



MARK BRNOVICH  
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

December 10, 2021

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

Dear Secretary Hobbs:

I am in receipt of your letter regarding the Elections Procedures Manual (EPM). I have carefully reviewed the draft EPM and, as I informed you yesterday through Tim La Sota, it must be changed in order to comply with state law and receive our approval.

As Arizona's Chief Legal Officer, I have a responsibility to assure that the EPM conforms to the law. As a reminder, election officials who violate its provisions (which are hundreds of pages long) are guilty of a class 2 misdemeanor. Through the red-lined document provided to you yesterday, I have provided clear direction on what changes need to be made to assure the EPM does not unnecessarily expose election officials and workers to criminal penalties.

You reference our interaction two years ago when finalizing the 2019 EPM and criticize me for hiring outside counsel to assist with this effort. We were forced to hire independent counsel, however, as a direct result of your unprecedented decision to file a bar complaint, not only against me but also against many attorneys in our office. I will not place our attorneys' law licenses in jeopardy based on your insinuations. You cannot insist that our office perform certain functions and then turn around and allege our lawyers are unethical for doing their jobs.

I will, of course, continue to defend our important election integrity laws, as illustrated by my victory earlier this year at the U.S. Supreme Court in *Brnovich v. Democratic National Committee*, which rejected a partisan challenge to our common-sense laws that prohibit ballot harvesting and require precinct-based voting. Just this week the Ninth Circuit Court of Appeals upheld our law that requires early ballots be signed before the polls close on Election Day. In light of those decisions, and consistent with applicable statutes, I hope you will act to ensure our future elections are administered with integrity and professionalism.

Once again, I will be pleased to approve the EPM with the changes outlined in my correspondence yesterday. I hope you have a Merry Christmas and a Happy New Year.

Sincerely,

A handwritten signature in blue ink that reads "Mark Brnovich". The signature is fluid and cursive, with a long horizontal flourish at the end.

Mark Brnovich  
Attorney General



**KATIE HOBBS**  
SECRETARY OF STATE

December 10, 2021

The Honorable Mark Brnovich  
Attorney General  
2005 North Central Avenue  
Phoenix, AZ 85004

Re: AGO Review of the 2021 Elections Procedures Manual

Mr. Brnovich,

Arizona law requires the Secretary of State to “prescribe rules to achieve and maintain the maximum degree of correctness, impartiality, uniformity and efficiency on the procedures for early voting and voting, and of producing, distributing, collecting, counting, tabulating and storing ballots.” These rules, prescribed in the Election Procedures Manual, must be issued by December 31 of odd-numbered years. Importantly, the law says that the Manual “shall be approved by the Governor and Attorney General” before issuance. *See* A.R.S. § 16-452.

You are, of course, familiar with this process as we successfully navigated it just two years ago. On October 1, 2019, my Office submitted a Manual for review. On November 12, your Office sent its “Initial Review” of the Manual, including a spreadsheet of more than 100 items that our Offices discussed during at least four meetings and countless emails over several weeks. While many of those items were based on your own misunderstanding of election administration, we worked in good faith to provide clarification and reach agreement. Eventually, the Manual was approved by you and Governor Ducey, marking the first successful update in five years.

This year, my Office met with County Recordors, Elections Directors, and their staff on a monthly basis to update and improve the Manual and received, reviewed, and incorporated public feedback. Once again, we submitted a Manual for review on October 1. After receiving no response from your Office, we reached out on November 15 to inquire about the status of your review. We similarly received no response. On December 1, we reached out again and received correspondence from Tim La Sota, stating that he had been retained by your Office and will be the “point of contact” on the Manual. Your decision to retain outside counsel for this review is quite curious, particularly since your website currently lists review of the Manual as an instance in which your Office’s Election Integrity Unit defends “the integrity of our elections.”

It’s unfortunate that your Office can apparently find time to chase Cyber Ninjas conspiracies when it’s politically expedient, while choosing to burden taxpayers with additional expenses—presumably at the rate of hundreds of dollars an hour—to perform your basic statutory duties. Though to be clear, it’s doubtful that the work done by Mr. La Sota fulfills your statutory duties, given the alarming incompetence it demonstrates. The December 9 letter from Mr. La Sota states that the enclosed “draft of the . . . Manual [contains] changes identified in redlined form,” and further states that “[t]he Attorney General will not approve the manual . . . unless those changes are made.” The document, however, contains no redlines. Instead, comment bubbles are interspersed throughout, with no indication of what text the comments are actually

referencing. Indeed, some comments are entirely irrelevant to the substance of the text on the page on which those comments appear. Based on what Mr. La Sota sent, no reasonable person can be certain what “changes” the Attorney General is demanding or why. For example:

- On page 29, a comment seems to indicate a sentence about A.R.S. § 16-542, in the section on the timeframe to mail ballots, should be removed based on the Arizona Supreme Court’s recent decision in *ASBA v. Arizona*. But that statute was not affected by *ASBA* nor was it or any other law relating to the timeframe to mail ballots altered by S.B. 1819.
- On page 69, three comments insist that the “proposed regulations exceed the scope of the Secretary’s statutory authority or contravene an election statute’s purpose,” but the comments appear on an otherwise blank page. These comments are all substantially the same, though they appear to reference no underlying text of the Manual.
- Other comments similarly insist the “proposed regulations exceed the scope of the Secretary’s statutory authority or contravene an election statute’s purpose,” but appear on text that simply states verbatim the cited statute’s mandates.
- On page 77, in a section on factors to consider when selecting voting locations, a comment states: “Discuss with Governor’s staff. May contravene A.R.S. § 16-1005(E).” There is no rational connection between selecting voting locations and the ballot collection ban.
- Interestingly, a handful of other comments also state “Discuss with Governor’s Staff” or similar, which I assume indicate coordination between the offices and which Mr. La Sota carelessly forgot to delete.

Ultimately, a failure to take seriously your statutory duty to review and approve the Manual is a detriment to voters and election officials across Arizona. As you recently heard from County officials, an updated Manual is an important resource to ensure the proper performance of their legal duties. I’d hoped that we’d be able to replicate the orderly and bipartisan approval process we shared in 2019, as I noted in my letter accompanying the Manual’s submission. Instead, you’ve waited until the 11<sup>th</sup> hour to condition your approval on the acceptance of your demands, while simultaneously providing those demands through a third party in an indecipherable document. One can only speculate as to why you have chosen this drastically different path as we head into the 2022 election year. But you’ve left little time for meaningful discussion of any proposed changes or consultation with the County Recorders and Election Directors who have spent countless hours collaborating with my Office to update the Manual.

Regardless, I ask that your Office immediately work in good faith with my Office, County officials, and the Governor to approve the Elections Procedures Manual prior to the December 31 statutory deadline. Any further delay and posturing is inexcusable.

Sincerely,



Katie Hobbs  
Arizona Secretary of State

cc: Tim La Sota  
Governor Doug Ducey