LaRue@azag.gov>

Wed 7/18/2018 11:32 PM

To: Danielle Lang <dlang@campaignlegalcenter.org>;

Cc: Karlson, Kara <Kara.Karlson@azag.gov>; La Rue, Joseph <Joseph.LaRue@azag.gov>;

📎 4 attachments (238 KB)

2018 0718 - LULAC Consent Decree Implementation Guidance.pptx; DPOC Form.docx; Consent Decree.pdf; 2018 0717 - Procedures Manual Addendum re LULAC Consent Decree.docx;

Danielle,

The attached guidance was transmitted by the Secretary to the County Recorders today. Please contact me with any questions or concerns.

Joseph

---

Joseph E. La Rue  
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Office of the Attorney General  
State Government Division  
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[2005 N. Central Ave.](#)

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**From:** Spencer, Eric [espencer@azsos.gov]

**Sent:** Wednesday, July 18, 2018 4:59 PM

**To:** Leslie Hoffman; Laurin Custis; Zach Moss; Adrian Fontes; Berta Manuz; Cochise - David Stevens; Doris Clark; Edison Wauneka; F. Ann Rodriguez; Kristi Blair; Patty Hansen; Robyn Stallworth Pouquette; Sadie Bingham; Sharie Milheiro; Shelly Baker; Suzie Sainz; Virginia Ross; Wendy John; Bowen Udall; Charlotte Williams; Chris J Roads; Donna Casner; Donna Diaz; Gwyn Villescias; Heather Lopez; Karen McCracken; Kathy Valenzuela; Keely Varvel; Laurin Custis; Lilene Sanchez; Luis Gonzalez (lgonzalez@santacruzcountyaz.gov); Mary McCoy-Durst; Nohyra Madsen; Richard Garcia; Petty, Janine

**Cc:** Allen Tempert; Angela Romero; Brad Nelson; Eric Mariscal; Judy Dickerson (E-mail); Kevin Scholl; Lisa Marra; Lynn Constabile; Mark Mayrand; Melinda Meek; Michele Forney; Paul Melcher; Rayleen Richards; Rey Valenzuela; Yvonne Pearson (E-mail); Christen Haddox; Jaspas Altaha; Jeannette Martinez; Martha Rodriguez; Mary Martinson; Nancy Krahulec; Karlson, Kara; La Rue, Joseph; Reagan, Michele; Miller, Lee; Petty, Janine; Roberts, Matt

**Subject:** Implementation Guidance for LULAC Consent Decree

Good afternoon,

As you may recall, the recently-entered LULAC Consent Decree requires the Secretary of State's office to issue implementation guidance to County Recorders in accordance with § 2 of the Decree. Accordingly, please find the attached PowerPoint presentation that outlines said guidance. This guidance document substantially mirrors the presentation I made to County Recorders on June 7, 2018.

Also attached is the documentary proof of citizenship submission form ("DPOC Submission Form") called for under the agreement.

In a nutshell, the guidance addresses:

- The need to make registrants federal only voters, at minimum, when proof of citizenship has not been provided (regardless of the type of voter registration form used);
- Acceptance of voter registration forms without DPOC and the resulting citizenship acquisition process; and
- Website updates necessary to explain the Consent Decree.

Concurrently, we will submit the proposed Elections Procedures Manual appendix to the Governor and Attorney General today.

We are happy to answer any questions as well. Thank you for your hard work and dedication to making voter registration easy and accessible to all Arizona citizens.

Sincerely, Eric

Eric H. Spencer  
State Election Director  
Arizona Secretary of State Michele Reagan  
Office: (602) 542-8683  
[espencer@azsos.gov](mailto:espencer@azsos.gov)  
[www.azsos.gov](http://www.azsos.gov)



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# IMPLEMENTATION GUIDANCE FOR LULAC CONSENT DECREE

Presented to Arizona's County Recorders By  
Arizona Secretary of State's Office



## County Recorder Guidance (effective 7/18/18)

- ▣ A Recorder should ensure all qualified registrants are *at minimum* registered as federal only voters.
  - The registration form still must be sufficiently complete and registrant must be otherwise qualified to register to vote.
  - If the registrant later provides DPOC, or if proper DPOC can be acquired on the registrant's behalf, the registrant should become a full ballot voter for all federal, state, county and local elections.
    - A "DPOC Submission Form" has been developed for the purpose of allowing a registrant to provide separate DPOC at a later date.
  - If DPOC has not provided by the registrant or acquired by the Recorder, the registrant is entitled to be registered as a federal only voter *regardless of the type of registration form utilized by the registrant.*

## County Recorder Guidance (effective 7/18/18)

- ▣ A Recorder should accept all voter registration forms (state and federal) that lack documentary proof of citizenship (DPOC) but that are otherwise sufficiently complete.
  - “Sufficiently complete” means at least the name, residential address or location, the date of birth and signature are present (A.R.S. § 16-121.01; 2014 Election Procedures Manual, pg 23-24).
  - “Acceptance” of a voter registration form without DPOC means, at minimum, entering the registrant’s information in the voter registration database.

## County Recorder Guidance (effective 7/18/18)

- Guidelines for “accepting” voter registration forms and triggering the DPOC acquisition process:
  - A Recorder should place the registrant in an “Active” status with a reason code of “Federal – No ID/No Citizenship” to trigger/automate the DPOC acquisition process through the statewide voter registration system.
    - If the registrant is entered in a “Suspense” status, the statewide voter registration system *will not* automatically upgrade voter to full ballot status if DPOC is found; the upgrade will need to be done manually.
  - If through the information provided by the registrant (AZ DL/ID # and/or SSN4) the statewide voter registration system can either verify and/or acquire DPOC on file with MVD, the statewide voter registration system will upgrade the registrant record to a “Valid Registration” status reason and the citizenship verified box will be automatically checked in PowerProfile.
    - This process may not happen immediately; a Recorder may have to close the record out and reopen to verify if DPOC was verified and/or acquired.
  - If the registrant did not provide an AZ DL / ID# or SSN4, there will not be enough criteria to make a hard match from the MVD proxy table in the statewide voter registration system. However, soft matches from registrant-provided data can be processed through the HAVA Exceptions Interface (HEI). Records that are matched in HEI will pull MVD data from the proxy table and automatically upgrade the voter to a “Valid Registration” status reason and auto-check the “citizenship verified” box.

## County Recorder Guidance (effective 7/18/18)

- A Recorder should perform the following actions if valid DPOC cannot be acquired (either through PowerProfile or manually):
  - If the registrant was flagged in HEI as having a Type F license:
    - The Recorder should send a letter (including a “DPOC Submission Form”) to the registrant within 10 business days, informing the applicant that:
      - Citizenship has not been proven and the registrant will not be registered; and
      - The registrant later may submit valid DPOC to become a full ballot voter.
    - In the meantime, the registrant’s status should be designated as “Not Eligible” with a status reason of “Invalid Citizenship Proof” in the voter registration database.
  - If DPOC otherwise cannot be acquired:
    - A Recorder should send a letter (including a “DPOC Submission Form”) to the registrant within 10 business days, informing the registrant that:
      - The Recorder does not possess the requisite DPOC;
      - The registrant must submit valid DPOC to become a full ballot voter; and
      - The registrant will be registered as a federal only voter unless DPOC is provided.

## County Recorder Guidance (effective 7/18/18)

- A Recorder should upgrade a registrant to a full ballot voter for the *next* election if the person:
  - Submits a registration form (state or federal) by the registration deadline without DPOC; and
  - Submits DPOC by 5 p.m. on the Thursday before the election.
    - A registrant does not necessarily need to use the official DPOC Submission Form.
- A federal only voter that was issued a federal only early ballot, but becomes a full ballot voter prior to the Thursday deadline, may (in accordance with the officer in charge of elections' guidance):
  - Vote the federal only ballot; or
  - Vote a full ballot on Election Day (whether provisional or regular).
- If the registration form is received after the registration deadline, or DPOC is received after the Thursday prior to the election, a Recorder should upgrade a registrant to a full ballot voter for *future* elections within 5 business days after the completion of processing provisional ballots.

## County Recorder Guidance (effective 7/18/18)

- A Recorder should update the Recorder's website to be consistent with the website updates made by the Secretary of State, available at:
  - <https://azsos.gov/elections/voting-election/proof-citizenship-requirements>
- The Recorder's website should inform prospective registrants of the following information:
  - The state voter registration form only requires DPOC for state and local elections. Federal voter registration forms do not require DPOC.
  - Submission of a complete state or federal voter registration form with valid DPOC allows the registrant to become a full ballot voter for federal, state, county and location elections for which the voter is eligible; submission of a state or federal voter registration form without DPOC makes the registrant a federal only voter.

## County Recorder Guidance (effective 7/18/18)

- A Recorder *may* attempt to acquire DPOC for prior registrants dating back to January 1, 2017, but is not required to do so.
  - The Recorder must ensure that the registrant has not moved, become deceased, or already registered to vote since the original voter registration form was submitted.
  - The Recorder must provide “proper notice of their new registration status by U.S. Mail” by sending a Voter ID card to the registrant.
  - In contrast to other counties, the Maricopa County Recorder *must* attempt to acquire DPOC for registrants dating back to January 1, 2017.

## Future Actions

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- ▣ Within 90 days, the Secretary of State will propose an amended state voter registration form to all Recorders.
- ▣ Within 120 days, the Secretary of State and Recorders will jointly finalize the amended state voter registration form.

Dear Voter,

You are now a registered as a Federal-Only voter in Arizona. You are eligible to vote for any federal races using an Arizona Federal-Only ballot.

Please be advised that providing documentary proof of U.S. citizenship to the County Recorder will update your voter registration status to a full ballot voter. A full ballot voter is eligible to participate in all federal, statewide, county and local races in his or her voting precinct. Please use the form below if you wish to provide documentary proof of citizenship and update your voter registration status.

Thank you,  
[County Recorder]

---

Documentary Proof of Citizenship Form

Name: \_\_\_\_\_

Residential Address: \_\_\_\_\_

\_\_\_\_\_

Mailing Address: \_\_\_\_\_

\_\_\_\_\_

Date of Birth: \_\_\_\_\_

Voter ID #: \_\_\_\_\_  
(if known)

Acceptable Documentary Proof of Citizenship pursuant to A.R.S. § 16-166(F) (please provide one):

🍎 Arizona Driver's License/Arizona Non-Operating ID #:

\_\_\_\_\_

🍎 Copy of U.S. Birth Certificate

🍎 Copy of pertinent pages of U.S. Passport

🍎 Copy of Naturalization Certificate / Certificate number: \_\_\_\_\_

🍎 Bureau of Indian Affairs, Tribal Treaty, or Tribal enrollment card #: \_\_\_\_\_

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

League of United Latin American Citizens  
of Arizona; Arizona Students’ Association,

No. CV17-4102-PHX DGC

Plaintiffs,

**CONSENT DECREE**

v.

Michele Reagan, in her official capacity as  
Secretary of State of Arizona; Adrian  
Fontes, in his official capacity as Maricopa  
County Recorder,

Defendants.

Before the Court is the Joint Motion Requesting Entry of Consent Decree, filed by Plaintiff League of United Latin American Citizens of Arizona (“LULAC-Arizona”), Plaintiff Arizona Students’ Association (“ASA”), Defendant Michele Reagan, in her official capacity as Secretary of State of Arizona (the “Secretary”), and Defendant Adrian Fontes, in his official capacity as Maricopa County Recorder (“Recorder Fontes”). Doc. 36. All Plaintiffs and Defendants shall hereafter be referred to as the “Parties.”

On November 7, 2017, LULAC-Arizona and ASA initiated this action against the Secretary and Recorder Fontes. The complaint alleged that Arizona’s dual voter registration policies violate the First and Fourteenth Amendments to the United States Constitution. Specifically, LULAC-Arizona and ASA alleged that Arizona treats voter

1 registration applicants differently depending on whether they use Arizona’s state  
2 registration form (the “State Form”) or the national registration form (the “Federal  
3 Form”). At the time the lawsuit was filed, fourteen of Arizona’s County Recorders  
4 rejected State Form applications submitted without valid documentary proof of  
5 citizenship (“DPOC”). Federal law required the County Recorders to accept Federal  
6 Form applications, even when they are submitted without DPOC. The Motor Vehicles  
7 Department (“MVD”) Proxy Table was then electronically checked through an  
8 automated process to determine whether the Federal Form applicants had a valid driver’s  
9 license, which indicates that DPOC is supposed to be on file with the MVD. Those with  
10 DPOC on file are eligible to vote in both state and federal elections (“Full Ballot Voter”).  
11 Those who did not have DPOC on file with the MVD were only able to vote in federal  
12 elections (“Fed Only Voter”).

13 As a result, whether one who does not present valid DPOC is registered to vote in  
14 federal elections is entirely dependent on which form the applicant uses to register.  
15 Those using the Federal Form but not providing DPOC, are registered to vote in federal  
16 elections; and, depending on the results of the Secretary’s automated review of the MVD  
17 database, may be registered to vote in state elections as well. But those using the State  
18 Form, and not providing valid DPOC, are not registered to vote in any elections because  
19 the application is rejected in its entirety. LULAC-Arizona and ASA alleged that this dual  
20 voter registration process violated the First and Fourteenth Amendments.

21 The Secretary denies that Arizona’s voter registration policies violate the First  
22 and Fourteenth Amendments or are otherwise illegal under state or federal law. The  
23 Secretary asserts that Federal and State Form applicants are not similarly situated for  
24 equal protection purposes. The Secretary asserts that Arizona is constitutionally  
25 permitted to require those applying to register to vote using the State Form to personally  
26 provide DPOC at the time that they submit their State Form. The Secretary further  
27 asserts that there is no constitutional or statutory requirement that Arizona election  
28 officials register applicants for federal elections when they have chosen to use the State  
Form to register to vote rather than the Federal Form.





1 which is established pursuant to A.R.S. § 36-2902. AHCCCS is Arizona’s Medicaid  
2 agency that offers health care programs to serve Arizona residents.

3 3. “Applicant” means an individual who has submitted an application to  
4 register to vote in the State of Arizona.

5 4. “AVID Database” means the voter registration database, currently being  
6 developed for the state of Arizona and intended to replace the current Database. The  
7 AVID Database is projected to be operational sometime in 2019 or early 2020, but shall  
8 be operational no later than July 1, 2020 except as provided in subparagraph (a), below.

9 (a) The date of July 1, 2020, contemplated for the operational function of the  
10 AVID Database, is contingent on the vendor with whom the Secretary has contracted to  
11 develop AVID fulfilling its obligations to have AVID operational in 2019 or early 2020  
12 at the latest. Should the vendor be unable to meet this contingency, or should the  
13 implementation of the AVID Database otherwise be delayed, the Secretary shall notify  
14 the Court and the Parties to this Consent Decree, in writing, and shall indicate in writing  
15 the date by which the vendor believes that AVID will be operational. Plaintiffs retain the  
16 right to seek a remedy from the Court to enforce this agreement if the implementation of  
17 the AVID database is unduly delayed.

18 (b) The provisions in this consent decree that apply to the AVID database will  
19 also apply to any future voter registration system adopted by the Secretary of State’s  
20 office.

21 5. “County Recorder” means the County Recorder of each of Arizona’s  
22 fifteen counties, and includes all county election officials working in or in conjunction  
23 with their offices.

24 6. “Database” means the existing electronic storage system developed and  
25 administered by the Secretary that contains the official voter registration record for every  
26 voter in the state. *See* A.R.S. § 16-168(J).

27 7. “DES” means the Arizona Department of Economic Security, which is  
28 established pursuant to A.R.S. § 41-1952.

8. “Designated voter registration agencies” are agencies that are required to

1 provide voter registration services pursuant to the National Voter Registration Act.

2 9. “DHS” means the Arizona Department of Health Services, which is  
3 established pursuant to A.R.S. § 36-102.

4 10. “DPOC” means documentary proof of citizenship, and is limited to the  
5 forms of satisfactory evidence of citizenship listed in A.R.S. § 16-166(F).

6 11. “F-type License” means the designation that the MVD uses in its database  
7 to distinguish Arizona driver’s license holders who, at the time that their driver’s licenses  
8 were issued, were presumed by MVD to not be United States citizens.

9 12. “Fed Only Voter” means an individual who is registered to vote solely in  
10 Arizona elections for federal office.

11 13. “Federal Form” means the National Mail Voter Registration Form,  
12 provided by the U.S. Elections Assistance Commission and used to register to vote in  
13 elections for federal office, as well as the Federal Write-in Absentee Ballot and Federal  
14 Post Card Application as those terms are used in 52 U.S.C. §§ 20302 and 20303.

15 14. “Federal Office” means the office of President or Vice President; or of  
16 Senator or Representative in, or Delegate or Resident Commissioner to, the United States  
17 Congress. 52 U.S.C. § 20502(2).

18 15. “Full Ballot Voter” means an individual who is registered to vote in  
19 Arizona elections for federal, state, and local office.

20 16. “Guidance” means formal guidance on voter registration procedures that  
21 the Secretary of State will provide to the County Recorders pursuant to her role as chief  
22 election official responsible for prescribing uniform procedures for voting. *See* A.R.S. §  
23 16-142. The Secretary will provide Plaintiffs’ counsel with copies of her Guidance  
24 before it is sent to the County Recorders.

25 17. “MVD” means the Arizona Motor Vehicles Division.

26 18. “MVD database” means the electronic storage system developed and  
27 administered by the Arizona Motor Vehicle Department.

28 19. “MVD Proxy Table” means the MVD data provided to the Secretary of  
State that includes the nightly updates of MVD transactions that occurred in the past

1 twenty-four hours that MVD sends to the Secretary in batch form.

2 20. “Procedures Manual” means the State of Arizona Elections Procedures  
3 Manual, which provides the rules related to voting and the conduct of elections. A.R.S. §  
4 16-452. The Secretary is required to develop the Procedures Manual in conjunction with  
5 the fifteen County Recorders. *Id.* The Procedures Manual has the force of law. A.R.S. §  
6 16-452(C). The Procedures Manual, 2018 Edition, has been drafted by the Secretary and  
7 submitted to the Governor and Attorney General as required by law for their review. *Id.*

8 21. “Protected Voter Registration” means the program to ensure anonymity to  
9 survivors of stalking, domestic violence, and sexual assault through the Address  
10 Confidentiality Program provided by A.R.S. § 41-161, et seq., and certain other  
11 individuals pursuant to A.R.S. § 16-153.

12 22. “Secretary” means the Arizona Secretary of State and her office, as well as  
13 successors in office.

14 23. “State Form” means the options for voter registration created and provided  
15 by the State of Arizona and its agencies, including but not limited to the online  
16 registration available through Service Arizona, the paper application available on the  
17 Secretary of State’s website, the paper application available at all County Recorder  
18 offices, and the Protected Voter Registration process.

19 24. “State Office” means any elected statewide, county-wide, or municipal  
20 public office, other than a Federal Office, for which a voter registered in the State of  
21 Arizona is eligible to vote.

### 22 **ORDER**

23 Accordingly, the Parties having freely given their consent, and the terms of the  
24 Consent Decree being fair, reasonable, and consistent with the requirements of state and  
25 federal law,

26 **IT IS ORDERED** as follows:

- 27 1. The Joint Motion for Approval of Consent Judgment (Doc. 36) is **granted**.
- 28 2. **The Procedures Manual.** The Parties are aware that the draft Procedures  
Manual, 2018 Edition has been submitted by the Secretary to Arizona’s Governor

1 and Attorney General for their review as required by statute. *See* A.R.S. § 16-  
2 452(B). Within thirty days after entry of this Consent Decree, the Secretary shall  
3 revise the Procedures Manual to incorporate the terms of this Consent Decree  
4 (“Procedures Manual Revisions”) and send the Procedures Manual Revisions,  
5 together with the Secretary’s recommendation of approval, to the Governor and  
6 Attorney General for their review, *see* A.R.S. § 16-452(B), and also to Plaintiffs’  
7 counsel. If Plaintiffs determine that the Procedures Manual Revisions do not  
8 comply with this Consent Decree, Plaintiffs may seek review by this Court  
9 through the Court’s procedures for motions. If the Governor and Attorney General  
10 do not approve the Procedures Manual Revisions or request modifications, the  
11 Secretary will send the Attorney General and/or Governor’s rejections or  
12 proposed modifications to Plaintiffs’ counsel. If those rejections or proposed  
13 modifications are in any respect inconsistent with this Consent Decree, Plaintiffs  
14 may use any available legal remedies to secure compliance with this Consent  
15 Decree.

16 **2. State Form Applications Submitted Without DPOC.** Within thirty days  
17 after entry of this Consent Decree, the Secretary shall, in writing:

- 18 a. provide guidance to the County Recorders to accept State Form  
19 applications submitted without DPOC;
- 20 b. provide guidance to the County Recorders to enter all such  
21 applications in the Database (or, in the case of Maricopa County and  
22 Pima County, to enter all such applications in their county voter  
23 registration databases and transmit such entries to the Database);
- 24 c. provide guidance to the County Recorders to immediately register  
25 the applicants for federal elections, provided the applicant is  
26 otherwise qualified and the voter registration form is sufficiently  
27 complete; and
- 28 d. check all State Form applications submitted without DPOC against  
the MVD database Proxy Table, via the automated processes in the

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Database, to determine whether the MVD has DPOC on file for the applicants. If DPOC is located, the Secretary shall promptly notify the applicable County Recorder via the automated processes in the Database that the State Form applicant has DPOC on file with the MVD and so must be made a Full Ballot Voter via the automated process in the Database.

i. if the Secretary’s check performed by the automated processes in the Database against the MVD database Proxy Table indicates that a State Form applicant holds an F-Type License, the Secretary shall promptly notify the applicable County Recorder of that fact via the automated processes of the Database. The automated processes of the Database will also flag this issue so that the County Recorder will know to change that applicant’s voter registration status to “not eligible.” The Secretary shall provide guidance to the County Recorders that the County Recorders shall notify the applicant by U.S. Mail within ten business days after receiving notice via the automated process in the database, according to information on file with the MVD database, that the applicant holds an F-Type License indicating non-citizenship and so will not be registered to vote. The notification from the County Recorder shall also inform the applicant that the applicant can provide valid DPOC to the County Recorder in order to become a Full Ballot Voter. The notification will be accompanied by the form described in Paragraph 3 (the “DPOC Submission Form”). The applicant may submit DPOC to the County Recorder through the process described in Paragraph 3 to become a Full Ballot Voter.

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ii. if the Secretary’s check via the automated features of the Database determines that a State Form applicant does not hold an F-Type License, but also does not have DPOC on file with the MVD, the Secretary shall promptly notify the applicable County Recorder of that result via the automated processes of the Database. The County Recorder shall notify these applicants by U.S. Mail within ten business days after receiving notice from the Secretary that (1) the County Recorder does not have the requisite DPOC to process their application; (2) they must submit DPOC if they wish to be a Full Ballot Voter; and, (3) until such time as they submit DPOC, they will be a Fed Only Voter and so will only be eligible to vote in Federal elections. The notification shall be accompanied by the form described in Paragraph 3 (the “DPOC Submission Form”). The applicant may submit DPOC to the County Recorder through the process described in Paragraph 3 to become a Full Ballot Voter. Until and unless the applicant submits valid DPOC, the County Recorders shall cause those voter registration applicants to be made Fed Only Voters.

**3. Provision of DPOC After the Submission of a State Form Application.**

Applicants who do not submit DPOC with their State Form application and do not have DPOC on file with MVD, and are notified by the applicable County Recorder that they will be Fed Only Voters unless and until they submit DPOC, may submit valid DPOC to become a Full Ballot Voter. To do so, they shall submit their DPOC to the County Recorder with a form provided to them by that official. This form (the “DPOC Submission Form”), which shall be developed by the Secretary and the County Recorders within thirty days after entry of this Consent Decree, shall contain sufficient information to allow the County Recorder to link the voter registration applicant’s DPOC

1 with his or her State Form application already on file in the Database.

2       A. Applicants who submit their State Form application at least twenty-nine  
3 days before an election as required by statute, A.R.S. §§ 16-120(A), -134(C), and whose  
4 valid DPOC with the DPOC Submission Form is received by their County Recorder by 5  
5 p.m. local time on the Thursday before the election, will be made Full Ballot Voters by  
6 the County Recorder and may vote in the upcoming election as a Full Ballot Voter. The  
7 registrations of such applicants shall be deemed to have occurred on the date that they  
8 originally submitted their State Form application. If the County Recorder has already  
9 transmitted a Fed Only early ballot to that voter, the voter will have the option to vote  
10 either that Fed Only early ballot or else vote a provisional Full Ballot at the polling place  
11 or vote center and comply with the rules regarding provisional ballots.

12       B. Applicants who submit their State Form application at least twenty-nine  
13 days before an election, and whose valid DPOC is received by 5 p.m. local time on the  
14 Thursday before the election, but who do not submit the DPOC Submission Form, may  
15 be made Full Ballot Voters by the County Recorder if the County Recorder has sufficient  
16 information to link the voter registration applicant's DPOC with the applicant's State  
17 Form application already on file in the Database. If the County Recorder makes such an  
18 applicant a Full Ballot Voter, and if the County Recorder has already transmitted a Fed  
19 Only early ballot to that voter, the voter will have the option to vote either that Fed Only  
20 early ballot or else vote a provisional Full Ballot at the polling place or vote center and  
21 comply with the rules regarding provisional ballots.

22       C. Applicants who do not submit their State Form application at least twenty-  
23 nine days before an election as provided by statute, or whose valid DPOC is received by  
24 their County Recorder after 5 p.m. local time on the Thursday before the election, will  
25 not be made Full Ballot Voters for the upcoming election. The County Recorder shall  
26 make such applicants Full Ballot Voters within five business days after processing  
27 provisional ballots, and they shall be Full Ballot Voters for subsequent elections.

28       D. For all applicants who submit State Form applications without valid  
DPOC, but subsequently submit valid DPOC and do not submit the DPOC Submission

1 Form, the County Recorder may make the applicant a Full Ballot Voter if the County  
2 Recorder has sufficient information to link the voter registration applicant's DPOC with  
3 the applicant's State Form application already on file in the Database. If the County  
4 Recorder lacks sufficient information to link the DPOC to the voter's application in  
5 order to make the applicant a Full Ballot Voter, the County Recorder may follow up with  
6 the applicant to seek the missing information if the County Recorder has sufficient  
7 information to do so. Applicants who subsequently provide the missing information  
8 necessary to link their DPOC to their applications shall be made Full Ballot Voters by  
9 the County Recorder within ten business days.

10 4. **State Form Applications Submitted On or After January 1, 2017.** This  
11 Consent Decree will govern all voter registration applications submitted after entry of  
12 this Consent Decree, including applications submitted within thirty days after entry of  
13 this Consent Decree. However, within thirty days after entry of this Consent Decree, the  
14 Secretary shall also provide written guidance to all County Recorders except the  
15 Maricopa County Recorder that, pursuant to the Consent Decree, they may, at their  
16 discretion, implement the new procedures outlined in Paragraphs 2–3 of this Consent  
17 Decree for State Form applications dating back to January 1, 2017, provided that they  
18 have the capability to ensure that such applicants have not moved, become deceased, or  
19 otherwise subsequently already registered to vote. Any applicants whose applications  
20 were filed before entry of this Consent Decree who are newly registered as Fed Only or  
21 Full Ballot Voters as a result of that process will be given the proper notice of their new  
22 registration status by U.S. Mail.

23 Within ninety days of entry of this Consent Decree, the Maricopa County  
24 Recorder shall implement the new procedures outlined in Paragraphs 2–3 of this Consent  
25 Decree for State Form applications dating back to January 1, 2017. This process shall  
26 include: (1) entering all State Forms submitted without DPOC into the database and  
27 immediately registering those applicants for federal elections, (2) checking the  
28 applicants' status against the MVD database, and (3) sending the applicants notification  
of their new registration status.

1           5.     **Federal Form Applications.** Within thirty days after entry of this Consent  
2 Decree, the Secretary shall provide written guidance to the County Recorders to  
3 promptly register all applicants who submit their Federal Form application with valid  
4 DPOC as Full Ballot Voters and promptly register all applicants who submit their  
5 Federal Form application without valid DPOC as Fed Only Voters. From the date of the  
6 entry of the Consent Decree, the Secretary shall also cause all new Federal Form  
7 applications submitted without DPOC to be checked against the MVD Proxy Table  
8 promptly upon entry into the Database, via the automated processes in the Database, to  
9 determine whether the MVD has DPOC on file for such Federal Form applicants, and  
10 take the following steps:

11           a.     If this check determines that the MVD Proxy Table has DPOC on file for  
12 any Federal Form applicant, the Secretary shall promptly notify the applicable County  
13 Recorder via the automated process in the Database that the applicant has DPOC on file  
14 with MVD and so must be made a Full Ballot Voter via the automated process in the  
15 Database.

16           b.     If this check determines that the MVD Proxy Table has information  
17 indicating that any Federal Form applicant holds an F-Type License, the Secretary shall  
18 promptly notify the applicable County Recorder of that fact via the automated processes  
19 of the Database and flag this record for the County Recorder to change that applicant's  
20 voter registration status to "not eligible." The County Recorder shall notify the applicant  
21 by U.S. Mail within ten business days after receiving notice from the Secretary that,  
22 according to information on file with the MVD database, the applicant holds an F-Type  
23 License indicating non-citizenship and so will not be registered to vote. The County  
24 Recorder's notice shall also inform the applicant that, if this information is not correct,  
25 the applicant may provide valid DPOC in order to become a Full Ballot Voter. The  
26 notification will be accompanied by the DPOC Submission Form described in Paragraph  
27 3. The applicant may submit valid DPOC to the County Recorder through the process  
28 described in Paragraph 3 to become a Full Ballot Voter.

          c.     If this check determines for any applicant that the MVD database does not

1 have DPOC on file and also that the applicant does not hold an F-Type License, the  
2 Secretary shall promptly notify the applicable County Recorder of that result via the  
3 automated processes of the Database. The County Recorder shall notify these applicants  
4 by U.S. Mail within ten business days after receiving notice from the Secretary that (1)  
5 the County Recorder does not have the requisite DPOC to process their application; (2)  
6 they must submit valid DPOC if they wish to be a Full Ballot Voter; and, (3) until such  
7 time as they submit valid DPOC, they will be a Fed Only Voter and so will only be  
8 eligible to vote in Federal elections. The notification will be accompanied by the DPOC  
9 Submission Form described in Paragraph 3. The applicant may submit valid DPOC to  
10 the County Recorder through the process described in Paragraph 3 to become a Full  
11 Ballot Voter. Until and unless the applicant submits valid DPOC, the County Recorders  
12 shall cause those voter registration applicants to be made Fed Only Voters.

13 d. Federal Form applicants who subsequently submit valid DPOC shall be  
14 made Full Ballot Voters according to and in conformity with the process described in  
15 Paragraph 3.

16 **6. Registered Voters Who Move From One Arizona County to Another.**

17 The AVID Database or another voter registration database similar to the AVID Database  
18 shall be operational as described, and according to the terms set forth, in the Definitions  
19 section of this consent decree. When the AVID Database is operational, the Secretary  
20 and County Recorders will be able to verify DPOC and append that information to  
21 applicants' voting records when those applicants change voter registration from one  
22 Arizona county to another. Consequently, once the AVID Database is operational and in  
23 use by the Secretary and the County Recorders, registered Full Ballot Voters will not be  
24 required to independently submit DPOC to their new County Recorder, so long as their  
25 DPOC is in the AVID Database.

26 **7. Application to Other Forms of Registration.** The procedures outlined  
27 above for processing voter registration applications submitted without valid DPOC will  
28 apply equally to all forms of voter registration, including voter registration through  
designated voter registration agencies, the Federal Post Card Application (FPCA), the

1 Federal Write-In Absentee Ballot, and the In-Person EZ Voter Registration system.

2       8.     **Education of the Public.** The Secretary shall continue to make reasonable  
3 efforts to better educate the citizens of Arizona concerning their opportunities to register  
4 to vote, including opportunities presented by the Federal Form. The Secretary will  
5 provide Plaintiffs' counsel with a copy of the planned notice that she intends to place on  
6 her website. Within thirty days after the entry of this Consent Decree, the Secretary shall:

7       a.     Update her website to explain that:

8             i. the State Form requires valid DPOC for state elections only;

9             ii. submission of a sufficiently complete State Form with valid DPOC will  
10 make the applicant a Full Ballot Voter;

11            iii. submission of a sufficiently complete State Form without DPOC will  
12 make the applicant a Fed Only Voter;

13            iv. the Federal Form does not require DPOC;

14            v. submission of the Federal Form without valid DPOC will make the  
15 applicant a Fed Only Voter; and

16            vi. submission of the Federal Form with valid DPOC will make the  
17 applicant a Full Ballot Voter.

18       b.     Provide guidance to the County Recorders that they should provide the  
19 information required in this Section 8 on their websites;

20       c.     Notify ADOT, DHS, AHCCCS, and DES of the changes in voter  
21 registration procedures outlined in this Consent Decree;

22       d.     Within four months after the entry of this Consent Decree, the Secretary  
23 shall create a new State Form that explains that citizens who do not submit DPOC with  
24 their registration forms will be registered only for federal elections until the appropriate  
25 proof of citizenship is provided or acquired. The Secretary will provide notice to  
26 Plaintiffs' counsel regarding the form of the explanation described in the previous  
27 sentence. The Secretary will create the new State Form within three months if the  
28 Secretary determines that it is possible to do so. The Secretary shall provide guidance to  
the County Recorders and all State Offices that disseminate voter registration forms,

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including designated voter registration agencies, that they should utilize the new State Form as soon as practicable. *See* A.R.S. § 16-352(C). Within thirty days after entry of the Consent Decree, the Secretary will provide written notice to the County Recorders that there will be changes made to the State Form within four months after the date the Consent Decree was entered.

10. **Continuing Jurisdiction.** The Court shall retain jurisdiction over this action until December 31, 2020 to enter such further relief as may be necessary for the effectuation of the terms of this Consent Decree.

11. **Attorneys’ Fees and Costs.** The Parties will continue to confer regarding what amount, if any, the State Defendants should pay to Plaintiffs for their attorneys’ fees and costs. If the Parties are unable to agree privately upon payment of fees and costs, Plaintiffs will file a motion for attorneys’ fees and costs pursuant to 42 U.S.C. § 1988 within forty-five days after entry of this consent decree.

The Clerk of Court is directed to terminate this action.

Dated this 18th day of June, 2018.



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David G. Campbell  
United States District Judge

## Appendix A

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## APPENDIX A SUPPLEMENTAL VOTER REGISTRATION PROCEDURES

The procedures outlined in this Appendix supersede any conflicting procedures outlined in the Election Procedures Manual currently in effect.

The consent decree entered in *League of United American Citizens of Arizona (LULAC) v. Reagan*, 2:17-cv-04102-DGC, Doc. 37 (D. Ariz. June 18, 2018) (the “LULAC Consent Decree”) is incorporated into this Appendix in full.

### 1.1 PROOF OF CITIZENSHIP AND FULL BALLOT VOTER STATUS

A County Recorder must make a registrant a “full ballot” voter<sup>1</sup> for the next election if the County Recorder receives accompanying documentary proof of citizenship for the registrant.<sup>2</sup> A County Recorder may receive proof of citizenship for a registrant in the following ways:

- The registrant may provide accompanying proof of citizenship with the registrant’s voter registration form; or
- The County Recorder may acquire proof of citizenship on the registrant’s behalf.

#### 1.1.1 ACQUISITION OF PROOF OF CITIZENSHIP

The Secretary of State must program or enable the statewide voter registration database to attempt citizenship acquisition using Arizona Motor Vehicle Department records in cases where a new registrant fails to provide accompanying documentary proof of citizenship. However, in no event shall an acquired “Type-F” Arizona driver’s license number qualify as valid proof of citizenship.

A County Recorder may acquire proof of citizenship for registrants who attempted to register to vote after January 1, 2017 using a State Form but were rejected due to lack of documentary proof of citizenship.<sup>3</sup> In that case, the County Recorder:

- Must ensure the registrant has not moved, become deceased, or already registered before registering the voter based on information supplied on the prior registration form; and
- Must send timely send the registrant a voter ID card that identifies the registrant’s status.

#### 1.1.2 FAILURE TO ACQUIRE VALID PROOF OF CITIZENSHIP

In cases where a registrant does not provide accompanying proof of citizenship with his or her voter registration form, a County Recorder should perform the following actions if valid

<sup>1</sup> A “full ballot voter” is a registrant entitled to vote in all federal, statewide, or local elections for which the registrant is qualified to vote.

<sup>2</sup> A.R.S. § 16-166(F).

<sup>3</sup> Pursuant to the LULAC Consent Decree, only Maricopa County is required to attempt to acquire documentary proof of citizenship on the registrant’s behalf if the registrant did not provide the accompanying proof. Acquisition of proof of citizenship is optional for counties other than Maricopa County.

documentary proof of citizenship cannot be electronically acquired via the statewide voter registration database.

If the registrant is shown to have a “Type F” Arizona driver’s license, a County Recorder must:

- Enter the registrant’s information in the voter registration database with a status of “Not Eligible” and a reason code of “Invalid Citizenship Proof”; and
- Send a letter to the registrant (including a proof of citizenship submission form) within 10 business days, informing the registrant that:
  - The registrant did not become registered to vote; and
  - The registrant may be registered and become a “full ballot” voter if the registrant resubmits a voter registration form with valid accompanying proof of citizenship.

If valid proof of citizenship otherwise cannot be electronically acquired via the statewide voter registration database, a County Recorder must:

- Enter the registrant’s information in the voter registration database and designate the registrant as a “federal only” voter”; and
- Send a letter to the registrant (including a proof of citizenship submission form) within 10 business days, informing the registrant that:
  - The registrant has not satisfied proof of citizenship requirements; and
  - The registrant will remain a “federal only” voter unless and until the registrant submits valid documentary proof of citizenship to become a “full ballot” voter.

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### 1.1.3 DELAYED RECEIPT OF PROOF OF CITIZENSHIP

If a County Recorder did not receive a registrant’s documentary proof of citizenship by the voter registration deadline, the registrant is nonetheless entitled to vote a full ballot at the next election if:

- The registrant registers to vote prior to the voter registration deadline; and
- The registrant separately provides documentatary proof of citizenship to the County Recorder by 5:00 p.m. on the Thursday before the election.

A registrant may provide separate proof of citizenship by using the proof of citizenship submission form promulgated by the Secretary of State and County Recorders. However, a County Recorder may accept proof of citizenship using a method other than the official proof of citizenship submission form.

If the registration is received after the voter registration deadline, or the registrant provides documentary proof of citizenship to the County Recorder after 5:00 p.m. on the Thursday before the election, the County Recorder must make the registrant a “full ballot” voter for future

elections. The County Recorder must make the registrant a “full ballot” voter for future elections within 5 business days after the completion of processing provisional ballots.

## 1.2 USE OF STATE OR FEDERAL FORM TO REGISTER FOR FEDERAL ELECTIONS

A registrant who submits an otherwise valid voter registration form to the County Recorder, but without providing accompanying documentary proof of citizenship, is entitled to be registered as a “federal only” voter based on the registrant’s sworn statement on the voter registration form that he or she is a U.S. citizen. A registrant may become a “federal only” voter regardless of the type of paper voter registration form submitted, including a State Form, Federal Post Card Application (FPCA), or Federal Write-In Absentee Ballot (FWAB).

A “federal only” voter may be upgraded to a full ballot voter if:

- The registrant timely provides documentary proof of citizenship to the County Recorder; or
- The County Recorder acquires documentary proof of citizenship on the registrant’s behalf.

## 1.3 ISSUANCE OF EARLY BALLOTS

If a “federal only” voter has been issued an early ballot, but becomes a “full ballot” voter prior to 5:00 p.m. on the Thursday before the election, the voter may:

- Vote the early ballot; or
- Vote a regular or provisional “full ballot” on Election Day, depending on the procedures implemented by officer in charge of elections.