

January 25, 2018

Via E-Mail and U.S. Mail

Office of the Secretary of State
Elections Division
1700 W. Washington St. Fl. 7
Phoenix, AZ 85007-2808
proceduresmanual@azsos.gov

Re: Comments on Chapter 1: Voter Registration
Draft 2017-18 State of Arizona Elections Procedures Manual

Dear Secretary Reagan and Elections Division Staff:

We submit these comments on behalf of the League of United Latin American Citizens Arizona (“LULAC-Arizona”) and Arizona Students’ Association (“ASA”). LULAC-Arizona is the Arizona-based branch of the nation’s oldest and largest Latino civil rights organization. Voter registration activity is key to LULAC-Arizona’s mission of increasing the civic participation of its members. ASA is a student-led, non-partisan membership organization created to represent the collective interest of the over 140,000 university students and over 400,000 community college students in Arizona. As a part of its mission, ASA encourages students throughout Arizona to register to vote through voter registration activity. Given their significant involvement in the voter registration process, both LULAC-Arizona and ASA have a substantial interest in the proposed 2017-2018 Elections Procedures Manual (“Draft Manual”). These comments focus on Chapter 1 of the manual, which governs voter registration. Having reviewed these provisions, it is our opinion that many of them are unduly burdensome, arbitrary, and unconstitutional. Arizona Advocacy, Promise Arizona, and Center for Neighborhood Leadership also join in these comments.¹

1. Sections 1.8.2.1.5 & 1.8.3.2.1.1: Prohibiting Recorders from Relying on Proof of Citizenship That Is Readily Available from MVD Records.

One of LULAC-Arizona and ASA’s primary concerns with the Draft Manual is the proposed new provision prohibiting County Recorders from “acquir[ing] proof of citizenship on the registrant’s behalf” when a State Form is submitted without satisfactory documentary proof of citizenship (“DPOC”). *See* Draft Manual § 1.8.2.1.5. This prohibition is not contained in the 2014 Elections Procedures Manual (“2014 Elections Procedures Manual”), which currently governs County Recorders’ voter

¹ These organizations and their members may submit additional comments on the Draft Manual.

registration activities. Under the 2014 Elections Procedures Manual, County Recorders may—and do—routinely “acquire” proof of citizenship for registrants who submit State Forms without DPOC. They do this by relying on readily available Arizona Department of Transportation, Motor Vehicle Division (“MVD”) records for a valid Arizona driver’s license or non-operating ID (“AZ DL/ID”), which qualify as “[s]atisfactory evidence of citizenship.” A.R.S. § 16-166(F)(1). If MVD records show that a registrant has an AZ DL/ID that was issued after October 1, 1996 and is not a “Type F” license, the Recorder adds this information to the registrant’s record. If the registrant satisfies all other eligibility requirements, the Recorder registers him/her to vote.

Prohibiting County Recorders from relying on readily available MVD records for proof of citizenship when a registrant submits a State Form without DPOC serves no legitimate purpose. County Recorders not only have easy access to this proof of citizenship but, in fact, the Draft Manual already requires County Recorders to check the MVD records when processing *all other voter registration forms* (e.g., Federal Forms, State Forms with DPOC, FPCA, FWAB, In-Person EZ Voter Registration, and Online EZ Voter Registration). Draft Manual § 1.9.1. Thus, this new rule does nothing more than impede and delay voter registration for citizens who are indisputably qualified to vote.

Furthermore, this rule lacks support in Arizona law. While footnote 138 of the Draft Manual points to ARS § 16-166(F), which states that “[t]he county recorder shall reject any application for registration that is not accompanied by satisfactory evidence of United States citizenship,” this section of Arizona code does not specify who or when evidence of citizenship needs to be provided (i.e. it does not specify that such proof of citizenship must be provided *by the applicant* rather than Recorder staff, nor does it specify that such proof of citizenship be provided *at the time the application is submitted*, rather than during a review process by the Recorder). Nowhere does Arizona law prohibit a County Recorder or their staff from using the State’s own records to “acquire proof of citizenship on the registrant’s behalf.” Indeed, it is clear from the Draft Manual that recorders will continue to “acquire proof of citizenship on the registrant’s behalf” during the IN-Person EZ Voter registration system. Draft Manual 1.7.5.1 (“An In-Person EZ Voter Registration must simply contain a ‘yes’ answer to the question “Are you a United States citizen who wishes to register to vote or update your existing voter registration?” If the registrant answers ‘yes,’ the registration will be processed by an MVD Customer Service Representative (CSR) and the registrant’s remaining MVD information . . . will be transmitted through the statewide voter registration system.”). This should be the system for all voter registrants.

Moreover, the Draft Manual requires Recorders to research and obtain other statutorily required information when registrants fail to provide it. *See* Draft Manual § 1.8.2.1 (If “minimum information” not complete on State Form (e.g., name, residence,

DOB), “County Recorder must . . . follow-up with registrant and seek the missing information” if Recorder has “means to do so.”² and Ariz. Rev. Stat. 16-121.01 (listing required elements for voter registration). There is no legitimate reason why proof of citizenship should be treated differently than these other required elements.³

Proposed Section 1.8.2.1.5 also violates federal law because it instructs County Recorders to reject State Forms that do not attach DPOC, even though those State Forms contain all of the information necessary to register voters in federal elections. In *See Arizona v. Inter Tribal Council of Ariz., Inc.* (“*ICTA*”), 133 S. Ct. 2247 (2013), the Supreme Court clearly held that Arizona may not require DPOC to register voters in federal elections. Following *ITCA*, the State adopted a dual registration system, with both State and Federal registration forms. However, the State Form serves as a universal registration form, i.e., citizens may register to vote in both state and federal elections by using the State Form. *See* Draft Manual 1.2. As a result, the State may not simply reject State Forms unaccompanied by DPOC. Instead, the State must treat these State Forms the same way it treats Federal Forms unaccompanied by DPOC: By registering these eligible voters in federal elections only.⁴

Similarly, proposed Section 1.8.3.2.1.1 (“Acquisition of Proof of Citizenship through Electronic Process”) imposes new, irrational barriers to registration for those who submit Federal Forms. Under the 2014 Manual, if a voter submits a Federal Form without DPOC but the County Recorder subsequently obtains a valid AZ DL/ID number when checking the form against MVD records, this evidence “constitutes proof of citizenship,” and the Recorder updates the Federal Form with this information and registers the registrant in both state and federal elections. *See* 2014 Elections Procedure Manual at 25. The Draft Manual would reverse this policy: If a County Recorder acquires a valid AZ DL/ID number from the MVD database for a “federal only” voter, the Draft Manual declares that that AZ DL/ID “does *not* constitute satisfactory proof of citizenship

² The Draft Manual likewise allows recorders to use the birth date information for an applicant to determine age eligibility even if a registrant does not check the box indicating that she is 18 years or older. Draft Manual 1.8.2.1.3.

³ Likewise, the chart on pages 29-31 and Sections 1.8.2.1.1 and 1.8.2.1.4 must be amended to clarify that State Forms unaccompanied by DPOC must be designated “in suspense,” just like State Forms that are missing other information, and not “not eligible.”

⁴ For the same reason, the Draft Manual must be amended to remove the following sentence from Section 1.4.1.2.4.2: “The consequences of failing to provide satisfactory proof of citizenship vary according to the type of voter registration form submitted.”

[allowing] that registrant to become a ‘full ballot’ voter.” Draft Manual § 1.8.3.2.1.1 (emphasis added). There is simply no rational basis, or basis in Arizona law, for instructing elections officials to ignore undisputed evidence of citizenship when processing voter registration forms.⁵

2. Arbitrary Treatment of Registrants

The Draft Manual also raises unnecessary barriers to registration and adopts arbitrary rules that treat qualified voters differently for no legitimate reason. For example, if a registrant submits a complete Federal Form without DPOC, that form is accepted and the registrant is registered to vote in federal elections. But if a registrant submits a complete State Form—which contains all of the same information required on the Federal Form—without DPOC, that form is rejected, and the registrant is not registered to vote in *any* elections, even federal ones. No rationale is provided for this differential treatment.

Moreover, a registrant who submits a State Form without DPOC cannot simply supplement her submission by providing DPOC, but rather must submit a brand new State Form with DPOC. Once again, no justification is provided for why voters using the State Form must go through this unnecessary, repetitive process.⁶ Missing DPOC on a State Form should be treated like other pieces of necessary information that are sometimes missing from an initial registration form. Those registrants should be placed in “suspense” status and recorders should “seek the missing information” in order to place the voter into active status. *See* Draft Manual 1.8.2.1.1 (placing voters who fail to “provide name, address, date of birth, or signature” into active status until the incomplete information is received); 1.8.2.1.4 (placing voters that fail to answer the citizenship question into “suspense” status until a response is received); 1.8.2.2 (placing a voter in suspense status if voter provided a driver’s license number as proof of citizenship but it cannot be verified).”

⁵ Once again, this refusal to consider such readily available evidence of citizenship is especially confounding because other provisions of the Draft Manual require County Recorders to go out of their way to track down missing information. *See, e.g.*, Draft Manual § 1.8.2.1 (If “minimum information” not complete on State Form (e.g., name, residence, DOB), “County Recorder must . . . follow-up with registrant and seek the missing information” if Recorder has “means to do so.”).

⁶ The Draft Manual provides no instruction to County Recorders on whether “federal only” voters who originally submitted Federal Forms without DPOC can provide DPOC and thereby become registered as “full ballot voters.”

Making matters worse, when a County Recorder notifies a registrant that her State Form has been rejected for failure to provide DPOC, that notice contains no information about the registrant's right to submit a Federal Form without DPOC and includes only another blank copy of the State Form for her to fill out. *See* Draft Manual § 1.8.2.1.5. Under the court order in *ITCA*, the Draft Manual must require the Recorder to send both a State and Federal Form, or at the very least inform the registrant that she can register to vote in federal elections without providing DPOC.

Indeed, the District Court's order in *Inter Tribal* required Defendants, including the Secretary of State and all Recorders and Election Directors of Arizona's counties, to "ensure that all written materials regarding the process for registering to vote, that Defendants distribute or make available to the public (including websites), include a statement that individuals may apply to register to vote in elections for Federal office using the Federal Form, and that, in using the Federal Form, applicants are not required to provide the documentary proof of citizenship information . . . in order to register to vote." *Gonzalez v. Arizona*, No. CV-06-1268, 2013 WL 7767705, at *1 (D. Ariz. Sept. 11, 2013) (emphasis added). Therefore, this notice should be included not only the notice form for registrants who do not attach DPOC to State Forms but should be included on all written materials regarding the voter registration process. This instruction is noticeably lacking from the Draft Manual in numerous sections.

Finally, the Draft Manual also contains the nonsensical requirement that a registered voter must re-prove his citizenship when he moves from one County to another, but need not re-prove his citizenship if he moves within a County. *See* Draft Manual § 1.4.1.2.7. There is simply no legitimate basis for imposing this burden on Arizonans' rights to vote and travel.

3. Other Comments

Section 1.4.1.2: The Draft Manual requires DPOC for all registration forms other than the Federal Form. These other forms include FPCA, FWAB, In-Person EZ Voter Registration and Online EZ Voter Registration. For all the reasons stated above, the manual should be amended to require County Recorder's to (a) supplement these forms with AZ DL/ID information if it shows proof of residency and (b) register individuals who use these forms to vote in federal elections even if they do not provide DPOC.

Sections 1.5.1.2 & 1.5.1.3: These sections outline the duties of public assistance agencies to provide assistance to clients who wish to register to vote. In order to comply with the order in *ITCA* and the NVRA, This section should be revised to add the requirement that these agencies offer clients assistance in obtaining and copying DPOC

and provide clients with information about the difference between State and Federal Forms.

Section 1.5.1.4: This section should be revised to require the Secretary of State or applicable County Recorder to supply as many voter registration forms as public assistance agencies request, but no fewer than the Secretary expects to be necessary based on available data about the number of citizens the agency typically serves.

Conclusion

In sum, the arbitrary distinctions drawn by the Draft Manual create a burdensome, irrational, and plainly unconstitutional system for voter registration. These policies must be replaced with a rational and coherent system that: (1) imposes the same consequences for all registrants who provide the same information, regardless of which form they use; (2) ensures that all registrants who provide the information required by the Federal Form are registered to vote in federal elections, regardless of whether they submit that information on the Federal or State Form; (3) ensures that all voters are registered for all elections where documentary proof of citizenship is readily available to the County Recorder through MVD data and the voter meets all other requirements; and (4) does not impose unnecessary barriers to registration, such as requiring registrants to submit entirely new forms rather than supplementing forms previously submitted.

DATED: January 25, 2018

Respectfully submitted,



Danielle Lang
J. Gerald Hebert
Adav Noti
Mark Gaber
CAMPAIGN LEGAL CENTER
1411 K Street NW Ste. 1400
Washington, D.C. 20005
Tel: (202) 736-2200

Spencer G. Scharff
GODDARD LAW OFFICE PLC
502 W. Roosevelt St.
Phoenix, AZ 85003
Tel: (602) 258-5521

Ezra D. Rosenberg
Arusha Gordon
Jon M. Greenbaum
LAWYERS' COMMITTEE FOR CIVIL
RIGHTS UNDERLAW
1401 New York Ave. NW Ste. 400
Washington, D.C. 20005
Tel: (202) 662-8345

Andrew W. Schwartz
Winter King
Stephanie L. Safdi
SHUTE, MIHALY & WEINBERGER LLP
396 Hayes St.
San Francisco, CA 94102
Tel: (415) 552-7272

Manuel G. Escobar, Jr.
LULAC
National Legal Advisor
201 W. Poplar St.
San Antonio, TX 78212
Tel: 210-225-1400

/s/ Joel Edman

Joel Edman
ARIZONA ADVOCACY NETWORK AND
FOUNDATION
1 N.1st St., St. 649
Phoenix, AZ 85004
Tel:(602) 297-2500

/s/ Petra Falcon

Petra Falcon
PROMISE ARIZONA
701 S. 1st St.
Phoenix, AZ 85004
Tel: (602) 288-3663

/s/ Viridiana Hernandez

Viridiana Hernandez
CENTER FOR NEIGHBORHOOD
LEADERSHIP
816 N 1st Ave.
Phoenix, AZ 85003
Tel: (480) 382-7782