Arizona's Election Readiness after the August 4 Primary

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Arizona's management of the August 4 primary provides encouraging signs that the state is prepared for the November general election. The state managed the 50% increase in overall primary turnout and the moderate increase in mail voting with very few issues. With regard to in-person voting, while some minor issues surfaced regarding poll workers shortages, printing of incorrect ballots and confusion regarding polling place relocations, by and large, between its March and August elections, the state implemented substantial measures that adequately addressed the needs and safety of most in-person voters and poll workers. One of the biggest remaining challenges for the state is to ensure that voters and election workers are educated about, and prepared for, possible last-minute rule-changes resulting from pending litigation. Additionally, scale matters when considering the ability to administer an election smoothly, and though both the mail and in-person voting infrastructures seem relatively robust, the greater turnout in the general election will surely put both to the test.

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I. Intro

Arizona has held two primary elections since COVID-19 swept the nation, giving the state two chances to adopt and test-run pandemic accommodations before the November general election. The state implemented a host of new measures between the March 17 Democratic presidential preference primary and the August 4 state-wide primary (some of which are detailed in our earlier Arizona profile memo dated July 27) to adapt elections administration to pandemic circumstances.

Arizona saw few problems in its August 4 primary. Mail voting on August 4 went smoothly, boosted by the state's history as a primarily mail-voting state (or "PEVL" voting, as it's called in the state, for "Permanent Early Voting List"). In the 2018 mid-term elections, for example, 79 percent of votes in Arizona were cast by mail. The state did, however, experience some minor issues with in-person voting on August 4 primarily related to poll worker shortages and confusion around polling place relocations.

Arizona heads into the general election season as one of the country's per-capita coronavirus hot spots. Given the state's significance as one of the battleground states for both the presidential election and control of the U.S. Senate, the consequences of the state's decisions concerning election administration could extend far beyond the Grand Canyon State.

II. Key Election Facts

The August 4 primary included races for U.S. Senate, U.S. House of Representatives, and the state legislature. Voter turnout was high across the board, regardless of partisan affiliation. Total turnout reached a historic high of 1,451,315 total votes (36.4 percent of registered voters), compared with 989,754 total votes (29.1 percent of registered voters) in Arizona's 2016 August primary. While these turnout figures are impressive in the context of state-specific competitions, they represent a fraction of the turnout expected in November. By way of comparison, in 2016, 2.7 times as many Arizonans voted in the general election as compared with the August primary; the 2016 August primary had nearly one million votes (29 percent of registered voters), while the 2016 general election clocked in nearly 2.7 million (74 percent of registered voters). In this respect, while the August primaries are a useful test run, they are not necessarily a perfect predictor of what will come in November, when the state will need to process a much higher volume of votes.

III. Challenges Faced in Adapting Election Procedures to the Pandemic

A. Vote-By-Mail in August and Outlook for November

Both total turnout and rates of mail voting reached an all-time high on August 4. Close to 88% of all votes cast in Arizona, just over 1.27 million, were PEVL votes, as compared to 79% in the 2018 elections and 83% in the 2016 August primary.

Due to the high volume of mail voting and the notice and cure period for signature defects (voters have until the fifth business day after an election to correct a signature), the official vote count was not certified until August 17, thirteen days after the election, the last date allowed by state law. The anticipated higher turnout for the general election, combined with the increased percentage of mail votes, will test the state's ability to meet the 27-day post-election certification deadline for the general election, and otherwise manage the high volume of mail ballots.

Despite increased volumes, mail voting in the state worked well on August 4. There were no news reports of mail vote tabulation delays or major pile ups and backlogs as there have been in past elections. This is likely due to three factors. First, the state passed a law in April 2019 that allows election officials to start tallying incoming ballots 14 days before Election Day, instead of the previously-allowed seven days. This has helped counties avoid large mail ballot count backlogs. In past years, counties reported backlogs of hundreds of thousands of ballots that could not be counted until seven days before Election Day. Second, some counties, such as Maricopa—the state's largest county with 65% of the state's voters—encouraged voters to mail their ballots by the Wednesday before Election Day (the receipt deadline) so they could be processed sooner. And third, in Maricopa County, election system upgrades and increased staffing helped the county process ballots much faster than in previous years. Maricopa County Recorder Adrian Fontes explained "...we more than doubled the staff at the elections department...Now, I've got trained career professionals, subject matter experts, processing ballots. They can supervise those citizen boards to make sure they're doing it right and we don't have to stop to send the experts out to set up polling places. Now we've got the resources, the human resources and the money we need, to make this all happen."

Though mail-voting was almost flawless on August 4, there was a hitch. Some Pinal County voters reported not receiving a complete mail ballot for their towns or cities. An investigation by the Arizona Secretary of State and county elections board found that almost 400 mail ballots had been misprinted across the county as a result of a mapping issue that mislabeled voters' geographical precinct. Voters who had already returned a faulty ballot were provided a new ballot, but if they didn't submit the new ballot, their original ballot was counted. This snafu impacted some tight races in a couple cities and towns across Pinal. The Secretary of State's office also found that fewer than 50 ballots in Gila County experienced similar precinct mislabeling that led to misprinted ballots.

A bigger issue to watch, however, is the impact of potential mail delays on the number of ballots rejected. In the August primary, more than 30,000 votes, over two percent of all ballots mailed, were discarded for lateness because they arrived after the 7:00 PM Election Day deadline. While late ballots are received and rejected in every election, potential mail delays, feared by some, could increase the number of rejected ballots in November. July mail-delivery delays prompted the Postal Service's General Counsel on July 29 to alert Arizona—and 45 other states—to instruct voters to send in their ballot at least a week before Election Day to ensure the ballot is received on time. In the August primary, an estimated one in five ballots cast—more than 300,000 votes—were received during the week leading up to Election Day, a figure likely to be more than double in November. Mail delays could result in tens of thousands of additional rejected ballots in November.

The Postal Service's letter warns that Arizona law does not leave enough time for late-requested mail ballots to travel by mail in both directions. Under the state law, voters can request a mail ballot up to 11 days before the Election Day on which it is due—insufficient time to allow for processing of the request plus one week to travel by mail in each direction. So, despite assurances from the Postmaster General that he has suspended operational changes feared to cause delays, it will be important to monitor mail delays to avoid an excess of late arriving ballots in November. The state has time to mitigate this risk by prominently warning voters to mail their ballots early or to drop them off in person at drop boxes, polling places, and vote centers by 7:00 PM on Election Day.

Indeed, the state is starting to address this risk by encouraging both early voting and the return of mail ballots in the mail a week before Election Day. Maricopa County is already making sure voters know their options and are able to check the status of their mail ballot. The county allows voters to track the status of their PEVL ballots. The text message service notifies voters when their ballot is mailed out to them, received by the county, verified, and sent to be counted. The county is also providing about 10-20 drop box locations (some locations are still pending approval by the city), including drive through drop boxes, for voters to drop off mail ballots through Election Day.

B. In-Person Voting

Access & Staffing

While almost 80% of Arizona voters receive their ballots by mail, many continue to vote in person, both during the state's lengthy early voting period (which starts 27 days before each election) and on Election Day itself. The state has taken significant measures to ensure the availability of convenient and safe in-person voting, and with a few exceptions, it succeeded in the August 4 primary.

Governor Doug Ducey (R) signed an executive order (EO 2020-50) on July 22, 2020 designed to help counties recruit poll workers. In the March election, many retirees who typically volunteer stayed home because they are in a higher-risk category for coronavirus. The executive order allowed state employees to serve as poll workers on Election Day (for both the August primary and general election) without impacting their pay or leave time, helping to staff polling locations so they would not close and create long lines. Maricopa County, as part of officials' back-up plan, trained dozens of extra poll workers for the August 4 primary, in case some dropped out at the last minute. And according to County Recorder Adrian Fontes, Maricopa plans to hire about 115% of the required number of poll workers for November.

Securing polling locations for in-person voting proved to be a challenge for the August primary, as many usual locations did not want to invite an influx of people into their buildings. The July 22 executive order also helped free up suitable polling locations by allowing election officials to use state buildings for polling places. Additionally, in Maricopa County, officials reserved larger facilities like shopping malls and convention centers to support physical distancing, and leased the vote centers so the county could have more control over facility operations, to ensure the facilities would open and would open on time.

Of the 51,500 voters who showed up to vote in person in Maricopa County on August 4, no far-reaching issues or unduly long lines were reported. This success can be attributed to a number of measures the county implemented to ensure convenient and safe in-person polling for both voters and poll workers. First, Maricopa uses a proprietary "SiteBook" check-in technology system to check in voters at vote centers, which it credits with faster check in and shorter lines.

Additionally, the entire county shifted to a vote center model in March 2020, a model in which voters can vote at any vote center in the county, rather than being limited to a particular precinct. This enabled the county to substitute nearly 500 precinct-specific polling places for about 100 vote centers serving all county residents for the August 4 primary. The vote center model also reduced the number of required poll workers from about 3,600 (at traditional polling places) to about 1,000 (at vote centers), thereby helping to avoid poll worker shortages, last-minute polling place closures, and the

related confusion experienced in some other states. Yuma County followed suit and also adopted the [vote center model](#) for the August primary.

Moreover, most vote centers were open for the state's extended early voting period, which starts [27 days before](#) Election Day, including some evenings and weekends, in order to "allow voters increased opportunities to vote before Election Day, hopefully reducing the number of visitors on Election Day and allowing more opportunity for physical distancing," according to the county's [Primary Election Training Manual](#). By August 1, three days before the August 4 primary, Maricopa County had opened [80 of its 100 early voting centers](#), and it had opened an additional 20 centers by August 2. The large voter centers, and their availability for early voting dates and hours, were credited with [shortening election day lines and enabling more socially distanced in-person voting](#). In response, Arizona Secretary of State Katie Hobbs [concluded](#) that vote centers "make voting more accessible and less complicated for people."

Maricopa County's shift to the vote center model also [contributed](#) to a substantial decrease in the rate of provisional ballots. Voter confusion regarding assigned polling places is no longer an issue since voters are eligible to vote at any vote center. With the vote center model, there is no such thing as "out-of-precinct voting." By way of comparison, in 2012, Maricopa County had 120,000 provisional ballots; in this election, the county had only [1,300 provisional ballots](#).

Arizona's Native American community also took helpful measures to support in-person voting. The Executive Director of the Navajo Department of Health issued an [emergency order](#) (EO No. 2020-009) deeming voting an essential activity, which exempted those able to cast a ballot on the Navajo Nation from curfews and stay-at-home orders for the purpose of voting. In light of the pandemic-related closures of government buildings traditionally used for in-person voting, Navajo leaders developed creative new voting venues. In Coconino County, for example, leaders [set up outdoor voting](#), and the Secretary of State's office sent mobile-hand washing stations.

Snafus

Arizona did face a limited number of issues on August 4 regarding the relocation of polling places and vote centers. There were [reports](#) in Maricopa County of about 50 calls to a voter advocacy group expressing confusion in finding voting locations on Election Day, due to the new vote center model and improperly marked locations, confounded by technical issues as the state's [voter information portal](#) improperly displayed nearest voting locations on mobile devices. Additionally, the group received one report of a poll worker turning away a voter in line before polls closed at 7:00 PM. Despite these minor issues, there were no indications of any systemic countywide problems in Maricopa County, home to 2.4 million voters including Phoenix.

Pima County, home of Tucson, also experienced a few in-person voting snafus. In mid-July, the county had a shortfall of 150 poll workers out of the 1,800 deemed necessary to operate polling sites. On Election Day, at one polling site, forty-one Republican voters were able to vote only in federal races after they received ballots that excluded local and state races. These voters were not allowed to correct the error after they submitted their deficient, but completed, ballot. The issue was a human error by volunteer poll workers.

Elsewhere in the county, some voters were left scrambling on Election Day when they learned that a polling precinct, located at the Sopori School in Amado for the past 35 years, was moved to a location 25 miles away. An online calendaring system used by the school inadvertently rejected the county's request to use the site as a polling place because it was set to reject all requests during the pandemic, as the building was generally closed for public activities. By the time the school district discovered the mistake, it was a week before the election and too late. Based on comparatively low in-person turnout for that precinct relative to prior elections, some suspect that some voters in the precinct did not vote as a result of the confusion.

Other counties, such as Mohave County, had difficulty staffing early and Election Day voting locations. The county reported staffing 37 polling locations with "skeleton crews" after retaining only 250 of the usual 400 poll workers.

Some Native voters on reservations had more limited access to early voting. For instance, the Pascua Yaqui Tribe in southern Arizona has not had an early voting site since 2018—when it was cancelled by the Pima County Recorder, apparently without conversations with tribal leaders—forcing many tribal members to travel up to two hours round-trip on public transportation to vote early. Other Native voters had less time to vote; leaders of the Havasupai tribe requested shorter voting hours to limit the potential transmission of COVID-19. Some reports also indicate that Native Americans have been more hesitant to adopt mail-in voting due to a history of disenfranchisement and cultural, socioeconomic, and language barriers. Against this backdrop, limited in-person voting options have been particularly frustrating to some.

Finally, the state reported minor issues with online registration for in-person voting. Arizona's voter portal allowed roughly 2,100 individuals to sign up for in-person voting even though they did not provide an Arizona driver's license or other required identifying documentation. The system eventually flagged these individuals as having insufficient documentation and the state subsequently sent letters to affected voters—but some voters said they weren't notified of the issue. Ultimately, those affected were permitted to vote so long as they started the registration process prior to the registration deadline and completed it before the actual election.

Health and Safety

There were no reported health-related issues during the August 4 primary, likely attributable to the significant health and safety measures taken by both state and county election administrators to protect the health and safety of both voters and poll workers.

The state took significant safety measures to prepare for the August 4 primary. On July 2, 2020, Governor Doug Ducey and Secretary of State Hobbs announced that $9 million in CARES Act funding would be allocated to fund AZVoteSafe, a state plan to ensure voter and poll worker safety. The funding was allocated to the following initiatives in approximately these amounts:

- $5 million to election departments and country recorders for their COVID-19 response initiatives, such as increasing the number of ballot drop-off locations, hiring additional temporary staff and poll workers, and expanding curbside voting.

- $1.5 million to increase early voting opportunities, especially in tribal and rural communities.

- $1.5 million to efforts to inform voters of their voting options.

- $1 million towards purchases of personal protective equipment (PPE and sanitation supplies for voting locations, such as face masks, face shields, gloves, hand sanitizer, disinfectant spray, disposable pens, and, in some areas, handwashing stations.

The state also released (i) the 2020 AZVoteSafeGuide, which outlines voters' options to vote early, vote by mail, or vote in person, and suggests precautions for in-person voting, such as wearing a face covering, bringing one's own pen, maintaining physical distancing, washing one's hands, and avoiding touching one's face, and (ii) Guidance for Reducing COVID-19 Risks at In-Person Voting Locations, with numerous suggestions for reducing risks when voting in person.

Some counties also supplemented state-wide measures with their own health and safety resources. Maricopa county released detailed plans for addressing the health risks of COVID-19 in the August 4 primary. In addition to increasing access to mail voting, these plans aimed to ensure safety during in-person voting by transitioning to the vote center model, establishing additional safety protocols, and expanding early in-person voting. As indicated above, most vote centers were about 2,000 square feet, allowing for socially distanced in-person voting, and were also equipped with hand-washing and hand sanitizer stations.

The county also developed training materials for poll workers that addresses vote center safety in the pandemic, such as a "Health and Safety" training video and a new training manual for poll workers. The training manual requires the following COVID-19 safety accommodations for both poll workers and voters at vote centers:

> All locations will implement heightened safety and cleaning measures designed in collaboration with the Maricopa County Health Department. Safety and cleaning measures include:
>
> - **Physical distancing:** Voting locations will be large enough to allow for adequate physical distancing. Plans are to separate check-in stations, voting booths, precinct tabulators, and areas for standing in line by at least 6 feet. Signage and markers will be used to implement physical distancing for voters when standing in line outside.
>
> - **Protective safety supplies:** All voters will be offered gloves during the check-in and voting process and Poll Workers will be provided with face masks, face shields and gloves to wear while working at voting locations.
>
> - **Frequent cleaning and disinfecting:** Poll Workers will be asked to clean and disinfect high touch surfaces every 30 minutes. If a voter chooses not to wear gloves during check-in and while voting, those surfaces will be cleaned immediately after they are used by the voter.
>
> - **Practicing good hygiene:** Poll Workers will be asked to monitor themselves for symptoms (e.g., cough, fever, chills, muscle pain, difficulty breathing, sore throat, loss of smell/taste) and to wash their hands frequently. In addition to hand sanitizer, we will also have facilities available for Poll Workers to wash their hands.
>
> Staffing plans include hiring ten (10) Poll Workers for most Vote Centers to assist voters and maintain safety protocols.

Pinal County also published an instruction manual for poll workers, which provides some guidance on polling place safety. The guide suggests the following precautions:

> - Poll workers should stay home if they are sick and take other sensible precautions to prevent the spread of COVID-19, such as maintaining physical distancing, washing or sanitizing their hands often, and avoiding touching their eyes.

- Poll workers should ensure that the polls remain clean and safe. They are instructed to regularly disinfect voter marking pens, encourage curbside voting, clean and disinfect tables and voting booths every hour with alcohol wipes, increase distance between voting booths when setting up equipment, and encourage using a stylus for poll pads.

To ensure safety, poll workers in Pima County were [supplied](#) with masks, plastic face shields, gloves, disinfectant spray, and hand sanitizer. Furthermore, masks and proper social distancing were required

to cast a ballot. If a voter did not have a mask, one was provided at the polling location. [Special accommodations](#) were provided for those who chose not to wear a mask. There was either a separate place for them to vote, or they could vote via curbside service and fill out a ballot in their car. Those options were also available to voters who did not want to enter the polling place to drop off or fill out a ballot. [Coconino County](#) established a new protocol to allow voters with health concerns or fears of contracting COVID-19 to participate in emergency early voting. Voters had to complete a form stating that they wished to vote early due to an emergency, but did not have to disclose the specifics of the emergency.

IV.   Election Rules In Flux - Litigation

Ongoing COVID-related election litigation leaves several election rules in flux that have increased relevance during the pandemic, including: the deadline for the receipt of return mail ballots, the deadline for curing a return ballot with no signature, the rules regarding provisional ballots, and the legality of a state law criminalizing the collection of the ballot of another voter.

A case [filed](#) on August 26, Yazzie v. Hobbs, challenges the state law that requires mailed ballots to be received, not postmarked, before 7:00 PM on Election Day to be counted. Plaintiffs are members of the Navajo Nation, and they allege that Arizona's requirement that mail ballots be received—not postmarked—before 7:00 PM on Election Day is an unconstitutional burden on their right to vote, as applied to them during the COVID-19 pandemic and United States Postal Service ("USPS") reorganizational issues. They allege that the Election Day receipt deadline has resulted in the

disenfranchisement of thousands of eligible Arizona voters through no fault of their own. They also assert that the rule disproportionately impacts Native Americans who own far fewer cars and who live in locations with fewer post offices and slower mail service. The plaintiffs seek a preliminary injunction requiring the state's election officials to count the ballots of all eligible Arizona voters who cast their ballot before or on Election Day, and whose ballots are received within a reasonable time after Election Day. A similar case was [settled](#) in June, with the state agreeing to expand early voting and outreach efforts to the Latinx, Native American, and rural voter communities alleged to be disproportionately harmed in that case.

In another case regarding ballot rejections, Arizona Democratic Party v. Hobbs, a US District Court issued a [Permanent Injunction](#) on September 10, requiring Arizona election officials to extend the deadline for a voter to cure a mail ballot returned without a signature. Pursuant to the injunction, voters that return unsigned ballot envelopes will have up to five business days after Election Day to fix the missing signature, which is the same deadline voters already have under Arizona law to cure ballots with signatures that do not match signatures on file and for in-person voters to cure lack of proper identification at the polls. The [lawsuit](#), filed in June 2020, challenged the state's inconsistent policy of allowing voters with *mismatched* signatures up to *five business days after Election Day* to cure, while allowing voters with *missing* signatures only until *7:00 PM on Election Day* to remedy the error. The debate is not over, however, as the state has [appealed](#) the decision to the U.S. Court of Appeals for the Ninth Circuit. Under the Election-Day-deadline challenged in the suit, voters who forget to sign their ballot envelope are less likely to be notified at all or in time to fix the error by Election Day, and more likely to have their vote rejected. Moreover, the inconsistent deadlines for fixing mismatched and missing signatures, and the ongoing litigation, could lead to voter confusion over the rules.

Another major case, DNC v. Hobbs, is headed to the Supreme Court. This case challenges the legality of two Arizona election rules: a state policy of tossing out entire provisional ballots cast in the wrong precinct (rather than tossing just the votes for city-council-specific seats and counting eligible votes for county, state and national offices), and a state law criminalizing the act of collecting the completed mail ballots of another voter and dropping them off on behalf of the voter (sometimes called "ballot harvesting"). In January 2020, the U.S. Court of Appeals for the Ninth Circuit [issued a split ruling](#) en banc invalidating both rules, holding that both policies violated Section 2 of the Voting Rights Act because they have a discriminatory impact on American Indian, Hispanic, and African American voters. The state has asked the U.S. Supreme Court to hear the case, and the Ninth Circuit has issued a [stay until](#) final disposition by the Supreme Court, so both rules struck down by the Ninth Circuit remain in effect until the Supreme Court either denies certiorari (which could happen before November) or issues a final ruling in the case (which is unlikely before November).

Both policies at issue in DNC v. Hobbs have heightened importance in the pandemic. Polling place reductions and relocations due to poll worker shortages are likely to confuse voters more than usual

regarding the correct polling location and increase the number of provisional votes cast at the wrong location. This issue is somewhat mitigated, however, by Maricopa's adoption of the vote center model, in which voters can cast votes at any vote center in the county. But not all Arizona counties have adopted the vote center model. The criminalization of collecting ballots for others forces more voters to show up in person at a reduced number of polling places and vote centers, increasing health risks to themselves and others. Alternatively, safety concerns in the pandemic could inspire more voters than usual to avoid the polls and seek to have another person return their mail ballot for them. Under the law at issue, any such ballots will not be counted.

There are a handful of other pending election cases in Arizona as well, including a [case](#) that challenges the state's in-person signature requirement for third-party and independent candidates seeking to qualify for the November ballot due to pandemic circumstances, and a [case](#) seeking to require Cochine County to provide curbside voting as an accommodation for disabled voters, particularly immuno-compromised voters who are at a higher risk if they contract the coronavirus.

Given that mail voting in the state starts in only a couple of weeks, there is a risk that both voters and election workers could end up confused by the unresolved and potentially changing rules regarding the mail-ballot receipt deadline, the dates by which different signature defects must be cured, which provisional votes count, and whether it is legal for someone to collect and drop off the ballots of other voters. If the state is not careful to educate voters and election workers on the current rules, the potential for specific changes, and any actual last-minute changes, confusion could lead to lost votes.

V.   Overall Readiness

Arizona's overall management of the August 4 primary amid pandemic circumstances—particularly given the near [50 percent increase](#) in turnout relative to the 2016 August primary—bodes well for the state's readiness for the November general election. The state managed the moderate increase in mail voting with very few issues. With regard to in-person voting, the state has time to fix the minor technical issues that surfaced on August 4, and the few counties with issues have time to recruit more poll workers, train them better to ensure they print the correct ballots, and to better educate voters on polling place relocations. By and large, between its March and August elections, the state implemented substantial measures to address the needs of in-person voting, by expanding the availability of large vote centers and other suitable voting locations as well as the variety of early voting options, by obtaining the required number of poll workers in the largest counties, and by implementing health measures to protect in-person voters and poll workers. One of the biggest remaining challenges for the state is to ensure that voters and election workers are educated about, and prepared for, possible last-minute rule-changes resulting from pending litigation. Additionally, scale matters when considering the ability to administer an election smoothly, and though both the mail and in-person

voting infrastructures seem relatively robust, the greater turnout in the general election will surely put both to the test.