Arizona: 2020 Election Policies & Practices

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Introduction

Chief Concern: Arizona is historically very slow to return election results. Can we expect this again this Election Day? Analysis of the August 4th Primary can give us an indication of what is to come:

Both total turnout and rates of mail voting reached an all-time high on August 4. Close to 84% of all votes cast in Arizona, just over 1.27 million, were early votes (Arizona does not distinguish between early voting and vote-by mail), 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, is expected to 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.

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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."

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. To address this concern, Secretary of State Hobbs is requesting that voters who are planning to return their ballot by mail do so by October 27, seven days before election day.

I. Calendar

- Deadline to register to vote
    - 29 days before election (October 5, 2020)
    - registration deadline extended to October 15
    - U.S.D.C extended the deadline to Oct 23, 2020 for the general election, but the [Ninth Circuit](#) just ended the extension, and the new registration deadline is October 15.
- Deadline to request an absentee ballot
    - (permanent or just once): 11 days before election
    - Oct 23, 2020 for the general election

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- Deadline for receipt of mail ballots
    - (regardless of postmark): Election Day (by 7:00 PM)
- Curing Deadlines
    - 5 days after election day (Nov 8) for signature mismatch
    - Election Day for missing signature
    - 5 days after Election Day for conditional provisional ballots
- Deadline to release results
    - The officer in charge of elections may publicly release election results beginning at 8:00 p.m. on election day. A.R.S. 16-551
    - For the initial transmission of election results on election day, and as additional results are tabulated prior to the county canvass, the officer in charge of elections must transmit election results to the Secretary of State in the required electronic format using an application specified by the Secretary of State.A.R.S. § 16-622(B)
    - "On the fourth Monday following a general election, the secretary of state, in the presence of the governor and the attorney general, shall canvass all offices for which the nominees filed nominating petitions and papers with the secretary of state[.]" A.R.S. 16-648
- Audit and Canvassing
    - November 4 at 7PM is the deadline to begin performing limited hand count of audit ballots case on Election Day. A.R.S 16-602(I);(B)(5)
    - November 8 is the first day that County Board of Supervisors may canvass returns and the last day is November 23
- Certification of Election
    - Monday, November 30
    - If, after this day, official canvass results are within 0.1%, the Secretary of State certifies the facts requiring a recount

Rules: Arizona has 15 counties, the elected recorders for which are responsible for the administration of elections.

II. Registration

A. Deadline to Register to Vote

Typically, the voter registration deadline is 29 days before the election in both primaries and general elections. This cycle, a U.S.D.C. extended the voter registration deadline to October 23, 2020,

which was cut off by the Ninth Circuit; the new deadline is Thursday, October 15. When registering to vote by mail (which a majority of Arizonans do), there is an option to register one time only or join the Permanent Early Voter List. The Permanent Early Voter List (PEVL) permits all voters who opt-in to this list to automatically receive a mail ballot for every election in which they are eligible to vote.

B. Deadline to Request Absentee Ballot

The deadline to request an absentee ballot is 11 days before the general election, which is October 23, 2020. This applies to both a one-time request and requests for the permanent early voter list. Arizona election officials are strongly encouraging voters to mail their absentee ballot by October 27 to allow time for the USPS to process and return the ballot. This is not an official deadline, just a recommendation. Voters can also return their ballots in person via drop boxes or at a polling place.

III.   Absentee Balloting

A. Ballot Drop Off and Collection

Arizona permits voters to drop off their ballots in a "secure" drop box, determined by the Recorder in each county and information for which is available on county websites. Voters can drop off their ballot at an early voting location or Election Day voting location in their county on or before Election Day, according to the Secretary of State. Furthermore, voters can drop off completed ballots at their county Recorder's office. If the voter does not return the ballot themselves, a family member, household member, or caregiver can return an absentee ballot on behalf of the voter. Arizona imposes felony charges on any unauthorized person who returns a ballot.

B. Number of mail ballots requested

In 2016, 74 percent of registered voters cast ballots, which amounted to over 2.6 million ballots cast out of 3.5 million registered voters. This year, as of August 4, over 3.9 million Arizonans are registered to vote, which is an 11 percent increase from 2016.

This year, in Maricopa County alone, Arizona's largest county by population, the County Recorder reported sending almost 2.1 million absentee ballots to voters. This is the largest portion by county of the nearly 3.1 million absentee ballots requested as of September 23. Voters have until October 23 to request a mail-in ballot.

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C. Ballot Requirements

For an absentee ballot to be counted, the voter must sign an affidavit under penalty of perjury. When the ballot is received, County Recorders compare the signature on the affidavit to a signature on file from either a voter registration form, DMV data, or other available sources. If the ballot satisfies the affidavit and signature-matching requirements, then the ballot is considered sufficient and counted.

IV. Early Voting

A. Rules

Early voting in Arizona runs from October 7 until October 30, but dates and hours vary based on county and location. Elections are administered by the County Recorders, the individual websites for which indicate when and where early voting occurs.

To vote in-person, a voter needs either a valid form of photo ID, two forms of non-photo ID that show name and address, or multiple forms of ID if one form of ID does not have a current address. Tribal IDs are permissible. If a voter does not have a valid ID, a provisional ballot may be cast and cured until 7PM on Election Day.

In 2016, 81 percent of the votes cast were through early voting, although the state does not differentiate between mail-in and in-person early voting.

The National Conference of State Legislatures reports that only eight states explicitly permit or require ballot drop boxes by statute or regulatory guidance, of which Arizona is one. It is a felony charge in the state for knowing destruction of a polling list, ballot, or ballot box "with the intent to interrupt or invalidate the election."

B. Locations where early voting occurs

In the August 4 primary, Maricopa County shifted to the vote center model, which contributed to a substantial decrease in the rate of provisional ballots. A vote center model eliminates the need for voters to go to their assigned precinct based on housing location and permits a voter to vote from any center in the county, but it does reduce the total number of polling places because precincts are consolidated into larger vote centers. Voter confusion regarding assigned polling places is

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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.

C. Early Vote Count

- Arizona at large
  - Sent 3,353,533 absentee ballots requested
  - 2,302,757 people cast their ballot as of Oct 30, 2020
- Maricopa County
  - As of Oct 9, 2020 Maricopa County Recorder office reports sending 2,051,430 mail-in ballots
  - As of Sept 23, 2,564,490 registered voters in Maricopa County
  - As of October 27, 2020, Maricopa County exceeded the total early vote from 2016
  - As of October 30, 2020, Maricopa County exceeded the total 2016 turnout

V.   Election Day

A. Election Violence

If there is violence on Election Day, one response may be the relocation of polling places to secure areas. Arizona permits local election officials to move polling places because of an emergency. Another option could be to extend voting hours at a polling place to make up for the "lost" house, but since Arizona prescribes polling hours by statute, this is likely an impermissible response to polling place disruption.

B. Poll workers

For Election Day, Secretary of State Hobbs is looking to hire more paid poll workers to keep pace with the record turnout. And, while poll worker recruitment is typically left to the counties, Secretary Hobbs has taken the initiative to assist in recruitment to keep pace with demand. To be a poll worker, one needs to be registered to vote and trained before Election Day. Enthusiasm leading to the surge in voting is also leading to a surge in election-related volunteers. Maricopa County received

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20,000 applications over the last month. Secretary Hobbs believes that most counties are not experiencing shortages in poll workers, with the current exception of Coconino County.

This summer, the governor of Arizona issued an executive order allowing state employees to take civic leave on Election Day to serve as poll workers, and Maricopa County trained extra poll workers to serve as no-show substitutes before its August primary.

In Mohave County, during the August 4 primary, officials had to staff 37 polling locations with "skeleton crews" of around 60 percent the typical number of poll workers.

C. Mask Rules

In Arizona, pursuant to Executive Order 2020-40, Arizona Governor Doug Ducey allowed communities to make their own rules on face coverings. Election administrators are recommending, but not requiring, that voters wear masks at polling places. Maricopa County, Arizona's largest county, passed a proclamation making masks required throughout the county in many public places. Despite Maricopa County's mask mandate, voters won't be turned away for not wearing masks.

D. Poll Observing

In Arizona, political party observers are nominated by the county chair of each party and are approved by the County Recorder to observe (1) specific voting locations on election day, (2) a central counting place, or (3) multiple voting locations. Parties may stipulate to the same number of observers at each voting place; if an agreement cannot be reached, the parties are limited to one observer at each location.

Political party observers may observe (1) the opening of polling places, (2) voting at polling places (although to uphold the integrity of the secret ballot, observers must maintain distance between themselves and the voter), (3) the closing of polling places, (4) the transport of ballots from polling places to a specified receiving site, and/or (5) any other significant voting or processing activity, including vote counting.

Counties are charged with signature matching under the supervision of the County Recorder. During the signature verification process, the County Recorder, or other election officer, will compare the signatures on the affidavit with the voter's voter registration form. Up to two party observers, one from each party, may watch over "any significant voting or processing activities," including the signature verification process. In addition, counties, like Maricopa County, have discretion to allow up to two members of the public to observe the process. During ballot counting, poll watchers can

observe every stage of the ballot counting process, from inspecting ballots to tabulating ballots to reviewing ballots.

VI.   Post-Election Period

Arizona is distinctive in that it allows early counting of ballots (including mail-in ballots), starting 14 days before the election. Partial results will be available on Election Day, despite the expected increase in mail-in ballots. Several Arizona election rules pertaining to mail-in ballots are currently going through COVID-19-related litigation, including disputes over the deadline for mail-in ballots to be returned and the deadline for curing a mail-in ballot that has been returned with no signature. However, the deadlines will remain as statutorily required: mail-in ballots must be received by 7PM on Election Day and ballots with a missing signature must be cured by that same deadline.

A. Processing Mail-In Ballots

Under Arizona law (Ariz. Rev. Stat. § 16-550), early ballots can be opened and counted by election officials 14 days before Election Day, but officials may not release the results until all precincts have reported or until one hour after the polls close on Election Day. All mail-in ballots must be received by 7:00 PM on Election Day to be counted. A case filed in August, *Yazzie v. Hobbs*, challenged this requirement that mail-in ballots be received by elections officials—rather than just postmarked—before 7:00 PM on Election Day, but the Ninth Circuit recently affirmed the decision of the District Court, denying this request to extend the deadline.

Mail-in ballots are certified through signature verification. Though such ballots cannot be counted earlier than 14 days before Election Day, they can be cleared through a signature verification process that begins when the ballot and ballot affidavit is received by the county recorder or official in charge of the election (approximately the week of October 12th this year, as ballots were mailed beginning October 7th). A detailed explanation of this process is found below in Section F.

By contrast, if the ballot is missing a signature, voters have only until 7:00 PM on Election Day to fix the error before their ballot is rejected. Arizona law is silent on the procedure for missing signatures (see Ariz. Rev. Stat. § 16-550), but the current version of the Elections Procedures Manual does address this issue. According to the Manual, "[i]f the early ballot affidavit is not signed, the County Recorder shall not count the ballot." The Arizona Democratic Party sued over this disparity in procedures. *Arizona Democratic Party v. Hobbs* challenges the current procedure that allows voters with mismatched signatures five days after the election to verify their ballots, while allowing those with

missing signatures only until 7:00 PM on Election Day to fix their mistake. The Election Day deadline makes voters more likely to have their vote rejected, as they are far less likely to receive notice in time to correct the error. In addition, the inconsistency between the deadline for mismatched signatures and missing signatures could be a source of confusion for voters. The 9th Circuit overturned the district court ruling extending the deadline, finding a minimal burden.

Ballots can also be rejected in the processing stage if they are cast in the wrong precinct. This rule has also generated litigation. In *Brnovich v. DNC*, the plaintiffs seek to eliminate the requirement that ballots cast in the wrong precinct are automatically discarded and not counted, proposing instead that votes for county, state, and national offices on ballots cast in the wrong precinct should be counted but that votes for precinct specific offices should not be counted. The Ninth Circuit struck down the law, finding that it was enacted with the intent to discriminate against minority voters. But the Arizona Attorney General appealed the case to the Supreme Court of the United States, which granted certiorari and will hear the case in 2021; the law remains in effect until that time.

B. Tabulating the Vote

Logic and Accuracy Tests

Arizona requires all of its election equipment to be tested and certified before an election. Under Arizona Revised Statutes § 16-449, this testing and certification process is to take place both before and after each election to ensure the equipment is counting votes accurately and attributing them to the correct candidates and ballot measures. Each county is required to test all of its election equipment (i.e. voting machines) before any tabulation can begin. These tests must be overseen by at least two elections staff or inspectors of different political parties. In addition, the testing must be open to observation by representatives of political parties, candidates, the press, and the public. Additionally, for any election that includes a federal, statewide, or legislative office, the Secretary of State must conduct additional logic and accuracy tests on equipment from various counties.

Early Ballots

In-person early voting begins 27 days before Election Day and continues through the Friday before the election. The elections officer may begin tabulating early ballots after confirmation from the Secretary of State that all voting equipment passes any required logic and accuracy test. Ariz. Rev. Stat. § 16-552(A). Tabulation of early ballots can start 14 days before the election. A.R.S. § 16-550(B). Once the signature on an early ballot affidavit is verified by the County Recorder, the ballot is sent to the early ballot board, which is made up of staff members who are required to be affiliated with different political parties. The early ballot board removes the ballots from their envelopes and

transports them to the tabulation room where election officials run them through [tabulators](). The ballot tabulation room is required by [law]() to have live video feed so voters are able to watch ballot tabulation occur.

Election Day Ballots

Some counties use the [central count]()method in which voters put their completed ballots in a "secured ballot bin" which is transported to the county's ballot tabulation center after the polls close. This transportation is carried out by"election workers" of different political parties.

Other counties use the [precinct tabulation]() method, in which voters or poll workers feed the completed ballots into a tabulation machine located at the voting location. The machine tabulates the ballots immediately and saves the vote count to a removable media device which is stored inside the tabulator. After the polls close, the poll workers or sheriff deputies bring the removable media device to the central counting location for the county. At the central counting location, an election official loads the results from the removable media device into the secure election management system and combines the vote totals for all the polling locations.

All counties must follow [chain of custody protocols](). This includes requirements for documentation on the handling of every ballot, storage of ballots in secure locations, and the live video feed on the ballot tabulation rooms. Counties must also follow protocols for ensuring the security of all ballots, including the use of tamper-evident seals, identification badges, and having two or more election officials of opposing political parties present.

C. Reporting the Vote

Under Arizona Revised Statutes [Title 16 Section 623](), unofficial tabulated results may be released after all precincts have reported or one hour after the closing of polls, whichever comes first. It appears that the latter is the de facto default, as the official [Secretary of State (SOS) website]() indicates that the first results will be released at 8:00 PM, which is one hour after the polls close at 7:00 PM. These first results will include early ballots, such as mail-in ballots, which can be counted starting [14 days before election night](). After that, these results will be updated "sporadically" as counties receive information from voting machines at their polling locations. [These results are unofficial](), as they have not yet been certified by the board of supervisors or other officers in charge. Results are simultaneously [shared]() with the SOS via phone, fax, or "other electronic means," as they are tabulated at each precinct.

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Arizona uses software from BPro, a private company that operates the TotalVote Election Software, for its state election night reporting system, which most counties also rely on to display their results for the public. On election night, the state updates election results on its ENR website as information is sent in from all counties. The state ENR website allows the public to view results by county, so 13 out of the 15 counties rely on this as their main ENR system. In most cases, the individual counties also upload results to their own websites as .pdf or .txt files. Two counties, Greenlee and Pinal, use Scytl, another private company's election software, to post their results on their individual county websites. Notably, while the "Precincts Reporting" number represents the "number of voting locations that have reported election results," it is unclear if this means that the included precincts have finished tabulating their results or if they still have votes left to count.

D. Certifying the Vote

To certify the election results, election officials must canvass the election results of each precinct or election district. The Secretary of State Election Services Division is in charge of certifying on the state level while the Board of Supervisors for each county certifies the county. The canvass verifies vote totals for all races tabulated by voting equipment as well as write-in votes. Canvassing must be carried out by a Board of Supervisors in a public meeting between six and 20 days after the election. The Board of Supervisors is made up of county officials elected to a four-year term. The official election results must include a Statement of Votes Cast, a cumulative Official Final Report, and a Write-Ins Vote Report. The Statement of Votes Cast must include the number of ballots cast in each precinct and county, the titles of offices up for election, the name of the people up for election, the number and title of each ballot measure, and the number of votes cast for and against each ballot measure. The cumulative Official Final Report must include the total number of precincts, total number of ballots cast, total number of registered voters eligible for the election, and number of votes cast for each candidate by district or division. The Write-Ins Vote Report must include the name and number of votes for each authorized write-in candidate by precinct. Once the board of supervisors completes the election results certification, the Official Final Report and Statement of Votes Cast must be published on the website of the officer in charge of the election. Under Arizona Revised Statutes § 16-645, if the election includes a federal, statewide, or legislative office or a statewide ballot measure, the Board of Supervisors or elections officer in charge is required to transmit the official canvass to the Secretary of State electronically and by mail.

E. Grounds for Disqualification of Ballots

In Arizona, a ballot can be disqualified if its signature is found deficient, if it arrives after the deadline, or if it is improperly filled out. In Arizona, ballots must be received, not postmarked, by

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7PM on Election Day in order to be counted. If received on time, then the County Recorder proceeds with signature verification.

F. Signature Verification

Arizona's signature verification laws are codified, including a provision for notice and cure of mismatched signatures within five business days after Election Day. The time period to cure *missing* signatures is pending litigation outcome in the Ninth Circuit to extend the current Election Day deadline to five business days after the election. State law does not include specific standards for signature verification, apparently leaving it up to counties to determine signature comparison methods. Approximately half of all ballots rejected in both 2016 and 2018 were rejected for signature-related issues.

Arizona provides voters with notice and cure opportunities. Election officials are required to compare the signature on the voter's mail-in ballot envelope with the signature on the voter's registration record. If the signature is "inconsistent," the election official is required to make "reasonable efforts" to contact the voter to cure the problem. The statute appears to allow for a broad range of practices for the actual matching process, from use of a forensic specialist with expertise in signature matching (as is done in Maricopa County) to applying a simple visual check based on subjective judgment of the election officials.

The Signature Matching Process and Standards

In **Maricopa County**, Arizona's largest county, elections officials responsible for signature verification are trained every two years by the same team that trains the FBI on forensic signature verification techniques. The reviewers are trained to look at 27 different points of comparison on a signature to complete verification, including slopes, pen drops, and other identifiable components of a person's handwriting. (Per conversation with Maricopa County Recorder, 9/16/20).

Signature verification proceeds through three levels of review in the county. First, a technician reviews a batch of 200-250 signatures to determine if each signature matches a signature on record. The technician compares the signature on the ballot to historic voter signatures on file and to non-election-related signatures the clerk has on file, such as those from housing records or trusts. If the signature matches, the ballot envelope is marked as a "Good Signature." Then, election officials send all of the "Good Signature" affidavit packets to Citizen Boards, comprised of two members of different political parties, who process the unopened packets to prepare the ballots for tabulation and check again to see if any ballots have missing or non-matching signatures. If the ballot affidavit envelope has a missing or non-matching signature, the Citizen Board sends it to a higher-level staff

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member. If the signature does not appear to match, it goes through a second round of verification by another technician. If it still doesn't match, a senior managing auditor reviews the signature prior to rejecting it for "mismatch." The county tries to "rule in favor of the voter." (Per conversation with Maricopa County Recorder, 9/16/20).

There is no requirement for observers to observe the signature verification process. (Per conversation with Maricopa County Recorder, 9/16/20). Observers may be present if the process is occurring in an area where observers are allowed, but they are not permitted to challenge the match determination.

Rejection Rates Due to Signature Defects

As displayed in Table 1 below, in 2016, signature defects on ballots accounted for over half (approx. 52%) of ballot rejections across the state. In 2018, issues with signatures on ballots accounted for approximately 48% of ballot rejections, while the ballot rejection rate for late ballots increased from 6% in 2016 to 29% in 2018.

Table 1: Rejection rates due to late ballots, missing signatures, or signature mismatches

	Ballots received	*VBM (vote by mail) total*	*Total VBM rejections*	*Rejected for lateness*	*Rejected for missing signature*	*Rejected for signature mismatch*
2016 General (#)	2,722,660	2,017,722	10,769	660	3,079	2,657
2016 General (%)		74.1%	0.5%	6.1%	28.6%	24.7%
2018 Midterm (#)	2,409,906	1,899,240	8,567	2,515	2,435	1,516
2018 Midterm (%)		78.8%	0.5%	29.4%	28.4%	17.7%
2020 General (#) *Projected**		2,500,000	13,000	3,700	3,600	2,200

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(2016 & 2018 EAVS Data)
* Projections were taken from *Table 2*. See *Table 2* for methodology

Figure 1: Reason for ballot rejections in 2016 and 20
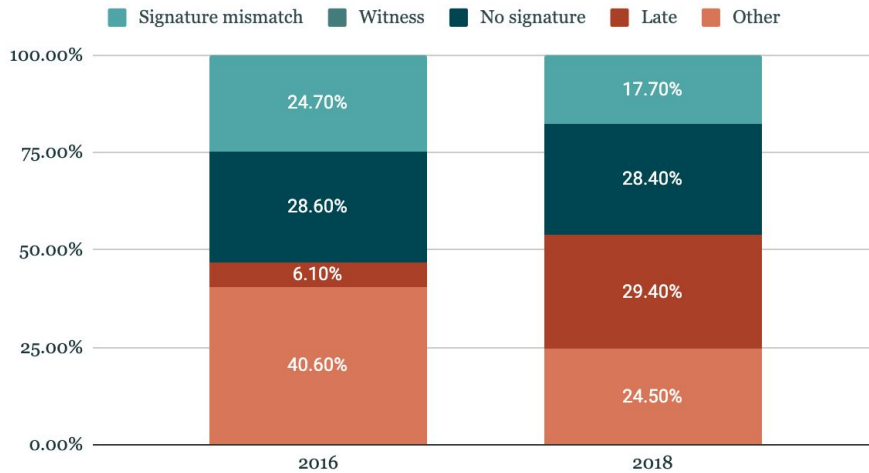
G. Rules for Challenging Ballots

In **Arizona**, state law allows observers to watch over "any significant voting or processing activities." The county recorder for Maricopa County, however, reported that observers in Maricopa have no right to observe the signature verification process specifically. They may observe it if the process happens to be occurring in an area where observers are allowed, but they are not permitted to challenge a determination of whether the signature is a match or not. (Per conversation with Maricopa County Recorder, 9/16/20).

H. Canvassing Rules and Deadlines

- **Canvassing Start Date**: Officials can begin processing absentee ballots 14 days before the election, which, in 2020, means that processing can start on October 20, 2020. (Ariz. Rev. Stat. § 16-550).
- **Training**: Arizona **does not have specific statutory language** indicating what methods election officials should employ to compare and verify signatures, and there is no statewide guidance on signature verification standards or processes.

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- **Comparing Signatures**: Arizona requires county recorders to match signatures with the voter's signature on the affidavit of registration. ([Ariz. Rev. Stat. §19-121.02](#)). Upon receiving the envelope containing an early ballot and ballot affidavit, Arizona law states that "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**."([Ariz. Rev. Stat. §16-550](#)). The statute does not specify standards for verification; it simply explains that "if the signature is **inconsistent** with the elector's signature on the elector's registration record, the county recorder must make "reasonable efforts" to contact voters whose ballots have either mismatched or missing signatures ([Ariz. Rev. Stat. §16-550](#)).
- **Notice**: In **Maricopa County**, to notify voters of a signature defect, elections officials **call or email a voter** and ask if he or she signed and returned their ballot and why their signatures are mismatched or missing.
- **Cure**: If the voter confirms the signature is theirs and provides a reason for the error, the ballot is considered "cured." (Per conversation with Maricopa County Recorder, 9/16/20). Arizona voters have [until five business days after the election](#), in this case, **November 10, 2020**, to cure mismatched signature defects on their ballots. There is pending litigation in the Ninth Circuit regarding whether or not the deadline to cure a missing signature, which is currently 7PM on Election Day, should be extended to five business days after the election in accordance with the mismatched signature deadline**. This is a result of a recent federal court order** that [mandated](#) that Arizona election officials extend the voter deadline for curing a missing signature to match the prior statutory deadline for curing a mismatched signature. The U.S. District Court [affirmed](#) the extended deadline, but the Ninth Circuit has issued a stay of the order pending appeal.

I. Recount Procedures

Arizona uses paper and Direct Recording Electronic (DRE) systems [for its elections](#) and requires a voter-verified paper audit trail (VVPAT) when conducting elections. Arizona state statute [A.R.S 16-661](#) mandates an automatic recount when the canvass of returns in a primary or general election shows the margins are less than or equal to the lesser of the following:

- One-tenth of one percent of the number of votes cast for both such candidates or upon such measures or proposals.
- Two hundred votes in the case of an office to be filled by state electors and for which the total number of votes cast is more than twenty-five thousand.
- Fifty votes in the case of an office to be filled by state electors and for which the total number of votes cast is twenty-five thousand or less.

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- Two hundred votes in the case of an initiated or referred measure or proposal to amend the constitution.
- Fifty votes in the case of a member of the legislature.
- Ten votes in the case of an office to be filled by the electors of a city or town or a county or subdivision of a city, town or county.

Appendix

A. Primary Report

An overview of the 5 most populous counties in Arizona and their outcomes from the August 4 primary.

- **Maricopa County**
    - For the August and November elections, Maricopa County also adopted the vote center model, shifting from 500 local precincts to [100 countywide voter centers](#) due to COVID-19 and a likely poll worker shortage. To counter the major decrease in voting locations, the county will keep 50-60 vote centers open for 24 days before election day, including on weekends and during the evenings.

- **Pima County**
    - **Pima County** Elections Department has [said](#) the August 4 primary election will be conducted as a polling place election in which "voters may vote at their designated polling place on Election Day; vote early in person; request a ballot by mail; or request to be placed on the Permanent Early Voter List." There were be [13 early voting sites](#) for the primary election. Pima County [eliminated](#) only one of 122 polling places during the March 17 election.
- **Pinal County**
    - Pinal County had [three early voting sites and four ballot drop-off locations](#) for the August 4 primary. For the March 17 election, Pinal County [relocated](#) two polling places but [did not eliminate](#) any, leaving it with 101 polling locations.
- **Yavapai County**
    - Yavapai County [plans to use](#) its standard 25 countywide vote centers for the August primary election in addition to 12 ballot drop-off locations. The county [did not move or eliminate](#) any vote centers for the March election.

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- **Yuma County**
  - Yuma County [plans to return](#) to its standard nine vote centers for the August 4 primary election as well as the November presidential election. In the March election, Yuma County [eliminated](#) one vote center, leaving the County with eight vote centers. Yuma County Elections Director Mary Fontes [said](#) two poll workers did not show up to work during the March election due to concerns about COVID-19.

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.

B. Ongoing Litigation

***Arizona Democratic Party v. Hobbs* No. 20-16759 (9th Cir.)**

In Arizona, a state that already had a notice and cure procedure in place, plaintiffs won an extension in the deadline for a voter to cure a ballot returned unsigned. 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.

In *[Arizona Democratic Party v. Hobbs](#)*, a U.S. District Court issued a [permanent injunction](#), giving voters who failed to sign their ballots five business days after Election Day to fix the missing signature, the same time given to voters to fix mismatched signatures. Pursuant to the injunction, voters who 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 had under Arizona law to cure ballots

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with signatures that do not match signatures on file and for in-person voters to cure lack of proper identification at the polls. However, this extension may not be permanent because Arizona has appealed this case to the U.S. Court of Appeals for the Ninth Circuit. The Ninth Circuit granted appellants, the State of Arizona, an Emergency Motion for Stay Pending Appeal, finding that the appellants are likely to succeed on the merits of their case on appeal. This stay upholds the current Arizona law that requires signatures on absentee ballots be submitted by 7PM on election day. This overturns the ruling of the US District Court, which found for ADP that it was proper to temporarily extend the deadline to cure for missing signatures to match the deadline for mismatched signatures -- 5 days after the election.

Arizona Republican Party v. Democratic National Committee No. 19-1258 (Sup. Ct.)

The Supreme Court granted certiorari on October 2, 2020. The three consolidated cases are: *Feldman v. Arizona Secretary of State*, No. 2:16-cv-1065 (D. Ariz.); *DNC v. Hobbs*, No. 18-15845 (9th Cir.); *Arizona Republican Party v. DNC*, No. 19-1258 (S. Ct.).

There are two issues that respondents, the State of Arizona, the Secretary of State, the Governor, and the Attorney General raise on petition for certiorari. The first issue was whether Arizona's out-of-precinct policy violates Section 2 of the Voting Rights Act; and, second, whether Arizona's ballot-collection law violates Section 2 of the Voting Rights Act or the Fifteenth Amendment. The original petitioners, the Arizona Democratic Party and its national affiliates, filed the complaint, which was lost at the district court level. Petitioner/appellants appealed and the Ninth Circuit en banc ruled in petitioners' favor, striking down both the out-of-precinct policy and the ballot-collection law. Appellees filed for certiorari, which was granted and consolidated on October 2, 2020. This case will be heard after the election.

C. Issues of Concern

Challenges in Language Access

A reduction in the number of polling places could adversely impact voters who speak Native American languages and depend on on-site language assistance at polling places. According to ASU's O'Connor College of Law Indian Legal Clinic, Section 203 of the Voting Rights Act required nine of Arizona's fifteen counties to provide language assistance to Native American voters on eight

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reservations in 2016.[1] Assistance for largely unwritten languages (which is determined by the covered county) need only be provided orally ([28 CFR § 55.12(c)](link)). In return, DOJ specifies that [trained bilingual poll workers are integral](link) for the operation. Yet, in 2016, only six of the nine aforementioned counties were in compliance, providing on-location translations of voter instructions and ballot information with either in-person translators or pre-recorded assistance. Onsite assistance is particularly important because ballots are [rarely translated](link) into indigenous languages, which are spoken by more than half of Native Americans in Arizona.

With language assistance limited to on-site polling places, and few if any ballots translated into their primary languages, vote-by-mail is not an effective option for Native American speakers. (On the other hand, in six counties constituting over 80% of the state population, Spanish is already provided for [ballots](link) as well as for the [statewide voter education guide](link).) At the same time, a reduction in polling places could make it less convenient and pose increased health risks for those requiring onsite language assistance during the pandemic (due to potentially larger crowds and increased travel via public transportation), at a time when Arizona tribes have already been [disproportionately impacted](link) by the virus and have [lost significant revenue sources](link).

The situation is potentially exacerbated by the [current closure of state elections offices for in-person business](link) due to the pandemic. The [Department of Justice](link) provides that "there should be trained personnel in the courthouse or city hall who can answer questions in the minority language, just as they do for English-speaking voters." With election offices currently closed to the public, the May 2020 tribal survey by Phoenix [nonprofit incubator Instituto](link) may prove illuminating as to how advanced election information has been affected.

No county or statewide election officials have announced any changes or accommodations for language accessibility for the August or November elections. However, counties such as Maricopa [have a Spanish-English bilingual voting coordinator](link), so it is possible the situation will be addressed in the future.

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[1] The Navajo language in Apache, Coconino, and Navajo Counties; the Pueblo language in Apache County; the Hopi language in Coconino and Navajo Counties; the Yuman language in Coconino, Mohave, Yavapai, and Yuma County; the O'odham language in Maricopa, Pima, and Pinal Counties; and the Yaqui language in Pima County (top five counties by population underlined).