

Arizona's 2020 Elections in the Wake of COVID

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As a state that already votes predominantly by mail, Arizona is better situated than others to manage elections during the coronavirus pandemic. Yet Arizona must nonetheless overcome significant obstacles to ensure a successful 2020 general election. Its presidential primary was held on March 17, early in the pandemic, so it hasn't yet had the same chance to practice pandemic election management as states with later primaries—though it will have another chance with the August 4 congressional primary fast approaching. And the number of coronavirus cases in Arizona is [rising exponentially](#), so the state is heading into the general election season as one of the country's major coronavirus hot spots. Given Arizona's significance for both the presidential election and control of the Senate, the consequences of its decisions concerning election administration could extend far beyond the Grand Canyon State.

Major challenges for Arizona in the general election include the state's ability to scale its vote-by-mail systems to meet increased demand. Partisan division has hindered reforms that could address safety risks at the polls, and election officials have only recently published details regarding logistics for polling place safety and the provision of a sufficient number of poll workers. Ongoing COVID-related election litigation leaves election rules in flux, including the legality of a state law banning the collection and return of others' ballots (sometimes called "ballot harvesting"), the treatment of provisional ballots cast at the wrong polling place, and inconsistent deadlines for curing a mail ballot returned with a mismatched signature versus one returned with no signature at all. Groups seeking to place initiatives on the ballot have also been frustrated by the difficulty of collecting signatures in-person amidst the pandemic, and courts have rejected requests to waive the requirement.

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Introduction

Because Arizona is already a predominantly vote-by-mail state, with [79% of the electorate voting by mail](#) in the 2018 election, the pandemic is unlikely to create the same level of election chaos emerging in some other politically-divided states. But restricted in-person voting opportunities and intense partisan conflict over the changing rules may have an impact on large swaths of voters. Partisan disagreements have hindered additional reforms that would adapt Arizona’s electoral system to the COVID environment.

Conflicts between the state government (controlled by Republicans) and the Secretary of State and Maricopa County Recorder (both Democrats) have centered on a number of potential reforms. They have disagreed on expansion of vote-by-mail (specifically, the “Permanent Early Voting List,” or PEVL in Arizona), details of some of the vote-by-mail rules, the collection of qualifying signatures for ballot referenda, and the treatment of provisional ballots cast in the wrong polling place. Some of these issues remain unresolved, creating the potential for voter and election worker confusion for the

upcoming primary election on August 4, 2020 and general election on November 3, 2020. And legislative opposition to expanding vote-by-mail for this year's elections could exacerbate health risks.

In addition to partisan differences, the state faces logistical challenges to protect the health and safety of voters and poll workers in the pandemic. The state has taken initial steps for pandemic voting using CARES Act funding to create a state plan called [AZVoteSafe](#), to ensure voter and poll worker safety. The state also released the [2020 AZVoteSafeGuide](#), which outlines voters' options to vote early, vote by mail, or vote in person, and suggests numerous precautions for in-person voting.

A reduction in the ordinary number of polling places, particularly in Maricopa County, home to 60% of the electorate, where 500 precinct polling locations have been condensed to 100 countywide vote centers, could exacerbate health risks. However, by shifting to the vote-center model, extending the early voting period and selecting large polling places, the county has taken significant measures to address these risks. A reduction in polling places could have an adverse impact on Arizona's voters who speak Native American languages, as language assistance for primarily oral languages is typically provided on location at polling places. (Spanish accessibility, on the other hand, will be less affected, as ballots in six counties—representing over 80% of the state population—and the state voter guide are [already bilingual](#).) Finally, polling place reductions may cause voter confusion if not managed with plenty of advanced notice and voter education.

I. Lay of the Land & Key Races

With a Republican Governor and Attorney General, and a Democratic Secretary of State, Arizona's divided government has engendered partisan conflict around issues of election management, including vote-by-mail implementation. Competitive races increase the stakes this year for both candidates and election administrators alike. Arizona is a battleground state for the Presidential campaign. Its U.S Senate race between Mark Kelly (D) and Martha McSally (R) could also be key to a nationwide battle for party control of the Senate. Additionally, Arizona's U.S. House delegation is split 5-4 for Democrats—four districts [have Cook ratings below +10](#) to either party with two having flipped in the last two cycles (narrowly R+1 and R+2).

On the state level, while executive offices are not up for reelection, the state legislative races will be highly competitive. Currently, Republicans hold the State Senate by a 4-seat margin and the State House by a 2-seat margin. Those races will not affect redistricting, however, which is controlled by the Arizona Independent Redistricting Commission. Additionally, three seats on the [Arizona Corporation Commission](#) are up for election in November.

Our analysis here focuses on Arizona's largest five counties, which comprise 88% of Arizona's population. Maricopa County (which includes Phoenix) alone represents 60% of the population, with Pima County (which includes Tucson) representing another 15%. Pinal, Yavapai, and Yuma make up the remainder of the top five.

Key Election Dates / Deadlines:

- March 17, 2020: Presidential Preference Election (Democratic Presidential Primary Election)
- May 19, 2020: [Local elections](#), including one municipality within Maricopa
- August 4, 2020: Primary Election (non-presidential)
- November 3, 2020: General Election
- Deadline to register to vote: 29 days before election (July 6, 2020 and October 5, 2020)
- Deadline to request an absentee ballot (permanent or just once): 11 days before election (5:00 PM) (July 24, 2020 for the August primary and Oct 23, 2020 for the general election)
- Deadline for receipt of mail ballots (regardless of postmark): Election Day (by 7:00 PM)

Key Voting Facts:

- [Registered](#) voters as of August 2020: 3,989,214
- Mail ballots returned as % of total turnout in 2018: [79%](#)

Voting Measures Arizona Has Already Implemented (Pre-COVID):

- No-excuse vote-by-mail statewide
- Online mail ballot request statewide
- Counties authorized to use vote centers
- In-person early or absentee voting
- Online voter registration
- No ID requirement to vote by mail (but ID is required to *apply* to vote by mail and for in-person voting)
- No witness or notary requirement for return mail ballot
- Prepaid postage statewide for return mail ballot

- Notice and cure for *mismatched* signatures on mail ballots up to 5 days after the election
- Notice and cure for *missing* signatures on mail ballots, only if there's time, and only up to and including Election Day

Key Resources:

- [AzSos.gov/elections](https://www.azsos.gov/elections): Election section of Arizona Secretary of State's website
- Arizona [2020 Elections Calendar](#)
- Vote.org [Arizona Election Center](#): voter registration, absentee voting, early voting, voter ID, election reminders
- Arizona Citizens Clean Elections Commission [Voter Education Guide](#): released roughly 6 weeks before each election
- [League of Women Voters, Arizona](#)

II. Measures that *have* been taken and *could* be taken to adapt to pandemic conditions

A. Measures taken to adapt elections to the challenge of the pandemic

- The state distributed \$9 million in CARES Act funding to create [AZVoteSafe](#), a state plan to ensure voter and poll worker safety.
- The state released the [2020 AZVoteSafeGuide](#), which outlines voters' options to vote early, vote by mail, or vote in person, and suggests numerous precautions for in-person voting. See [Guidance for Reducing COVID-19 Risks at In-Person Voting Locations](#).
- Maricopa County and most other counties have mailed applications for permanent absentee voting (in Arizona called the Permanent Early Voting List or "PEVL") to all voters who were not already registered to vote by mail.
- For the March Democratic presidential preference election, due to a poll worker shortage and loss of some polling sites based in senior centers, Maricopa County reduced the number of polling places from 229 to 151, [converted all of them into](#)

[vote centers](#) open to all registered Democrats in the county, and [used these vote centers as ballot drop-off zones](#) for absentee ballots.

- 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.

B. Measures that *could* be taken to adapt elections to the challenge of the pandemic

- To address public health concerns related to in-person voting, more counties could publish details and poll worker training materials regarding the health and safety measures to be followed at polling stations in their counties. To date, not all counties have published detailed safety protocols.
- To reduce the potential of confusion in the event that the Supreme Court, before the election, denies the state's petition of certiorari in [DNC v. Hobbs](#), the state could **educate election officials about the potential for changes to state rules** relating to the delivery of another person's ballot and provisional ballots cast in the wrong precinct.
- To enable citizens to access the state referenda process, the state legislature could have **allowed campaigns to gather the required signatures electronically** during the pandemic, via the same website candidates for state offices use to secure signatures for their nominating petitions.
- To avoid voter confusion and lost votes in mail voting, the state and counties could **educate voters about the need to sign return ballot envelopes and the inconsistent deadlines for curing errors**. (Voters have until five business days post-election to cure mismatched signatures, but must resolve missing signatures by Election day). See [Election Procedures Manual of Dec 2019, pp. 68-69](#).
- To avoid discarding legitimate votes due to U.S. Post Office delays, especially as the volume of mail ballots increases, Arizona could change [election statutes](#) to **accept mail ballots that arrive after Election Day if they are postmarked by Election Day**. Currently [mail ballots that arrive after Election Day are rejected, even if they were postmarked on or before Election Day](#).

- Arizona could permit same-day voter registration, particularly as government offices have been closed for in-person registration due to the pandemic. Currently voter registration applications must be postmarked 29 days before Election Day.
- To assist those who speak a minority language while election offices are closed, the Secretary of State could work with the [Inter Tribal Council of Arizona](#) to list contact information, in native languages, for personnel available for language accessibility issues, potentially with the help of ASU's Native Vote Election Protection Project [incident hotline](#).

III. Political Landscape

In light of health concerns around voting, Secretary of State Katie Hobbs (D) and the Arizona Association of Counties asked the State Legislature to change state law to enable temporary all-mail elections this fall, but the Republican-controlled [Legislature did not act](#) during the spring session.

This left Hobbs and local election officials to consider what measures they could take on their own. On March 13, 2020, four days before the Democratic Presidential Preference primary, Maricopa County Recorder Adrian Fontes (D) said he would send a ballot to every voter who did not already have a mail ballot or cast an early vote, a move [ultimately blocked by the courts](#). Fontes cited [safety concerns and lack of cleaning supplies](#) as reasons for his plan. Secretary Hobbs [cautioned](#) that the plan may confuse voters because ballots would arrive on, or the day before, Election Day, and warned that state law did not authorize sending unsolicited ballots. Fontes asserted that a [lack of express authorization did not equate to a prohibition](#). AG Mark Brnovich (R) led the court fight to stop the plan on the grounds that Arizona state law does not allow county officials to send unsolicited ballots, and quickly [obtained a TRO](#) and preliminary injunction that halted Fontes from sending out the ballots.

On March 25, Fontes responded with a new plan to [send vote-by-mail applications to voters](#) in Maricopa county with an option to request permanent vote-by-mail status, a plan consistent with state law. Fontes also proposed [extending the period of early voting to three weeks](#) for the November election, and two weeks [for the August primary](#). Meanwhile, in an April 25, 2020 tweet, Fontes continued to [urge lawmakers to authorize him to mail ballots to all voters](#).

The Arizona Legislature has resisted efforts to further expand vote-by-mail for some time. The proposed SB 1077 (pre-COVID), introduced in the state senate in early January of this year would have allowed full vote-by-mail elections if approved by the county board and if 60% of voters are

already permanent vote by mail. The bill [did not receive a hearing](#) in the Republican-controlled legislature. Phoenix-based Rep. Shawna LM Bolick (R), a member of the House Elections Committee, [questioned the security](#) and cost of all-mail elections, while state Sen. Michelle Ugenti-Rita (R), who leads her caucus on election policy [suggested](#) voters simply change their registration to permanent vote-by-mail rather than change state law. Yavapai County Recorder Leslie Hoffman (R), an exception in her party, has [signaled support](#) for unilaterally sending voters their ballots.

IV. Operational and Safety Issues

This section examines (a) polling place and staff availability, (b) health and safety measures, and (c) language access issues, looking at Arizona’s March 17, 2020 presidential preference election (the 2020 Democratic Primary) as a potential indicator of issues that might arise in the upcoming August 4 and November 3 elections.

A. Polling Place & Staffing Availability

Arizona’s counties recently released their plans for the August 4 primary, a good test for the November general election. Maricopa County, which comprises 60% of the state’s electorate, has [adopted an all-vote-center model](#) for the August 4 primary, a plan that allows voters to vote at any of the county’s vote centers, not just one assigned polling place. The county will significantly reduce its number of polling places from the usual 500 to about 100 locations, a plan that reduces the number of required poll workers from 3,600 to about 1,000. The county seeks to offset the impact of the reduced number of polling places in part with an extended voting period. [Vote centers](#) will be open July 8 through August 4, twenty four days before Election Day, including some evenings and weekends “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.” See [Poll Worker Training Manual, p.8](#). The Maricopa County Board of Supervisors approved the plan on June 22.

For the March 17, 2020 democratic presidential preference primary, Maricopa County cut more than [one third](#) of its usual polling locations (about 80 locations) on Election Day, [leaving it with only 151 voting locations](#). However, the polling places were converted into vote centers and also used as mail ballot drop-off locations. County election officials [cited](#) poll worker no-shows and cancelations [due to health concerns](#) and a lack of cleaning supplies as the reasons for the cuts. Maricopa County additionally [relocated](#) five polling places for the March election because they were located in senior living facilities.

Poll worker shortages occurred despite Secretary of State Hobbs' [offer](#) to help counties obtain additional poll workers from the Arizona Department of Health Services' volunteer program. As a result of the poll worker shortage on March 17, legislative proposals were introduced to allow all-mail elections in certain circumstances and to hire additional poll workers. Republican Chair of the Senate Elections Committee, State Sen. Michelle Ugenti-Rita, opposes all-mail elections but proposed [enlisting the National Guard as poll workers](#). To date, neither all-mail elections nor enlisting the National Guard has gained traction in the state legislature.

Beyond Maricopa County, plans for the August 4 primary in the next four largest counties seem to be consistent with the March 17 elections, during which relatively few polling places were eliminated. A county-by-county review reveals the following:

- **Pima County** 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 will 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** plans to have [93 polling locations](#) for the August 4 primary, down from 101 polling places in the March 17 election. It will also have [three early voting sites and four ballot drop-off locations](#).
- **Yavapai County** [plans to use](#) its standard 25 countywide vote centers for the August primary plus [13 ballot drop-off locations and 2 vote centers](#). The county [did not move or eliminate](#) any vote centers for the March election.
- **Yuma County** plans to return to [its standard nine vote centers](#), of which two will be “mega centers,” plus one early vote center (at the County Recorder’s Office) for both the August 4 and November elections. In the March election, Yuma County [eliminated](#) one vote center, leaving the County with eight vote centers. Two poll workers [did not show up](#) due to COVID-19 health concerns.

B. Health and Safety Measures at Polling Places

Both the State of Arizona and its county election administrators have taken substantial election safety measures since the March 17 democratic presidential primary. Safety guidance for the March 17 election was minimal and details scant. Ahead of the August 4 election, however, the state has allocated \$9 million in CARES Act funding, and Maricopa and Pinal counties have issued detailed

plans for safe elections. Several other counties, however, have yet to publicly release specific COVID-19 safety protocols.

Statewide Measures

The state has recently taken 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 county 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 PPE and sanitation supplies for voting locations, such as face masks, face shields, gloves, hand sanitizer, disinfectant spray, and 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.

By contrast, despite the [health risks to both voters and poll workers of in-person elections](#) during a pandemic, the state issued only minimal health guidelines before the March 17 primary. On March 6, 2020, Secretary Hobbs [indicated](#) that Arizona would be following [CDC guidelines](#) regarding COVID-19 precautions for polling locations, but did not issue state guidance. These guidelines offered suggestions for how to maintain healthy environments and operations and promoted voter behaviors that reduce spread. On March 11, 2020, Secretary Hobbs issued a press release with some health and safety [guidance](#) for the elderly and for voting locations frequented by seniors, such as senior centers, advising them to:

- *Ensure the availability of clear signage for curbside voting for those who need it;*

- *Advise the facility to get the message out to vulnerable populations that they should avoid the crowds on Election Day unless they are voting, and to take heightened precautions in any case;*
- *Advise the facility to complete a full cleaning and disinfecting of the spaces used once the polling sites are closed down, according to DHS recommendations.*

County-Level Measures in the Five Most Populous Counties

While Maricopa county has released [detailed plans](#) for addressing the health risks of COVID-19 in the August 4 primary, and Pinal County has released some safety guidance, not all counties have followed.

Maricopa County has published training materials for poll workers that address vote center safety in the pandemic including 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 has 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.*

Unfortunately, not all of the five most populous counties have followed the example of Maricopa and Pinal Counties. To date, Pima, Yavapai and Yuma Counties have not published on their websites the specific measures they will be taking to protect voter and poll-worker safety.

C. Challenges in Language Access

A reduction in the number of polling places could adversely impact the more than half of Native Americans in Arizona who speak Native American languages. Native American language speakers often depend on on-site language assistance at polling places.¹ Ballots are [rarely translated](#) into indigenous languages, and assistance for largely unwritten Native American languages, such as Apache, can be provided only orally. As a result, vote-by-mail is a less effective option for Native American speakers.² The reduction in polling places could make in-person voting less convenient and pose increased health risks for those requiring onsite language assistance during the pandemic, at a time when Arizona tribes have already been [disproportionately impacted](#) by the virus. The situation is

¹ The VRA currently requires language support for two Native American Languages: Navajo (in Apache, Coconino, and Navajo Counties) and Apache (in Gila, Pinal, and Graham Counties), and primarily oral languages require only oral assistance. See [28 CFR § 55.12\(c\)](#).

² In contrast, Spanish translations are already provided for [ballots](#) in six counties constituting over 80% of the state population, and for the [statewide voter education guide](#).

potentially exacerbated by closure of [state](#) and [county](#) elections offices for in-person business due to the pandemic, offices that often offer trained personnel to answer questions in minority languages.

Some counties have employed creative methods to assist Native American-language speaking voters outside of the polling place and election offices. Maricopa County has published a helpful [online audio glossary](#), a tool that translates English election-related words into Tohono O’odham, a language used in Maricopa. Coconino County provides language assistance through radio ads, and Gila County offers an Apache-speaking outreach coordinator.

Phoenix-based non-profit [Instituto](#) is launching a statewide survey of Native American tribal members to better understand the COVID-19-related election challenges faced by Arizona’s Native American community. Results from the May 2020 tribal survey, not yet publicly available, may further illuminate the unique challenges faced by these voters in the pandemic.

V. Election Rules in Flux due to COVID-Related Litigation

Arizona’s partisan politics have also been playing out in the courts, in several election-related lawsuits with heightened consequences in pandemic circumstances. Ongoing legal battles could result in last-minute rule changes and confusion regarding (i) the treatment of provisional ballots cast in the wrong precinct, (ii) the legality of taking another voter’s ballot to the poll (a practice [more common](#) in the state’s minority communities), and (iii) the time period to cure a missing signature on a vote-by-mail ballot envelope—a policy with significant consequences in a mostly-mail election with a substantial number of first-time mail voters. Another legal decision has frustrated groups hoping to gather signatures electronically to qualify referenda for the ballot.

A. Ninth Circuit Court Invalidated: (i) a State Policy of Tossing Provisional Ballots Cast in the Wrong Precinct, and (ii) a Law that Criminalizes Returning Another Person’s Ballot

- On January 27, 2020, in a split *en banc* ruling, the Ninth Circuit Court of Appeals [invalidated two Arizona election policies](#): (i) a state policy of tossing out entire provisional ballots cast in the wrong precincts (rather than counting only the applicable votes for other municipal, statewide, and national offices), and (ii) a state

law that criminalizes taking another person's ballot to the polls. Democratic National Committee v. Hobbs, No. 18-15845 (9th Cir. en banc, Jan 27, 2020).

- The challenge was brought by the national and state Democratic Party. Arizona AG Mark Brnovich has already filed a [petition for certiorari to the Supreme Court](#) seeking review of the [decision](#). The Ninth Circuit has [stayed](#) its decision pending final disposition by the U.S. Supreme Court. Thus, both of the invalidated rules 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).
- In a 239-page [opinion](#), the Court [held that both policies violate Section 2 of the Voting Rights Act](#) because they have a discriminatory impact on American Indian, Hispanic, and African American voters, and that H.B. 2023 also violates the Fifteenth Amendment. The court reasoned that the state's minority voters disproportionately rely on others to bring their ballots to the polling place for them, and also tend to move more often and are therefore more likely to turn up at the wrong precinct. The court also found that H.B. 2023's criminalization of returning another person's ballot was enacted with discriminatory intent.
- Both policies at issue in DNC v. Hobbs have heightened importance in the pandemic. COVID-related polling place reductions and relocations are likely to increase voter confusion regarding the correct polling location, and increase the number of provisional votes cast at the wrong location. The criminalization of ballot harvesting could increase safety risks for all voters by requiring more voters to show up in person at a reduced number of polling places. Safety concerns could also inspire more voters than usual to avoid the polls and seek to have another person return their mail ballot for them, ballots which will not be counted under the law at issue.

B. Longer Cure Period for Mismatched Signatures than for Missing Signatures in Vote-By-Mail

- Equally significant this election cycle is changing rules and ongoing litigation about how long voters will have to correct mail ballots rejected due to missing signatures on their return ballot envelope. Signatures are used by election officials in mail voting to confirm the voter's identity.
- On June 10, 2020, the Arizona Democratic Party and the Democratic National Committee [sued](#) the state in U.S. District Court over a state election rule to discard mail-in ballots that are missing a signature on the return envelope without providing such voters the same opportunity to fix the error afforded to voters whose envelope

signature does not match the signature in their voter registration record. Specifically, voters whose signatures *do not match* are afforded an opportunity to correct their signature for up to five days after Election Day, while voters whose mail ballots are *missing* signatures have only until 7:00 PM. on Election Day to cure the error or their votes are not counted. See [2019 Elections Procedures Manual](#) (p.68-69). The suit alleges the practice of discarding the votes of registered voters who forgot to sign their envelopes without providing an opportunity to cure violates due process, the First Amendment and the Equal Protection Clause of the Fourteenth Amendment.

- Litigation regarding when voters are notified and provided an opportunity to cure missing and mismatched signatures on vote-by-mail ballots has been playing out in Arizona since the 2018 general election when it came to light that Arizona counties were applying inconsistent rules.
- Two lawsuits were filed over the inconsistencies soon after the 2018 election. One [lawsuit](#) resulted in a [court order requiring counties to provide notice of mismatched signatures](#) and ultimately in state legislation providing voters an opportunity to cure a *mismatched* signature [up to five business days](#) after the election.
- The other [lawsuit](#) alleged failure of election officials to consistently provide notice and opportunity to cure mail ballots that were *missing a signature altogether*. On September 12, 2019, the plaintiffs reached a [settlement agreement](#) with Arizona Secretary of State Katie Hobbs (D) pursuant to which [Hobbs agreed](#) to provide the same notice and cure period (up to five days post-election) for *missing* signatures as the state applied for *mismatched* signatures. In December 2019, however, Attorney General Brnovich (R) retracted [Hobbs' agreement](#), asserting Hobb's had no legal authority to extend the cure period for missing signatures. Consequently, Arizona's final [2019 Election Procedures Manual](#) includes inconsistent cure periods for mismatched and missing signatures (see pp. 68-69), the source of the DNC's June 2020 suit.
- The recent rule change due to the retraction of the settlement agreement, the resulting inconsistent deadlines for curing mismatched and missing signatures, and the ongoing litigation could lead to voter confusion in the upcoming 2020 elections and lost votes, exacerbated by the increase in first-time mail voters, who may be more likely to forget to sign their ballot envelope.

C. Courts Reject Pleas to Modify Signature Qualification Rules for Ballot Measures

- The method of collecting signatures for statewide ballot measures has frustrated Arizonians seeking to qualify ballot measures amid the pandemic for August and November ballots. In Arizonans for Fair Elections v. Hobbs, U.S. Dist. Court for the District of Arizona, No. CV-20-00658-PHX-DWL (Order April 17, 2020), a U.S. District Court rejected a request by two ballot measure committees to collect petition signatures from voters online as an alternative to dispatching volunteers with clipboards during a pandemic. The campaigns asked a court in April to order the Arizona government to let them use the same website that candidates for state office use to collect signatures from voters. Secretary of State Hobbs supported the proposal and said her office could make changes necessary to the website, known as E-Qual, to accommodate the initiatives.
- U.S. District Court Judge Dominic Lanza held that the Arizona Constitution requires initiative campaigns to collect signatures from supporters in person. He noted that "the signature requirements [the lawsuit] seeks to displace have been a part of Arizona's constitutional and electoral landscape for over a century," and stated that policymakers, or voters using the initiative process, should change the law, not a judge.
- On May 13, 2020, the Arizona State Supreme Court issued a ruling consistent with the U.S. District Court, holding in a 6-1 decision that online signatures do not and will not count under state law to qualify referenda for the ballot.

Conclusion

Political deadlock and litigation in Arizona reflect widespread disagreement on appropriate responses to voting and election management during the pandemic. As a result, state election officials and voters face the possibility of rule changes right up until the election, increasing the potential for confusion over contested voting rules. Additionally, while some counties, such as Maricopa and Pinal, have disclosed plans for ensuring the health and safety of voters and staff at polling places, and adequate polling place staffing, others have not. There are still measures at both the state and county level that could help reduce voter confusion over election rules, reduce the health risks of voting amidst the pandemic, and promote voting access for all eligible voters in Arizona.

Appendix - Repository of Noteworthy News Articles & Information

- Jan 15, 2020: [These Four Initiatives Could Completely Overhaul Arizona Elections](#)
- Arizona Election Emergency Statutes:
<https://www.ncsl.org/research/elections-and-campaigns/election-emergencies.aspx>
 - [A.R.S. § 16-564](#): If a polling place is moved, the ballot box can be moved, but must be accompanied by two members of the election board.
 - [A.R.S. § 16-543](#): The secretary of state can change procedures to comply with UOCAVA in case of an emergency.
- [Arizona State Legislature Revised Statutes on Elections and Electors](#)
- [FEMA Guidelines on Ensuring Civil Rights During the COVID-19 Response](#)
- [FEMA Guidelines on Use of the National Guard \(National Guard was deployed to help with Wisconsin elections\)](#)
- [Higher turnout in Arizona presidential primary](#)
- [Arizona election officials' plan \(avoiding lawmakers\)](#)
- [New proposed election plan for Maricopa County](#)
- [2019 Elections Procedures Manual for Arizona](#)