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22 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
23 **IN AND FOR THE COUNTY OF MARICOPA**

24 Adrian Fontes, in his official capacity as the
25 Maricopa County Recorder,

26 Plaintiff,

vs.

State of Arizona; Katie Hobbs, in her
official capacity as Arizona Secretary of
State,

Defendants.

Case No: CV2020-011845

**STATE'S COUNTERCLAIM AND
CROSSCLAIM**

1 State of Arizona, ex rel. Mark Brnovich,
2 Arizona Attorney General,

3 Counterclaimant and
4 Cross Claimant

5 vs.

6 Adrian Fontes, in his official capacity as
7 Maricopa County Recorder,

8 Counterdefendant

9 and

10 Katie Hobbs, in her official capacity as
11 Arizona Secretary of State,

12 Cross Defendant.
13

14 For its counterclaim against Maricopa County Recorder Adrian Fontes and its
15 crossclaim against Arizona Secretary of State Katie Hobbs, the State of Arizona, through Mark
16 Brnovich, Attorney General (the "State"), hereby alleges as follows:

17 **INTRODUCTION**

18 1. On the eve of the 2020 General Election, Arizona Secretary of State Katie Hobbs
19 (the "Secretary") and Maricopa County Recorder Adrian Fontes (the "Recorder") have
20 unilaterally altered election procedures inconsistent with, and in violation of, Arizona law.
21 More specifically, they plan to allow any voter who states that they cannot physically fill out a
22 ballot and who is subject to physical restrictions, including those who are not comfortable due
23 to COVID-19, to cast an unsigned ballot filled out remotely by third parties using unsecure
24 teleconferencing technology (including Apple's FaceTime program).

25 2. It is extremely easy to vote in Arizona and the State provides numerous options
26 for doing so. In addition to in-person and mail-in voting, fifty years ago, the State established a

1 process whereby county recorders can appoint individuals, called Special Election Boards, to
2 assist voters who are unable to cast their ballot in person or by mail. Arizona law provides that
3 “any qualified elector who is confined as the result of a continuing illness or physical disability
4 and is, therefore, not able to go to the polls on the day of the next election and who does not
5 wish to vote by the mailed early ballot procedure, may make a verbal or a signed written
6 request to the county recorder or other officer in charge of elections to have a ballot personally
7 delivered to the elector by the special election board at the elector's place of confinement within
8 the county or other political subdivision.” A.R.S. § 16-549(C). Moreover, “[t]he ballot shall be
9 delivered to the elector in person by a special election board as provided in this section.” *Id.*
10 At the conclusion of the voting process, “the marked ballot in the sealed envelope shall be
11 handed by the elector to the special election board and shall be delivered by the board to the
12 county recorder or other officer in charge of elections.” *Id.* § 16-549(E). The ballot is sealed in
13 a ballot affidavit envelope, which must be signed by the elector. A.R.S. §§ 16-548(E), -549(A),
14 - 584(E). Those signatures are then statutorily required to be consistent with the signature on
15 file in the elector’s voter registration record. A.R.S. §§ 16-550(A), -584(E).

16 3. On September 20, 2020, the Yuma County Recorder contacted Governor Ducey’s
17 office to express concerns about new voting procedures, including voting using
18 teleconferencing technology (“Virtual Voting Procedures”), that the Secretary had circulated to
19 the county recorders. As a result, Governor Ducey wrote to the Secretary to express concerns
20 that the Virtual Voting Procedures are inconsistent with Arizona law and promulgated without
21 authority. During their correspondence, the Secretary asked Governor Ducey to issue an
22 executive order adopting the Secretary’s new Virtual Voting Procedures. Governor Ducey
23 declined to do so.

24 4. On September 23, 2020, the Secretary, without the required approval of the
25 Arizona Attorney General and the Governor, issued “guidance” entitled “Assisting Voters in
26 Caregiving and Hospital Facilities During the COVID-19 Pandemic.” The document purports

1 to describe procedures that county election officials should now use for assisting voters in long
2 term care facilities, residential health care facilities, and hospitals during the upcoming election.
3 After explaining ballot by mail options and procedures, the document describes
4 “recommended” procedures for “Virtual Special Election Boards Using Videoconferencing
5 Technology.” These Virtual Voting Procedures would allow voters who are subject to
6 visitation and access restrictions or who are otherwise not comfortable receiving assistance
7 through an in-person meeting due to COVID-19, but who claim to need physical assistance in
8 marking their ballot, to vote virtually through unsecure remote videoconference without ever
9 physically receiving or signing their ballot affidavit envelope.

10 5. The Recorder took the Secretary’s Virtual Voting Procedures and ran with them.
11 On September 24, 2020, the Recorder issued his own Virtual Voting Procedures entitled
12 “Expanding Voting Platforms for Voters with Physically [(sic)] Limitations.” The Recorder
13 and Secretary have stated that the Recorder’s Procedures are consistent with the Secretary’s
14 Procedures. The Recorder’s Procedures instruct that “[t]he SEB may only fulfill in person
15 voting requests if physical distancing of the six feet requirement is possible.” They also
16 instruct that voters may vote virtually using remote videoconferencing technology, without
17 physical delivery and return of the ballot and without a signature/mark, “if they meet the
18 criteria of being physically unable to mark their ballot and restricted access to meeting in
19 person exists.”

20 6. Unfortunately, the Recorder has a recent track record of unilaterally
21 implementing new voting procedures in violation of Arizona law. In March 2020, the AGO
22 obtained a temporary restraining order against the Recorder after he unilaterally, and over the
23 objection of the Secretary, attempted to convert the Presidential Preference Election in
24 Maricopa County into a full mail-in election in violation of Arizona law. The Recorder caused
25 thousands of unnecessary ballots to be printed at great cost to taxpayers. Moreover, on
26 September 10, 2020, the Arizona Supreme Court enjoined the Recorder from unilaterally

1 including a new instruction with mail-in ballots. The Court found that “Defendants exceeded
2 their authority by proposing to include the New Instruction.”

3 7. In mid-September, the AGO independently learned, through the Recorder’s Early
4 Voting Plan, that the Recorder planned to implement procedures for virtual voting using
5 videoconferencing technology. Such procedures are not authorized under Arizona law. Thus,
6 on September 18, 2020, the AGO wrote to the Recorder asking him to explain “how this
7 procedure will work and the authority you believe authorizes qualified voters to vote in this
8 manner” and requesting a response by September 23.

9 8. After requesting an extension of time to respond and retaining outside counsel,
10 the Recorder provided a written response at 2:00 p.m. on September 25, 2020. The Recorder
11 filed this action less than half an hour later.

12 9. The Secretary and Recorder’s Virtual Voting Procedures are inconsistent with
13 Arizona law in numerous respects. Not only are the Virtual Voting Procedures directly
14 inconsistent with several Arizona statutes relating to voting, the Virtual Voting Procedures
15 were promulgated without lawful authority. The State is, therefore, entitled to special action,
16 declaratory, and injunctive relief preventing the Recorder and Secretary from implementing the
17 Virtual Voting Procedures in any way.

18 **JURISDICTION AND VENUE**

19 10. The Arizona Attorney General has the statutory authority to enforce Title 16 of
20 the Arizona Revised Statutes on behalf of the State. *See* A.R.S. § 16-1021.

21 11. The Court has subject matter jurisdiction over the State’s claims pursuant to
22 article 6, section 14 and article 6, section 18 of the Arizona Constitution. The Court further has
23 subject matter jurisdiction pursuant to A.R.S. §§ 12-123 and -124.

24 12. The Court has venue over this action pursuant to A.R.S. § 12-401(16) and the
25 Arizona Rules of Procedure for Special Actions.

1 **PARTIES**

2 13. The State is a body politic.

3 14. Counterclaimant/Crossclaimant Mark Brnovich is the Arizona Attorney General
4 and asserts the counter and cross claims on behalf of the State in his official capacity.

5 15. Counterdefendant Adrian Fontes is the Maricopa County Recorder and is named
6 in his official capacity only.

7 16. Crossdefendant Katie Hobbs is the Arizona Secretary of State and is named in her
8 official capacity only.

9 **FACTUAL BACKGROUND**

10 17. In or around mid-September, the AGO obtained a copy of the Recorder's Early
11 Voting Plan. In that document, the Recorder mentioned implementing a process whereby
12 certain voters will be permitted to "cast their vote , . . on a video call." Because voting by
13 videoconferencing technology is not permitted under Arizona law, on September 18, 2020, the
14 AGO wrote to the Recorder to ask for an explanation of "how this procedure will work and the
15 authority you believe authorizes qualified voters to vote in this manner." The AGO requested a
16 response no later than September 23, 2020. *See* Declaration of Michael S. Catlett ("Catlett
17 Decl.") attached hereto as Exhibit A at ¶ 2, AGO0002.

18 18. Meanwhile, on September 20, 2020, the Yuma County Recorder contacted
19 Governor Ducey's office to express serious concerns about similar procedures that the
20 Secretary had circulated for review and comment. The Yuma County Recorder informed
21 Governor Ducey's office that "[v]irtual assistance to voters via video-conferencing to vote an
22 early ballot under the statutory language involving Special Election Boards has been
23 implemented in Maricopa County and has been included in distributed recommendations from
24 the Secretary of State's Office." The Yuma County Recorder explained that "[a]s all counties
25 have faced challenges due to the COVID-19, security and integrity remain a priority and I feel
26

1 strongly that the recommendations diminish security and integrity and I do not feel I'm able to
2 accommodate any such requests for the recommended procedures."

3 19. Governor Ducey was understandably concerned, and so the next day (September
4 21, 2020) he wrote the Secretary about "concerns expressed by a certified election officer
5 regarding election policies and practices that have been proposed and/or recently
6 implemented." Governor Ducey explained that "[t]he reports received by my office regarding
7 the proposed election policies and procedures . . . appear in conflict with state law and the
8 election procedures manual." Governor Ducey emphasized that the procedures described by
9 the Yuma County Recorder were required to be enacted through the legislative process or
10 through the process for amending Arizona's Election Procedures Manual: "Substantive policy
11 changes such as the ones described by election officials should endure legislative scrutiny or
12 approval by the attorney general and the governor through the rigorous election procedures
13 manual process prescribed in state law." Therefore, "[t]hese policy changes should be
14 suspended immediately so that Arizonans can continue to have confidence and faith in the
15 integrity of our election system." *See* Catlett Decl. at ¶ 3, AGO0004-0005.

16 20. The Secretary responded in writing the same day. The Secretary took the position
17 that the new "guidance and recommendations" are consistent with state law and necessary due
18 to COVID-19. Tellingly, however, the Secretary asked Governor Ducey "to promptly (1) issue
19 an Executive Order authorizing such a practice where necessary due to COVID-19; (2) order
20 ADHS to issue emergency directives to safely facilitate voting in long term care, residential
21 care, and hospital facilities under A.R.S. § 26-307; (3) designate my Office to issue emergency
22 orders regarding SEBs under A.R.S. § 26-307; or (4) otherwise authorize another solution"
23 *See* Catlett Decl. at ¶ 4, AGO0007.

24 21. On September 22, 2020, Governor Ducey rightly refused to accede to the
25 Secretary's after-the-fact request for approval of her unilateral changes to Arizona election law.
26 Governor Ducey informed the Secretary that "the submission of a policy revision such as this,

1 outside of the legal process and in the middle of an election cycle, will not be considered at this
2 time.” Governor Ducey correctly explained that last-minute experimentation with election
3 procedures harms election integrity: “[T]he only way we can assure the electorate of the
4 integrity of our election system is to refrain from changes in the middle of the election cycle.
5 This isn’t the time to experiment.” *See* Catlett Decl. at ¶ 5, AGO0012.

6 22. That same day, the Secretary responded again. The Secretary agreed that “when I
7 say that election officials have a responsibility to act ‘within the contours of our constitution
8 and laws,’ I do mean exactly that, no exceptions.” The Secretary continued to take the position,
9 however, that the new policies are legal and merely optional for County Recorders to apply. *See*
10 Catlett Decl. at ¶ 6, AGO0014.

11 23. On September 23, 2020, Governor Ducey wrote to Attorney General Brnovich,
12 attaching the prior correspondence between Governor Ducey and the Secretary, and indicating
13 that “[w]e remain concerned about the referenced policies and procedures and request your
14 office look into this matter.” *See* Catlett Decl. at ¶ 7, AGO0017.

15 24. On September 23, 2020, the Arizona Department of Health Services (“ADHS”)
16 issued “Updates to COVID-19 Guidance for Visitation at Congregate Care Setting for
17 Vulnerable Adults and Children” (the “Update”). The Update explained that all congregate
18 care facilities with vulnerable adults or children, including nursing care institutions, residential
19 care institutions, nursing supported developmental disability group homes, and ICF-IID’s,
20 “should immediately allow for compassionate care visits regardless of the level of community
21 spread.” The Update makes clear that such visits “include visits by . . . professionals assisting
22 individuals with disabilities, including the use of licensed sign language interpreters and other
23 communication service providers.” *See* Catlett Decl. at ¶ 8, AGO0029.

24 25. On September 23, 2020, the Secretary issued a press release announcing that she
25 had issued new guidance allowing certain voters to use videoconferencing technology to vote
26

1 remotely. *See* Catlett Decl. at ¶ 11, AGO0046-47. Despite issuing a press release about the
2 new rules, the Secretary does not appear to have made them publicly available on her website.

3 26. At about 5:00 p.m. on September 24, 2020, the AGO received from the
4 Recorder's counsel a copy of the Secretary's issued procedures for videoconference voting.
5 Because the Secretary, in violation of state law, did not ask for the Attorney General or
6 Governor's approval of the Virtual Voting Procedures as required under A.R.S. § 16-452, this
7 is the first time that the AGO had seen those procedures.

8 27. The document is entitled "Assisting Voters in Caregiving and Hospital Facilities
9 During the COVID-19 Pandemic" ("the Secretary's Procedures"). *See* Catlett Decl. at ¶ 9,
10 AGO0033-41.

11 28. The Secretary's Procedures begin by explaining that, "This guidance provides
12 recommendations from the Arizona Secretary of State's Office to county election officials for
13 assisting voters in long term care facilities (including nursing homes and intermediate care
14 facilities), residential health care facilities (including assisted living centers/homes and
15 behavioral health residential facilities), and hospitals during the COVID-19 pandemic." *Id.* at
16 AGO0033.

17 29. The Secretary's Procedures discuss the procedures for ballot by mail and to
18 obtain assistance from the Special Elections Board. Notably, the Secretary acknowledges that
19 "the voter must be able to make their own selections even if they require assistance marking the
20 ballot." *Id.* at AGO0034. Moreover, "voters who reside in caregiving facilities may rely on the
21 assistance of facility caregiving staff or visiting family or household members to both complete
22 and return their ballots." *Id.*

23 30. Regarding Special Election Boards, the Secretary's Procedures quote A.R.S. §
24 16-549(C), which states that a voter is eligible to use the Special Elections Board when the
25 voter is "confined as the result of a continuing illness or physical disability and is, therefore, not
26

1 able to go to the polls on the day of the next election and who does not wish to vote by the
2 mailed early ballot procedure.” *Id.*

3 31. The Secretary’s Procedures contain a section entitled “Virtual Special Election
4 Boards Using Videoconferencing Technology.” *Id.* at AGO0039. No provision of Arizona law
5 or the Arizona Election Procedures Manual allows for “Virtual Special Elections Boards.”

6 32. The Secretary’s Procedures recommend that Special Elections Boards develop
7 procedures for facilitating virtual assistance with the aid of videoconferencing technology. *Id.*
8 No provision of Arizona law or the Arizona Election Procedures Manual allows for the use of
9 videoconferencing technology to allow voters to receive, mark, or return their ballots virtually.

10 33. The Secretary’s Procedures state that the Special Elections Board should use
11 videoconferencing technology where a voter “needs physical assistance in marking their
12 ballot,” does not have a qualified third party to assist in marking the ballot, and where the
13 Special Election Board “is not permitted to enter a caregiving facility or hospital due to
14 COVID-19 visitation and access restrictions (*or the voter is not comfortable receiving*
15 *assistance through an in-person meeting due to COVID-19).*” *Id.* (emphasis added). No
16 provision of Arizona law or the Arizona Election Procedures Manual allows voters to vote
17 virtually using videoconferencing technology under these circumstances.

18 34. Under the Secretary’s Procedures, the Special Election Board can use county-
19 issued devices, but they “may also permit voters to conduct a virtual SEB appointment using
20 the voter’s own device.” *Id.* No provision of Arizona law or the Arizona Election Procedures
21 Manual allows voters to vote using their own videoconferencing device.

22 35. According to the Secretary, if the voter chooses to use his or her own device, then
23 the Special Elections Board can remain at the County Recorder’s Office to assist the voter: “If
24 the voter choses [(sic)] to use their personal device, the SEB team may be located at the County
25 Recorder’s Office during the videoconference SEB appointment.” *Id.* at AGO0040. The
26 Special Elections Board need not deliver a ballot in person and the voter need not return the

1 ballot in person. No provision of Arizona law or the Arizona Election Procedures Manual
2 exempts the Special Elections Board from delivering the ballot in person or the voter from
3 returning the ballot in person.

4 36. According to the Secretary's Procedures, the Special Election Board may confirm
5 the voter's identity by merely having the voter hold up his or her identification to the camera on
6 his or her telecommunications device. Under A.R.S. § 16-579(B), this could include two forms
7 of identification that do not bear the voter's photo identification. No provision of Arizona law
8 or the Arizona Election Procedures Manual allows a voter to receive a ballot by presenting his
9 or her identification through virtual means.

10 37. According to the Secretary's Procedures, once the Special Election Board has
11 indicated the voter's selections on the ballot, "the SEB should write 'voter unable to sign due to
12 COVID-19 rules' in the voter signature box." *See* Catlett Decl. at ¶ 9, AGO0041. No provision
13 of Arizona law or the Arizona Election Procedures Manual allows a voter to cast a ballot by
14 having a third party write "voter unable to sign due to COVID-19 rules" on the ballot affidavit
15 envelope. Moreover, there is no "rule" relating to COVID-19 that would restrict a voter from
16 signing a ballot. It's unclear what "rules" the Secretary is referring to.

17 38. According to the Secretary's Procedures, the Special Election Board should seal
18 the envelope in a plastic bag and "[i]f time permits, the plastic bag containing the ballot
19 envelope should be stored in a secure area and quarantined for three days before being retrieved
20 for processing and tabulation." *Id.* No provision of Arizona law or the Arizona Election
21 Procedures Manual allows election officials to quarantine ballots before processing and
22 tabulation.

23 39. Just one day after the Secretary issued the Secretary's Procedures, the Recorder
24 implemented them. On September 24, the Recorder issued a "policy and procedure" entitled
25 "Expanding Voting Platforms for Voters with Physically (sic) Limitations" (the "Recorder's
26 Policies"). *See* Catlett Decl. at ¶ 10, AGO0043-44.

1 40. Both the Recorder and the Secretary have stated that the Recorder's Policies are
2 consistent with the Secretary's Policies. *See* Recorder's Complaint ¶ 6. No provision of
3 Arizona law allows the Recorder to unilaterally issue policies adopting new methods for
4 obtaining a ballot and casting a vote.

5 41. The Recorder's Policies explain that they are intended to "describe[] the
6 expansion to the traditional in-person services to include smart device technology. The options
7 available to voters will include voting in-person, courier service or the use of this newly
8 proposed video meeting service (FaceTime)." *See* Catlett Decl. at ¶ 10, AGO0043. No
9 provision of Arizona law or the Arizona Election Procedures Manual allows voters to obtain
10 their ballots or cast their votes using video meeting services, including FaceTime.

11 42. The Recorder's Policies explain that "the voter shall select their preferred method
12 for voting and notify the SEB if they need a device or if they prefer to use their own. The SEB
13 will use iPads to conduct the video meeting." *Id.* No provision of Arizona law or the Arizona
14 Election Procedures Manual allows voters to unilaterally choose to vote by video or Special
15 Election Boards to discharge their statutory duties through remote video using iPads.

16 43. While the Recorder attempts to characterize the new policies as being a narrow
17 exception for those with disabilities, the Policies themselves belie this characterization.

18 44. The Recorder's policies explain that Arizona law requiring physical delivery and
19 receipt of ballots will only be used "if physical distancing of the six feet requirement is
20 possible." *Id.* No provision of Arizona law or the Arizona Election Procedures Manual makes
21 virtual voting the norm and physical delivery and receipt the exception only "when physical
22 distancing of the six feet requirement is possible."

23 45. Similarly, according to the Recorder's Procedures, a voter can vote virtually by
24 video technology if "they meet the criteria of being physically unable to mark their ballot and
25 restricted access to meeting in-person exists (i.e. care facility, nursing home, etc.)." *Id.* The
26 Recorder provides absolutely no guidance or detail on when a voter is "physically unable to

1 mark their ballot”—perhaps when they forget to request a mail-in ballot—and no guidance or
2 detail on when sufficient “restricted access to meeting in-person exists”—perhaps when the
3 Special Elections Board cannot provide a ballot without coming within six feet of the voter
4 (i.e., in all cases). The Recorder’s unilateral, non-statutory exemption to personal receipt and
5 delivery will swallow the statutory requirements—those that were actually produced by the
6 democratic process. No provision of Arizona law or the Arizona Election Procedures Manual
7 allows virtual voting under these undefined circumstances (or really any circumstance).

8 46. Under the Recorder’s Procedures, like under the Secretary’s Procedures, voters
9 will be required merely to show identification virtually. *See* Catlett Decl. at ¶ 10, AGO0044.
10 No provision of Arizona law or the Arizona Election Procedures Manual allows a voter to
11 receive a ballot by presenting identification virtually.

12 47. Under the Recorder’s Procedures, like under the Secretary’s Procedures, the voter
13 will not sign the ballot affidavit envelope. Instead, the Special Elections Board will “write
14 ‘voter unable to sign due to COVID-19 rules’ in the signature box.” *Id.* No provision of
15 Arizona law or the Arizona Election Procedures Manual allows a voter to cast a ballot by
16 having a third party write “voter unable to sign due to COVID-19 rules” on the ballot affidavit
17 envelope. Further, no provision of Arizona law permits ballots with an unsigned ballot
18 affidavit envelope to be counted. Moreover, there is no “rule” relating to COVID-19 that
19 would restrict a voter from signing a ballot. It’s unclear what “rules” the Recorder is referring
20 to.

21 48. Even if the Virtual Voting Procedures are legal, they are bad policy, so much so
22 that the Recorder and Secretary abused any discretion in issuing them.

23 49. The Virtual Voting Procedures are significantly lacking in detail. One cannot
24 review them without coming away with numerous questions about who qualifies for the Virtual
25 Voting Procedures, how qualification will be verified, and how the secrecy and security of
26 ballots will be maintained.

1 50. Implementation of the Virtual Voting Procedures for the first time during the
2 general election, when they were not used for the presidential preference election or the
3 primary election, will result in significant voter confusion and likely raise questions about the
4 integrity of the election.

5 51. The Virtual Voting Procedures also risk producing erroneous or mistaken votes.
6 To the extent an elector is unable to mark his own ballot, the Virtual Voting Procedures do not
7 permit the elector to meaningfully inspect the whole of the ballot before the ballot is sealed in
8 the ballot affidavit envelope. Given the dozens of candidates and a variety of local and
9 statewide initiatives, ballots are necessarily complex. Electors are entitled to personally inspect
10 their ballot to ensure accuracy and to prevent miscast votes. While the Virtual Voting
11 Procedures instruct SEBs to virtually show the ballot after votes are marked, that hardly permits
12 the elector the ability to conscientiously review their ballot to ensure there are no mistakes,
13 accidental or otherwise.

14 52. The Virtual Voting Procedures are also subject to fraud and abuse. Requiring
15 SEBs to travel to the elector's place of confinement to deliver the ballot enables election
16 officials to confirm eligibility. The act of going to the place of confinement prevents false
17 claims of confinement. Nothing in the Virtual Voting Procedures enables the county recorder
18 to confirm the elector is eligible for the SEB, is in fact confined at all or disabled in any
19 manner, or even physically located in the county, let alone the country. Because the Virtual
20 Voting Procedures permit electors to use personal devices with the SEB remotely located, it
21 fails to provide any safeguards to prevent bad actors wherever located from making a request
22 for, and receiving help from an SEB virtually. While the Secretary and Recorder may not have
23 intended to create a set of procedures that could be easily abused, they did just that.

24 53. The Virtual Voting Procedures permit SEBs to simply write on the ballot
25 affidavit, "voter unable to sign due to COVID-19 rules[.]" The early ballot is then comingled
26 with the general population of early ballots, and in Maricopa County the ballot will be subject

1 to the ordinary process of verifying ballot signatures through electronic scan and review. Yet,
2 the Virtual Voting Procedures provide no requirement that the signature verification board
3 (different from the SEBs) confirm that ballots stating “voter unable to sign due to COVID-19
4 rules” were actually cast through an SEB. Accordingly, nothing prevents bad actors from
5 fraudulently submitting early votes by simply writing “voter unable to sign due to COVID-19
6 rules” on the ballot affidavit—gutting the signature requirement and eliminating any need to
7 forge an elector’s signature to cast a fraudulent vote.

8 54. On September 24, 2020, after retaining outside counsel, the Recorder confirmed
9 to the AGO that he plans to implement the Recorder’s Procedures beginning on October 7,
10 2020. *See* Catlett Decl. at ¶ 13-14, AGO0052-54.

11 55. On September 25, 2020, the Recorder responded in substance to the AGO’s
12 September 18 inquiry letter and (unsuccessfully) attempted to justify the Recorder’s
13 Procedures. *See* Catlett Decl. at ¶ 15-16, AGO0056-57.

14 56. No less than half an hour after providing his explanation, the Recorder filed this
15 lawsuit naming the State and the Secretary as defendants.

16 CLAIMS FOR RELIEF

17 Count 1 - Special Action Relief Against the Recorder

18 57. The State incorporates by reference the foregoing allegations as if set forth
19 herein.

20 58. The Recorder’s Procedures violate or are inconsistent with numerous provisions
21 of Arizona law, including A.R.S. §§ 16-547, -548, -549, -550, -552, -579, and -584.

22 59. The Recorder’s Procedures violate or are inconsistent with Arizona’s
23 constitutional provision guaranteeing the right to secret ballot. Ariz. Const. art. 7, § 1.

24 60. The Recorder does not have the legal authority under Arizona law to unilaterally
25 issue new election procedures. Ariz. Const. art. 12, § 4.
26

1 61. Because the Recorder is acting or threatening to act without legal authority and
2 has abused any discretion in issuing and implementing the Recorder's Procedures, the State is
3 entitled to special action relief under Arizona Rule of Procedure for Special Actions 3.

4 62. More specifically, the State is entitled to emergency and final special action relief
5 finding the Recorder's Procedures regarding videoconferencing technology to be null and void
6 and prohibiting the Recorder from further implementing or enforcing those portions of the
7 Recorder's Procedures.

8 63. Because the Recorder has indicated that he plans to implement the Recorder's
9 Procedures for the upcoming election beginning on October 7, time is of the essence, and the
10 State is entitled to an order to show cause why the special action relief requested herein shall
11 not issue.

12 64. While the State does not believe that the factors for issuance of preliminary or
13 permanent injunction need be satisfied in order to obtain the immediate special action relief
14 described above, the State's claim and the Recorder's actions easily satisfy the requirements for
15 the issuance of preliminary and permanent injunctive relief. The State is, therefore, entitled to
16 the issuance of such relief enjoining the Recorder from further disseminating, implementing or
17 enforcing the videoconferencing technology portions of the Recorder's Procedures.

18 65. The State is entitled to an award of its attorneys' fees and costs pursuant to A.R.S.
19 §§ 12-341 and 12-348.01.

20 **Count 2 - Special Action Relief Against the Secretary**

21 66. The State incorporates by reference the foregoing allegations as if set forth
22 herein.

23 67. The Secretary's Procedures violate or are inconsistent with numerous provisions
24 of Arizona law, including A.R.S. §§ 16-452, -547, -548, -549, -550, -552 -579, and -584.

25
26

1 68. Because the Secretary is acting or threatening to act without legal authority and
2 has abused any discretion in issuing and implementing the Secretary's Procedures, the State is
3 entitled to special action relief under Arizona Rule of Procedure for Special Actions 3.

4 69. More specifically, the State is entitled to emergency and final special action relief
5 finding the Secretary's Procedures regarding videoconferencing technology to be null and void
6 and prohibiting the Secretary from further disseminating, implementing or enforcing those
7 portions of the Secretary's Procedures.

8 70. The Recorder has indicated that he plans to implement the Recorder's Procedures
9 for the upcoming election beginning on October 7. Upon information and belief, the Pima
10 County Recorder also plans to implement the Secretary's videoconferencing procedures
11 beginning on October 7. Therefore, time is of the essence, and the State is entitled to an order
12 to show cause why the special action relief requested herein shall not issue.

13 71. While the State does not believe that the factors for issuance of preliminary or
14 permanent injunction need be satisfied in order to obtain the immediate special action relief
15 described above, the State's claim and the Secretary's actions easily satisfy the requirements for
16 the issuance of preliminary and permanent injunctive relief. The State is, therefore, entitled to
17 the issuance of such relief enjoining the Secretary from further disseminating, implementing or
18 enforcing the videoconferencing technology portions of the Secretary's Procedures.

19 72. The State is entitled to an award of its attorneys' fees and costs pursuant to A.R.S.
20 §§ 12-341 and 12-348.01.

21 **Count 3 – Declaratory Relief Against the Recorder and the Secretary**

22 73. The State incorporates by reference the foregoing allegations as if set forth
23 herein.

24 74. A current controversy exists regarding the legality and enforceability of the
25 Recorder's Procedures and the Secretary's Procedures.
26

1 75. As described herein, the Recorder's Procedures and the Secretary's Procedures
2 regarding the use of videoconferencing technology for voting are unlawful and unenforceable.

3 76. Pursuant to A.R.S. § 12-1831, the State is entitled to a declaratory judgment that
4 the Recorder's Procedures and the Secretary's Procedures regarding the use of
5 videoconferencing technology for voting are unlawful and unenforceable.

6 77. The State is entitled to an award of its attorneys' fees and costs pursuant to A.R.S.
7 §§ 12-341 and 12-348.01.

8 **PRAYER FOR RELIEF**

9 Based on the foregoing, the State requests:

- 10 A. Special action relief prohibiting the Recorder and the Secretary from further
11 disseminating, implementing, or enforcing the videoconference technology
12 portions of the Secretary's Procedures or the Recorder's Procedures;
 - 13 B. Preliminary and permanent injunctive relief enjoining the Recorder and the
14 Secretary from further disseminating, implementing, or enforcing the
15 videoconference technology portions of the Secretary's Procedures or the
16 Recorder's Procedures;
 - 17 C. Declaratory relief that the Recorder's Procedures and the Secretary's Procedures
18 relating to virtual voting using videoconferencing technology are unlawful and
19 unenforceable;
 - 20 D. Attorneys' fees and costs pursuant to A.R.S. §§ 12-341 and 12-348.01;
 - 21 E. Such further relief as the Court deems just or proper.
- 22
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26

1 RESPECTFULLY SUBMITTED this 29th day of September, 2020.

2 **MARK BRNOVICH**
3 **ATTORNEY GENERAL**

4 By */s/ Michael S. Catlett* _____

5 Joseph A. Kanefield
6 *Chief Deputy & Chief of Staff*
7 Brunn ("Beau") W. Roysden III
8 *Solicitor General*
9 Michael S. Catlett
10 *Deputy Solicitor General*
11 Jennifer J. Wright
12 *Assistant Attorney General*

13 *Attorneys for Counterclaimant and Cross-claimant*
14 *State of Arizona ex rel. Mark Brnovich, Attorney*
15 *General*

1 COPY of the foregoing FILED
2 with the Court this 29th day of September, 2020.

3 COPY of the foregoing EMAILED this 29th day of
4 September, 2020 to:

5 Mary R. O'Grady
6 Kristin L. Windtberg
7 Joshua D. Bendor
8 OSBORN MALEDON, P.A.
9 2929 North Central Avenue, Suite 2100
10 Phoenix, Arizona 85012-2793
mogrady@omlaw.com
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11 *Attorneys for Plaintiff/Counterdefendant*
12 *Maricopa County Recorder Adrian Fontes*

13 Roopali H. Desai
14 D. Andrew Gaona
15 Kristen Yost
16 COPPERSMITH BROCKELMAN PLC
17 2800 North Central Avenue, Suite 1900
18 Phoenix, Arizona 85004
rdesai@cblawyers.com
agaona@cblawyers.com
kyost@cblawyers.com

19 *Attorneys for Defendant/Cross Defendant*
20 *Arizona Secretary of State Katie Hobbs*

21 /s/ Michael S. Catlett
22
23
24
25
26

Exhibit A

1 **MARK BRNOVICH**
2 **ARIZONA ATTORNEY GENERAL**
3 Firm State Bar No. 14000

4 Brunn W. Roysden III (State Bar No. 28698)
5 *Solicitor General*
6 Michael S. Catlett (State Bar No. 25238)
7 *Deputy Solicitor General*
8 Jennifer J. Wright (State Bar No. 27145)
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10 2005 N. Central Ave.
11 Phoenix, Arizona 85004
12 Telephone: (602) 542-8958
13 Facsimile: (602) 542-4377
14 Beau.Roysden@azag.gov
15 Michael.Catlett@azag.gov
16 Jennifer.Wright@azag.gov
17 ACL@azag.gov

18 *Attorneys for Counterclaimant and Crossclaimant*
19 *State of Arizona*

20 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
21 **IN AND FOR THE COUNTY OF MARICOPA**

22 Adrian Fontes, in his official capacity as the
23 Maricopa County Recorder,

24 Plaintiff,

25 vs.

26 State of Arizona; Katie Hobbs, in her
official capacity as Arizona Secretary of
State,

Defendants.

Case No: CV2020-011845

**DECLARATION OF MICHAEL S.
CATLETT**

1 State of Arizona, ex rel. Mark Brnovich,
2 Arizona Attorney General,

3 Counterclaimant and
4 Cross Claimant

5 vs.

6 Adrian Fontes, in his official capacity as
7 Maricopa County Recorder,

8 Counterdefendant

9 and

10 Katie Hobbs, in her official capacity as
11 Arizona Secretary of State,

12 Cross Defendant.
13

14 I, Michael S. Catlett, declare as follows:

15 1. I am an attorney licensed to practice law in Arizona. I am Deputy Solicitor
16 General with the Arizona Attorney General's Office, and counsel for the State of
17 Arizona.
18

19 **Correspondence**

20 2. Attached hereto as **Exhibit 1** is a true and correct copy of a letter dated
21 September 18, 2020 from the Arizona Attorney General's Office ("AGO") to Maricopa
22 County Recorder Adrian Fontes ("Recorder"), which was sent by email and certified mail
23 on Friday, September 18, 2020 to the Recorder, Maricopa County Attorney Joseph La
24 Rue and Maricopa County Board of Supervisors Chairman Clint Hickman.

25 3. Attached hereto as **Exhibit 2** is a true and correct copy of a letter dated
26 September 21, 2020 from Arizona Governor Doug Ducey ("Governor") to Arizona

1 Secretary of State Katie Hobbs (“Secretary”), in which Attorney General Mark Brnovich
2 (“AG”) was copied.

3 4. Attached hereto as **Exhibit 3** is a true and correct copy of a letter dated
4 September 21, 2020 from the Secretary to the Governor, in which the AG was copied

5 5. Attached hereto as **Exhibit 4** is a true and correct copy of a letter dated
6 September 22, 2020 from the Governor to the Secretary, in which the AG was copied.

7 6. Attached hereto as **Exhibit 5** is a true and correct copy of a letter dated
8 September 23, 2020 from the Secretary to the Governor, in which the AG was copied.

9 7. Attached hereto as **Exhibit 6** is a true and correct copy of a letter dated
10 September 23, 2020 from the Governor to the AG, with copies of the correspondence
11 between the Governor and Secretary.

12 **AZDHS Updates to COVID-19 Guidelines for Visitation at Congregant Settings for**
13 **Vulnerable Adults and Children**

14 8. Attached hereto as **Exhibit 7** is a true and correct copy of the Arizona
15 Department of Health Services’ September 23, 2020 “Updates to COVID-19 Guidance
16 for Visitation at Congregate Settings for Vulnerable Adults and Children”.

17 **Secretary’s Procedures**

18 9. Attached hereto as **Exhibit 8** is a true and correct copy of the Arizona
19 Secretary of State’s “Assisting Voters in Caregiving and Hospital Facilities During the
20 COVID-19 Pandemic” and was provided to AGO by the Recorder on Thursday,
21 September 24, 2020. By information and belief, this is the final set of procedures issued
22 by the Secretary on Wednesday, September 23, 2020.

23 **Recorder’s Procedures**

24 10. Attached hereto as **Exhibit 9** is a true and correct copy of the Recorder’s
25 “Early Voting (EV) Special Election Boards (SEB) Expanding Voting Platforms for
26 Voters with Physically (sic) Limitations” and was provided to the AGO by the Recorder

1 on Thursday, September 24, 2020. By information and belief, this is the final set of
2 procedures issued by Recorder on Thursday, September 24, 2020 for use during the
3 November 3, 2020 General Election (“General Election”).

4 **Secretary’s September 23, 2020 Press Release**

5 11. Attached hereto as **Exhibit 10** is a true and correct copy of the Secretary’s
6 press release issued on September 23, 2020 entitled “Secretary of State’s Office issues
7 guidance to ensure communities most affected by pandemic can exercise their
8 fundamental right to vote[,]” which is publically available at [https://azsos.gov/about-](https://azsos.gov/about-office/media-center/press-releases/1225)
9 [office/media-center/press-releases/1225](https://azsos.gov/about-office/media-center/press-releases/1225).

10 **Recorder’s Policy Number VR-001**

11 12. Attached hereto as **Exhibit 11** is a true and correct copy of the “Maricopa
12 County Recorder & Election Department Internal Policy, Processing Signatures for
13 Voters Unable to Make a Mark, Policy Number VR-001” that was provided to the AGO
14 by the Recorder on Thursday, September 24, 2020. By information and belief, these
15 policies will be used for processing unsigned ballots in Maricopa County for the General
16 Election.

17 **Email Correspondence Between Recorder’s Counsel and AGO**

18 13. Attached hereto as **Exhibit 12** is a true and correct copy of email
19 correspondence between counsel for the Recorder and the AGO between Wednesday,
20 September 23, 2020 and Thursday, September 24, 2020.

21 14. Exhibit 12 states, “the Recorder intends to make these procedure (sic)
22 available when the early voting period begins on October 7.”

23 15. Attached hereto as **Exhibit 13** is a true and correct copy of email
24 correspondence between counsel for the Recorder and the AGO on Friday, September 25,
25 2020.

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16. Exhibit 13 states, the Recorder “cannot agree to stay implementation of the policy at issue during the pendency of this case.”

Amended Order of the Arizona Supreme Court in
Arizona Public Integrity Alliance v. Fontes

17. Attached hereto as **Exhibit 14** is a true and correct copy of the Arizona Supreme Court’s amended order, which was filed on September 10, 2020 in *Arizona Public Integrity Alliance v. Fontes*, CV-20-0253-AP/EL.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated this 28th day of September, 2020.

s/ Michael S. Catlett
Michael S. Catlett

Exhibit 1



MARK BRNOVICH
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL

September 18, 2020

Via Email and Certified Mail

The Honorable Adrian Fontes
Maricopa County Recorder
111 S. 3rd Avenue
Phoenix, Arizona 85003
afontes@risc.Maricopa.gov

Re: *Request for Response Regarding Maricopa County Recorder's Plan to Allow Votes to be Cast by "Video Call"*

Dear Mr. Fontes:

The Arizona Attorney General is authorized to enforce violations of Title 16 of the Arizona Revised Statutes in connection with the upcoming General Election. The Early Voting Plan submitted by your office to the Maricopa County Board of Supervisors at the September 16, 2020, Board of Supervisors' Meeting permits electors who have a disability, are ill, institutionalized or otherwise incapable of traveling or using the early voting process to "cast their vote ... on a video call" with the assistance of a Special Election Board.¹

We have reviewed the relevant statutes in Title 16 governing special election boards as well as the Election Procedures Manual and have been unable to find any authority that would permit voting by video call. Please explain how this procedure will work and the authority you believe authorizes qualified voters to vote in this manner. Please respond in writing no later than September 23, 2020. Thank you for your prompt attention to this matter. If you have any questions, I can be reached at (602) 542-8255.

Sincerely,

Jennifer Wright
Assistant Attorney General
Elections Integrity Unit

cc: The Honorable Clint Hickman, Chairman, Maricopa County Board of Supervisors
Mr. Joseph La Rue, Maricopa County Attorney's Office

¹ See Office of Maricopa County Recorder Adrian Fontes & the Maricopa County Elections Department *Early Voting Plan November General Election* (submitted to the Maricopa County Board of Supervisors at the Sept. 16, 2020 meeting) ("Early Voting Plan") at 11.

Exhibit 2



STATE OF ARIZONA
OFFICE OF THE GOVERNOR

DOUGLAS A. DUCEY
GOVERNOR

EXECUTIVE OFFICE

September 21, 2020

Secretary of State Katie Hobbs
1700 W. Washington St., 7th Floor
Phoenix, Arizona 85007

Dear Secretary Hobbs,

I write today after receiving concerns expressed by a certified election officer regarding election policies and practices that have been proposed and/or recently implemented. Over the last two years, our offices have worked closely to maintain and strengthen the integrity of our election system. From the approval of the 2019 Election Procedures Manual, to fully funding and investing in the 2020 Presidential Preference Election, to a \$9 million investment to support safe and secure voting in Arizona during the COVID-19 pandemic— I appreciate your partnership.

As you are aware, the integrity of the election system is attributed in large part by the commitment of election officers to uphold our constitution, laws, and the state election procedures manual. The reports received by my office regarding the proposed election policies and procedures seem to break with that tradition, and appear in conflict with state law and the election procedures manual.

Specifically, my office received reports of the following:

- The establishment of a hotline by your office that would allow individuals to register to vote telephonically, without submitting a required registration form.¹ State law and the election procedures manual very clearly require a voter registration form to be submitted by a voter, precluding the ability of your office to register voters telephonically.
- The facilitation of special election boards in Maricopa County, by virtual means, in violation of state law, which requires that these services be, “delivered to the elector *in person* by a special election board...” (emphasis added).² Further, the \$9 million

¹2019 Election Procedures Manual, p. 1.

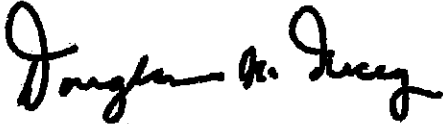
² A.R.S. § 16-549(C)

investment in response to COVID-19 was, in part, to ensure election officials have adequate resources to ensure safe and secure *in-person* special election board services.

Across all spectrums, COVID-19 has changed the way we operate and we've had to quickly evolve to accommodate the unforeseen demands and challenges of this pandemic — but at no point in addressing these challenges should we disregard the laws, policies, and procedures that exist to protect the integrity of our election systems. Substantive policy changes such as the ones described by election officials should endure legislative scrutiny or approval by the attorney general and the governor through the rigorous election procedures manual process prescribed in state law.

These policy changes should be suspended immediately so that Arizonans can continue to have confidence and faith in the integrity of our election system. If you have any questions, please do not hesitate to reach out to my staff.

Sincerely,

A handwritten signature in black ink that reads "Douglas A. Ducey". The signature is written in a cursive, flowing style.

Douglas A. Ducey
Governor
State of Arizona

CC: Mark Brnovich, Attorney General

Exhibit 3



KATIE HOBBS
SECRETARY OF STATE
State of Arizona

Governor Doug Ducey
1700 W. Washington St., 9th Floor
Phoenix, AZ 85007

September 21, 2020

VIA EMAIL ONLY

Dear Governor Ducey,

I write in response to your letter dated September 21, 2020 expressing concern regarding certain election policies and practices. As you noted in your letter, our Offices have enjoyed a strong bipartisan partnership over the past two years—a partnership that has benefitted Arizona voters and a partnership that I appreciate. I am hopeful that that partnership will continue, and the misunderstandings that prompted your letter will be quickly dispelled.

The commitment of elections officials to uphold our constitution and laws is certainly crucial to the integrity of our elections, and Arizonans rightfully place great faith in their elections officials. But the integrity of our elections also requires a deeper commitment from elections officials: a commitment to maximize the enfranchisement of voters and to facilitate and ease the process of voting within the contours of our constitution and laws. During the COVID-19 pandemic, voters face new barriers to the ballot box, barriers which our Offices have collaborated to reduce. But those who have been most affected by the pandemic—particularly those in long-term care facilities, those who are hospitalized, and members of tribal nations—still face barriers to democratic participation that may remain insurmountable despite our shared efforts.

Against this backdrop, my Office developed internal procedures for voter registration assistance and issued guidance—in close collaboration with your staff and the Arizona Department of Health Services (ADHS)—with recommendations on providing special election board assistance, including assistance aided by video conferencing technology, to voters in long term care facilities, residential care facilities, and hospitals when face-to-face visitation is not permitted or safe due to COVID-19. As explained further below, both these efforts were developed to be consistent with existing law.

First, my office has not established a hotline that would allow individuals to register to vote telephonically without submitting a paper registration form. We agree that voters must register to vote either by submitting a paper registration form or completing an online registration through the ServiceArizona website. As you may know,

however, COVID-19 has made registering to vote difficult for tribal communities because: (1) in-person voter registration efforts, both by election officials and civic engagement organizations, have been significantly curtailed, and (2) online registration is often not available to these Arizonans due to lack of internet access and/or lack of an Arizona driver's license or state identification card, which is necessary to use ServiceArizona. When these very valid concerns were brought to our attention, our Office developed procedures to provide limited assistance to eligible Arizonans in initiating the submission of a paper voter registration form by the October 5, 2020 voter registration deadline if the voter cannot register through ServiceArizona and cannot otherwise submit a complete voter registration form on their own by the registration deadline. In that circumstance, we would expressly instruct the voter that their registration will not be complete until they sign the copy of the registration form that we mail to them and submit a signed form to their County Recorder's Office. *See* A.R.S. § 16-134(B). You can rest assured that no one is being registered telephonically without submitting a complete voter registration form. This process is entirely consistent with existing law, and I am proud of our multifaceted efforts to work within the existing framework and develop creative solutions that will assist Arizonans who—due to pre-existing socio-economic challenges, exacerbated by the impact of COVID-19—may otherwise be shut out of the democratic process. Tribal communities, such as the Navajo Nation, have been hard hit by the pandemic. The least we can do is ensure they can still exercise their fundamental right to vote and participate in our democracy despite these challenges.

Second, and as noted above, my Office worked with ADHS and members of your staff to develop guidance and recommendations on providing special election board ("SEB") assistance, including assistance aided by video conferencing technology, to voters in long term care facilities, residential care facilities, and hospitals when COVID-19 restrictions prevent SEBs from physically entering those facilities. So it comes as a surprise to hear, after the guidance has now been issued, that your Office believes it is contrary to state law. Raising these objections during the development of the guidance would have certainly been preferable and would have presumably eliminated any need for the current correspondence.

The guidance provided by my Office recommends that an SEB use videoconferencing technology only if "the SEB is not permitted to enter a caregiving facility or hospital due to COVID-19 visitation and access restrictions (or the voter is not comfortable receiving assistance through an in-person meeting due to COVID-19)" and "the voter...does not have a trusted caregiver, fellow resident, or family member or other third-party with visitation access to provide that assistance." I believe this guidance will, if necessary, protect the voting rights of those who rely on an SEB to vote and is within the reasonable contours of state law. The guidance also minimizes the potential number of voters who may use this process.

Your letter notes that state law requires an SEB to deliver a ballot "in person" to an elector. However, "in person" requirements have, in other areas of law, been allowed to proceed through the use of technological means. For example, Arizona Attorney General Opinion No. I91-033 explained that for the purposes of conducting open meetings, a Community College District governing board would be approved to use electronic media such as a telephone or video conference. 1991 WL 488347 (Ariz. 1991) (citing Arizona

Attorney General Opinion I83-135, which determined that one or more members of a public body unable to be present in person may participate by telephone or video conference). These principles were recently reaffirmed in Arizona Attorney General Opinion No. I20-002 (Ariz. 2020). And Arizona Attorney General Opinion No. I85-125, 1985 WL70374 (Ariz. 1984) permitted the use of telephonic or videoconference technologies to conduct in-person parole hearings. Moreover, under my Office's guidance, SEBs who provide the voter with a county-issued device will be physically present at the same location as the voter (just not in the same room), thus satisfying any "in person" requirement, even strictly construed. This option is also consistent with your repeated admonitions regarding the importance of protecting elderly and vulnerable Arizonans from COVID-19, and the flexibility you have implemented to mitigate the risk of COVID-19 spread. *See, e.g.*, Exec. Order 2020-28 ("[A]n introduction of COVID-19 into nursing care institutions can result in an outbreak and have devastating consequences for both healthcare providers and residents."); Exec. Order 2020-22 (requiring virtual visitation for all residents of facilities where visitation has been restricted); Exec. Order 2020-53 ("[A]voiding close contact with others, especially for Arizonans 65 or older, remains an important precaution to mitigate COVID-19 impacts... [modifications of requirements] are necessary to ensure that Arizonans are able to obtain governmental services and participate in government functions as Arizona responds to and recovers from COVID-19.").

If, despite these authorities, your Office still believes that SEB assistance aided by videoconferencing technology is impermissible under current law, I would respectfully disagree, but urge you to promptly: (1) issue an Executive Order authorizing such a practice where necessary due to COVID-19; (2) order ADHS to issue emergency directives to safely facilitate voting in long term care, residential care, and hospital facilities under A.R.S. § 26-307; (3) designate my Office to issue emergency orders regarding SEBs under A.R.S. § 26-307; or (4) otherwise authorize another solution to ensure our most vulnerable citizens—elderly and ill Arizonans, who have faced the gravest risk from the pandemic—are not also deprived of their fundamental right to vote due to the pandemic.

Sincerely,



Katie Hobbs
Arizona Secretary of State

CC: Mark Brnovich, Attorney General

Exhibit 4



STATE OF ARIZONA
OFFICE OF THE GOVERNOR

DOUGLAS A. DUCEY
GOVERNOR

EXECUTIVE OFFICE

September 22, 2020

Secretary of State Katie Hobbs
1700 W. Washington St., 7th Floor
Phoenix, Arizona 85007

Dear Secretary Hobbs,

I've received your response to my letter dated September 21, 2020, regarding the concerns raised by certified election officers about your proposed policy and procedure revisions. With respect, I'd like to address a few key components of your letter.

You state, "The commitment of elections officials to uphold our constitution and laws is certainly crucial to the integrity of our elections, and Arizonans rightfully place great faith in their elections officials. But the integrity of our elections also requires a deeper commitment from elections officials: a commitment to maximize the enfranchisement of voters and to facilitate and ease the process of voting within the contours of our constitution and laws (emphasis added)."

The responsibility of election officials to uphold our constitution and laws is not only a crucial responsibility, it should stand as the final test on whether changes to our election policies and procedures are appropriate — *no exceptions*. As our nation embarks on the next general election, the eyes of the country will be on Arizona, and the only way we can assure the electorate of the integrity of our election system is to refrain from changes in the middle of the election cycle. This isn't the time to experiment.

You also state, "You can rest assured that no one is being registered telephonically without submitting a complete voter registration form."

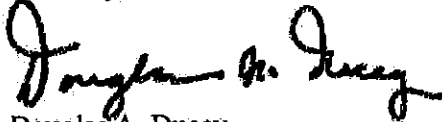
I am pleased to hear this, and I am sure the numerous county recorders who understood otherwise will be pleased as well.

Finally, you state that your office, "... worked with ADHS and members of your staff to develop guidance and recommendations on providing special election board ("SEB") assistance, including assistance aided by video conferencing technology, to voters in long term care facilities, residential care facilities, and hospitals when COVID-19 restrictions prevent SEBs from physically entering those facilities."

I appreciate the collaboration between our respective offices, however, this is simply not an accurate representation of the review your office requested from the Arizona Department of Health Services regarding the "health/safety component" of a more extensive document. Our public health officials have worked tirelessly throughout the COVID-19 response, and I am so grateful for their service — however, they are not election law experts, and do not have the authority to circumvent the legislative process or the election procedures manual process clearly defined in law.

Further, in the recent past our offices have successfully conducted changes to election procedures in coordination with the attorney general's office in accordance with state law — the submission of a policy revision such as this, outside of the legal process and in the middle of an election cycle, will not be considered at this time.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas A. Ducey". The signature is written in a cursive, flowing style.

Douglas A. Ducey
Governor
State of Arizona

CC: Mark Brnovich, Attorney General

Exhibit 5



KATIE HOBBS
SECRETARY OF STATE
State of Arizona

Governor Doug Ducey
1700 W. Washington St., 9th Floor
Phoenix, AZ 85007

September 22, 2020

VIA EMAIL ONLY

Governor Ducey,

Happy National Voter Registration Day!

I have received your letter dated September 22, 2020, and, with respect, I want to provide additional clarification.

First, you open your letter by quoting a statement from my previous letter, including:

"But the integrity of our elections also requires a deeper commitment from elections officials: a commitment to maximize the enfranchisement of voters and to facilitate and ease the process of voting within the contours of our constitution and laws." (emphasis added)

Your emphasis and explanation seem to imply that I believe in "exception[s]" to compliance with the law. I'm confident that your misinterpretation was merely accidental, but let me be clear: when I say that elections officials have a responsibility to act "within the contours of our constitution and laws," I do mean exactly that, no exceptions.

Second, I'm surprised to hear that any county recorders believed that my Office planned to register voters *entirely* by phone. My Office spoke with a number of recorders individually about this issue before discussing the process with all recorders. Most recently, we provided all county recorders with the detailed internal procedures my staff will be using to ensure proper screening of eligible voters. Regardless, I'm glad that any misperceptions have been resolved.

Finally, I agree that ADHS staff cannot be expected to be election law experts and did not imply otherwise. However, your own staff was included in emails and phone calls discussing special election boards and the potential use of technology to assist these boards, including, but not limited to, your associate general counsel. It is our expectation that if she is included in this type of communication and believes that any of the informal guidance shared by my Office violates the law, that concern would be shared with my staff. I know this is why my staff includes your team on these types of correspondence.

Furthermore, your letter seems to conflate the guidance provided by my office with statute or the contents of the Elections Procedures Manual. The difference is important—both statute and the Manual legally bind the counties, the guidance does not. County recorders will, as they always have, consult with their own legal advisors about their obligations under the law.

Given that “our offices have worked closely to maintain and strengthen the integrity of our election system,” I was disappointed that you didn’t first seek to discuss these issues before accusing my Office of “disregard[ing] the laws, policies, and procedures that exist to protect the integrity of our election systems.” Our offices have frequently sought to work through any differences in a direct and professional manner. I hope we can return to that kind of partnership.

We all wish that our State and our Country had reached a place where this type of contingency planning—scenarios in which visitors are not allowed into health care facilities due to the COVID19 pandemic—were unnecessary for elections officials. Yet, elections officials have a duty to protect the fundamental right to vote, while upholding our constitution and laws, regardless of the pandemic.

Sincerely,

A handwritten signature in black ink, appearing to be 'KH' followed by a long horizontal flourish.

Katie Hobbs
Arizona Secretary of State

CC: Mark Brnovich, Attorney General

Exhibit 6



STATE OF ARIZONA
OFFICE OF THE GOVERNOR

DOUGLAS A. DUCEY
GOVERNOR

EXECUTIVE OFFICE

September 23, 2020

Honorable Mark Brnovich
Arizona Attorney General
2005 N Central Avenue
Phoenix, AZ 85004

Dear General Brnovich,

Please see attached the correspondence between our office and the Secretary of State. We remain concerned about the referenced policies and procedures and request your office look into this matter.

Sincerely,

A handwritten signature in cursive script that reads "Douglas A. Ducey".

Douglas A. Ducey
Governor
State of Arizona



STATE OF ARIZONA
OFFICE OF THE GOVERNOR

DOUGLAS A. DUCEY
GOVERNOR

EXECUTIVE OFFICE

September 21, 2020

Secretary of State Katie Hobbs
1700 W. Washington St., 7th Floor
Phoenix, Arizona 85007

Dear Secretary Hobbs,

I write today after receiving concerns expressed by a certified election officer regarding election policies and practices that have been proposed and/or recently implemented. Over the last two years, our offices have worked closely to maintain and strengthen the integrity of our election system. From the approval of the 2019 Election Procedures Manual, to fully funding and investing in the 2020 Presidential Preference Election, to a \$9 million investment to support safe and secure voting in Arizona during the COVID-19 pandemic— I appreciate your partnership.

As you are aware, the integrity of the election system is attributed in large part by the commitment of election officers to uphold our constitution, laws, and the state election procedures manual. The reports received by my office regarding the proposed election policies and procedures seem to break with that tradition, and appear in conflict with state law and the election procedures manual.

Specifically, my office received reports of the following:

- The establishment of a hotline by your office that would allow individuals to register to vote telephonically, without submitting a required registration form.¹ State law and the election procedures manual very clearly require a voter registration form to be submitted by a voter, precluding the ability of your office to register voters telephonically.
- The facilitation of special election boards in Maricopa County, by virtual means, in violation of state law, which requires that these services be, “delivered to the elector *in person* by a special election board...” (emphasis added).² Further, the \$9 million

¹2019 Election Procedures Manual, p. 1.

² A.R.S. § 16-549(C)

Letter to Secretary Hobbs

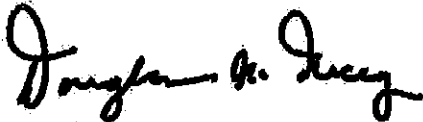
Page 2 of 2

investment in response to COVID-19 was, in part, to ensure election officials have adequate resources to ensure safe and secure *in-person* special election board services.

Across all spectrums, COVID-19 has changed the way we operate and we've had to quickly evolve to accommodate the unforeseen demands and challenges of this pandemic — but at no point in addressing these challenges should we disregard the laws, policies, and procedures that exist to protect the integrity of our election systems. Substantive policy changes such as the ones described by election officials should endure legislative scrutiny or approval by the attorney general and the governor through the rigorous election procedures manual process prescribed in state law.

These policy changes should be suspended immediately so that Arizonans can continue to have confidence and faith in the integrity of our election system. If you have any questions, please do not hesitate to reach out to my staff.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas A. Ducey". The signature is written in a cursive, flowing style.

Douglas A. Ducey

Governor

State of Arizona

CC: Mark Brnovich, Attorney General



KATIE HOBBS
SECRETARY OF STATE
State of Arizona

Governor Doug Ducey
1700 W. Washington St., 9th Floor
Phoenix, AZ 85007

September 21, 2020

VIA EMAIL ONLY

Dear Governor Ducey,

I write in response to your letter dated September 21, 2020 expressing concern regarding certain election policies and practices. As you noted in your letter, our Offices have enjoyed a strong bipartisan partnership over the past two years—a partnership that has benefitted Arizona voters and a partnership that I appreciate. I am hopeful that that partnership will continue, and the misunderstandings that prompted your letter will be quickly dispelled.

The commitment of elections officials to uphold our constitution and laws is certainly crucial to the integrity of our elections, and Arizonans rightfully place great faith in their elections officials. But the integrity of our elections also requires a deeper commitment from elections officials: a commitment to maximize the enfranchisement of voters and to facilitate and ease the process of voting within the contours of our constitution and laws. During the COVID-19 pandemic, voters face new barriers to the ballot box, barriers which our Offices have collaborated to reduce. But those who have been most affected by the pandemic—particularly those in long-term care facilities, those who are hospitalized, and members of tribal nations—still face barriers to democratic participation that may remain insurmountable despite our shared efforts.

Against this backdrop, my Office developed internal procedures for voter registration assistance and issued guidance—in close collaboration with your staff and the Arizona Department of Health Services (ADHS)—with recommendations on providing special election board assistance, including assistance aided by video conferencing technology, to voters in long term care facilities, residential care facilities, and hospitals when face-to-face visitation is not permitted or safe due to COVID-19. As explained further below, both these efforts were developed to be consistent with existing law.

First, my office has not established a hotline that would allow individuals to register to vote telephonically without submitting a paper registration form. We agree that voters must register to vote either by submitting a paper registration form or completing an online registration through the ServiceArizona website. As you may know,

however, COVID-19 has made registering to vote difficult for tribal communities because: (1) in-person voter registration efforts, both by election officials and civic engagement organizations, have been significantly curtailed, and (2) online registration is often not available to these Arizonans due to lack of internet access and/or lack of an Arizona driver's license or state identification card, which is necessary to use ServiceArizona. When these very valid concerns were brought to our attention, our Office developed procedures to provide limited assistance to eligible Arizonans in initiating the submission of a paper voter registration form by the October 5, 2020 voter registration deadline if the voter cannot register through ServiceArizona and cannot otherwise submit a complete voter registration form on their own by the registration deadline. In that circumstance, we would expressly instruct the voter that their registration will not be complete until they sign the copy of the registration form that we mail to them and submit a signed form to their County Recorder's Office. See A.R.S. § 16-134(B). You can rest assured that no one is being registered telephonically without submitting a complete voter registration form. This process is entirely consistent with existing law, and I am proud of our multifaceted efforts to work within the existing framework and develop creative solutions that will assist Arizonans who—due to pre-existing socio-economic challenges, exacerbated by the impact of COVID-19—may otherwise be shut out of the democratic process. Tribal communities, such as the Navajo Nation, have been hard hit by the pandemic. The least we can do is ensure they can still exercise their fundamental right to vote and participate in our democracy despite these challenges.

Second, and as noted above, my Office worked with ADHS and members of your staff to develop guidance and recommendations on providing special election board ("SEB") assistance, including assistance aided by video conferencing technology, to voters in long term care facilities, residential care facilities, and hospitals when COVID-19 restrictions prevent SEBs from physically entering those facilities. So it comes as a surprise to hear, after the guidance has now been issued, that your Office believes it is contrary to state law. Raising these objections during the development of the guidance would have certainly been preferable and would have presumably eliminated any need for the current correspondence.

The guidance provided by my Office recommends that an SEB use videoconferencing technology only if "the SEB is not permitted to enter a caregiving facility or hospital due to COVID-19 visitation and access restrictions (or the voter is not comfortable receiving assistance through an in-person meeting due to COVID-19)" and "the voter...does not have a trusted caregiver, fellow resident, or family member or other third-party with visitation access to provide that assistance." I believe this guidance will, if necessary, protect the voting rights of those who rely on an SEB to vote and is within the reasonable contours of state law. The guidance also minimizes the potential number of voters who may use this process.

Your letter notes that state law requires an SEB to deliver a ballot "in person" to an elector. However, "in person" requirements have, in other areas of law, been allowed to proceed through the use of technological means. For example, Arizona Attorney General Opinion No. I91-033 explained that for the purposes of conducting open meetings, a Community College District governing board would be approved to use electronic media such as a telephone or video conference. 1991 WL 488347 (Ariz. 1991) (citing Arizona

Attorney General Opinion I83-135, which determined that one or more members of a public body unable to be present in person may participate by telephone or video conference). These principles were recently reaffirmed in Arizona Attorney General Opinion No. I20-002 (Ariz. 2020). And Arizona Attorney General Opinion No. I85-125, 1985 WL70374 (Ariz. 1984) permitted the use of telephonic or videoconference technologies to conduct in-person parole hearings. Moreover, under my Office's guidance, SEBs who provide the voter with a county-issued device will be physically present at the same location as the voter (just not in the same room), thus satisfying any "in person" requirement, even strictly construed. This option is also consistent with your repeated admonitions regarding the importance of protecting elderly and vulnerable Arizonans from COVID-19, and the flexibility you have implemented to mitigate the risk of COVID-19 spread. See, e.g., Exec. Order 2020-28 ("[A]n introduction of COVID-19 into nursing care institutions can result in an outbreak and have devastating consequences for both healthcare providers and residents."); Exec. Order 2020-22 (requiring virtual visitation for all residents of facilities where visitation has been restricted); Exec. Order 2020-53 ("[A]voiding close contact with others, especially for Arizonans 65 or older, remains an important precaution to mitigate COVID-19 impacts... [modifications of requirements] are necessary to ensure that Arizonans are able to obtain governmental services and participate in government functions as Arizona responds to and recovers from COVID-19.").

If, despite these authorities, your Office still believes that SEB assistance aided by videoconferencing technology is impermissible under current law, I would respectfully disagree, but urge you to promptly: (1) issue an Executive Order authorizing such a practice where necessary due to COVID-19; (2) order ADHS to issue emergency directives to safely facilitate voting in long term care, residential care, and hospital facilities under A.R.S. § 26-307; (3) designate my Office to issue emergency orders regarding SEBs under A.R.S. § 26-307; or (4) otherwise authorize another solution to ensure our most vulnerable citizens—elderly and ill Arizonans, who have faced the gravest risk from the pandemic—are not also deprived of their fundamental right to vote due to the pandemic.

Sincerely,



Katie Hobbs
Arizona Secretary of State

CC: Mark Brnovich, Attorney General



STATE OF ARIZONA
OFFICE OF THE GOVERNOR

DOUGLAS A. DUCEY
GOVERNOR

EXECUTIVE OFFICE

September 22, 2020

Secretary of State Katie Hobbs
1700 W. Washington St., 7th Floor
Phoenix, Arizona 85007

Dear Secretary Hobbs,

I've received your response to my letter dated September 21, 2020, regarding the concerns raised by certified election officers about your proposed policy and procedure revisions. With respect, I'd like to address a few key components of your letter.

You state, "The commitment of elections officials to uphold our constitution and laws is certainly crucial to the integrity of our elections, and Arizonans rightfully place great faith in their elections officials. But the integrity of our elections also requires a deeper commitment from elections officials: a commitment to maximize the enfranchisement of voters and to facilitate and ease the process of voting within the contours of our constitution and laws (emphasis added)."

The responsibility of election officials to uphold our constitution and laws is not only a crucial responsibility, it should stand as the final test on whether changes to our election policies and procedures are appropriate — *no exceptions*. As our nation embarks on the next general election, the eyes of the country will be on Arizona, and the only way we can assure the electorate of the integrity of our election system is to refrain from changes in the middle of the election cycle. This isn't the time to experiment.

You also state, "You can rest assured that no one is being registered telephonically without submitting a complete voter registration form."

I am pleased to hear this, and I am sure the numerous county recorders who understood otherwise will be pleased as well.

Finally, you state that your office, "... worked with ADHS and members of your staff to develop guidance and recommendations on providing special election board ("SEB") assistance, including assistance aided by video conferencing technology, to voters in long term care facilities, residential care facilities, and hospitals when COVID-19 restrictions prevent SEBs from physically entering those facilities."

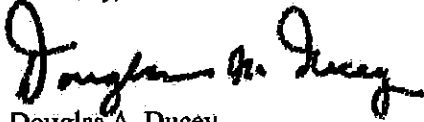
Letter to Secretary Hobbs

Page 2 of 2

I appreciate the collaboration between our respective offices, however, this is simply not an accurate representation of the review your office requested from the Arizona Department of Health Services regarding the "health/safety component" of a more extensive document. Our public health officials have worked tirelessly throughout the COVID-19 response, and I am so grateful for their service — however, they are not election law experts, and do not have the authority to circumvent the legislative process or the election procedures manual process clearly defined in law.

Further, in the recent past our offices have successfully conducted changes to election procedures in coordination with the attorney general's office in accordance with state law — the submission of a policy revision such as this, outside of the legal process and in the middle of an election cycle, will not be considered at this time.

Sincerely,



Douglas A. Ducey
Governor
State of Arizona

CC: Mark Brnovich, Attorney General



KATIE HOBBS
SECRETARY OF STATE
State of Arizona

Governor Doug Ducey
1700 W. Washington St., 9th Floor
Phoenix, AZ 85007

September 22, 2020

VIA EMAIL ONLY

Governor Ducey,

Happy National Voter Registration Day!

I have received your letter dated September 22, 2020, and, with respect, I want to provide additional clarification.

First, you open your letter by quoting a statement from my previous letter, including:

"But the integrity of our elections also requires a deeper commitment from elections officials: a commitment to maximize the enfranchisement of voters and to facilitate and ease the process of voting within the contours of our constitution and laws." (emphasis added)

Your emphasis and explanation seem to imply that I believe in "exception[s]" to compliance with the law. I'm confident that your misinterpretation was merely accidental, but let me be clear: when I say that elections officials have a responsibility to act "within the contours of our constitution and laws," I do mean exactly that, no exceptions.

Second, I'm surprised to hear that any county recorders believed that my Office planned to register voters *entirely* by phone. My Office spoke with a number of recorders individually about this issue before discussing the process with all recorders. Most recently, we provided all county recorders with the detailed internal procedures my staff will be using to ensure proper screening of eligible voters. Regardless, I'm glad that any misperceptions have been resolved.

Finally, I agree that ADHS staff cannot be expected to be election law experts and did not imply otherwise. However, your own staff was included in emails and phone calls discussing special election boards and the potential use of technology to assist these boards, including, but not limited to, your associate general counsel. It is our expectation that if she is included in this type of communication and believes that any of the informal guidance shared by my Office violates the law, that concern would be shared with my staff. I know this is why my staff includes your team on these types of correspondence.

Furthermore, your letter seems to conflate the guidance provided by my office with statute or the contents of the Elections Procedures Manual. The difference is important—both statute and the Manual legally bind the counties, the guidance does not. County recorders will, as they always have, consult with their own legal advisors about their obligations under the law.

Given that “our offices have worked closely to maintain and strengthen the integrity of our election system,” I was disappointed that you didn’t first seek to discuss these issues before accusing my Office of “disregard[ing] the laws, policies, and procedures that exist to protect the integrity of our election systems.” Our offices have frequently sought to work through any differences in a direct and professional manner. I hope we can return to that kind of partnership.

We all wish that our State and our Country had reached a place where this type of contingency planning—scenarios in which visitors are not allowed into health care facilities due to the COVID19 pandemic—were unnecessary for elections officials. Yet, elections officials have a duty to protect the fundamental right to vote, while upholding our constitution and laws, regardless of the pandemic.

Sincerely,

A handwritten signature in black ink, appearing to be 'KH' followed by a long horizontal flourish.

Katie Hobbs
Arizona Secretary of State

CC: Mark Brnovich, Attorney General



STATE OF ARIZONA
OFFICE OF THE GOVERNOR

EXECUTIVE OFFICE

DOUGLAS A. DUCEY
GOVERNOR

September 23, 2020

Secretary of State Katie Hobbs
1700 W Washington St., 7th Floor
Phoenix, AZ 85007

Dear Secretary Hobbs,

In your initial response, you claimed that telephonic voter registration will not be administered. Based on conversations with county recorders, it now seems as if your office is indeed implementing this process. We remain concerned and believe the practice falls outside of the confines of the law. We are requesting Attorney General Brnovich look into this practice.

With respect to Special Election Board voting through virtual means, it is clear based on your request for authority to administer this process made on September 21, 2020, that this practice is not consistent with state law and that your office does not have the statutory authority to provide this guidance to counties.

Further, you reference an email to the Arizona Department of Health Services ("ADHS") regarding a draft guidance document, in which virtual Special Election Board voting is referenced, seeking "ADHS's feedback on the health/safety components of the document." While your office copied members of my staff in this email to ADHS, your office did not seek input from our office — though the position of my office has been made clear through our recent correspondence.

Sincerely,

Douglas A. Ducey
Governor
State of Arizona

Exhibit 7



ARIZONA DEPARTMENT OF HEALTH SERVICES

Updates to COVID-19 Guidance for Visitation at Congregate Care Setting for Vulnerable Adults and Children Updated 9/23/2020

The following changes will be added to the LTC Visitation Guidance Document:

PAGE 1 Introduction

1. Facilities should immediately allow for compassionate care visits regardless of the level of community spread. Compassionate care visits include visits for end-of-life or terminal diseases, but facilities must limit contact as much as possible. This is consistent with guidance from CMS and the White House Gating Criteria. Compassionate care visits also include visits by necessary healthcare professionals (including medical, dental, and behavioral healthcare), clergy, and professionals assisting individuals with disabilities, including the use of licensed sign language interpreters and other communication service providers.

Compassionate care visits that occur during the substantial community spread phase should have the mitigation measures implemented that would be required during the moderate phase.

PAGE 9: Additional Visitation Types: The following will be added to the Visitation types:

- **Health care workers** who are not employees of the facility but provide direct care to the facility's residents, such as hospice workers, Emergency Medical Services (EMS) personnel, dentists, home health personnel, dialysis technicians, laboratory technicians, radiology technicians, social workers, clergy etc., must be permitted to come into the facility as long as they are not subject to a work exclusion due to an exposure to COVID-19 or show signs or symptoms of COVID-19 after being screened. Therapy dogs should be permitted, however, any handler must adhere to the visitation policy.
- **Regulatory and investigative personnel** who are not employees of the facility but ensure health and safety of the residents, such as law enforcement, ADHS/CMS licensing surveyors, APS Investigators, and health plan quality assurance investigators, etc., must be permitted to come into the facility as long as they are not subject to a work exclusion due to an exposure to COVID-19 or show signs or symptoms of COVID-19 after being screened.



Page 9 **Additional Visitation Types (continued)**

- Residents may designate one or two family member(s) or caretaker(s) to serve as a "Designated Essential Visitor". The facility should develop policies and procedures to allow for the Designated Essential Visitor to visit at any time during normal (pre-COVID-19) visitation hours, or in cases of emergency, as long as the following requirements are met:
 - The Essential Visitor presents the facility documentation of a negative COVID test (either PCR or antigen) on the same testing interval required by CMS for the facility staff:
 - Minimal (Percent Positivity <5%): Once a month
 - Moderate (5% - 10%): Once a week
 - Substantial (>10%): Twice a week
 - The Designated Essential Visitor signs an initial attestation that they will avoid attending large gatherings in between testing and visitation;
 - The Designated Essential Visitor attests on each visit that they are free from symptoms;
 - The Designated Essential Visitor must be at least 18 years of age
 - The facility requires mask-wearing by residents (when safe), visitors, Designated Essential Visitor, and staff.
 - The facility requires hand sanitizing before the visit.
 - The facility maintains a visitor log for contact tracing purposes.
 - The resident shall have the discretion to change their Designated Essential Visitor in accordance with the policy established by the facility
- For all visitation types:
 - Facilities should limit the number of visitors per resident at one time and limit the total number of visitors in the facility at one time (based on the size of the building and physical space). Facilities should ensure all residents are able to receive visitors; and
 - Facilities must develop visitation policies for residents that may be bed restricted and unable to attend visitation outdoors or in an identified location. Policies and procedures shall take into consideration the requirements for **Visitor Access to Resident's Living Space**, but allow for adequate visitation time.
 - For situations where there is a roommate and the health status of the resident prevents leaving the room, facilities should attempt to enable in-room visitation while adhering to the infection prevention requirements for COVID-19.



Page 9 **Additional Visitation Types (continued)**

- Facilities should enable visits to be conducted with an adequate degree of privacy by requiring staff maintain a reasonable distance during visitation. Visitors who are unable or unwilling to adhere to the requirements of COVID-19 infection prevention, such as wearing a mask at all times and maintaining physical distance (if required), should not be permitted to visit or should be asked to leave.
- To ensure that families who work during the week have the ability to visit their loved ones, facilities shall ensure that at least one weekend day is open for visitation.

Exhibit 8



Assisting Voters in Caregiving and Hospital Facilities During the COVID-19 Pandemic

This guidance provides recommendations from the Arizona Secretary of State's Office to county election officials for assisting voters in long term care facilities (including nursing homes and intermediate care facilities), residential health care facilities (including assisted living centers/homes and behavioral health residential facilities), and hospitals during the COVID-19 pandemic. These recommendations were developed in consultation with the Arizona Department of Health Services (ADHS) and based on existing guidance from the Centers for Disease Control and Prevention (CDC) and ADHS. These recommendations are aimed at facilitating the exercise of the right to vote while safeguarding the health and safety of voters, their family members and caregivers, other facility residents and staff, and election officials.

The information below should also be consulted by facility and hospital staff, caregivers, and family members to understand the options that may be available and applicable rules for assisting residents, patients, and family members in these circumstances. Contact your County Recorder's Office for more information regarding voter registration, early voting, including receiving a ballot-by-mail, and the availability of special election boards.

RECOMMENDATION 1: BALLOT-BY-MAIL

Arizona voters in long-term care and residential health care facilities (collectively, "caregiving facilities") or hospitals should primarily be encouraged to request a ballot-by-mail if at all possible. If the voter needs assistance marking or returning their ballot, they are encouraged to enlist the assistance of a trusted caregiver (including facility staff, where appropriate), family member, or household member. Assistors must sign and complete the appropriate portion of the ballot affidavit envelope. This option is a safe and secure means of voting that minimizes the risk of COVID-19 transmission.

A. Voters Should Request a Ballot-by-Mail Whenever Possible

The most convenient way for voters residing in caregiving facilities to receive a ballot is through the mail, either by signing up for the Permanent Early Voting List or by making a one-time request for a ballot to be sent to their residence location by mail. Receiving a

ballot by mail minimizes the risk of exposure to COVID-19 for both the voter and third parties, and is a long-established, secure, and safe means of voting in Arizona.¹

County Recorders are encouraged to coordinate with caregiving facilities in their county to provide relevant voting information to voters and remind voters who need special assistance to request a ballot-by-mail by the October 23, 2020 deadline, and preferably as early as possible to ensure sufficient time to receive, vote, and return the ballot. The Secretary of State's Office will also be issuing an AZVoteSafeGuide for voters in caregiving facilities and will coordinate with ADHS to distribute to appropriate facilities.

B. A Person of the Voter's Choice May Help Mark the Ballot at the Voter's Direction

If the voter is able to mark their own ballot, they should do so. A voter who needs assistance marking their ballot may rely on a trusted third party of the voter's choice, such as a caregiver (including facility staff, if appropriate), family member, or household member. *See* A.R.S. § 16-547. The person who assisted the voter in marking their ballot must complete the appropriate section of the early ballot affidavit stating that they provided assistance because the voter "was physically unable to mark the ballot solely due to illness, injury or physical limitation," and acknowledging that "there is no power of attorney for voting and that the voter [was] able to make their selection even if they cannot physically mark the ballot." A.R.S. § 16-547(A).

Please note that a power of attorney is not permitted in any procedure or transaction concerning elections, including requesting or voting a ballot. A.R.S. § 16-102. Therefore, the voter must be able to make their own selections even if they require assistance marking the ballot.

C. Caregivers, Family Members, Household Members, and Election Officials May Help Voters Return Their Voted Ballot

Only certain people may help return a voter's ballot. Voters may rely on a caregiver, family member, household member, or election official to help mail back or otherwise return their voted ballot to county election officials. A.R.S. § 16-1005. Under current Arizona law, other third-parties not falling into one of these four categories may not help return a voter's ballot.

Arizona law defines these categories broadly:

- A caregiver is "a person who provides medical or health care assistance to the voter in a residence, nursing care institution, hospice facility, assisted living center,

¹ Step-by-step instructions on how to sign up for the Permanent Early Voting List or make a one-time request for a ballot-by-mail is available at www.azsos.gov/votebymail. If needed, voters may request that a ballot be mailed to a designated temporary address.

assisted living facility, assisted living home, residential care institution, adult day health care facility or adult foster care home."

- A family member is "a person who is related to the voter by blood, marriage, adoption or legal guardianship."
- A household member is "a person who resides at the same residence as the voter."

Therefore, voters who reside in caregiving facilities may rely on the assistance of facility caregiving staff or visiting family or household members to both complete and return their ballots. Family visitors should take appropriate precautions and comply with the most recent guidance from the Arizona Department of Health Services for visiting congregate settings for vulnerable adults.²

Where practicable, counties are encouraged to coordinate with facility staff to establish designated pick-up date(s) on which County Recorder staff are scheduled to pick up voted ballots from voters in the facility.

RECOMMENDATION 2: SPECIAL ELECTION BOARDS

Voters who require physical assistance in completing and/or returning a ballot and who may not have a trusted caregiver, family member, household member or other third-party to turn to for assistance may request a Special Election Board from their County Recorder. A.R.S. § 16-549(C) permits counties to appoint and deploy SEBs to assist electors "who [are] confined as the result of a continuing illness or physical disability and [are], therefore, not able to go to the polls on the day of the next election and who do[] not wish to vote by the mailed early ballot procedure."

SEBs "shall consist of two members, one from each of the two" major political parties. A.R.S. § 16-549(A). County Recorders may appoint "such number of special election boards as needed" to deliver ballots to ill or disabled electors. *Id.* The statute does not limit who can serve on a Special Election Board, except for any "person who is a candidate for an office other than precinct committeeman." *Id.*

Prior to providing a voter a ballot, the SEB must first verify the voter's identity by asking for appropriate voter identification consistent with A.R.S. § 16-579; *see also* Elections Procedures Manual ch. 2, section IV.B (specifying that a voter must provide identification before receiving a ballot from a special election board).

Voters generally must request SEB assistance by 5:00 p.m. on the second Friday before the election. A.R.S. § 16-549(C). This year, that day falls on October 23, 2020. Voters who

² Arizona Department of Health Services, Covid-19 Guidance for Visitation At Congregate Settings For Vulnerable Adults and Children (Aug. 28, 2020), <https://www.azdhs.gov/documents/preparedness/epidemiology-disease-control/infectious-disease-epidemiology/novel-coronavirus/community/congregate-visitation.pdf>.

become ill or physically unable to complete their ballot after that date, including those who are hospitalized, "may nevertheless request personal ballot delivery" by an SEB, but must sign a statement under penalty of perjury stating that the person is experiencing or experienced an emergency after 5:00 p.m. on the second Friday preceding the election and before 5:00 p.m. on the Monday immediately preceding the election that would prevent the person from voting at the polls. A.R.S. § 16-549(D). The County Recorder "shall, when possible honor such requests up to and including the last day before the election." A.R.S. § 16-549(D); *see also* Elections Procedures Manual ch. 2, section IV (outlining timelines for requesting Special Election Boards).

Counties should coordinate with caregiving facilities within their jurisdiction to facilitate the use of SEBs by voters inside the facility. The Arizona Department of Health Services maintains databases listing all the caregiving facilities registered in a particular county.³ Counties are also encouraged to prepare outreach materials that can be distributed to residents of caregiving facilities to inform them about how to request SEB assistance and the various options that are available in the county.

A. Personal Ballot Delivery by a Special Election Board

If the SEB is not permitted to physically meet with the voter due to COVID-19 visitation and access restrictions (or the voter is not comfortable receiving assistance through an in-person meeting due to COVID-19), and the voter is either: (1) physically able to mark their own ballot; or (2) can rely on a trusted caregiver (including facility staff, where appropriate), fellow resident, or family member with visitation access to assist with marking their ballot, the SEB may personally deliver a ballot to the voter in the facility and return the voted ballot to the County Recorder's Office.

The SEB should contact the voter (or voter's designated assistant or caretaker) upon arriving on-site, identify themselves, follow internal procedures to verify the voter's identity by examining valid voter identification consistent with A.R.S. § 16-579, transfer the ballot to the voter (or the voter's designated caretaker), ensure the voter receives the ballot, and retrieve the voter's sealed and signed ballot envelope for transport back to the County Recorder's Office.

1. The SEB members should wear a face covering/mask and, if available, face shield when approaching or interacting with any staff or residents of the facility.
2. The SEB should wear gloves to handle the signed ballot envelope, or thoroughly wash hands with soap and water or sanitize hands immediately before and after handling the envelope.

³ Arizona Department of Health Services, Provider and Facility Databases, <https://www.azdhs.gov/licensing/index.php#databases> (providing databases for, among other licensed providers, Long Term Care Providers, Residential Services Providers, and Group Homes for the Developmentally Disabled).

3. The envelope should be immediately placed in a designated plastic zip-lock bag for transport back to the County Recorder's Office.
4. If time permits, the plastic bag containing the voted ballot envelope should be stored in a secure area and quarantined for three days before being retrieved for processing and tabulation.

B. In-Person Assistance by a Special Election Board

Due to COVID-19, many facilities have imposed visitation and access restrictions to protect the health of residents and staff. On August 25, 2020, however, the Governor's Long Term Care Facility Task Force voted to reopen caregiving facilities pursuant to several recommendations, including that visitors provide proof of a negative COVID-19 test taken within the past 48 hours and follow specified safety precautions during the visit. On August 28, 2020, ADHS published additional guidance for visitation at congregate settings for vulnerable adults.⁴ Pursuant to this guidance:

- Indoors in-person visits, including by SEBs, should be permitted only when the community spread levels in the county of the particular care facility are deemed "minimal" by ADHS benchmarks.
- Outdoors in-person visits may be permitted when community spread levels are "moderate" in the county.⁵

Where in-person visits by SEBs are permitted and requested by voters in caregiving facilities or hospitals, counties should supplement existing in-person SEB procedures with the following additional health and safety recommendations. Further, SEBs should follow all rules set by the facility to safeguard the health and safety of residents and facility staff.

1. Even where community spread is minimal, outdoor visits present lower risk than indoor visits and should be utilized whenever possible.
2. Any in-person meetings should take place in designated areas of the facility with ample ventilation and minimal exposure to other individuals. For example, caregiving facilities or hospitals could reserve a section of a courtyard, a spare

⁴ Arizona Department of Health Services, Covid-19 Guidance for Visitation At Congregate Settings For Vulnerable Adults and Children (Aug. 28, 2020), <https://www.azdhs.gov/documents/preparedness/epidemiology-disease-control/infectious-disease-epidemiology/novel-coronavirus/community/congregate-visitation.pdf>.

⁵ Current community spread levels (minimal, moderate, or substantial) by county are available at ADHS's Business Operations Dashboard, <https://www.azdhs.gov/preparedness/epidemiology-disease-control/infectious-disease-epidemiology/index.php#novel-coronavirus-community>.

room, a corner of a building with a window or similar partition, or other such space to be used exclusively for meetings between SEBs and voters.

3. Counties and/or facilities should consider acquiring temporary plexiglass or acetate panels that can be assembled into portable, lightweight partitions to separate SEB members from voters in the designated meeting space. These partitions should be sanitized after each use.
4. SEB members should undergo symptom/temperature screening before entering facilities, particularly patient care and living areas.
5. Whenever possible, SEB members should arrange for a COVID-19 test within 48 hours of the scheduled visit and ensure a negative test result prior to the visit. In some circumstances, the SEB may be required to present proof of negative test results as a condition of entry. SEB members should isolate between the time of their COVID-19 test and their visit to the facility, and should provide their names on the facility visitor log for contact-tracing purposes.
 - a. ADHS can assist in arranging rapid testing for a limited number of SEB members in advance of their dispatch to caregiving facilities or hospitals. Counties needing such assistance should contact the Secretary of State's Office to arrange for testing.
6. Counties should supply SEBs with adequate personal protective equipment (PPE) including face coverings/masks, face shields, and gloves, and sanitation supplies, including alcohol-based hand sanitizer and disinfecting wipes or spray.
7. When entering the facility or meeting with a voter, SEB members should:
 - a. Wear a face mask/covering at all times;⁶
 - b. Thoroughly wash hands with soap and water before and after entering and leaving, or use an alcohol-based hand sanitizer if hand washing facilities are not readily available;⁷
 - c. Remain 6 feet from all residents/patients and staff;
 - d. Not use patient facilities/restrooms; and

⁶ The CDC recommends wearing masks without an exhalation valve or vent. Centers for Disease Control and Prevention, Coronavirus Disease 2019: How to Wear Masks, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-to-wear-cloth-face-coverings.html>.

⁷ Pursuant to CDC guidelines, any alcohol-based hand sanitizer should be comprised of 60 percent alcohol by volume, at minimum. Centers for Disease Control and Prevention, Coronavirus Disease 2019: Hand Hygiene Recommendations <https://www.cdc.gov/coronavirus/2019-ncov/hcp/hand-hygiene.html>.

- e. Plan in advance, and make sure the voter does too, to ensure the appointment can be completed as efficiently and quickly as possible.
8. The SEB should meet with the voter in the voter's residential living space inside the facility only if: (1) the voter does not have a roommate or share a room; and (2) the SEB members provide proof of a negative COVID-19 test, taken within the past 48 hours. Further, the SEB should remain in patient care/living areas for less than 15 minutes if at all possible.
9. Upon completion of the appointment, the voted ballot envelope should be immediately placed in a designated plastic zip-lock bag for transport back to the County Recorder's Office.
10. If time permits, the plastic bag containing the voted ballot envelope should be stored in a secure area and quarantined for three days before being retrieved for processing and tabulation.

C. Virtual Special Election Boards Using Videoconferencing Technology

If the SEB is not permitted to enter a caregiving facility or hospital due to COVID-19 visitation and access restrictions (or the voter is not comfortable receiving assistance through an in-person meeting due to COVID-19), but the voter needs physical assistance in marking their ballot and does not have a trusted caregiver, fellow resident, or family member or other third-party with visitation access to provide that assistance, counties are encouraged to develop procedures for facilitating virtual SEB assistance with the aid of videoconference technology.

1. Counties should equip their SEB teams with pairs of county-issued tablet devices with a secure videoconferencing application, and one of which can be hand-delivered to the voter inside the caregiving facility or hospital who wishes to receive SEB assistance via video conference.
 - Counties should rely on their procurement and IT departments to purchase the tablets and install any necessary applications that will be used to assist voters. The tablets should be programmed to allow a voter to accept a videoconference invitation by the SEB simply by pressing one button.
 - Counties should consult IT personnel regarding security measures that can be implemented to ensure videoconferencing proves to be a safe and secure method of connection. For example, this may be achieved by using a secure connection to a county's secure wireless network enabled by a portable wireless internet hotspot device (MiFi), or other secure means.
 - Counties may also permit voters to conduct a virtual SEB appointment using the voter's own device, and should consult IT personnel regarding any security measures that should be implemented when this option is utilized.

2. The SEB should make advance arrangements with the voter (or the voter's designated assistant or caregiver) to confirm technology arrangements and, if necessary, coordinate the transfer of a county-provided tablet at the beginning of the meeting. Any county-supplied tablet device should be sanitized using alcohol-based wipes⁸ before transferring to a third-party. Once the video connection is established, the SEB should ensure that the voter is able to properly hear and see the tablet screen.
 - If the voter chooses to use their personal device, the SEB team may be located at the County Recorder's Office during the videoconference SEB appointment.
 - If the SEB is to provide the device to the voter, the SEB team will have to drive to the location of the voter. During the meeting, the SEB team should be physically located in a confidential space that allows the device to be placed on speaker, while observing physical distancing requirements. For example, a facility may have a private room from which the SEB may conduct the videoconference appointment, or the SEB team may sit in their vehicle outside the facility or a voter's home.
3. During a virtual SEB session, the SEB members need not be in the same room as the voter who requires assistance, so long as the SEB can verify the voter's identity consistent with A.R.S. § 16-579 and the voter is able to effectively communicate their selections through the videoconference technology.
4. At the start of the appointment, the SEB should ask the voter (or voter's caregiver inside the facility) to physically hold up to the camera the voter's valid form(s) of voter identification for inspection. Alternatively, the voter or voter's caregiver may bring the voter's identification documents (or copies thereof) for the SEB to review at the start of the meeting.
5. Once the SEB verifies the voter's identity, the SEB meeting should proceed as they would during a regular in-person SEB meeting. The following steps are recommended to ensure clear communication:
 - a. The SEB should read one office at a time, followed by the candidate names on the ballot for each office, as well as each ballot measure. The SEB should stop after each office/ballot measure and request the voter's selection.

⁸ Consistent with CDC guidance, counties should equip SEBs with alcohol-based wipes that are at least 70% alcohol by volume for sanitizing tablets and may also consider procuring wipeable covers for any county-supplied devices. See Centers for Disease Control and Prevention, Coronavirus Disease 2019: Cleaning and Disinfection for Community Facilities, <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>.

- b. The SEB should repeat the voter's selection, obtain confirmation of that selection from the voter, and mark the ballot based on the voter's choice.
 - c. The SEB should then hold the device towards the selection on the ballot to show the voter the correct choice was marked.
 - d. Repeat for each office and ballot measure on the ballot. Once a selection has been made for all offices and ballot measures, the SEB should read all offices and get a final confirmation of the voter's choice for each office and ballot measure, and give the voter the opportunity to view the marked selection for each office and ballot measure before sealing the ballot in the affidavit envelope.
 - e. The SEB should then place the voted ballot in the affidavit envelope, seal the affidavit envelope, and show the voter on the video that the envelope has been sealed with the ballot in it.
 - f. The SEB will then request permission from the voter to write on the affidavit. The SEB will print their name in the voter assistance section, sign their name, and write "SEB" at the top. If it is not possible to transmit the ballot envelope to the voter for them to physically sign or make their mark, the SEB should write "voter unable to sign due to COVID-19 rules" in the voter signature box.
6. At the conclusion of the appointment, the SEB should retrieve any county-provided tablet (if necessary, with the assistance of facility staff) and sanitize the equipment for transport back to the County Recorder's Office.
 7. Upon completion of the appointment, the voted ballot and envelope should be immediately placed in a designated plastic zip-lock bag for transport back to the County Recorder's Office.
 8. If time permits, the plastic bag containing the voted ballot envelope should be stored in a secure area and quarantined for three days before being retrieved for processing and tabulation.

Exhibit 9

Maricopa County Elections Department

Early Voting (EV) Special Election Boards (SEB)

Expanding Voting Platforms for Voters with Physically Limitations

Purpose

The purpose of this policy and procedure is to outline the business case to incorporate technology into the existing in-person SEB services. The technology expansion will ensure voters requiring physical assistance with marking their ballot are not disenfranchised due to physical distancing and public health related concerns.

Scope

The scope of this SEB policy and procedure includes the SEB services provided to voters that request assistance for voting their ballot. The SEBs primarily provide in-person services to registered voters. This scope describes the expansion to the traditional in-person services to include smart device technology. The options available to voters will include voting in-person, courier service or the use of this newly proposed video meeting service (FaceTime).

Policy

The SEB team is responsible for facilitating and enabling voting by eligible voters who are ill or have a disability in accordance with the time periods outlined in Arizona Revised Statute A.R.S. § 16-549(C) and A.R.S. § 16-549(D). The administrative responsibilities are carried out by two permanent Elections staff. During elections, the administrator recruits and hires full time temporary employees that are paired together to form two member bipartisan boards. For all intents and purposes the acronym SEB will be used to describe the two member bipartisan board.

To ensure accessibility, the voter shall select their preferred method for voting and notify the SEB if they need a device to vote or if they prefer to use their own. The SEB will use iPads to conduct the video meeting.

Procedure

Planning

1. The SEB team will coordinate services by conducting outreach to facilities, contacting voters that previously participated with SEB services, and managing incoming requests from voters.
2. When coordinating with an assisted living facility, the SEB will work with the point of contact to identify voter interest, verify eligibility for those interested, coordinate registering voters, assist with voter registration updates and mitigate barriers (i.e. acceptable proof of identification).
3. The SEB will coordinate appointments for eligible voters to vote their ballot.
4. The SEB will provide information on the voting platform options during the coordination of the appointment (in-person, courier, or video meeting).
5. The SEB may only fulfill in person voting requests if physical distancing of the six feet requirement is possible.
6. The voter will select their preferred method for voting (courier or in-person) and if they meet the criteria of being physically unable to mark their ballot and restricted access to meeting in-person exists (i.e. care facility, nursing home, etc.), then the option for a video meeting in lieu of in-person meeting can be offered to the voter.
7. The SEB will provide the voter details on what they can expect during their voting experience.
8. The SEB will explain the identification requirements to voter and identify potential issues.
9. The SEB will identify if the voter needs to have a device transported to them to hold the video meeting, if they qualify for this video meeting service.

Video Meeting Protocols

1. The SEB will ensure the voter does not have hearing challenges that will prevent them from meeting through a video conference call.
2. The SEB will identify the appropriate ballot for the voter.
3. The SEB will provide a date and time to the voter and/or point of contact to arrange for a video meeting. Prior to the meeting, the SEB will work with the voter to determine if they will use their personal device or if the SEB will provide the device.
4. If the SEB supplies the device to the voter, the team will drive to the location of the voter. Instructions and disinfectant supplies will be provided to the voter and/or designated point of contact.
5. The SEB will be physically located in a confidential space that allows the device to be placed on speaker while observing physical distancing requirements.
6. The physical location of the SEB is contingent on available space and if the team drove to the location of the voter. For example, a facility may have a private room for the SEB or the team may sit in their vehicle outside the facility.
7. The SEB may also be located at the MCTEC facility if the voter chooses to use their personal device.
8. The SEB will contact the voter, identify themselves, follow internal protocols to verify the voter's identity (Voter will physically hold their identification up to the camera) and provide a brief explanation of what will happen on the video meeting.
9. The SEB will begin by reading each office and candidate names on the ballot. The board will stop after each office and request the voter's selection.
10. The SEB will repeat the voter's selection, obtain confirmation from the voter, and mark the ballot based on the voter's choice.
11. The SEB will then hold the device towards the office or measure being voted on the ballot as proof to the voter the correct choice was marked.
12. Once a selection has been made for all offices or measures, the SEB will read all offices or measures and confirm the voter's choice.
13. The SEB will place the voted ballot in the affidavit and request permission from the voter to write on the affidavit. The SEB will print their name in the voter assistance section, sign their name, write "SEB" at the top, and write "voter unable to sign due to COVID-19 rules" in the signature box.
14. The SEB will seal the affidavit.
15. The SEB will then retrieve the device from the voter and/or point of contact (when one has been loaned to the voter).
16. The SEB will disinfect the device upon receiving it from the voter and/or point of contact.
17. The SEB will triage the affidavit and ballot packet for processing and tabulation.

Affidavit

The affidavit shall be sealed in the presence of the bipartisan two member SEB team. Upon return back to the MCTEC secure facility, the SEB team will transfer custody of the packet to the team responsible for ensuring the remaining protocols for handling of the packet are adhered to. All transactions are tracked within the system and all affidavits are imaged for retention and archive. The image itself will include the SEB team members names and signatures for further accountability.

Devices

The SEB will use and provide County issued iPad devices for video meetings. Each iPad device is operated using cellular data connection (not Wi-Fi).

Exhibit 10



(1)

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Secretary of State's Office issues guidance to ensure communities most affected by pandemic can exercise their fundamental right to vote

PRESS RELEASE



For Immediate Release

KATIE HOBBS
SECRETARY OF STATE

Wednesday, September 23, 2020

PHOENIX – In the face of a pandemic, Arizonans should not have to choose between their right to vote and their health, and that is true for the most vulnerable among us. As part of a comprehensive voter safety initiative, the Secretary of State has issued guidance and shared internal processes to ensure communities most affected by the pandemic are able to exercise their fundamental right to vote.

COVID-19 has made registering to vote extremely difficult for tribal communities because in-person voter registration efforts, both by election officials and civic engagement organizations, have been significantly curtailed. Additionally, online registration is often not available to these Arizonans due to lack of internet access and/or lack of an Arizona driver's license or state identification card, which is necessary to register online through ServiceArizona.

"In response to these valid concerns, my office developed a process for staff to provide limited assistance to eligible Arizonans in initiating the submission of a paper voter registration form by the registration deadline if the voter cannot register through ServiceArizona and cannot otherwise submit a complete voter registration form on their own by the deadline," Secretary Katie Hobbs said.

"After determining an individual is eligible to register and has no other way to do so, our staff will assist with filling out a paper form at the individual's direction over the phone, signing on the assister line on the form, and submitting the form to the County Recorder on the voter's behalf to ensure an initial submission by the applicable deadline."

The Secretary of State's Office would mail the voter a copy of the form, with instructions to sign and return the signed copy to the County Recorder in order to complete their registration and become an active registered voter.

Arizona law, [A.R.S. § 16-134\(B\)](#), (<https://nam12.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.azleg.gov%2Fviewdocument%2F%3FdocName%3Dhttps%3A%2F%2Fwww.azleg.gov%2Fars%2F16%2F00134.htm&data=02%7C01%7C%ssoli>) contemplates that counties may receive incomplete forms and specifies that if the missing information is provided by 7 p.m. on Election Day, the voter is deemed to have been registered on the date the registration was first received.

"My office has a plan in place to follow up with any Arizonan who initiates a voter registration application through this process to ensure they receive the information they need to complete their registration," Hobbs added.

The Secretary of State's Office also provided nonbinding guidance for county election officials with recommendations on assisting voters in long term care and similar facilities when visitation restrictions due to COVID-19 prohibit entering the facilities.

"The recommendations include, as a last resort, using video conferencing technology to allow Special Election Boards to assist voters when entry into the facility is prohibited and the voter needs assistance marking their ballot but cannot enlist the help of someone in the facility," Hobbs said.

Special Election Boards are not a new feature of Arizona elections. Arizona law, [A.R.S. § 16-579](#), (<https://nam12.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.azleg.gov%2Fviewdocument%2F%3FdocName%3Dhttps%3A%2F%2Fwww.azleg.gov%2Fars%2F16%2F00579.htm&data=02%7C01%7C%ssoli>) long authorized counties to appoint and deploy Special Election Boards to assist voters who are unable to go to the polls due to illness or physical disability.

"What is new is that we are facing an unprecedented global pandemic, in which Arizona has been an epicenter of infection. Therefore, these facilities, for good reason, have imposed strict visitation restrictions and for some of these voters who are elderly, ill, or living with a disability, assistance from a Special Election Board using videoconferencing technology is the only way they will be able to vote."

Hobbs added that the Governor's position that this is unlawful is not only wrong, and surprising given his staff's involvement in the development of the guidance, but will result in the disenfranchisement of some of the most vulnerable Arizonans.

"I am fulfilling my obligations under the law and am doing everything I can within the contours of our constitution and laws to protect and promote the right to vote, especially for those most vulnerable among us and those most gravely impacted by the COVID-19 pandemic. I will continue to do so despite these baseless attacks premised on misinformation and political opportunism," Hobbs said.

-30-

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Contact for more information:

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Public Information Officer
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OTHER PRESS RELEASES

Secretary of State's Office issues guidance to ensure communities most affected by pandemic can exercise their fundamental right to vote ([/about-office/media-center/press-releases/1225](#))

– 2020 Sep 23 Wed

Secretary Katie Hobbs Celebrates National Voter Registration Day on September 22 ([/about-office/media-center/press-releases/1224](#))

– 2020 Sep 21 Mon

Secretary of State's Office announces upgrade to ServiceArizona.com and new AZVoteSafe Guide for Native American voters ([/about-office/media-center/press-releases/1223](#))

– 2020 Sep 21 Mon

The 2020 Arizona Author Series Explores Frontier Women In Arizona ([/about-office/media-center/press-releases/1222](#))

– 2020 Sep 11 Fri

Two papers, same name: more Spanish language newspapers now on the Arizona Memory Project ([/about-office/media-center/press-releases/1221](#))

– 2020 Sep 10 Thu

Official newspaper of the White Mountain Apache Tribe now on the Arizona Memory Project ([/about-office/media-center/press-releases/1219](#))

– 2020 Sep 3 Thu

Secretary of State's Office certifies Prop. 207 and Prop. 208 for the November 3, 2020 General Election ([/about-office/media-center/press-releases/1217](#))

– 2020 Aug 21 Fri

Arizona Secretary of State's next 'Live at Noon' event set for Aug. 26 ([/about-office/media-center/press-releases/1215](#))

– 2020 Aug 21 Fri

Saddle up for a ride through film making in Arizona's Little Hollywood ([/about-office/media-center/press-releases/1214](#))

– 2020 Aug 20 Thu

Official Primary Election Results Certified Today ([/about-office/media-center/press-releases/1213](#))

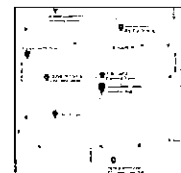
– 2020 Aug 17 Mon

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Exhibit 11



Maricopa County Recorder & Election Department Internal Policy

Policy Title: Processing Signatures for Voters Unable to Make a Mark	Policy Number: VR-001
	Current Adoption Date: October 9, 2019
Approved by: Adrian Fontes, Recorder	
	Original Adoption Date:

I. PURPOSE

Arizona Revised Statutes 16-152 (A)(20) provides that if a Voter is unable to sign a form, a statement that the affidavit was completed according to the Registrant's direction is sufficient. There are many reasons, however, why someone may be assisted and have the assistance box signed. As a result, there is sometimes a delay in processing forms and ballots as Recorder/Election staff confirms this with the Registrant/Voter. This policy seeks to streamline the process by which voter registrations, early ballot affidavits, Election Day signature rosters and other voter registration and election documents may be processed without delay for Voters who cannot sign their signature or make a mark due to disability.

II. DEFINITIONS

- A. **Registrant or Voter who cannot sign or make a mark:** Any person who has a physical disability that prevents the person from signing their signature or making a mark on paper or electronic voter registration or election affidavits and forms.
- B. **Designated Person of the Registrant or Voter's Choice:** A designated person who provides assistance to a Registrant or Voter who requires assistance to register or vote by reason of disability or inability to read or write. This designated person may be a person of the Registrant or Voter's choice and may not be the Registrant or Voter's employer or agent of that employer, an agent of the Registrant or Voter's union, or a candidate for an office in that election other than the office of precinct committeeman. (Voting Rights Act 52 U.S.C. § 10508, A.R.S. 16-580 E)

III. POLICY

- A. If a Registrant or Voter is unable to sign or make a mark, the Registrant or Voter may designate a person of their choice, who will write on the signature line "unable to sign due to disability" or similar wording to that effect, and then sign their name on the designated line on the form for those providing assistance. The designated person does not need to be the same individual for all voter registration and/or elections documents signed for the Registrant or Voter.
- B. The designated assistance box must include a statement that the affidavit was completed according to the Registrant's direction, and the form is still deemed to be submitted under

penalty of perjury by the Registrant/Voter. The Designated Person's signature is a sufficient substitute for the Registrant or Voter's signature in cases of physical disability. (pg. 40 of the 2014 Procedures Manual pg. 22 of 2019 draft; A.R.S. 16-152 A.(20))

- C. If a Voter has not previously submitted a voter registration form or other election document that has been attached to the Voter's record with the phrase "unable to sign due to disability," or similar wording to that effect, staff may contact the Voter to confirm their identity consistent with the early ballot curing procedures (policy EV-001).
- D. A person who cannot sign or make a mark shall be encouraged to register to vote or re-register to update their signature with the phrase "unable to sign due to disability" pursuant to this policy to ensure that future petition signatures, early ballot affidavits, and provisional ballot affidavits can be verified without delay. Election staff shall attach any document that contains this phrase to the Voter's registration record after confirming the Voter's identity consistent with the early ballot curing procedures (policy EV-001).
- E. Failure to provide this updated signature shall not be grounds for denying voter registration or a ballot. A phrase written in the signature box that is substantively similar to "unable to sign due to disability" shall be accepted by staff as meaning the same.
- F. If a Voter voting on Election Day is unable to sign or make a mark in the signature block on the electronic screen due to a disability, an Inspector or Judge shall sign the roster for the Voter and the name of the Voter shall be written with the Inspector or Judge's attestation on the same signature line. (A.R.S. 16-579 E.)

IV. Tasks

Voter Registration:

- A. Procedures to be developed under separate cover.

Signature Verification for Petitions, Early Ballots, Emergency Ballots or Provisional Ballot

- A. When verifying signatures for petitions, early voting or provisional ballots, if the statement "unable to sign due to disability" is in the signature block of the petition or affidavit, and also in the signature block of the voter registration form on file, this is considered a matching signature.
- B. If the statement "unable to sign due to disability" or something similar written to that effect is in the signature block of the petition or affidavit, but there is a signature on the voter registration form on file, elevate this to the management queue.
- C. In the Management Queue: If the statement "unable to sign due to disability" is in the signature block of the petition or affidavit, but there is a signature on the voter registration form, contact the Voter to verify that this information is correct. If the Voter confirms that they are no longer able to sign or make a mark due to disability, designate the signature as verified. Send the voter a registration form with the instruction on how to update their signature consistent with this policy.

Exhibit 12

Wright, Jennifer

From: Josh Bendor <jbendor@omlaw.com>
Sent: Thursday, September 24, 2020 4:59 PM
To: Wright, Jennifer
Cc: Mary O'Grady; Josh Bendor
Subject: RE: Recorder's 2nd Request for Extension to AGO Request for Response Regarding Maricopa County Recorder's Plan to Allow Votes to be Cast by "Video Call"
Attachments: 1 - Arizona Secretary of State, Assisting Voters in Caregiving and Hospital Facilities During the COVID-19 Pandemic.pdf; 2 - Maricopa County, Early Voting Plan for November 2020.pdf; 3 - Maricopa County, Expanding Voting Platforms for Voters with Physically Limitations, Version 9.3.pdf; 4 - Maricopa County, Policy VR-001, Processing Signatures for Voters Unable to Make a Mark.pdf

Dear Jennifer,

In response to your first request below, I am attaching the following documents, which contain applicable guidelines and procedures:

1. Arizona Secretary of State, Assisting Voters in Caregiving and Hospital Facilities During the COVID-19 Pandemic
2. Maricopa County, Early Voting Plan for November 2020
3. Maricopa County Elections Department, Early Voting Special Election Boards: Expanding Voting Platforms for Voters with Physically Limitations, Version 9.3
4. Maricopa County, Policy VR-001, Processing Signatures for Voters Unable to Make a Mark

In response to your second request below, the Recorder does intend to have procedures in place (consistent with the attached documents) whereby special election boards can use video technology to assist voters who (1) due to serious disabilities, need assistance in filling out their ballots and, (2) due to public health restrictions, cannot meet in person. As we will explain more fully by 2pm tomorrow, these procedures are consistent with state and federal law. Indeed, an interpretation of state law that would prohibit these procedures would violate the voting rights of persons with disabilities, as protected by state and federal statutes. Consistent with these legal obligations, the Recorder intends to make these procedure available when the early voting period begins on October 7.

Thanks,
Josh

From: Wright, Jennifer <Jennifer.Wright@azag.gov>
Sent: Thursday, September 24, 2020 11:46 AM
To: Mary O'Grady <mograd@omlaw.com>
Subject: [EXT] Recorder's 2nd Request for Extension to AGO Request for Response Regarding Maricopa County Recorder's Plan to Allow Votes to be Cast by "Video Call"

Dear Mary,

Thanks for your call advising us that you are representing the Maricopa County Recorder with respect to our Office's request for information regarding plans to permit votes to be cast by "video call". We sent our original inquiry letter to the Recorder on Friday, September 18. Yesterday, the Recorder requested an extension, which we granted, giving him until noon today. While we appreciate that you have only been retained this morning, we are sure you also understand that time is of the essence given early voting begins October 7.

Therefore, and pursuant to our original request for information from the County Recorder, please provide the following prior to 5:00 p.m. today:

1. Copies of any and all guidelines and procedures regarding the use of the videoconferencing technology by special election boards or other election boards, including any such guidelines or procedures promulgated by the Secretary of State; and
2. Written confirmation whether the Recorder intends to implement procedures or guidance relating to voting using videoconferencing technology, and, if so, the date on which he intends to deploy special election boards using such technology.

With respect to any legal analysis you plan to provide with respect to the Recorder's authority, we will extend the deadline to respond until 2:00pm tomorrow, September 25th. As there is little time between now and the start of early voting, no further extensions will be granted.

Thank you for your professionalism and prompt attention to this matter.

Respectfully,

Jennifer Wright
Assistant Attorney General



Office of the Arizona Attorney General
Solicitor General's Office
Elections Integrity Unit
2005 N. Central Ave., Phoenix, AZ 85004
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From: Wright, Jennifer
Sent: Wednesday, September 23, 2020 12:12 PM
To: Joseph La Rue
Subject: Request for Extension to AGO Request for Response Regarding Maricopa County Recorder's Plan to Allow Votes to be Cast by "Video Call"

Joseph,

In response to your request for an extension to the AGO's letter dated September 18, 2020, the AGO would appreciate a response no later than noon tomorrow, Thursday, September 24, 2020.

Thanks!

Jennifer Wright
Assistant Attorney General

Office of the Arizona Attorney General
Solicitor General's Office
Elections Integrity Unit
2005 N. Central Ave., Phoenix, AZ 85004



Desk: 602.542.8255 | Fax: 602.542.8308

Jennifer.Wright@azag.gov

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Exhibit 13

Wright, Jennifer

From: Josh Bendor <jbendor@omlaw.com>
Sent: Friday, September 25, 2020 9:02 PM
To: Catlett, Michael
Cc: Roysden, Beau; Wright, Jennifer; Mary O'Grady; Kristin Windtberg; Bo Dul (bdul@azsos.gov)
Subject: RE: Fontes v. State

Mike,

Thanks for your email. I am copying Elections Director Bo Dul on this email at her request. Bo informs me that the Secretary will be retaining outside counsel but has not yet done so, and she would like to be included on correspondence between counsel in the interim.

Regarding the schedule, we cannot agree to stay implementation of the policy at issue during the pendency of this case. We believe our briefing schedule would adequately predict the interests of all parties, but if you have an alternative to propose, we are of course open to hearing it. Note that Yom Kippur is on Monday. As a result, I do not think we can agree to file our opening brief on Tuesday.

Best,
Josh

From: Catlett, Michael
Sent: Friday, September 25, 2020 4:39 PM
To: Josh Bendor
Cc: Roysden, Beau ; Wright, Jennifer ; Mary O'Grady ; Kristin Windtberg
Subject: [EXT] RE: Fontes v. State

Josh,

Thank you for your courtesy email to our office earlier this afternoon. We are authorized to accept service on behalf of the State of Arizona. Please include Jennifer, Beau Roysden, and me on any future correspondence relating to this matter. Also, please provide a file-stamped copy of the complaint as soon as you receive one.

Thank you as well for taking the time to put together the proposed schedule. While we agree that the parties need accelerated consideration of the declaratory relief requested by your client, along with emergency relief the State plans to seek, the proposed schedule is too extended for the parties to obtain final declaratory guidance after appeal prior to the October 7 date the Recorder identified as the date he plans to implement the procedures at issue in the case. This may not be an issue if your client will agree (1) not to implement the teleconferencing procedures prior to final judgment after appeal and (2) that the briefing schedule also applies to any relief the State seeks against the parties. Otherwise, we will only agree to a schedule that builds in enough time for resolution of all emergency claims and an appeal prior to October 7. We will also need agreement from whoever the Secretary retains as counsel.

Best,

Mike

From: Josh Bendor [<mailto:jbendor@omlaw.com>]
Sent: Friday, September 25, 2020 2:30 PM
To: Wright, Jennifer; Karlson, Kara; Romney, Dustin
Cc: Mary O'Grady; Kristin Windtberg
Subject: Fontes v. State

Jennifer, Kara, and Dustin,

We have just filed the attached lawsuit regarding the special election boards issue. Please let me know if you can accept service for the State (Jennifer) and for the Secretary (Kara and Dustin). The system hasn't generated the Summonses yet, but I can send those once we have them.

We would like to resolve this issue by the start of early voting on October 7. I would therefore propose the following briefing schedule:


Plaintiff's opening brief and any amicus briefs supporting plaintiff: Wednesday, September 30, 5pm
Defendants' response briefs and any amicus briefs supporting defendants: Friday, Oct. 2, 5pm
Plaintiff's reply: Monday, October 5, 3pm
Oral argument: Tuesday, October 6 – whenever works for the court

Let me know if this will work for you and if you would like to discuss. I can make myself available this afternoon to discuss by phone if that makes things easier. If you want to just give me a call, my number is below.

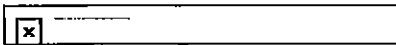
Thanks
Josh

Josh Bendor

[Profile](#) | [Add me to your address book](#)

	<u>2929 North Central Avenue</u> <u>21st Floor</u> <u>Phoenix, Arizona 85012</u> Telephone 602.640.9350 Facsimile 602.640.9050
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Exhibit 14

SUPREME COURT OF ARIZONA

ARIZONA PUBLIC INTEGRITY) Arizona Supreme Court
ALLIANCE, and Arizona nonprofit) No. CV-20-0253-**AP/EL**
Corporation; TYLER MONTAGUE, an)
individual,) Court of Appeals
) Division One
Plaintiffs/Appellants,) No. 1 CA-CV 20-0458
)
v.) Maricopa County
) Superior Court
ADRIAN FONTES in his official) No. LC2020-000252-001
capacity as Maricopa County)
Recorder; FRAN McCARROL in her)
official capacity as Clerk of)
the Maricopa County Board of)
Supervisors; CLINT HICKMAN,)
JACK SELLERS, STEVE CHUCRI, BILL) **FILED 09/10/2020**
GATES, AND STEVE GALLARDO, in)
their official capacities as)
members of the Maricopa County)
Board of Supervisors; MARICOPA)
COUNTY, a political subdivision)
of the State of Arizona,)
)
Defendants/Appellees.)
)
)

AMENDED ORDER

The Court, by a panel consisting of Chief Justice Brutinel, Justice Gould, Justice Lopez, and Justice Beene, has considered the briefs of the parties, the record, the trial court's ruling, and the relevant statutes and case law in this expedited election matter.

Plaintiffs sought to enjoin the Maricopa County Recorder and the Maricopa County Board of Supervisors from including a particular instruction ("New Instruction") with mail-in ballots for the 2020 general election. The New Instruction informed voters that that they could vote for one candidate and, if they made a mistake, could cross

out their selection and vote for a different candidate.

On September 4, 2020, the trial court determined that although Plaintiffs showed a likelihood of success on the merits, Plaintiffs did not meet the other criteria to warrant a preliminary injunction. The trial court, therefore, denied Plaintiffs' application for a preliminary injunction.

The Court finds Defendants exceeded their authority by proposing to include the New Instruction. While election statutes have changed, the permissible voter instructions, as authorized by A.R.S. § 16-502 and the Election Procedural Manual, have not. Further, we conclude that Plaintiffs have satisfied the requirements for obtaining a preliminary injunction.

IT IS ORDERED reversing the trial court's order.

IT IS FURTHER ORDERED enjoining election officials, the Maricopa County Recorder and its vendors from inserting the "New Instruction" in the envelopes with the ballots for the November 3, 2020 general election.

An opinion will follow.

DATED this 10th day of September, 2020.

/s/
ROBERT BRUTINEL
Chief Justice

TO:

Alexander Michael del Ray Kolodin
Christopher A Viskovic
Chris Ford
Joseph Eugene La Rue
Thomas P Liddy
Emily M Craiger
Joseph Branco
Joseph A Kanefield
Brunn W Roysden III
Linley Wilson
Jennifer Wright
Hon. James D Smith
Hon. Jeff Fine
Amy M Wood
pm