

IN THE SUPREME COURT

STATE OF ARIZONA

REPUBLICAN NATIONAL
COMMITTEE, et al.,

Plaintiffs/ Appellants

v.

ADRIAN FONTES, et al.,

Defendants/ Appellees.

Supreme Court No. CV-25-0089

Filed per:
Ariz. R. Civ. App. P. 16(b)(1)(B).

BRIEF OF *AMICI CURIAE* PIMA COUNTY

Daniel Jurkowitz (018428)
Deputy County Attorney
Daniel.Jurkowitz@pcao.pima.gov
Laura Conover
Pima County Attorney
32 N. Stone #2100
Tucson, Arizona 85701
(520) 724-5700
Attorney for Amici Curiae Pima County

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	3
INTRODUCTION	5
STATEMENT OF THE ISSUES	5
I. Reversion to the 2019 Election Procedures Manual may cause confusion and disruption in the middle of multiple elections.	5
CONCLUSION	10

TABLE OF AUTHORITIES

	<u>Page(s)</u>
Cases	
<i>Matter of One Cessna 206 Aircraft, FAA Registry No. N-72308, License No. U-206-1361</i> , 118 Ariz. 399, 402 (1978)	10
<i>McKenna v. Soto</i> , 250 Ariz. 469 (2021)	8
Statutes	
A.R.S. § 16-168.....	6
A.R.S. § 16-246.....	6
A.R.S. § 16-411.....	6,10
A.R.S. § 16-449.....	6
A.R.S. § 16-452.....	5, 6, 8, 11
A.R.S. § 16-513.01.....	6
A.R.S. § 16-542.....	6
A.R.S. § 16-543.....	6
A.R.S. § 16-544.....	6, 9
A.R.S. § 16-550.01.....	8
A.R.S. § 16-552.....	7
A.R.S. § 16-579.....	6
A.R.S. § 16-602.....	7, 9,10
A.R.S. § 16-621.....	7
A.R.S. § 16-926.....	7

A.R.S. § 16-938.....	7
----------------------	---

Rules

<i>Arizona Election Procedures Manual</i> (2019)	7,8
<i>Arizona Election Procedures Manual</i> (2023)	7, 8, 9, 10

INTRODUCTION

This action challenges the adoption process for the Arizona Election Procedures Manual (“EPM”) issued by the Secretary of State and approved by the Governor and the Attorney General pursuant to [A.R.S. § 16-452\(B\)](#). If the Court were to agree that the challenged 2023 edition was not properly adopted, presumably the 2019 version of the EPM would become effective again. Pima County and the Pima County Recorder believe the 2023 adoption was valid as the more specific adoption process for the EPM should control over the more general rule adoption process in the APA. However, if the Court disagrees, any relief should be applied prospectively to allow county and local election officials to continue to rely upon the adopted rules.

STATEMENT OF THE ISSUES

If the Court determines that the 2023 EPM adoption was improper, should any relief be afforded retroactively or only prospectively?

ARGUMENT

I. Reversion to the 2019 Election Procedures Manual may cause confusion and disruption in the middle of multiple elections.

Pima County is currently in the middle of administering a Special General Election for Congressional District 7 to be held on September 23,

2025, a General Election for school districts and the City of Tucson to be held on November 4, 2025, and an election on the Regional Transportation Authority of Pima County's Next Plan on March 10, 2026.

Since the 2019 edition of the EPM, there have been considerable changes to Arizona election statutes. Many of the provisions in that edition are no longer relevant and direction in the 2023 edition and the 2025 draft would be lost. The current process for the promulgation of the EPM takes into account the input from county election officials to address their continually evolving needs as determined from each successive election. [A.R.S. § 16-452\(A\)](#).

Arizona statutes specifically authorize the Secretary of State to expand upon the legal directions for election officials in the EPM. Examples of this are: protection of voter registration information [[A.R.S. § 16-168\(I\)](#)], updating voter registration [[A.R.S. §§ 16-246\(G\), 16-542](#)], voter wait times [[A.R.S. § 16-411\(K\)](#)], testing of election equipment [[A.R.S. § 16-449](#)], provisional ballot notices [[A.R.S. § 16-513.01](#)], transmission of UOCAVA ballots [[A.R.S. § 16-543](#)], early voter request forms [[A.R.S. § 16-544\(B\)](#)], voting of a conditional provisional ballot [[A.R.S. § 16-579\(A\)\(2\)](#)], signing of an electronic poll book [[A.R.S. § 16-579\(E\)](#)], hand count procedures [[A.R.S. §](#)

16-602(B)], proceedings at the ballot counting center [A.R.S. § 16-621(A)], the format for campaign finance reports [A.R.S. § 16-926(A)], and campaign finance investigations [A.R.S. § 16-938(B)].

An example of changes between the 2019 and 2023 EPM that go beyond statute is the direction provided to early ballot challenges made under A.R.S. § 16-552(D). The 2019 EPM states, “Challenges to early ballots must be submitted prior to the opening of the early ballot affidavit envelope. Challenges received after the affidavit envelope containing the ballot has been opened may be summarily denied as untimely.” Ariz. Sec’y of State, *Arizona Election Procedures Manual*, at 67 (2019) (emphasis added).

In contrast the 2023 EPM states, “Challenges to early ballots must be submitted in writing after an early ballot is returned to the County Recorder and prior to the opening of the early ballot affidavit envelope. Challenges received before the early ballot is returned or after the affidavit envelope containing the ballot has been opened must be summarily denied as untimely.” Ariz. Sec’y of State, *Arizona Election Procedures Manual*, at 79 (2023) (emphasis added).

The 2023 EPM thus clarifies that early ballot challenges prior to receipt by the County Recorder are invalid and that instead of a discretionary

determination as to whether or not to entertain, untimely challenges must be denied. Reversion to the 2019 EPM would thus create potential confusion and non-uniform interpretation by county.

Another major difference between the editions of the EPM deals with signature verification. Both editions reference a Signature Verification Guide. The 2019 edition includes the Guide as an appendix and states, “The County Recorders shall apply the criteria spelled out in the County Recorder Petition Signature Verification Guide (see Chapter 17, Appendix 4) when performing signature verification.” *Arizona Election Procedures Manual*, at 122 (2019) (emphasis added). The 2023 edition, however, states, “Counties should consult the Secretary of State’s Signature Verification Guide, available at www.azsos.gov/elections.” *Arizona Election Procedures Manual*, at 84 (2023) (emphasis added). In between these editions, this Court held in *McKenna v. Soto*, 250 Ariz. 469 (2021), that the signature verification guidelines referenced in the EPM did not have the force of law and could only act as guidance. *Id.* at 474, ¶ 21. The Legislature subsequently adopted and incorporated the Secretary of State’s 2020 Signature Verification Guide. [A.R.S. § 16-550.01\(H\)](#).

Another addition to the 2023 EPM, that is not present in the 2019 EPM, are the rules regarding implementation of the Active Early Voting List (“AEVL”) legislation, Laws 2021, Ch. 359, amending [A.R.S. § 16-544](#). This legislation added the following language to remove voters from the AEVL, “The voter fails to vote an early ballot in all elections for two consecutive election cycles. For the purposes of this paragraph, "election" means any regular primary or regular general election for which there was a federal race on the ballot or for which a city or town candidate primary or first election or city or town candidate second, general or runoff election was on the ballot.” [A.R.S. § 16-544\(H\)\(4\)](#).

The 2023 EPM interprets that as meaning, “The voter did not vote by early ballot in any primary, general, or city/town election (*i.e.*, the voter voted by early ballot in *no* primary, general, or city/town election) in two consecutive election cycles (beginning after the 2022 election cycle)...” [Arizona Election Procedures Manual](#), at 61 (2023).

One last example is the hand count audit conducted pursuant to [A.R.S. § 16-602](#). [A.R.S. § 16-602\(B\)\(1\)](#) requires that at least two percent of precincts or two precincts, whichever is greater, shall be randomly selected for audit. However, counties now have the option of conducting elections by vote

center, rather than by precinct. [A.R.S. § 16-411\(B\)\(4\)](#). Since it would be impossible to conduct the audit by precinct, the 2023 EPM provides, “In counties that utilize vote centers, each vote center is considered to be a precinct/polling location and the officer in charge of elections must conduct a hand count of regular ballots from at least 2% of the vote centers, or 2 vote centers, whichever is greater. Ballots do not have to be separated into precincts before the hand count audit.” [Arizona Election Procedures Manual, at 223 \(2023\)](#). The 2019 EPM has no such provision. If the 2023 EPM were invalidated, there would be no legal authority left to conduct a hand count audit of vote centers and the purpose of [A.R.S. § 16-602](#) would thus be frustrated.

CONCLUSION

While Pima County and the Pima County Recorder believe the 2023 EPM adoption was valid and complied with the more specific statutory adoption process, if the Court disagrees, any relief should be applied only prospectively. The Court has a long history of applying changes in interpretation of a statute only prospectively where a retroactive application could cause havoc and disruption. See e.g. [Matter of One Cessna 206 Aircraft, FAA Registry No. N-72308, License No. U-206-1361, 118 Ariz. 399, 402 \(1978\)](#).

County and local election officials should be able to continue to rely upon established and contemporary rules to meet the legislative intent for “...the maximum degree of correctness, impartiality, uniformity and efficiency...” in the conduct of elections. [A.R.S. § 16-452\(A\)](#).

RESPECTFULLY SUBMITTED September 18, 2025.

LAURA CONOVER
PIMA COUNTY ATTORNEY

By: /s/Daniel Jurkowitz
Daniel Jurkowitz (018428)
Deputy County Attorney
32 N. Stone #2100
Tucson, Arizona 85701
(520) 724-5700
Daniel.Jurkowitz@pcao.pima.gov
Attorney for Amici Curiae
Pima County