

Review of ASOS 2023 Election Procedure Manual

Findings

August 15th, 2023



PREPARED BY
WE THE PEOPLE AZ ALLIANCE
IN COLLABORATION WITH
MARICOPA COUNTY REPUBLICAN COMMITTEE



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SUMMARY

As provided for in Arizona Revised Statute, the AZSOS Elections Procedure Manual (EPM) is key in protecting critical infrastructure, our Arizona Elections.

On August 1st, 2023, Arizona Secretary of State, Adrian Fontes, issued a press release and a draft copy of his 2023 draft Elections Procedure Manual (EPM).

<https://azsos.gov/about-office/media-center/press-releases/1551>

In this press release he opened a 15 day public comment period. He also makes the following statement:

"As a former County Recorder, I understand how important this manual is for the dedicated Arizonans who are entrusted with one of the toughest and most important jobs in our democracy," Secretary Fontes said. "In an atmosphere of heightened scrutiny of our elections, local and county officials need clear guidance based on law. Now that we are at the start of our public comment period, I look forward to continuing this important conversation about a document that is essential to the running of safe, secure, and accurate elections in every corner of our state."

We recruited a team of our subject matter experts to analyze the EPM and determine if it conforms with A.R.S. Title 16 Election Statutes. We also referenced reviews, challenges, and reports issued in 2021 by the former Arizona Attorney General's office in our findings.

Our organization began a review of the draft released by AZSOS Fontes and worked in collaboration with Maricopa County Republican Committee (MCRC) Chairman Craig Berland to weigh in on this issue.

Due to the limited time-frame provided for by the Secretary of State, this report is not an exhaustive list of all potential areas of violation or concern and we highly encourage all legislators and citizens to continue to review this EPM on their own.

SUMMARY OF KEY FINDINGS

A.R.S. 16-452, clearly defines the areas that should be covered by the EPM.

A.R.S. 16-452. Rules; instructions and procedures manual; approval of manual; field check and review of systems; violation; classification

A. After consultation with each county board of supervisors or other officer in charge of elections, the secretary of state shall 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. The secretary of state shall also adopt rules regarding fax transmittal of unvoted ballots, ballot requests, voted ballots and other election materials to and from absent uniformed and overseas citizens and shall adopt rules regarding internet receipt of requests for federal postcard applications prescribed by section 16-543.

B. The rules shall be prescribed in an official instructions and procedures manual to be issued not later than December 31 of each odd-numbered year immediately preceding the general election. Before its issuance, the manual shall be approved by the governor and the attorney general. The secretary of state shall submit the manual to the governor and the attorney general not later than October 1 of the year before each general election.

C. A person who violates any rule adopted pursuant to this section is guilty of a class 2 misdemeanor.

D. The secretary of state shall provide personnel who are experts in electronic voting systems and procedures and in electronic voting system security to field check and review electronic voting systems and recommend needed statutory and procedural changes.

In 2021, the Attorney General's office highlighted areas that the AZSOS Predecessor, Secretary Hobbs, attempted to regulate outside her authority as Secretary of State. These sections were flagged by former Assistant AG Jennifer Wright. Secretary Fontes has once again added these sections into the 2023 EPM. The determination was as follows:

" The proposed regulations exceed the scope of the Secretary's statutory authorization or contravene an election statute's purpose, and therefore cannot be approved. See Leach v. Hobbs, 483 P.3d 194, 198 ¶ 21 (Ariz. 2021) ("[A]n EPM regulation

that exceeds the scope of its statutory authorization or contravenes an election statute's purpose does not have the force of law.”); McKenna v. Soto, 481 P.3d 695, 699 (2021).”

We have documented areas that Secretary Fontes included regulation that exceeds his statutory authorization.

The EPM holds criminal implications is A.R.S. 16-451, Section C, therefore, areas outside his scope are a violation of legislative intent.

The AZSOS has also attempted to modify statute by including additional documents to “compare” signatures to in early mail-in voting to validate a voter’s identity. The statute is clear that the voter record must be used and that using additional correspondence or documents is a violation of A.R.S. 16-550, Section A. (See Chapter 2)

The AZSOS is charged with prescribing rules regarding “***producing, distributing, collecting, counting, tabulating and storing ballots.***”, yet, the AZSOS failed to prescribe guidance for proper chain of custody and removed the words “Chain of Custody” in all three areas of limited guidance from the 2019. (See Chapters 2, 4 and 10)

Ballot Drop-Boxes are not a legal method of voting in the State of Arizona. Under A.R.S. 16-1005(E) states that ballot drop off site MUST BE STAFFED.

16-1005. Ballot abuse; violation; classification

E. A person or entity that knowingly solicits the collection of voted or unvoted ballots by misrepresenting itself as an election official or as an official ballot repository or is found to be serving as a ballot drop off site, other than those established and staffed by election officials, is guilty of a class 5 felony.

Therefore, any reference to drop-boxes in this EPM is outside the AZSOS scope and is a violation of statute and must not be include.

" The proposed regulations exceed the scope of the Secretary's statutory authorization or contravene an election statute's purpose, and therefore cannot be approved. See Leach v. Hobbs, 483 P.3d 194, 198 ¶ 21 (Ariz. 2021) ("[A]n EPM regulation that exceeds the scope of its statutory authorization or contravenes an election statute's purpose does not have the force of law."); McKenna v. Soto, 481 P.3d 695, 699 (2021)."

DETAILED FINDINGS BY CHAPTER

Chapter 1: Voter Registration

Pages 1-17, Sections I-II;

Page 5, Section 2(A) Citizenship Requirement

The Draft EMPM on page 5 allows for a circumstance where the County Recorder may visually inspect the applicant's proof of citizenship but not make a copy while A.R.S 16-166 indicates that the recorder must retain a copy of this documentation for at least two years.

Pages 18-27, Section IV, C-J;

Pages 29-30, Section V, E-F;

Pages 30-43, Section VI-IX

" The proposed regulations exceed the scope of the Secretary's statutory authorization or contravene an election statute's purpose, and therefore cannot be approved. See Leach v. Hobbs, 483 P.3d 194, 198 ¶ 21 (Ariz. 2021) ("[A]n EPM regulation that exceeds the scope of its statutory authorization or contravenes an election statute's purpose does not have the force of law."); McKenna v. Soto, 481 P.3d 695, 699 (2021)."

Page 33, Section VII(C): Voter Registration Deadline

Page 33 states that the SoS may change the registration deadline “if the closure of state or federal offices would cause a method of registration to be unavailable within the 30-day period preceding the next election.” This is a misinterpretation of state law and NAVRA.

Chapter 2: Early Voting

Page 50, Section I, A(7), paragraph 2, sentence 2;

“If the voter provides the missing information after the 11th day before the election, the County Recorder may send the voter a ballot-by-mail for that election if the County Recorder has sufficient time to do so.”

Page 51, Section I, B(2), sentence 3;

“(unless the County Recorder has time to do so)”

Statute clearly defines the regulations in these aforementioned matters. Allowing the counties to process these at their discretion is a violation of:

A.R.S. 16-542

E. In order to be complete and correct and to receive an early ballot by mail, an elector's request that an early ballot be mailed to the elector's residence or temporary address must include all of the information prescribed by subsection A of this section and must be received by the county recorder or other officer in charge of elections no later than 5:00 p.m. on the eleventh day preceding the election.

Therefore;

“ The proposed regulations exceed the scope of the Secretary’s statutory authorization or contravene an election statute’s purpose, and therefore cannot be approved. See Leach v. Hobbs, 483 P.3d 194, 198 ¶ 21 (Ariz. 2021) (“[A]n EPM regulation that exceeds the scope of its statutory authorization or contravenes an election statute's purpose does not have the force of law.”); McKenna v. Soto, 481 P.3d 695, 699 (2021).”

Page 54, Section I, B(8), Paragraph 2, Numbers (5-7)

5. An indicator of the voter's party affiliation;
6. A checkbox to allow the voter to remove the voter's name from the AEVL; and
7. A checkbox to request that the ballot-by-mail not be mailed for the elections listed on the notice."

The requirements for Notice to AVEL voters are clearly defined in A.R.S. 16-544(D) and the AZSOS had added additional language and,

Therefore,

" The proposed regulations exceed the scope of the Secretary's statutory authorization or contravene an election statute's purpose, and therefore cannot be approved. See Leach v. Hobbs, 483 P.3d 194, 198 ¶ 21 (Ariz. 2021) ("[A]n EPM regulation that exceeds the scope of its statutory authorization or contravenes an election statute's purpose does not have the force of law."); McKenna v. Soto, 481 P.3d 695, 699 (2021)."

Page 56, Section I, B(9)(C), Paragraph 1, Last sentence, Beginning with "The Board of Supervisors *may delegate* this responsibility ..."

A.R.S. 16-545(B) clearly states:

16-545. Early ballot

A. The early ballot shall be one prepared for use in the precinct in which the applicant resides and, if a partisan primary election, of the political party with which the applicant is affiliated as shown by the affidavit of registration. The ballot shall be identical with the regular official ballots, except that it shall have printed or stamped on it "early".

B. The officer charged by law with the duty of preparing ballots at any election shall:

There is no provision for the BOS to abdicate those duties by appointing another elected official as AZSOS suggests in this EPM.

Therefore;

" The proposed regulations exceed the scope of the Secretary's statutory authorization or contravene an election statute's purpose, and therefore cannot be approved. See Leach v. Hobbs, 483 P.3d 194, 198 ¶ 21 (Ariz. 2021) ("[A]n EPM regulation that exceeds the scope of its statutory authorization or contravenes an election statute's purpose does not have the force of law."); McKenna v. Soto, 481 P.3d 695, 699 (2021)."

Page 58, Section I, B(9)(C)(7), subsection words "or ballot drop-off location"

A.R.S. 16-547(D) Clearly state "Polling location"; adding "or ballot drop-off location" clearly alters and therefore violates statute.

16-547. Ballot affidavit; form

D. The county recorder or other officer in charge of elections shall supply printed instructions to early voters that direct them to sign the affidavit, mark the ballot and return both in the enclosed self-addressed envelope that complies with section 16-545. The instructions shall include the following statement:

In order to be valid and counted, the ballot and affidavit must be delivered to the office of the county recorder or other officer in charge of elections or **may be deposited at any polling place** in the county no later than 7:00 p.m. on election day. The ballot will not be counted without the voter's signature on the envelope.

Therefore;

" The proposed regulations exceed the scope of the Secretary's statutory authorization or contravene an election statute's purpose, and therefore cannot be approved. See Leach v. Hobbs, 483 P.3d 194, 198 ¶ 21 (Ariz. 2021) ("[A]n EPM regulation that exceeds the scope of its statutory authorization or contravenes

an election statute's purpose does not have the force of law.”);

McKenna v. Soto, 481 P.3d 695, 699 (2021).”

Page 58, Section I, B(9)(D)(2), Paragraph 1, Last Sentence, beginning with “whenever practicable...” and Footnote 21

A.R.S. 16-545(B)(1) and A.R.S. 16-544(F) set strict parameters on when an early ballot *must* be mailed. The AZSOS is attempting to expand and modify those terms and allow for discretion. This clearly violates A.R.S.16-544 and 545.

16-544. Active early voting list; civil penalty; violation; classification; definition

F. Not later than the first day of early voting, the county recorder or other officer in charge of elections shall mail an early ballot to all eligible voters included on the active early voting list in the same manner prescribed in section 16-542, subsection C. If the voter has not returned the notice or otherwise notified the election officer within forty-five days before the election that the voter does not wish to receive an early ballot by mail for the election or elections indicated, the ballot shall automatically be scheduled for mailing.

16-545. Early ballot

B. The officer charged by law with the duty of preparing ballots at any election shall:

1. Prepare the official early ballot and deliver a sufficient number to the recorder or other officer in charge of elections not later than the thirty-third day before the election. Except as provided in section 16-542, subsection D, regular early ballots shall not be distributed to the general public before the beginning of early voting.

Therefore;

“ The proposed regulations exceed the scope of the Secretary’s statutory authorization or contravene an election statute’s purpose, and therefore cannot be approved. See Leach v. Hobbs, 483 P.3d 194, 198 ¶ 21 (Ariz. 2021) (“[A]n EPM regulation that exceeds the scope of its statutory authorization or contravenes an election statute's purpose does not have the force of law.”); McKenna v. Soto, 481 P.3d 695, 699 (2021).”

Page 62, Section I(D)

Page 62 grants the SoS special authority to extend the early voting period for UOCAVA voters in case of "emergency". In this section, "emergency" is not clearly defined. This conflicts with the statutory requirement that all ballots must be received by the County Recorder no later than 7:00 pm on election day. There is no room in the statute or any special authority granted to the SoS to alter this deadline.

Page 62, Section I(I)

The Draft EPM on page 72 confirms that early ballots cast in person or via a special elections board must be signature verified, while it also modifies this process by saying, these ballots "should not be invalidated based solely on an allegedly inconsistent signature absent other evidence that the signatures were not made by the same person." This modification eviscerates the effectiveness of signature verification and so violates the purpose of the statute.

Page 64, Section I(I)(9)

"The County Recorder or officer in charge of elections shall develop and implement secure ballot retrieval and custody procedures, which shall include the following:"

The words "Chain of Custody" was replaced with "Custody". Although this change may appear subtle, this is highly concerning. The removal of the word "Chain" reduces the requirement to maintain records from every point and exchange to only showing a record of possession.

"Chain of custody" is a legal term referring to the order and manner in which physical or electronic evidence in criminal and civil investigations has been handled.

Vs.

"Custody" is the state of physically holding or controlling a person or piece of property, or of having the right to do so.

Page 70, Section V, Paragraph 1

A.R.S. 16-591 has no restrictions on the challenge of an early ballot that meets the requirements for challenge. AZSOS is attempting to regulate restrictions to this statutory right.

AZSOS States, “Challenges to early ballots must be submitted prior to the opening of the early ballot affidavit envelope. Challenges received after the affidavit envelope containing the ballot has been opened must be summarily denied as untimely. ”

However, A.R.S. 16-591 does not regulate the time requirement, nor does it provide for an untimely rejection.

16-591. Grounds for challenging an elector

Any qualified elector of the county may orally challenge a person offering to vote as not qualified under section 16-121.01 or on the ground that the person has voted before at that election.

Therefore;

“ The proposed regulations exceed the scope of the Secretary’s statutory authorization or contravene an election statute’s purpose, and therefore cannot be approved. See Leach v. Hobbs, 483 P.3d 194, 198 ¶ 21 (Ariz. 2021) (“[A]n EPM regulation that exceeds the scope of its statutory authorization or contravenes an election statute’s purpose does not have the force of law.”); McKenna v. Soto, 481 P.3d 695, 699 (2021).”

Page 71, Section VI (A)(1), Paragraph 1

A.R.S. 16-550 clearly states that signatures must be compared with the signature on the registration record. The AZSOS attempting to add in additional documents as the voter’s control signature violates the language of the statute and is outside the authority granted by the legislature.

16-550. Receipt of voter’s ballot; cure period

A. Except for early ballots tabulated as prescribed in section 16-579.02, on receipt of the envelope containing the early ballot and the ballot affidavit, the county recorder or other officer in charge of elections shall compare the signatures thereon with the signature of the elector on the elector’s registration record. If the signature is

inconsistent with the elector's signature on the elector's registration record, the county recorder or other officer in charge of elections shall make reasonable efforts to contact the voter, advise the voter of the inconsistent signature and allow the voter to correct or the county to confirm the inconsistent signature. The county recorder or other officer in charge of elections shall allow signatures to be corrected not later than the fifth business day after a primary, general or special election that includes a federal office or the third business day after any other election. If the signature is missing, the county recorder or other officer in charge of elections shall make reasonable efforts to contact the elector, advise the elector of the missing signature and allow the elector to add the elector's signature not later than 7:00 p.m. on election day. If satisfied that the signatures correspond, the recorder or other officer in charge of elections shall hold the envelope containing the early ballot and the completed affidavit unopened in accordance with the rules of the secretary of state.

Therefore;

" The proposed regulations exceed the scope of the Secretary's statutory authorization or contravene an election statute's purpose, and therefore cannot be approved. See Leach v. Hobbs, 483 P.3d 194, 198 ¶ 21 (Ariz. 2021) ("[A]n EPM regulation that exceeds the scope of its statutory authorization or contravenes an election statute's purpose does not have the force of law."); McKenna v. Soto, 481 P.3d 695, 699 (2021)."

Pages 18-27, Section IV, C-J;

Pages 29-30, Section V, E-F;

Pages 30-43, Section VI-IX

Pages 52-53, Section I, B(5-7), To include footnotes 18 and 19

Pages 55-56, Section I, B(9)(B), To include all language with the exception of the final sentence beginning with "The voter may..."

Page 56, Section I, B(9)(C)(3)

Page 66, Section II, Paragraph 1, Sentence 1

Page 71-72, Section VI (A)(1), Paragraphs 4 and 6, including Footnote 24

Page 72, Section IV (B)(2), Last Paragraph

" The proposed regulations exceed the scope of

the Secretary's statutory authorization or contravene an election statute's purpose, and therefore cannot be approved. See Leach v. Hobbs, 483 P.3d 194, 198 ¶ 21 (Ariz. 2021) ("[A]n EPM regulation that exceeds the scope of its statutory authorization or contravenes an election statute's purpose does not have the force of law."); McKenna v. Soto, 481 P.3d 695, 699 (2021)."

Chapter 3: Ballot-By-Mail Elections

Chapter 3 appears to be within the AZSOS' scope and in compliance with the Arizona Revised Statutes.

Chapter 4: Voting Equipment

Page 88, Section I, Paragraph 2

"Thus, a voting system consists of the electronic voting equipment (including central count equipment, precinct voting equipment, and accessible voting equipment) and election management system (EMS) used to tabulate ballots. The voter registration system, electronic pollbooks, and ballot on demand printers are separate from the voting system."

It is patently untrue that these components do not require certification by the EAC. For example, the EAC certification of Dominion Voting System 5.5B (certified by the Arizona Secretary of State and used in Maricopa County) expressly states in the [EAC Certification](#) the following:

System Overview: The D-Suite 5.5-B Voting System is a paper-based optical Scan voting system with a hybrid paper/DRE option consisting of the following Major components: The Election Management System (EMS), the ImageCast Central (ICC), the ImageCast Precinct (ICP and ICP2), the ImageCast Evolution

(ICE), The ImageCast X (ICX) DRE w/ Reports Printer, ImageCast X (ICX) DRE w/ Voter-Verifiable Paper Audit Trail (VVPAT), and the ImageCast X ballot marking device (BMD). The D-Suite 5.5-B Voting System configuration is a modification from the EAC approved D-Suite 5.5 system configuration. Thus ballot-marking devices are expressly included in a voting system and therefore must be certified by the EAC, so the added sentence must be deleted because it conflicts with the EAC.

Please also note the [EAC Quick Start Guide](#) page 3. "Pre-Election Testing—Hardware"

"• *Test all components of your voting system before every election. Test scanners, voting machines, encoders, electronic poll books, printers, dials, buttons, card readers, scanner heads, modems, and exterior of voting booths. Example: If your ballot cards/supervisor cards are encoded with a specific election ID, they must be retested before each election.*"

EAC Certification of all components is required by federal regulation, and the Arizona Secretary of State has no authority whatsoever to delete, waive, alter, override, or ignore EAC certification. Thus the added sentence is unauthorized and must be deleted.

Page 92, Section II(D)(2), Paragraph 8

"To accommodate ballot printing and shipping timelines, counties that utilize a vendor to program the election may be notified of the selected precincts for the Secretary of State's L&A test prior to the completion of programming provided that the information on selected precincts shall be maintained as confidential, shall not be disclosed to the vendor that is programming the election, and shall be utilized only to ensure timely shipment of test ballots to the Secretary of State."

It seems unreasonable to believe that vendors cannot have all precinct ballot designs complete prior to the AZSOS L&A testing. By notifying a vendor what

precincts will be tested, it will ensure bias in the results of the testing. It is the equivalent of telling a test subject what questions to study for a “random” test.

Page 99, Section III(A)(7)

“ Must be witnessed by two or more election staff members (of different political parties if possible) when being moved or transferred, which includes an inventory of the equipment”

2019: “Must be witnessed by two or more election staff members (of different political parties if possible) when being moved or transferred, which includes an inventory of the equipment and **chain of custody** before and after the move or transfer.”

VS.

2023: “Must be witnessed by two or more election staff members (of different political parties if possible) when being moved or transferred, which includes an inventory of the equipment and **documentation of the custody** before and after the move or transfer. (See Citation Notes for **Page 64, Section I(I)(9)**)

Pages 79-87, Section I

“ The proposed regulations exceed the scope of the Secretary’s statutory authorization or contravene an election statute’s purpose, and therefore cannot be approved. See Leach v. Hobbs, 483 P.3d 194, 198 ¶ 21 (Ariz. 2021) (“[A]n EPM regulation that exceeds the scope of its statutory authorization or contravenes an election statute’s purpose does not have the force of law.”); McKenna v. Soto, 481 P.3d 695, 699 (2021).”

Chapter 5: Accommodating Voters With Disabilities

Page 110, Section II, Paragraph 4, end of Sentence 1 and All of Paragraph 5

“with the criteria set out in this section”

This statement implies that the AZSOS has the ability to set the criteria for election day inspections.

Page 106-107, Section I, Including Footnotes 28-30

Page 108-109, Section III, Paragraphs 2, Including Subsections 1-6

Page 110, Section IV, Footnote 32

" The proposed regulations exceed the scope of the Secretary's statutory authorization or contravene an election statute's purpose, and therefore cannot be approved. See Leach v. Hobbs, 483 P.3d 194, 198 ¶ 21 (Ariz. 2021) ("[A]n EPM regulation that exceeds the scope of its statutory authorization or contravenes an election statute's purpose does not have the force of law."); McKenna v. Soto, 481 P.3d 695, 699 (2021)."

Chapter 6: Regulation of Petition Circulators

These regulations are defined by our legislators in Arizona Revised Statute as a scope of the EPM.

Therefore the entirety of Section 3 is not within the scope of the EPM;

" The proposed regulations exceed the scope of the Secretary's statutory authorization or contravene an election statute's purpose, and therefore cannot be approved. See Leach v. Hobbs, 483 P.3d 194, 198 ¶ 21 (Ariz. 2021) ("[A]n EPM regulation that exceeds the scope of its statutory authorization or contravenes an election statute's purpose does not have the force of law."); McKenna v. Soto, 481 P.3d 695, 699 (2021)."

Chapter 7: Presidential Preference Election

Chapter 7 appears to be within the AZSOS' scope and in compliance with the Arizona Revised Statutes.

Chapter 8: Pre-Election Procedures

Page 127, Section II, Footnote 38

This is an egregious overreach of the AZSOS that encroaches on the rights granted to the political party by A.R.S. 16-531(A). This is a clear violation of the statute:

16-531. Appointment of election boards; qualifications

A. When an election is ordered, and not less than twenty days before a general or primary election, the board of supervisors shall appoint for each election precinct, voting center or other voting location one inspector, one marshal, two judges and as many clerks of election as deemed necessary. The inspector, marshal, judges and clerks shall be qualified voters of the precinct for which appointed, except if there is not a sufficient number of persons available to provide the number of appointments required, the inspector, marshal, judges and clerks shall be qualified voters of this state. The inspector, marshal and judges shall not have changed their political party affiliation or their no party preference affiliation since the last preceding general election, and if they are members of the two political parties that cast the highest number of votes in the state at the last preceding general election, they shall be divided equally between these two parties. There shall be an equal number of inspectors in the various precincts in the county who are members of the two largest political parties. In each precinct where the inspector is a member of one of the two largest political parties, the marshal in that precinct shall be a member of the other of the two largest political parties. Whenever possible, any person appointed as an inspector shall have had previous experience as an inspector, judge, marshal or clerk of elections. If there is no qualified person in a given precinct, the appointment of an inspector may be made from names provided by the county party chairman. If not less than ninety days before the election the chairman of the county committee of either of the parties designates qualified voters of the precinct, or of another precinct if there are not sufficient members of that party available in the precinct to provide the necessary representation on the election board as judge, such designated qualified voters shall be appointed. The judges, together with the inspector, shall constitute the board of elections. Any registered voter in the election precinct, or in another election precinct if there are not sufficient persons available in the election precinct for which the clerks are being appointed, may be appointed as clerk.

Therefore;

" The proposed regulations exceed the scope of

the Secretary's statutory authorization or contravene an election statute's purpose, and therefore cannot be approved. See Leach v. Hobbs, 483 P.3d 194, 198 ¶ 21 (Ariz. 2021) ("[A]n EPM regulation that exceeds the scope of its statutory authorization or contravenes an election statute's purpose does not have the force of law."); McKenna v. Soto, 481 P.3d 695, 699 (2021)."

Page 132, Section III, Paragraph 1, Sentence 4

"Observation at nonpartisan elections may be permitted at the discretion of the officer in charge of elections."

The statute's use of the term may also, indicates in addition to the political party NOT in-lieu of.

And

Page 133, Section III (A), Paragraph 4, Sentence 2

"Further, the officer in charge of elections may require that observers at the central counting place or ballot tabulation center be registered voters of the county."

These are egregious overreaches of the AZSOS that encroaches on the rights granted to the political party under A.R.S. 16-621(A).

The AZSOS does not have the authority to write policy that limits the rights of the voter or the political party in Arizona Revised Statute. This is a clear Violation and overreach:

16-621. Proceedings at the counting center

A. All proceedings at the counting center shall be under the direction of the board of supervisors or other officer in charge of elections and shall be conducted in accordance with the approved instructions and procedures manual issued pursuant to section 16-452 under the observation of representatives of each political party and the public. The proceedings at the counting center may also be observed by up to three additional people representing a candidate for nonpartisan office, or representing a political committee in support of or in opposition to a ballot measure, proposition or question. A draw by lot shall determine which three groups or candidates shall have representatives participate in the observation at the counting center. Persons representing a

candidate for nonpartisan office or persons or groups representing a political committee in support of or in opposition to a ballot measure, proposition or question, who are interested in participating in the observation, shall notify the officer in charge of elections of their desire to be included in the draw not later than seventeen days before the election. After the deadline to receive submissions from the interested persons or groups, but prior to fourteen days before the election, the county officer in charge of elections shall draw by lot, from the list of those that expressed interest, three persons or groups and those selected shall be notified and allowed to observe the proceedings at the counting center. If a group is selected the group may alter who represents that group for different days of observation but on any given observation day a selected group shall not send more than one observer. A group may rotate an observer throughout the day. Only those persons who are authorized for the purpose shall touch any ballot or ballot card or return. All persons who are engaged in processing and counting of the ballots shall be qualified electors, shall be deputized in writing and shall take an oath that they will faithfully perform their assigned duties. There shall be no preferential counting of ballots for the purpose of projecting the outcome of the election. If any ballot, including any ballot received from early voting, is damaged or defective so that it cannot properly be counted by the automatic tabulating equipment, a true duplicate copy shall be made of the damaged or defective ballot in the presence of witnesses and substituted for the damaged or defective ballot. All duplicate ballots created pursuant to this subsection shall be clearly labeled "duplicate" and shall bear a serial number that shall be recorded on the damaged or defective ballot.

Therefore;

" The proposed regulations exceed the scope of the Secretary's statutory authorization or contravene an election statute's purpose, and therefore cannot be approved. See *Leach v. Hobbs*, 483 P.3d 194, 198 ¶ 21 (Ariz. 2021) ("[A]n EPM regulation that exceeds the scope of its statutory authorization or contravenes an election statute's purpose does not have the force of law."); *McKenna v. Soto*, 481 P.3d 695, 699 (2021)."

In addition,

The Draft EPM on page 133 confirms the political parties' role in appointing observers at polling locations, but limits this role by adding, "The County

Recorder or officer in charge of elections may require reasonable deadlines for Advance notice of appointments." With no definition for "reasonable", this change leaves open the possibility to erase this fundamental right and role of the parties, and thereby offends the statute, 16-590, that defines it.

Page 137, Section V, Paragraph 1, Sentence 2

And

Page 153, Section V(F)(2), Paragraph 1, Sentence 2

The AZSOS does not have the authority to grant the Board of Supervisors the right to abdicate their prescribed duties to the office of the Recorder. A.R.S. 16-503(A) clearly state that the Board of Supervisors are responsible for the preparing and providing the ballots for an election. This statement is outside the scope of the AZSOS as he does not have the authority to relieve and elected officer of his/her statutory duties.

16-503. Duty to prepare and provide ballots; cost of printing ballots and instruction cards as public expense

A. **The board of supervisors**, and in city and town elections, the city or town clerk, shall prepare and provide ballots containing the names of all persons whose certificates of nomination have been filed with them. The ballots shall be printed and ready for inspection by the candidates and their agents at least ten days before a general election and at least five days before a city or town election.

And

16-461. Sample primary election ballots; submission to party chairmen for examination; preparation, printing and distribution of ballot

D. **The board of supervisors** shall have printed mailer-type sample ballots for a primary election and shall mail at least eleven days before the election one sample ballot of a political party to each household containing a registered voter of that political party unless that registered voter is on the active early voting list established pursuant to section 16-544. Each sample ballot shall contain the following statement: "This is a sample ballot and cannot be used as an official ballot under any circumstances". A certified claim shall be presented to the

secretary of state by the board of supervisors for the actual cost of printing, labeling and postage of each sample ballot actually mailed, and the secretary of state shall direct payment of the authenticated claim from funds of the secretary of state's office.

Therefore;

" The proposed regulations exceed the scope of the Secretary's statutory authorization or contravene an election statute's purpose, and therefore cannot be approved. See Leach v. Hobbs, 483 P.3d 194, 198 ¶ 21 (Ariz. 2021) ("[A]n EPM regulation that exceeds the scope of its statutory authorization or contravenes an election statute's purpose does not have the force of law."); McKenna v. Soto, 481 P.3d 695, 699 (2021).

Page 157, Section VII, Paragraph 6, Bullet Point 7

This is a duplicate of number 3 of same paragraph

Page 124, Section I(E)(14);

Page 153, Section V(F)(2), Paragraph 2, Bullet Point 4;

Page 160, Section VIII(B), Bullet Point 10, Paragraphs 2 and 3;

" The proposed regulations exceed the scope of the Secretary's statutory authorization or contravene an election statute's purpose, and therefore cannot be approved. See Leach v. Hobbs, 483 P.3d 194, 198 ¶ 21 (Ariz. 2021) ("[A]n EPM regulation that exceeds the scope of its statutory authorization or contravenes an election statute's purpose does not have the force of law."); McKenna v. Soto, 481 P.3d 695, 699 (2021)."

Chapter 9: Conduct of Elections/Election Day Operations

Page 175, Section III, (C), Bullet Point 6

"6.U.S. Department of Justice or other authorized federal government observers."

According to Article I, Section 4, Clause 1: The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof

The Supreme Court has interpreted the Elections Clause expansively, enabling states to provide a complete code for congressional elections, not only as to times and places, but in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns. The Court has further recognized the states' ability to establish sanctions for violating election laws as well as authority over recounts and primaries.

The Federal Government has no jurisdiction over our elections process and should NOT be authorized to interfere. The AZSOS including this language grants authorities not otherwise provided for.

Therefore;

" The proposed regulations exceed the scope of the Secretary's statutory authorization or contravene an election statute's purpose, and therefore cannot be approved. See Leach v. Hobbs, 483 P.3d 194, 198 ¶ 21 (Ariz. 2021) ("[A]n EPM regulation that exceeds the scope of its statutory authorization or contravenes an election statute's purpose does not have the force of law."); McKenna v. Soto, 481 P.3d 695, 699 (2021)."

Page 176, Section III (D), Paragraph 2, Bullet Point 2

“•Persons who witness problems at a voting location should not speak to or accost a voter in an attempt to “enforce” the law, but rather inform the inspector or marshal to allow them to resolve the issue.”

And

Page 176, Section III (D) Paragraph 3 in it's entirety

“In addition to the potentially intimidating conduct outlined above, the following may also be considered intimidating conduct inside or outside the polling place:

- Aggressive behavior, such as raising one's voice or taunting a voter or poll worker;
- Using threatening, insulting, or offensive language to a voter or poll worker;

- Blocking the entrance to a voting location;
- Disrupting voting lines;
- Following voters or poll workers coming to or leaving a voting location, including to or from their vehicles;
- Intentionally disseminating false or misleading information at a voting location, such as flyers or communications that misstate the date of the election, hours of operation for voting locations, addresses for voting locations, or similar efforts intended to disenfranchise voters;
- Directly confronting, questioning, photographing, or videotaping voters or poll workers in a harassing or intimidating manner, including when the voter or poll worker is coming to or leaving the polling location;
- Asking voters for “documentation” or other questions that only poll workers should perform;
- Raising repeated frivolous voter challenges to poll workers without any good faith basis, or raising voter challenges solely based on race, ethnicity, national origin, language, religion or disability; or
- Posting signs or communicating messages about penalties for “voter fraud” in a harassing or intimidating manner.”

These regulations prohibit free speech and attempt to criminalize citizens for exercising the free speech rights without defining any parameters for due process. Who gets to determine what is “aggressive”, “taunting” or more importantly “false” or “misleading”? The AZSOS does not have the authority to be the arbiter of truth nor does the AZSOS have the authority to appoint poll worker as speech police.

Therefore;

“ The proposed regulations exceed the scope of the Secretary’s statutory authorization or contravene an election statute’s purpose, and therefore cannot be approved. See Leach v. Hobbs, 483 P.3d 194, 198 ¶ 21 (Ariz. 2021) (“[A]n EPM regulation that exceeds the scope of its statutory authorization or contravenes an election statute’s purpose does not have the force of law.”); McKenna v. Soto, 481 P.3d 695, 699 (2021).”

Page 187, Section VII, Paragraph 7, Sentence 2

“To prevent harassment and intimidation of the challenged voter, the person making the challenge may not speak to the challenged voter. ”

There is no restriction in A.R.S. 16-592 to impose such restrictions on the challenger. Once again the AZSOS is implementing free speech clauses outside of his scope or authority.

Therefore;

“ The proposed regulations exceed the scope of the Secretary’s statutory authorization or contravene an election statute’s purpose, and therefore cannot be approved. See Leach v. Hobbs, 483 P.3d 194, 198 ¶ 21 (Ariz. 2021) (“[A]n EPM regulation that exceeds the scope of its statutory authorization or contravenes an election statute’s purpose does not have the force of law.”); McKenna v. Soto, 481 P.3d 695, 699 (2021).”

Chapter 10: Central Counting Place Procedures

Page 193, Section 1 (Removal of Section C)

2019 “Manual Ballot Counting: If it becomes impracticable to count all or some of the ballots with tabulating equipment, the officer in charge of elections may direct that ballots be counted manually, following the provisions governing the counting of paper ballots. No valid ballot shall be left uncounted.”

VS.

2023 Removed

This section was removed for the 2023 draft. This is of concern because it appears to be another step exposing the AZSOS’ desire to impress the same false narrative that Election officers do not have the authority to hand count ballots under any circumstance.

Page 194, Section II, Paragraphs 3 (Sentence 2) and Paragraph 4

“Political party chairpersons may nominate persons to fill board positions, but the board members are appointed at the discretion of the officer in charge of elections.”

Regulation is clear in A.R.S. 16-531(A) that the County Chairman may submit these names and positions should be filled based on experience and recommendations of the Chair. This is outside the scope of the AZSOS EPM

16-531. Appointment of election boards; qualifications

A. When an election is ordered, and not less than twenty days before a general or primary election, the board of supervisors shall appoint for each election precinct, voting center or other voting location one inspector, one marshal, two judges and as many clerks of election as deemed necessary. The inspector, marshal, judges and clerks shall be qualified voters of the precinct for which appointed, except if there is not a sufficient number of persons available to provide the number of appointments required, the inspector, marshal, judges and clerks shall be qualified voters of this state. The inspector, marshal and judges shall not have changed their political party affiliation or their no party preference affiliation since the last preceding general election, and if they are members of the two political parties that cast the highest number of votes in the state at the last preceding general election, they shall be divided equally between these two parties. There shall be an equal number of inspectors in the various precincts in the county who are members of the two largest political parties. In each precinct where the inspector is a member of one of the two largest political parties, the marshal in that precinct shall be a member of the other of the two largest political parties. Whenever possible, any person appointed as an inspector shall have had previous experience as an inspector, judge, marshal or clerk of elections. If there is no qualified person in a given precinct, the appointment of an inspector may be made from names provided by the county party chairman. If not less than ninety days before the election the chairman of the county committee of either of the parties designates qualified voters of the precinct, or of another precinct if there are not sufficient members of that party available in the precinct to provide the necessary representation on the election board as judge, such designated qualified voters shall be appointed. The judges, together with the inspector, shall constitute the board of elections. Any registered voter in the election precinct, or in another election precinct if there are not sufficient persons available in the election precinct for which the clerks are being appointed, may be appointed as clerk.

Therefore;

***" The proposed regulations exceed the scope of
the Secretary's statutory authorization or contravene an election***

statute's purpose, and therefore cannot be approved. See Leach v. Hobbs, 483 P.3d 194, 198 ¶ 21 (Ariz. 2021) ("[A]n EPM regulation that exceeds the scope of its statutory authorization or contravenes an election statute's purpose does not have the force of law."); McKenna v. Soto, 481 P.3d 695, 699 (2021)."

Page 195, Section II(A), Paragraph 3

2019: "The Receiving Board shall ensure proper **chain of custody documentation** for all items received."

VS.

2023: "The Receiving Board shall ensure proper **documentation** for all items received."

(See Citation Notes for **Page 64, Section I(I)(9)**)

Page 199, Section II(D)(3), Bullet Point 1

"•(for out-of-precinct ballots, only the voter's selections for races and ballot measures for which the voter is eligible to vote shall be duplicated onto the correct ballot style);"

" The proposed regulations exceed the scope of the Secretary's statutory authorization or contravene an election statute's purpose, and therefore cannot be approved. See Leach v. Hobbs, 483 P.3d 194, 198 ¶ 21 (Ariz. 2021) ("[A]n EPM regulation that exceeds the scope of its statutory authorization or contravenes an election statute's purpose does not have the force of law."); McKenna v. Soto, 481 P.3d 695, 699 (2021)."

Page 203, Section II(E), Paragraph 2

2019: "Properly credentialed political party observers may observe the proceedings from inside the room where they happen."

Vs.

2023: Removed in this 2023 draft.

This is an attempt to further reduce the authority granted to a political party under Arizona Revised Statute. This is beyond the scope intended for the EPM.

Therefore;

" The proposed regulations exceed the scope of the Secretary's statutory authorization or contravene an election statute's purpose, and therefore cannot be approved. See Leach v. Hobbs, 483 P.3d 194, 198 ¶ 21 (Ariz. 2021) ("[A]n EPM regulation that exceeds the scope of its statutory authorization or contravenes an election statute's purpose does not have the force of law."); McKenna v. Soto, 481 P.3d 695, 699 (2021)."

Chapter 11: Hand Count Audit

Page 213, Note 56

The Draft EPM on page 213 note 56 states, "A county lacks the discretion to conduct a hand count of all ballots cast at precincts or voting centers located in the county. Likewise, a county lacks the discretion to hand count all early ballots cast in the county." This is not settled law with adequate foundation to be codified in the EPM.

Chapter 12: Post-Election Day Procedures

Page 234, Section I, Footnote 59

"Although Arizona does not observe Daylight Savings Time (DST), the Navajo Nation, including those portions in Arizona, does. Therefore, when DST is in effect in the Navajo Nation, voting locations in the Navajo Nation preemptively close at 7:00 p.m. DST. "

" The proposed regulations exceed the scope of the Secretary's statutory authorization or contravene an election

statute's purpose, and therefore cannot be approved. See Leach v. Hobbs, 483 P.3d 194, 198 ¶ 21 (Ariz. 2021) ("[A]n EPM regulation that exceeds the scope of its statutory authorization or contravenes an election statute's purpose does not have the force of law."); McKenna v. Soto, 481 P.3d 695, 699 (2021)."

Chapter 13: Certifying Election Results

Pages 240-244, Section II(A)(4)(a-f)

Pages 248-249, Section VI, Paragraph 4

" The proposed regulations exceed the scope of the Secretary's statutory authorization or contravene an election statute's purpose, and therefore cannot be approved. See Leach v. Hobbs, 483 P.3d 194, 198 ¶ 21 (Ariz. 2021) ("[A]n EPM regulation that exceeds the scope of its statutory authorization or contravenes an election statute's purpose does not have the force of law."); McKenna v. Soto, 481 P.3d 695, 699 (2021)."

Chapter 14: Campaign Finance

These regulations are defined by our legislators in Arizona

Revised Statute as a scope of the EPM.

Therefore the **entirety of Chapter 14** not within the scope of the EPM;

" The proposed regulations exceed the scope of the Secretary's statutory authorization or contravene an election statute's purpose, and therefore cannot be approved. See Leach v. Hobbs, 483 P.3d 194, 198 ¶ 21 (Ariz. 2021) ("[A]n EPM regulation that exceeds the scope of its statutory authorization or contravenes an election statute's purpose does not have the force of law."); McKenna v. Soto, 481 P.3d 695, 699 (2021)."

"Truth will ultimately prevail where there is pain to bring it to light."
George Washington

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"The life of the nation is secure only while the nation is honest, truthful, and virtuous." –Fredrick Douglass