



May 6, 2025

Via Email

Honorable Kris Mayes
Arizona Attorney General
2005 North Central Ave., Seventh Floor
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Kris.Mayes@azag.gov

Re: Request for Attorney General Opinion

Dear Attorney General Mayes:

Today I write to ask you to issue a formal Attorney General opinion that our county recorders will rely on in processing voter registration notification and updates for the group referred to in *Richer v. Fontes* as the Affected Voters. CV-24-00221-SA, 2024 WL 4299099 (Ariz., September 20, 2024).

The questions presented are:

1. To what extent must county recorders provide the Affected Voters notice and an opportunity to provide DPOC, before those voters may vote in upcoming elections?
2. For Affected Voters who do not provide DPOC, how must county recorders proceed regarding those voters' ability to vote in upcoming elections?

As background, in 2004, Arizona voters approved Proposition 200 and Arizona became the first and only state in the nation to require registrants to provide documentary proof of citizenship ("DPOC"). Arizona's then-governor issued the proclamation enacting Prop. 200 on December 8, 2004. Because the voting-related provisions were subject to preclearance under the Voting Rights Act, however, they did not become effective until receipt of notice of preclearance from the United States Department of Justice on January 24, 2005. Among the statutes adopted by Prop. 200 was A.R.S. § 16-166(F). That statute lists several acceptable forms of DPOC. A.R.S. § 16-166(F)(2)-(6).

The most commonly used form of DPOC is "[t]he number of the applicant's driver license or nonoperating identification license issued after October 1, 1996, by the department of

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transportation.” A.R.S. § 16-166(F)(1). The Arizona Department of Transportation (“ADOT”), Motor Vehicle Division (“MVD”), began requiring applicants for driver licenses and nonoperating identification licenses to establish their lawful presence in the United States in July 1996. *See* Op. Ariz. Atty. Gen. I05-001, at 3 (2005) (citing A.R.S. §§ 28-3153(D), -3158(C)). Beginning in 2000, MVD instituted a policy whereby those who are lawfully present, but not citizens, receive an “F type” license, which they cannot use as DPOC. *Id.* at 4 & n.2.

In addition to providing DPOC, a person registering to vote must sign a statement declaring that he or she is a United States citizen and acknowledging that executing a false registration is a Class 6 felony. A.R.S. § 16-152(A)(14), (18).

Persons registered to vote in Arizona on January 24, 2005, when the voting provisions of Prop 200 took effect, are “deemed to have provided satisfactory evidence of [DPOC] and shall not be required to resubmit evidence of citizenship unless the person is changing voter registration from one county to another.” A.R.S. § 16-166(G).

While Prop 200’s DPOC requirement applied to Arizona’s state and local elections, the United States Supreme Court concluded that the DPOC requirement, as applied to the federal mail registration form known as the Federal Form, violated the National Voter Registration Act (“NVRA”) and could not be enforced for registration to vote in federal elections. *See Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 20 (2013).

Thereafter, Arizona implemented a unique bifurcated voter registration system. *See* Op. Ariz. Atty. Gen. I13-011, at 6, 12 (2013); *see also League of United Latin American Citizens of Arizona et al. v. Reagan et al.*, No. 2:17-cv-04102-DGC, Doc. 37 (D. Ariz. June 18, 2018) (LULAC Consent Decree). In that bifurcated system, the Arizona Elections Procedures Manual (“EPM”) states that voters who complete a voter registration form and attest under penalty of perjury that they are United States citizens, but who do not provide DPOC, are registered as “federal-only” voters. *See* Arizona EPM at 3 (2023); *see also* https://apps.azsos.gov/election/files/epm/2023/20231230_EPM_Final_Edits_406_PM.pdf.

The EPM also states that federal-only voters receive ballots that contain only federal races (i.e., President and Vice-President, United States Senator, and United States Representative). *Id.* The EPM states that Federal-only voters may not vote for State or local offices or ballot measures. *Id.*

On August 22, 2024, the United States Supreme Court issued a stay of the trial court’s injunction of A.R.S. § 16-121.01(C), requiring county recorders to reject all state registration forms submitted without DPOC. *Mi Familia Vota v. Fontes*, No. 24-A-164 (August 22, 2024). My Office requested a legal opinion of you at that time relating to whether, if DPOC is otherwise available, a state form must be rejected. At the time your opinion, in relevant part, was no, that if an applicant submits a state voter registration form without DPOC, the recorder should perform the standard HAVA check, and, if DPOC has already been supplied, there is no need to reject the state form. Op. Ariz. Atty. Gen. I24-015 (2024).

In early September, 2024, it was brought to my Office's attention that many legacy MVD credential holders (those with licenses issued prior to October 1, 1996) had never been required to provide proof of authorized presence to MVD. This meant that within AVID there was no indication that there was a need by the recorder to request DPOC either, because those licenses were not considered "F" type within the MVD system. My Office and MVD quickly remedied the outstanding issue to identify the Affected Voters within AVID for future transactions, but were left with the hard reality that tens of thousands of long-time Arizonans who had been entitled to a full state ballot due only to this error, would now be eligible only for a federal-only ballot unless they provided DPOC prior to the next election.

Each of the Affected Voters have attested under penalty of perjury to being United States citizens and have no reason to believe they needed to provide additional documentation to election officials. In *Richer v. Fontes*, both then-Recorder Richer and myself represented to the Court our belief that most of the Affected Voters likely are citizens.

Most importantly, Recorder Richer and I agreed that for elections after 2024, the Affected Voters must present satisfactory evidence of DPOC to cast a Full Ballot.

After the completion of the duties related to the 2024 General Election, in late December 2024, my Office provided guidance to the County Recorders regarding how to implement the notification to and processing of subsequent voter registrations of the Affected Voters.

The guidance issued by my office to the counties was carefully crafted to ensure all Affected Voters are treated uniformly across county lines and according to statutory requirements. We asked the counties to notify all Affected Voters that they would be considered federal-only voters until they provided DPOC, and that in order to vote a full ballot in an upcoming election each Affected Registrant could provide DPOC up to 7:00pm on election day. Our guidance included the attached sample notice for the counties to use in their notification to the Affected Voters.

Reports indicate that many Recorders have implemented the notice requirement to the Affected Voters differently.¹ I confirmed this at a recent meeting with the county recorders. This concerns me not only because of the inequitable treatment of the Affected Voters based only on where they happen to live, but because this disparate treatment will surely lead to uncertainty for future elections. For example, in some counties, the recorder has elected to notify the Affected Voters that they must provide DPOC, and yet those recorders do not plan to change the Affected Voters to federal only voters, even if DPOC is not provided. This could give rise to election contests, and the unlawful disenfranchisement of these voters.

In other counties, Affected Voters, even those deemed to have provided DPOC pursuant to the terms of Prop. 200, are receiving cancellation notices, rather than providing the voters notice of

¹ See <https://www.votebeat.org/arizona/2025/03/31/arizona-voters-receive-letters-asking-for-proof-of-citizenship/> and <https://www.kjzz.org/politics/2025-04-02/arizona-counties-are-contacting-200-000-voters-who-havent-provided-proof-of-citizenship>.

the change to federal-only status and the opportunity to provide DPOC. This action could also give rise to election contests or other unnecessary litigation. It is unclear whether any recorders followed my Office's guidance to notify the Affected Voters that they are now eligible only for a federal-only ballot unless they provide DPOC coupled with changing the registrations accordingly.

This disparate treatment of the Affected Voters is an issue that must be resolved as expeditiously as possible. The Special Primary Election to fill the vacancy created by the passing of Congressman Grijalva is set for July 15, 2025, and although it is a federal election, meaning all Affected Voters are eligible to participate, to the extent counties within CD7 are cancelling these voters, they will irrevocably disenfranchise them in violation of law. Therefore, I ask that you issue a Legal Opinion to ensure that the county recorders and their county attorneys may all proceed uniformly, and that Arizona election outcomes maintain the certainty the public requires.

I thank you in advance for your consideration of this important issue. Should you have any questions, please do not hesitate to contact Amy Chan at (602) 540-3403 or achan@azsos.gov.

Sincerely,



ADRIAN P. FONTES
Secretary of State

cc: Josh Bendor, Solicitor General
Honorable Larry Noble, Apache County Recorder
Honorable Billy Cloud, Cochise County Recorder
Honorable Aubrey Sonderegger, Coconino County Recorder
Honorable Sadie Bingham, Gila County Recorder
Honorable Polly Merriman, Graham County Recorder
Honorable Erin Miller, Greenlee County Recorder
Honorable Richard Garcia, La Paz County Recorder
Honorable Justin Heap, Maricopa County Recorder
Honorable Lydia Durst, Mohave County Recorder
Honorable Timothy Jordan, Navajo County Recorder
Honorable Gabriella Cázares-Kelly, Pima County Recorder
Honorable Dana Lewis, Pinal County Recorder
Honorable Anita Moreno, Santa Cruz County Recorder
Honorable Michelle Burchill, Yavapai County Recorder
Honorable David Lara, Yuma County Recorder