



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION	No. I25-007 (R25-009)
By KRIS MAYES ATTORNEY GENERAL	Re: Treatment of Voters with Legacy MVD Credentials Who May Not Have Provided Proof of Authorized Presence to MVD
August 18, 2025	

To: Adrian Fontes
Arizona Secretary of State

Questions Presented

Under Arizona law, people who seek to register to vote may demonstrate that they are U.S. citizens by providing “satisfactory evidence of United States citizenship.” A.R.S. § 16-166(F). The most common type of evidence is the number of one’s Arizona driver license if the license was issued after October 1, 1996. A.R.S. § 16-166(F)(1). This year is significant because it is when Arizona began requiring license applicants to prove that they are lawfully present in the United States.

During the last two decades, many Arizona voters provided on their voter registration form an Arizona driver license number that was originally issued before October 1, 1996, but for which a duplicate version of the license was issued later. Arizona’s voter registration system incorrectly deemed such licenses to be issued on the later date. As a result, these people were deemed to have provided satisfactory evidence of citizenship and were registered to vote. Your opinion request

refers to this group as the “Affected Voters.” Some of the Affected Voters may have provided other types of satisfactory evidence of citizenship when they registered to vote, in addition to their driver license number.

Election officials discovered this error in Arizona’s voter registration system last year. In September 2024, the Arizona Supreme Court resolved an urgent dispute: Could the Affected Voters fully participate in the 2024 General Election, despite the question about whether they had proven citizenship? The Arizona Supreme Court held that they could.

Now that the urgency of the 2024 General Election has subsided, you have asked the following questions:

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

Summary Answers

County recorders currently have no legal authority to cancel registrations of the Affected Voters, in whole or in part, merely because of the error in Arizona’s voter registration system relating to the issuance date of licenses. Absent a change in the law, county recorders must maintain the existing registration status of each Affected Voter unless a recorder has affirmative evidence that a specific voter is ineligible to vote, such as evidence that the voter is not a U.S. citizen. If a county recorder has affirmative evidence that a voter is not a U.S. citizen, the recorder may initiate a notice and cancellation process with respect to that voter, as provided by statute.

County recorders may take steps to inquire whether the Affected Voters are U.S. citizens, including by asking them to provide satisfactory evidence of citizenship. If an Affected Voter responds by providing such evidence, that should dispel doubt. But if an Affected Voter does not respond, the mere lack of response does not, under current law, authorize the county recorder to cancel the voter's registration, in whole or in part.

Background

Since statehood, the right to vote in Arizona has been limited to U.S. citizens. Ariz. Const. art. VII, § 2(A). Whether and how voters in Arizona must prove their citizenship is a question that has become complex in recent years. Thus, a brief historical review is provided here.

I. Before 2005, Arizona required voter registration applicants to attest to U.S. citizenship but did not otherwise require proof of citizenship.

People who wish to vote in Arizona must first register by filling out a voter registration form. For decades, voter registration forms in Arizona have required applicants to attest that they are U.S. citizens.

In 1991, for example, Arizona's voter registration form included a statement that the applicant is a U.S. citizen and a space for the applicant's signature, and Arizona added a warning on the form: "executing a false registration is a class 6 felony." 1991 Ariz. Sess. Laws, Ch. 310, § 13 (amending A.R.S. § 16-152).

In 1993, Arizona clarified that applicants who provide their signature and certain other information on the voter registration form are "presumed to be properly registered to vote," but this presumption could be rebutted by clear and convincing evidence that the voter "is not a qualified registrant." 1993 Ariz. Sess. Laws, Ch. 98, § 10 (adding A.R.S. § 16-121.01). This meant that the presumption of proper registration could be rebutted by clear and convincing

evidence that, among other things, a voter is not a U.S. citizen. *See* A.R.S. § 16-101(A)(1) (listing U.S. citizenship among voter qualifications).

That same year, Congress enacted the National Voter Registration Act. The Act requires States to take certain steps when registering voters, at least for federal elections. For example, States must accept and use a federally created mail voter registration form (commonly known as the “Federal Form”) to register voters for federal elections. 52 U.S.C. § 20505(a). The Federal Form requires applicants to attest that they are U.S. citizens and to sign under penalty of perjury. *Id.* § 20508(b)(2).¹

In 2002, Congress enacted the Help America Vote Act. The Act requires States to take additional steps when registering voters. For example, a State may not accept a voter registration form for federal elections unless (1) the form includes the applicant’s driver’s license number or last four digits of social security number, or (2) the State assigns the applicant a unique identifying number. 52 U.S.C. § 21083(a)(5)(A).² In addition, to verify accuracy of information on voter registration forms, a State must compare voter registration information with its own motor vehicle information. 52 U.S.C. § 21083(a)(5)(B).

II. Since 2005, Arizona has required voter registration applicants to provide satisfactory evidence of U.S. citizenship, not just attest to citizenship, for at least some elections.

In November 2004, Arizona decided to require more than a sworn attestation of U.S. citizenship for voter registration. Specifically, Arizonans approved Proposition 200, named the

¹ Similarly, the Act requires states to provide a voter registration form for federal elections to people who apply for a driver’s license. 52 U.S.C. § 20504(c)(1). That form, too, requires applicants to attest that they are U.S. citizens and to sign under penalty of perjury. *Id.* § 20504(c)(2)(C).

² Arizona applies a similar requirement when registering voters for state elections. *See* 2003 Ariz. Sess. Laws, Ch. 260, §§ 1, 5 (amending A.R.S. § 16-121.01(A) and § 16-152).

“Arizona Taxpayer and Citizen Protection Act.”³ This law required county recorders to “reject any application for registration” that “is not accompanied by satisfactory evidence of United States citizenship.” A.R.S. § 16-166(F). This requirement has become known as Arizona’s documentary proof of citizenship requirement (often referred to as a “DPOC” requirement).

The documentary proof of citizenship requirement became effective on January 24, 2005. *See* Ariz. Op. Att’y Gen. No. I05-001, 2005 WL 436194, at *1 n.1 (Feb. 4, 2005). The requirement did not apply retroactively. People who had already registered to vote in Arizona by that date are deemed to have provided satisfactory evidence of citizenship, and are not required to resubmit such evidence unless they change voter registration from one county to another. A.R.S. § 16-166(G).

An applicant can show satisfactory evidence of citizenship in several ways, including by providing the “number of the applicant’s driver license or nonoperating identification license issued after October 1, 1996 by the department of transportation.” A.R.S. § 16-166(F)(1). The year 1996 is significant. That is when Arizona’s Department of Transportation began requiring people to prove, when getting a driver license or identification license, that their presence in the United States is federally authorized. *See* 1996 Ariz. Sess. Laws, Ch. 230, §§ 5-7 (amending A.R.S. §§ 28-413(C), -416(C), -421.01(E)) (now codified at A.R.S. §§ 28-3153(D), -3158(C), -3165(F)).⁴ Although authorized presence is not the same as U.S. citizenship, relying on licenses issued after October 1, 1996 prevents undocumented immigrants from registering to vote. *See*

³ Proposition 200 is available at <https://apps.azsos.gov/election/2004/info/PubPamphlet/english/prop200.htm>.

⁴ It is unclear why the authors of Proposition 200 specifically chose October 1, 1996 as the cutoff date. The requirement to prove authorized presence to Arizona’s Department of Transportation took effect on August 1, 1996. *See* Ariz. Op. Att’y Gen. No. I05-001, 2005 WL 436194, at *2 n.2 (Feb. 4, 2005).

Ariz. Op. Att’y Gen. No. I05-001, 2005 WL 436194, at *3 (Feb. 4, 2005). And, since at least 2000, the Arizona Department of Transportation’s Motor Vehicle Division (“MVD”) has tracked which licensees prove their authorized presence in a way that indicates they are *not* U.S. citizens. *See id.* at *2.

A. Arizona’s documentary proof of citizenship requirement from 2005 to 2013

To understand how Arizona’s documentary proof of citizenship requirement worked in its early years, consider Arizona’s Elections Procedures Manual from 2006.⁵ As the Manual explains, Arizona’s Secretary of State coordinated with MVD to compare voter registration forms with MVD records, consistent with the federal Help America Vote Act. *See* 2006 Ariz. Election Procedures Manual at 43–44, 47–48. If a license number on a voter registration form matched a license issued by MVD *before* October 1, 1996 (and if the applicant was not previously registered and no other satisfactory evidence of citizenship was available), then the county recorder did not register the applicant and instead notified the applicant and requested another type of evidence of citizenship. *See id.* at 45–46.

In 2013, the subject became more complicated after a U.S. Supreme Court decision interpreting the National Voter Registration Act’s effect on Arizona law. As mentioned above, the Act requires Arizona to “accept and use” the Federal Form when registering voters for federal elections. 52 U.S.C. § 20505(a). But the Federal Form does not require applicants to submit evidence of citizenship beyond a sworn attestation that they are U.S. citizens. *See id.* § 20508(b)(2). Thus, the Supreme Court ruled that, for applicants who use the Federal Form to register, Arizona cannot prevent them from voting in federal elections merely because of a lack of

⁵ Arizona’s Secretary of State periodically issues an Elections Procedures Manual for the benefit of election workers after approval of the Governor and Attorney General. *See* A.R.S. § 16-452(B). Previous versions of the Manual are available at <https://azmemory.azlibrary.gov/>.

documentary proof of citizenship. *See Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 20 (2013). The Supreme Court specified, however, that this limit on Arizona’s power does not apply in the context of “state-developed” voter registration forms. *See id.* at 12.

B. Arizona’s documentary proof of citizenship requirement from 2013 to 2018

After the Supreme Court’s ruling in 2013, Arizona developed “two distinct voter registration rolls” to comply with both Proposition 200 and the National Voter Registration Act. *See Ariz. Op. Att’y Gen. No. I13-011*, 2013 WL 5676943, at *3 (Oct. 7, 2013). During this time, if a license number on a voter registration form matched a license that MVD had issued *before* October 1, 1996 (and if the applicant was not previously registered and no other satisfactory evidence of citizenship was available), the result depended on which type of voter registration form the applicant used:

1. For state-developed forms (or “State Forms”): The county recorder proceeded as before. The county recorder did not register the applicant and instead notified the applicant and requested another type of evidence of citizenship. *See* 2014 Ariz. Elections Procedures Manual at 17, 20.⁶
2. For Federal Forms: The county recorder registered the applicant as a “federal-only” voter (someone who can vote for federal offices but not state or local offices) and notified the applicant that satisfactory evidence of citizenship was needed to be a “full-ballot” voter (someone who can vote for federal, state, and local offices). *See id.* at 14–15, 22, 24–25.

⁶ The 2014 version of the Manual is available at <https://azmemory.azlibrary.gov/> and at https://azsos.gov/sites/default/files/docs/2014_Election_Procedures_Manual.pdf.

More litigation followed. In 2017, two organizations claimed that Arizona’s practice of treating applicants differently depending on which voter registration form they used violated federal law. *See League of United American Citizens of Arizona v. Reagan* (“*LULAC*”), No. 2:17-cv-04102-DGC, Doc. 1 (D. Ariz. Nov. 7, 2017). In 2018, to resolve the lawsuit, Arizona’s Secretary of State and Maricopa County’s Recorder entered into a consent decree, agreeing to treat applicants the same regardless of which voter registration form they used. *See LULAC*, Doc. 37 (D. Ariz. June 18, 2018).

C. Arizona’s documentary proof of citizenship requirement from 2018 to 2024

After the *LULAC* consent decree in 2018, if a license number on a voter registration form matched a license that MVD had issued *before* October 1, 1996 (and if the applicant was not previously registered and no other satisfactory evidence of citizenship was available), the result was the same for State Forms and Federal Forms: The county recorder registered the applicant as a federal-only voter and notified the applicant that satisfactory evidence of citizenship was needed to be a full-ballot voter. *See* 2019 Ariz. Elections Procedures Manual at 3, 8.⁷

But in 2022, the Arizona Legislature enacted a statute to reverse the effects of the *LULAC* consent decree. Under the new statute, county recorders must “reject” State Forms that are “not accompanied by satisfactory evidence of citizenship,” instead of registering such applicants as federal-only voters. A.R.S. § 16-121.01(C); *see also* A.R.S. § 16-121.01(D)–(F) (establishing different process for Federal Forms). This statute signaled a return to the 2013–2018 period in which county recorders treated applicants differently based on which voter registration form they used.

⁷ The 2019 version of the Manual is available at <https://azmemory.azlibrary.gov/> and at https://apps.azsos.gov/election/files/epm/2019_elections_procedures_manual_approved.pdf.

A federal district court ruled in 2023 that this statute was unenforceable and that Arizona must instead abide by the *LULAC* consent decree. *Mi Familia Vota v. Fontes*, 691 F. Supp. 3d 1077, 1104 (D. Ariz. 2023); *see also Mi Familia Vota v. Fontes*, No. CV-22-00509-PHX-SRB, 2024 WL 2244338, at *2 (D. Ariz. May 2, 2024) (final judgment). But in August 2024, the U.S. Supreme Court stayed this part of the district court’s decision pending completion of an appeal. *See Republican Nat’l Comm. v. Mi Familia Vota*, 145 S. Ct. 108 (Mem.) (2024). Today, that appeal remains ongoing, so the Supreme Court’s stay remains in place.

D. Arizona’s documentary proof of citizenship requirement from 2024 to now

Given the U.S. Supreme Court’s stay in August 2024, county recorders are currently expected to follow A.R.S. § 16-121.01(C). Thus, today, if a county recorder receives a voter registration form with a license number that matches a license that MVD had issued *before* October 1, 1996 (and if the applicant is not already registered and no other satisfactory evidence of citizenship is available), then the result depends on which type of voter registration form the applicant is using:

1. For State Forms: The county recorder will not register the applicant and will instead notify the applicant and request another type of evidence of citizenship.
2. For Federal Forms: The county recorder will register the applicant as a federal-only voter and will notify the applicant that satisfactory evidence of citizenship is needed to be a full-ballot voter.

This practice is similar to what occurred from 2013 to 2018.

III. Arizona has a process for rejecting incomplete voter registration forms, as well as a separate process for cancelling registrations of voters who are already registered.

The process by which a county recorder rejects a voter registration form that is missing satisfactory evidence of citizenship is set forth in statute. This process requires county recorders

to notify the applicant promptly so that the applicant can provide such evidence in time for the next election.

Specifically, under Arizona law, if information on a registration form is “incomplete or illegible,” the county recorder “shall notify the applicant within ten business days of receipt of the registration form” and “shall specify the missing or illegible information.” A.R.S. § 16-134(B). The applicant may supply the missing information “before 7:00 p.m. on election day,” in which case the applicant is “deemed to have been registered” on the date that the county recorder first received the form. *Id.* This process expressly governs State Forms that are missing satisfactory evidence of citizenship. *Id.*; *see also* A.R.S. § 16-121.01(C) (following A.R.S. § 16-134(B)). Similarly, for Federal Forms that are missing satisfactory evidence of citizenship, county recorders must use all available resources to verify citizenship status “[w]ithin ten days after receiving” the form, and if citizenship cannot be verified, must register the applicant as a federal-only voter and “notify” the applicant. *See* A.R.S. § 16-121.01(D), (E).

Consistent with these statutes, Arizona’s Elections Procedures Manual explains that, if an applicant does not provide satisfactory evidence of citizenship (and such evidence is not otherwise available), the county recorder must send the registrant a letter “within 10 business days of receipt of the registration application.” 2023 Ariz. Elections Procedures Manual at 7.⁸

In addition to the process for rejecting voter registration forms that are missing documentary proof of citizenship, county recorders also perform a post-registration function known as list maintenance. As part of this process, county recorders review lists of voters who

⁸ The 2023 version of the Manual is available at <https://azmemory.azlibrary.gov/> and at https://apps.azsos.gov/election/files/epm/2023/EPM_20231231_Final_Edits_to_Cal_1_11_2024.pdf. The Secretary of State is expected to issue an updated version later this year. *See* A.R.S. § 16-452(B).

are already registered, and if they discover that a registered voter is not actually eligible to vote, they may cancel the voter's registration.

For example, under Arizona law, county recorders must cancel registrations of voters who are confirmed to be dead, adjudicated as incapacitated, or convicted of a felony. A.R.S. § 16-165(A)(2)–(4). Similarly—and more relevant here—county recorders must cancel registrations of voters who are confirmed to be “not a United States citizen,” after giving them notice and an opportunity to provide satisfactory evidence of citizenship. A.R.S. § 16-165(A)(10).

Consistent with these statutes, Arizona's Elections Procedures Manual explains in detail the list maintenance procedures that county recorders follow. *See* 2023 Ariz. Elections Procedures Manual at 36–48.

IV. In 2024, officials discovered an error in Arizona's voter registration system regarding the issuance date of Arizona licenses, and the Arizona Supreme Court allowed the Affected Voters to vote full ballots in the 2024 General Election.

In September 2024, Arizona's Secretary of State and Maricopa County's Recorder presented an urgent dispute to the Arizona Supreme Court. *See Richer v. Fontes*, No. CV-24-0221-SA, 2024 WL 4299099, at *1–2 (Ariz. Sept. 20, 2024) (unpublished disposition). According to the filings and decision in that case, the situation was as follows:

MVD keeps track of the date on which it issues licenses, and MVD electronically communicates this date information to Arizona's voter registration system. For example, if MVD issued a license to someone before October 1, 1996 and had no other interaction with the person, the person's license appeared in Arizona's voter registration system as having been “issued” before October 1, 1996.

But in some situations, MVD issued a license to someone before October 1, 1996 and had a more recent interaction in which the person did *not* need to prove authorized presence, such as issuing the person a duplicate license to replace one that was lost. In those situations, the person's

license appeared in Arizona’s voter registration system as having been “issued” on the date of the more recent interaction. In such situations, the county recorder reasonably (but incorrectly) believed that the person’s license was issued after October 1, 1996, in a way that counts as satisfactory evidence of citizenship under A.R.S. § 16-166(F)(1). As a result, these people were registered as full-ballot voters. Some of these people may also have provided an additional type of satisfactory evidence of citizenship at the time of registration.

Although this error existed for years, election officials learned of the error in September 2024, shortly before the 2024 General Election. The error was discovered because someone who was not a U.S. citizen had been registered to vote in 2022 (but did not actually vote). The error was promptly resolved so that it no longer affects people who seek to register to vote today.

As of September 2024, Arizona’s Secretary of State estimated that the error affected 97,928 voters who were already registered to vote, most of whom had been registered for years (the “Affected Voters”).⁹ The Secretary of State and the Maricopa County Recorder presented differing arguments to the Arizona Supreme Court regarding how to proceed. The Secretary argued that the Affected Voters should be allowed to fully participate in the 2024 General Election, whereas the Recorder argued that the Affected Voters should be deemed federal-only voters until they provide satisfactory evidence of citizenship.

The Arizona Supreme Court sided with the Secretary in a non-precedential decision.¹⁰ The Court reasoned that the Affected Voters had “long since applied for, and received, their voter

⁹ The Secretary of State later updated this estimate to include 202,760 voters. *See Report on Audit of MVD’s Authorized Presence Policy and Data for Voter Registration Purposes*, prepared by MVD in consultation with Former Yuma County Recorder Robyn Stallworth-Pouquette and Former Coconino County Recorder Patty Hansen (Jan. 31, 2025), pg. 3.

¹⁰ Because the decision was non-precedential, this opinion cites the decision only “for persuasive value.” Ariz. R. Sup. Ct. 111(c)(1)(C).

registration,” so “the time for the county recorder to reject their applications pursuant to § 16-166(F) has passed.” *Richer*, 2024 WL 4299099, at *2. The Court also reasoned that, although A.R.S. § 16-165(A)(10) authorizes cancelling registrations of voters who are not U.S. citizens, the parties in the case agreed that “most of the Affected Voters likely are citizens,” that “all of the Affected Voters have attested under penalty of perjury to being United States citizens,” and that “[i]t is possible that Affected Voters have, in fact, provided satisfactory evidence of [citizenship].” *Id.* (quoting joint statement of facts). The Court also observed that the source of the problem was a “state administrative failure,” and there was “little time remaining before the beginning of the 2024 General Election.” *Id.* at 3.

The Court acknowledged that, when a county recorder “obtains information” and “confirms” that a voter is not a U.S. citizen, the recorder must initiate a process to cancel the voter’s registration, including sending the voter a notice and opportunity to respond. *Id.* (quoting A.R.S. § 16-165(A)(10)). Thus, the Court reasoned that a “county recorder can therefore proceed with respect to individual voters under § 16-165(A)(10) as long as the provision’s due process requirements are followed.” *Id.*

V. After the 2024 General Election, county recorders have not treated the Affected Voters in a uniform way.

Your opinion request states that, in late December 2024, your office provided guidance to county recorders regarding how to handle registrations of Affected Voters. You explain that your office’s guidance asked counties to notify all Affected Voters that they would be considered federal-only voters in future elections unless they provide satisfactory evidence of citizenship, which they could do until 7:00 p.m. on election day.

Your opinion request also states that county recorders have not implemented this guidance in a uniform way. Your request does not name any specific recorder or accuse anyone of violating

the law, but merely provides examples of differing practices. For example, in some counties the recorders plan to maintain the current registration status of the Affected Voters even if they do not provide satisfactory evidence of citizenship, whereas in other counties the recorders are planning to cancel (or have already cancelled) registrations of Affected Voters without providing an opportunity to provide satisfactory evidence of citizenship.

VI. The Legislature considered a bill to address how county recorders must treat the Affected Voters.

In February 2025, a committee of Arizona’s House of Representative considered a bill (HB 2038) to establish a procedure for county recorders to follow with respect to the Affected Voters. *See Meeting of House Federalism, Military Affairs & Elections Committee (Feb. 12, 2025).*¹¹ The Legislature did not enact the bill.

Analysis

The problem presented here is complex, and Arizona laws provide no specific authority to county recorders regarding how to proceed. You are correct that uniformity across county lines is essential, and your efforts to establish uniformity are commendable. The Affected Voters should not be treated differently from each other based on where they reside.

Under current Arizona law, county recorders must maintain the existing registration status of the Affected Voters unless there is affirmative evidence of ineligibility, such as evidence that a specific voter is not a U.S. citizen. In the rare case that a county recorder has affirmative evidence of non-citizenship, the county recorder may initiate a notice and cancellation process for the individual voter in question, following statutory procedural protections. But the mere fact that an Affected Voter does not respond to a post-registration request for satisfactory evidence of citizenship is not affirmative evidence of non-citizenship and does not, under current law,

¹¹ Video is available at <https://www.azleg.gov/videoplayer/?eventID=2025021052>.

authorize a county recorder to cancel the voter's registration, in whole or in part, including by downgrading the registration from full-ballot status to federal-only status.

I. Under Arizona law, county recorders are limited to powers expressly or impliedly delegated.

A county recorder's authority "is limited to those powers expressly or impliedly delegated to [the recorder] by the state constitution or statutes." *Arizona Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 62 ¶ 14 (2020). "Implied powers exist when they 'may be fairly implied from, and are necessary for, the complete exercise of [the] express powers.'" *Horne v. Hobbs*, No. 1 CA-CV 24-0615, 2025 WL 1982692, at *3 ¶ 13 (Ariz. App. July 17, 2025) (quoting *Ponderosa Fire Dist. v. Coconino Cnty.*, 235 Ariz. 597, 603 ¶ 25 (App. 2014)). "But '[i]mplied powers do not exist independently of the grant of express powers and the only function of an implied power is to aid in carrying into effect a power expressly granted." *Id.* (quoting *Vangilder v. Ariz. Dep't of Revenue*, 252 Ariz. 481, 488 ¶ 24 (2022)).

Here, as the Arizona Supreme Court previewed in *Richer v. Fontes*, there are two possible sources of authority for county recorders to cancel or downgrade registrations of Affected Voters: (1) the statutory process for rejecting voter registration forms that are missing satisfactory evidence of U.S. citizenship, and (2) the statutory process for cancelling registrations of voters who are not U.S. citizens. After careful review, however, neither set of statutes authorizes county recorders to cancel or downgrade registrations of Affected Voters, either expressly or impliedly, absent affirmative evidence that a voter is not a U.S. citizen. Each set of statutes is considered below.

II. Arizona's current statutory process for rejecting voter registration forms that are missing satisfactory evidence of citizenship does not apply to the Affected Voters.

As explained above, Proposition 200 began requiring county recorders to "reject any application for registration" that "is not accompanied by satisfactory evidence of United States citizenship." A.R.S. § 16-166(F). A more recent statute requires county recorders to "reject" a

State Form that “is not accompanied by satisfactory evidence of citizenship.” A.R.S. § 16-121.01(C). Similarly, for a Federal Form that “is not accompanied by satisfactory evidence of citizenship,” county recorders must attempt to verify citizenship, and if the attempt is inconclusive, must register the applicant as a federal-only voter. *See* A.R.S. § 16-121.01(D), (E).

Under any of these scenarios, the county recorder must notify the applicant promptly so that the applicant can provide satisfactory evidence of citizenship in time for the next election. For State Forms, the county recorder “shall notify the applicant within ten business days of receipt of the registration form” and “shall specify the missing or illegible information” so that the applicant can supply the missing information “before 7:00 p.m. on election day.” A.R.S. § 16-134(B); *see* A.R.S. § 16-121.01(C) (following § 16-134(B) for State Forms). Similarly, for Federal Forms, county recorders must attempt to verify citizenship “[w]ithin ten days after receiving” the form, and if citizenship cannot be verified, must “notify” the applicant. A.R.S. § 16-121.01(D), (E). Consistent with these statutes, Arizona’s Elections Procedures Manual explains that, if an applicant does not provide satisfactory evidence of citizenship (and such evidence is not otherwise available), the county recorder must send the registrant a letter “within 10 business days of receipt of the registration application.” 2023 Ariz. Elections Procedures Manual at 7.

This statutory process does not apply to the Affected Voters for several reasons. The first is that the process is specifically for *rejecting* a voter registration application, in whole or in part. *See* A.R.S. § 16-166(F) (county recorder must “reject” voter registration forms that are missing satisfactory evidence of citizenship); A.R.S. § 16-121.01(C) (county recorder must “reject” State Forms that are missing satisfactory evidence of citizenship); A.R.S. § 16-121.01(D), (E) (for Federal Forms that are missing satisfactory evidence of citizenship and citizenship cannot be verified, county recorder must register applicant as federal-only voter). There is no indication that

the authors of Proposition 200 or the Legislature intended a technical meaning of the word “reject,” so ordinary meaning applies. A.R.S. § 1-213; *Vangilder*, 252 Ariz. at 488 ¶ 24.

Here, county recorders already *accepted* the voter registration applications of the Affected Voters long ago. Indeed, many of the Affected Voters have been voting for years (and some for as many as twenty years). The idea of “rejecting” their applications now would be like an employer “rejecting” job applications of thousands of longtime employees. The question is not whether to reject their applications; the question is whether to terminate their current status. As the Arizona Supreme Court put it, “the time for the county recorder to reject their applications” has “passed.” *Richer*, 2024 WL 4299099, at *2.

This conclusion is strengthened by statutory context. *See BSI Holdings, LLC v. Arizona Dep’t of Transportation*, 244 Ariz. 17, 21 ¶ 19 (2018) (“We must not interpret terms in isolation, but rather in their overall context.”). The statutory process for rejecting a voter registration application that is missing satisfactory evidence of citizenship requires the county recorder to notify the applicant *promptly* after receiving the application, so that the applicant can provide the missing information in time for the next election. A.R.S. § 16-134(B); *see also* A.R.S. § 16-121.01(C)–(E). But here, promptness is impossible given how long the Affected Voters have been registered. Moreover, the Legislature has established a separate list maintenance process for cancelling registrations of people who are already registered, as discussed below. *See* A.R.S. § 16-165(A)(10). The existence of a separate list maintenance process for people who are already registered is further evidence that the process for rejecting voter registration applications does not apply to the Affected Voters. *See Horne*, 2025 WL 1982692, at *3 n.3 (“A statute’s expression of one or more items of a class indicates an intent to exclude all items of the same class which are not expressed.” (citation and internal quotation marks omitted)).

This conclusion is further strengthened by considering what is known—and not known—about the Affected Voters. The abovementioned statutory process is specifically for rejecting voter registration applications that are “not accompanied by” satisfactory evidence of citizenship. A.R.S. §§ 16-121.01(C), (D), -166(F). Here, however, it is unknown which of the registration forms of the Affected Voters were “not accompanied by” satisfactory evidence of citizenship. The fact that their Arizona license was issued before October 1, 1996 simply means their *license* did not provide evidence of citizenship. *Id.* § 16-166(F)(1). Other information could still have provided satisfactory evidence of citizenship, such as a birth certificate, passport, naturalization information, or a tribal number. *Id.* § 16-166(F)(2)–(6). It is unclear which or how many of the Affected Voters provided an additional form of evidence of citizenship to county recorders when they submitted their registration forms during the last two decades. And it may be impossible to fully answer that question now, because county recorders are not required to keep documents submitted as evidence of citizenship for more than two years. *Id.* § 16-166(J). As the Secretary of State and Maricopa County Recorder both acknowledged to the Arizona Supreme Court, “[i]t is possible that Affected Voters have, in fact, provided satisfactory evidence of [citizenship].” *Richer*, 2024 WL 4299099, at *2 (quoting joint statement of facts).

To be clear: County recorders may have implied authority to promptly correct errors *they* make upon receiving a voter registration form. For example, a county recorder who initially misinterprets a document submitted by an applicant as a satisfactory birth certificate and thus deems the applicant a U.S. citizen, but then realizes the mistake long before any election, may have implied authority to correct the error by reversing the registration and contacting the applicant before the election. In that situation, the county recorder’s quick correction might be “fairly implied from, and [] necessary for, the complete exercise” of the county recorder’s duty to reject

voter registration applications that are missing satisfactory evidence of citizenship. *Horne*, 2025 WL 1982692, at *3 ¶ 13 (citation and internal quotation marks omitted).

But the situation here is different. More than 200,000 Affected Voters became registered through no fault of county recorders, over the course of two decades, and it is unknown which of their registration forms were, in fact, missing satisfactory evidence of citizenship. Even if county recorders have implied authority to promptly correct their own errors when they receive a voter registration form, such authority would not extend here. This is especially so given that some Affected Voters may have, “in fact, provided” other satisfactory evidence of citizenship. *Richer*, 2024 WL 4299099, at *2. It is entirely “possible to suppose” that the authors of Proposition 200 and the Legislature “intended to give counties the power” to promptly correct their own mistakes “without also giving them the power” to cancel or downgrade the registration of Affected Voters who fail to respond to a letter long after they registered. *Sw. Gas Corp. v. Mohave Cnty.*, 188 Ariz. 506, 509 (App. 1997); *see also, e.g., Sharp v. Bd. of Trs. of State Employees’ Ret. Sys.*, 5 N.E.3d 188, 194–95 (Ill. App. Ct. 2014) (concluding that a state board was “not estopped from fixing errors it makes in its calculation of pension benefits” but must “correct those mistakes within the 35-day period provided for” by law, and “may not correct the error now” absent “statutory authority”).

For these reasons, the statutory process for rejecting voter registration applications that are missing satisfactory evidence of citizenship does not apply to the Affected Voters.

III. Arizona’s current list maintenance statutes do not authorize county recorders to cancel or downgrade registrations of Affected Voters without affirmative evidence that an Affected Voter is not a U.S. citizen.

Another possible source of authority for county recorders to cancel or downgrade registrations of voters is Arizona’s list maintenance statutes. The most relevant statute is A.R.S. § 16-165(A)(10), which requires county recorders to cancel registrations of voters who are

confirmed to be “not a United States citizen,” after giving them notice and an opportunity to provide satisfactory evidence of citizenship. Here is the statutory text:

A. The county recorder shall cancel a registration:

10. When the county recorder ***obtains information pursuant to this section and confirms that the person registered is not a United States citizen***, including when the county recorder receives a summary report from the jury commissioner or jury manager pursuant to § 21-314 indicating that a person who is registered to vote has stated that the person is not a United States citizen. Before the county recorder cancels a registration pursuant to this paragraph, the county recorder shall send the person notice by forwardable mail that the person's registration will be canceled in thirty-five days unless the person provides satisfactory evidence of United States citizenship pursuant to § 16-166. The notice shall include a list of documents the person may provide and a postage prepaid preaddressed return envelope. If the person registered does not provide satisfactory evidence within thirty-five days, the county recorder shall cancel the registration and notify the county attorney and attorney general for possible investigation.

A.R.S. § 16-165(A)(10) (emphasis added).

By its terms, this statutory process applies only when there is affirmative evidence that a registered voter is “not a United States citizen”—not merely when there is a lack of satisfactory evidence of U.S. citizenship. To illustrate, consider the example described in § 16-165(A)(10), when a county recorder “receives a summary report from the jury commissioner or jury manager . . . indicating that a person who is registered to vote has stated that the person is not a United States citizen.” In that example, the county recorder would have evidence that a voter is not a U.S. citizen—specifically, a summary of information derived from juror questionnaires completed by prospective jurors—not just lack of satisfactory evidence of citizenship. Similarly, consider a nearby statute that directs the Secretary of State to compare voter registration records with Arizona’s “driver license database” and then to notify a county recorder if a voter “is not a United

States citizen.” A.R.S. § 16-165(G). In that example, as before, the county recorder would have evidence that a voter is not a U.S. citizen, not just lack of satisfactory evidence of citizenship.¹²

The difference between lack of satisfactory evidence of U.S. citizenship and affirmative evidence of non-citizenship is further demonstrated in a nearby statute, which directs county recorders to compare people who were “registered to vote without satisfactory evidence of citizenship” with “the systematic alien verification for entitlements program maintained by the United States citizenship and immigration services” (known as “SAVE”). A.R.S. § 16-165(I). The SAVE program can, in some situations, provide evidence that a person is not a U.S. citizen, as described in Arizona’s Elections Procedures Manual. *See* 2023 Ariz. Election Procedures Manual at 9–11, 43 (explaining how SAVE works). If a mere lack of satisfactory evidence of U.S. citizenship were equivalent to affirmative evidence of non-citizenship, this statutory provision would be unnecessary. The statutes must be interpreted in a way that distinguishes between lack of satisfactory evidence of citizenship and affirmative evidence of non-citizenship, to ensure that no provision is “inert, redundant, or trivial.” *Arizonans for Second Chances, Rehab., & Pub. Safety v. Hobbs*, 249 Ariz. 396, 406 ¶ 28 (2020) (citation and internal quotation marks omitted).

Here, there is no affirmative evidence that the Affected Voters as a class are not U.S. citizens. Rather, as the Secretary of State and the Maricopa County Recorder both acknowledged to the Arizona Supreme Court, “most of the Affected Voters likely are citizens,” and “all of the

¹² As mentioned above, since at least 2000, MVD has tracked which licensees proved their authorized presence in a way that indicates they are *not* U.S. citizens. *See* Ariz. Op. Att’y Gen. No. I05-001, 2005 WL 436194, at *2 (Feb. 4, 2005); *see also* 2023 Ariz. Elections Procedures Manual at 8 (explaining that, if MVD records show that a voter registration applicant proved authorized presence in a way that showed non-U.S. citizenship, the county recorder will not register the person until proof of citizenship is provided).

Affected Voters have attested under penalty of perjury to being United States citizens.” *Richer*, 2024 WL 4299099, at *2 (quoting joint statement of facts).

For this reason, A.R.S. § 16-165(A)(10) does not authorize county recorders to cancel or downgrade registrations of Affected Voters based on a mere lack of satisfactory evidence of U.S. citizenship. *See Horne*, 2025 WL 1982692, at *3 n.3 (“A statute’s expression of one or more items of a class indicates an intent to exclude all items of the same class which are not expressed.” (citation and internal quotation marks omitted)). The Arizona Supreme Court reached the same conclusion, stating that A.R.S. § 16-165(A)(10) “does not authorize county recorders to modify the Affected Voters’ registration record to deny the right to vote in Arizona elections unless they provide [documentary proof of citizenship].” *Richer*, 2024 WL 4299099, at *2.

However, the Arizona Supreme Court went on to suggest that A.R.S. § 16-165(A)(10) could play a role in how county recorders treat “individual voters.” Specifically, the Court observed that the statute “recognizes the right of any voter to notice and an opportunity to contest any determination of a voter’s ineligibility,” and then stated that a “county recorder can therefore proceed with respect to *individual voters* under § 16-165(A)(10) as long as the provision’s due process requirements are followed.” *Richer*, 2024 WL 4299099, at *3 (emphasis added).

The precise meaning of this statement by the Arizona Supreme Court has been debated by county recorder offices. In view of the overall statutory scheme, the Court’s statement is best understood as follows:

First, county recorders have implied authority to use tools at their disposal to try to confirm whether the Affected Voters are U.S. citizens, including by asking Affected Voters to voluntarily provide satisfactory evidence of citizenship. Given the circumstances, such efforts are “fairly implied from, and are necessary for, the complete exercise” of county recorders’ express powers

of list maintenance with respect to U.S. citizenship. *Horne*, 2025 WL 1982692, at *3 (citation and internal quotation marks omitted).

Second, if an Affected Voter responds by providing satisfactory evidence of U.S. citizenship, that should dispel any doubt. In contrast, if an Affected Voter acknowledges that he or she is not a U.S. citizen or otherwise provides affirmative evidence of non-citizenship, then the county recorder may initiate a notice and cancellation process based on having obtained information and confirming that the voter is “not a United States citizen.” A.R.S. § 16-165(A)(10).

Third, if an Affected Voter simply does not respond to a county recorder’s request for satisfactory evidence of citizenship, or responds in a way that neither provides evidence of citizenship nor provides evidence of non-citizenship, that would not suffice to initiate a notice and cancellation process. This is because the county recorder would not have obtained information or confirmed that the voter is “not a United States citizen.” A.R.S. § 16-165(A)(10). There are innocent reasons why an Affected Voter may not respond to a county recorder’s request, including not seeing the request, not fully understanding the request, or perhaps even suspecting that the request is not genuinely from the same government office that successfully registered the voter years ago. County recorders have neither express nor implied authority to cancel or downgrade the voter’s registration in that situation. It is entirely “possible to suppose” that the Legislature “intended to give counties the power” to cancel registrations of voters who are confirmed to be not U.S. citizens, “without also giving them the power” to cancel or downgrade registrations of Affected Voters for whom there is no evidence of non-citizenship. *Sw. Gas Corp.*, 188 Ariz. at 509. Indeed, that is the implication of A.R.S. § 16-165(A)(10), because “[w]hen a statute limits a thing to be done in a particular mode, it includes a negative of any other mode.” *Christensen v. Harris Cnty.*, 529 U.S. 576, 583 (2000) (citation and internal quotation marks omitted).

For these reasons, Arizona's list maintenance statutes currently do not authorize county recorders to cancel or downgrade registrations of Affected Voters without affirmative evidence of non-citizenship.

Conclusion

Under current Arizona law, county recorders must maintain the existing registration status of the Affected Voters unless there is affirmative evidence of ineligibility, such as evidence that a specific voter is not a U.S. citizen. If a county recorder has affirmative evidence of non-citizenship, the county recorder must follow the procedural protections of A.R.S. § 16-165(A)(10) before cancelling a voter's registration. The mere fact that an Affected Voter does not respond to a post-registration request for satisfactory evidence of citizenship is not affirmative evidence of non-citizenship and does not authorize a county recorder to cancel the voter's registration, in whole or in part, including by downgrading the registration from full-ballot status to federal-only status.

* * *

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