



November 4, 2018

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Re: Early Voting Practices in Connection with the November 6, 2018 General Election

To the County Recorders of Arizona:

A uniform and impartial adherence to the law is vital to public confidence in the electoral system and the outcomes it produces. In this vein, troubling reports have emerged of at least two early voting practices in certain counties that not only are inconsistent with the governing statutes and regulatory directives from the Secretary of State, but undermine the constitutional guarantee that all Arizonans are entitled to cast a ballot on equal terms, irrespective of their geographic location within the state.

I. Misuse of “Emergency” Early Voting

Arizona has constructed an early voting regime that is far more permissive than those enacted in other states. Every elector may cast an early ballot, either by mail or in-person at various sites throughout every county. *See* Ariz. Rev. Stat. §§ 16-541, -542. Additionally, voters who, by reason of illness or disability, are unable to physically travel to an early voting site and do not wish to vote by mail may have ballots personally delivered to them by elections officials. *See id.* § 16-549. This exceptionally accommodating framework, however, is cabined by one modest limitation. The Legislature has directed in no uncertain terms that in-person early voting must terminate “no later than 5:00 p.m. on the Friday preceding the election,” *i.e.*, Friday, November 2, 2018. Ariz. Rev. Stat. § 16-542(E).

A dispensation from this categorical deadline is permissible only “[a]s a result of an emergency occurring between 5:00 p.m. on the second Friday preceding the election and 5:00 p.m. on the Monday preceding the election.” *Id.* § 16-542(H). An “emergency” consists of “any unforeseen circumstances that would prevent the elector from voting at the polls.” Ariz. Rev. Stat. § 16-542(H). In other words, mere inconvenience is not a permissible predicate for a reprieve from the November 2 early voting deadline; the voter must be burdened with exigencies that would “prevent”—*i.e.*, make it impossible—for him or her to vote on Election Day, and that were not known or reasonably foreseeable.

It has come to our attention that the Maricopa County Recorder’s office may be systematically permitting electors to cast in-person early ballots between Saturday, November 3 and Monday, November 5, irrespective of whether such individuals have cited any articulable “emergency.” If true, this practice impermissibly circumvents the statutory deadline and constitutes a *de facto* extension of general early voting. The resulting variation among counties also unfairly disadvantages voters in jurisdictions that enforce the Legislature’s mandate that a *bona fide* emergency is a necessary prerequisite to belated in-person early voting. *See generally Bush v. Gore*, 531 U.S. 98, 106, 107 (2000) (emphasizing the importance of “specific rules designed to ensure uniform treatment of voters” and that “arbitrary and disparate treatment to voters in . . . different counties” inflicts a constitutional injury).

II. Post-Election Rehabilitation of Facially Defective Early Ballots

A ballot returned by mail may be processed only if the signature on the accompanying affidavit matches the signature on file in the putative voter’s registration record. *See* Ariz. Rev. Stat. § 16-550(A). County elections officials must conduct the signature verification immediately “[u]pon receipt” of the ballot, *id.* and all issued early ballots must be received and processed by the county recorders’ offices no later than 7:00pm on Election Day, *id.* § 16-551(C). In the event of discrepant signatures, the county recorder “may attempt to contact the voter to ascertain whether the voter actually voted the early ballot and any reasons why the signatures may not match,” but only “[i]f time permits.” Ariz. Sec’y of State, ELECTION PROCEDURES MANUAL (2014) at 166. Certain county recorders’ offices, however, reportedly will allow voters to cure non-compliant early ballots for an unspecified period of time *after* Election Day, a contingency that finds no statutory authorization and threatens to beget an extended period of confusion and uncertainty following the election. In contriving *ad hoc* post-election “grace periods” to rehabilitate facially defective ballots, these counties are subverting the statutory framework securing the uniform administration of statewide elections and imperiling voters’ right to the equal protection of the laws, regardless of the county in which they reside.

Accordingly, to ensure that courts can effectively adjudicate any future litigation concerning these practices, I respectfully request that you identify and segregate all ballots that were either:

1. cast in-person on November 3, November 4 or November 5, 2018 by any individual who has not asserted the existence of an “emergency,” within the meaning of Ariz. Rev. Stat. § 16-542(H); or

2. returned by mail and contained affidavit signatures that did not match the signatures on the corresponding voter registration forms but were processed as valid on the basis of extrinsic information provided by the putative voters after 7:00pm on November 6, 2018.

We believe that failure to comply with this request would constitute the intentional spoliation of evidence relevant to claims and defenses in anticipated litigation.

Thank you for your attention to this matter of important public concern.

Respectfully,

/s Jonathan Lines
Jonathan Lines, Chairman
Arizona Republican Party