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12 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
13 IN AND FOR THE COUNTY OF MARICOPA

14 Adrian Fontes, in his official capacity as
15 the Maricopa County Recorder,

16 Plaintiff,

17 v.

18 State of Arizona; Katie Hobbs, in her
19 official capacity as the Secretary of State
20 of Arizona;

21 Defendants.

No. _____

**COMPLAINT FOR
DECLARATORY RELIEF**

Expedited Election Case

22 Plaintiff hereby alleges as follows:

SUMMARY OF THE CASE

23 1. This is a declaratory judgment action to ensure that voters in Maricopa
24 County who need assistance in filling out their ballots due to serious disabilities and
25 cannot receive assistance in proximity to another person due to public health restrictions
26 are able to vote in the November 2020 general election.

27 2. State and federal law protects the voting rights of people with disabilities.

28 3. Some people with disabilities, such as those who have cerebral palsy or
multiple sclerosis, may need assistance in filling out their ballots. The law protects
their right to assistance, too.

1 15. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401(16)
2 because Defendant Hobbs resides and/or holds office in that county.

3 **THE LAW PROTECTS THE VOTINGS RIGHTS OF THE DISABLED**

4 16. Arizona law provides that “[a] qualified individual with a disability shall
5 not be excluded from voting or be discriminated in voting under this section by reason
6 of the disability.” A.R.S. § 41-1421(B).

7 17. Title II of the Americans with Disabilities Act similarly provides that “no
8 qualified individual with a disability shall, by reason of such disability, be excluded
9 from participation in or be denied the benefits of the services, programs, or activities of
10 a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. §
11 12132. The provisions of Title II “apply to all aspects of voting.” Department of Justice,
12 *The Americans with Disabilities Act and Other Federal Laws Protecting the Rights of*
13 *Voters with Disabilities* (2014), https://www.ada.gov/ada_voting/ada_voting_ta.htm.

14 18. The law also protects the rights of voters with disabilities to receive
15 assistance to vote.

16 19. A.R.S. § 16-580(E) provides “[a]ny registered voter, at the voter’s option,
17 may . . . be accompanied and assisted by a person of the voter’s own choice or be
18 assisted by two election officials, one from each major political party, during any
19 process relating to voting or during the actual process of voting on a paper ballot,
20 machine or electronic voting system.”

21 20. Similarly, the Voting Rights Act of 1965 provides that “[a]ny voter who
22 requires assistance to vote by reason of blindness, disability, or inability to read or write
23 may be given assistance by a person of the voter’s choice, other than the voter’s
24 employer or agent of that employer or officer or agent of the voter’s union.” 52 U.S.C.
25 § 10508.

1 **THE ARIZONA LEGISLATURE PROVIDED FOR SPECIAL ELECTIONS**
2 **BOARDS TO SAFEGUARD THE VOTING RIGHTS OF THE DISABLED**

3 21. Consistent with these principles, Arizona law provides for the creation of
4 special election boards “for the purpose of making it possible for qualified electors who
5 are ill or have a disability to vote.” A.R.S. § 16-549(A).

6 22. Specifically, the statute provides that “any qualified elector who is
7 confined as the result of a continuing illness or physical disability and is, therefore, not
8 able to go to the polls on the day of the next election and who does not wish to vote by
9 the mailed early ballot procedure, may make a verbal or a signed written request to the
10 county recorder or other officer in charge of elections to have a ballot personally
11 delivered to the elector by the special election board at the elector’s place of
12 confinement within the county or other political subdivision.” A.R.S. § 16-549(C).

13 23. When a voter receives a ballot from a special election board, “the manner
14 and procedure of voting shall be as provided in section 16-548 [regarding early ballots],
15 except that the marked ballot in the sealed envelope shall be handed by the elector to
16 the special election board and shall be delivered by the board to the county recorder or
17 other officer in charge of elections.” A.R.S. § 16-549(E).

18 24. The early voting statutes (and by extension, the special election board
19 statute) recognize that voters may need help filling out early ballots.

20 25. By statute, an early ballot shall be accompanied by an envelope which
21 shall include an affidavit that shall be completed “[i]f the voter was assisted by another
22 person in marking the ballot.” A.R.S. § 16-547(A).

23 26. The affidavit reads:

24 I declare the following under penalty of perjury: At the registered voter’s
25 request I assisted the voter identified in this affidavit with marking the
26 voter’s ballot, I marked the ballot as directly instructed by the voter, I
27 provided the assistance because the voter was physically unable to mark
28 the ballot solely due to illness, injury or physical limitation and I

1 understand that there is no power of attorney for voting and that the voter
2 must be able to make their selection even if they cannot physically mark
3 the ballot.

4 Name of voter assistant: _____

5 Address of voter assistant: _____

6 *Id.*

7 **BASED ON PRIOR EXPERIENCE, THE RECORDER DEVELOPED A**
8 **POLICY TO ENSURE THAT SERIOUSLY DISABLED PEOPLE CAN VOTE**

9 27. In the August 4, 2020 primary election, the Recorder's Office received
10 requests for special election board services from 44 voters.

11 28. Approximately ten of those voters needed assistance in filling out their
12 ballots due to serious disabilities (such as amyotrophic lateral sclerosis (ALS), multiple
13 sclerosis, and cerebral palsy) but could not receive assistance in proximity to the special
14 election board members due to health restrictions associated with the COVID-19
15 pandemic.

16 29. For example, one woman would have serious health problems if she
17 touched paper. She was also at elevated risk of complications from COVID-19.
18 Pursuant to statute, the Recorder's Office sent a 2-person special election board to her
19 house. The members of the board were able to fill out the ballot for the woman
20 consistent with A.R.S. §§ 16-547 and -549 while communicating with her about her
21 selections through a window.

22 30. For the November 2020 general election, the Recorder's Office planned
23 to send special elections boards to assist these ten people and any other similarly
24 situated voters who requested special election board assistance.

25 31. The Recorder's Office recognized that voters who need assistance in
26 filling out their ballots due to serious disabilities may live in care facilities or hospitals
27 with restricted visitation policies due to COVID-19.

28

1 32. The Recorder’s Office developed a policy to deal with that situation by
2 using video technology. See **Ex. A** (Maricopa County Elections Department, *Early*
3 *Voting (EV) Special Election Boards (SEB): Expanding Voting Platforms for Voters*
4 *with Physical[]] Limitations*, Sept. 24, 2020) (the “Policy”).

5 33. The Policy was in part a response to the Governor’s executive orders
6 limiting access to care facilities due to COVID-19 health concerns, but encouraging
7 innovation in serving residents confined in these facilities. See, e.g., Exec. Order 2020-
8 28; Exec. Order 2020-22; Exec. Order 2020-53.

9 34. Under the Policy, “the option for a video meeting in lieu of in-person
10 meeting can be offered to the voter” only in limited circumstances: if the voter “meet[s]
11 the criteria of being physically unable to mark their ballot and restricted access to
12 meeting in-person exists (i.e. care facility, nursing home, etc.)” Policy at 1, ¶ 6.

13 35. In those limited circumstances, the Policy sets out detailed Video Meeting
14 Protocols for special election boards (“SEBs”) to follow.

15 36. Before meeting with the voter, the Protocols direct the SEB to take
16 preparatory steps such as to “ensure the voter does not have hearing challenges that will
17 prevent them from meeting through a video conference call,” “identify the appropriate
18 ballot for the voter,” and “provide a date and time to the voter and/or point of contact
19 to arrange for a video meeting.” Policy at 2, ¶¶ 1-3.

20 37. Upon arrival, “[t]he SEB will contact the voter, identify themselves,
21 follow internal protocols to verify the voter’s identity (Voter will physically hold their
22 identification up to the camera) and provide a brief explanation of what will happen on
23 the video meeting.” Policy at 2, ¶ 8.

24 38. “The SEB will begin by reading each office and candidate names on the
25 ballot. The board will stop after each office and request the voter’s selection.” Policy
26 at 2, ¶ 9.

27 39. “The SEB will repeat the voter’s selection, obtain confirmation from the
28 voter, and mark the ballot based on the voter’s choice.” Policy at 2, ¶ 10.

1 40. “The SEB will then hold the device towards the office or measure being
2 voted on the ballot as proof to the voter the correct choice was marked.” Policy at 2,
3 ¶ 11.

4 41. “Once a selection has been made for **all** offices or measures, the SEB will
5 read all offices or measures and confirm the voter’s choice.” Policy at 2, ¶ 12.

6 42. “The SEB will place the voted ballot in the affidavit and request
7 permission from the voter to write on the affidavit. The SEB will print their name in
8 the voter assistance section, sign their name, write ‘SEB’ at the top, and write ‘voter
9 unable to sign due to COVID-19 rules’ in the signature box.” Policy at 2, ¶ 13. The
10 SEB will then seal the affidavit. Policy at 2, ¶ 14.

11 **THE CONTROVERSY CONCERNING SEBS AT THE GENERAL ELECTION**

12 43. In September 2020, Secretary of State Katie Hobbs published guidance
13 entitled *Assisting Voters in Caregiving and Hospital Facilities During the COVID-19*
14 *Pandemic*. See **Ex. B**. The Policy is consistent with that guidance.

15 44. On September 21, 2020, the Governor sent a letter to Secretary Hobbs
16 accusing her of facilitating “special election boards in Maricopa County, by virtual
17 means, in violation of state law.” **Ex. C** (Letter from Gov. Ducey to Sec. Hobbs, Sept.
18 21, 2020) at 1. The letter also asserted that “[t]hese policy changes should be suspended
19 immediately.” *Id.* at 2.

20 45. The letter asserted that video meetings between special election boards
21 and voters violate state law because the special election board statute provides that
22 “[t]he ballot shall be delivered to the elector in person.” A.R.S. § 16-549(C).

23 46. The Attorney General’s Office has also questioned the legal authority for
24 Maricopa County’s plan for SEBs.

25 47. The concerns about the legal authority for the SEBs are unwarranted. for
26 several reasons.

27 48. First, the reference to delivering the ballot “in person” must be read in
28 conjunction with the statutory purpose of special election boards – to “mak[e] it

1 possible for qualified electors who are ill or have a disability to vote,” A.R.S. § 16-
2 549(A) – and the mandate that “[a] qualified individual with a disability shall not be
3 excluded from voting or be discriminated in voting under this section by reason of the
4 disability,” A.R.S. § 41-1421(B).

5 49. Read together, the statutes should not require an SEB to physically hand
6 a ballot to a voter if that requirement would deny a person the right to vote “by reason
7 of disability,” (*id.*) such as if the person’s disability prevents him from being in the
8 presence of an SEB member or if the person’s disability prevents him from accepting
9 delivery of the ballot in person (e.g., if the person lacks working use of her hands).

10 50. The SEB statute should also be read in light of the statutory recognition
11 that voters – especially voters who need SEB services – may not physically mark their
12 own ballots, and therefore may not need to physically receive them. *See* A.R.S. §§ 16-
13 547(A), 16-580(E).

14 51. Second, “in person” requirements in other areas of law have been deemed
15 fulfilled through telephonic or videoconference technologies. *See, e.g.,* Arizona
16 Attorney General Opinion No. I20-002 (2020) (permitting public bodies to hold public
17 meetings through technological means); Arizona Attorney General Opinion No. I85-
18 125, 1985 WL 70374 (1985) (“The use of a two-way television communications system
19 is surely the type of ‘creative solution’ contemplated by the Court. So long as the
20 parolee is still able to be seen and heard by all involved in the hearing, he will ‘be heard
21 in person.’”)

22 52. Third, under the Policy, SEBs that provide voters with county-issued
23 devices will be physically present at the same location as the voter (just not in the same
24 room), thus satisfying any “in person” requirement. The use of video technology to
25 communicate from a nearby room is little different than communicating with a person
26 through a window. And nothing in the statute specifies that the SEB and the voter be
27 in the same room.

EXHIBIT A

Maricopa County Elections Department

Early Voting (EV) Special Election Boards (SEB)

Expanding Voting Platforms for Voters with Physically Limitations

Purpose

The purpose of this policy and procedure is to outline the business case to incorporate technology into the existing in-person SEB services. The technology expansion will ensure voters requiring physical assistance with marking their ballot are not disenfranchised due to physical distancing and public health related concerns.

Scope

The scope of this SEB policy and procedure includes the SEB services provided to voters that request assistance for voting their ballot. The SEBs primarily provide in-person services to registered voters. This scope describes the expansion to the traditional in-person services to include smart device technology. The options available to voters will include voting in-person, courier service or the use of this newly proposed video meeting service (FaceTime).

Policy

The SEB team is responsible for facilitating and enabling voting by eligible voters who are ill or have a disability in accordance with the time periods outlined in Arizona Revised Statute A.R.S. § 16-549(C) and A.R.S. § 16-549(D). The administrative responsibilities are carried out by two permanent Elections staff. During elections, the administrator recruits and hires full time temporary employees that are paired together to form two member bipartisan boards. For all intents and purposes the acronym SEB will be used to describe the two member bipartisan board.

To ensure accessibility, the voter shall select their preferred method for voting and notify the SEB if they need a device to vote or if they prefer to use their own. The SEB will use iPads to conduct the video meeting.

Procedure

Planning

1. The SEB team will coordinate services by conducting outreach to facilities, contacting voters that previously participated with SEB services, and managing incoming requests from voters.
2. When coordinating with an assisted living facility, the SEB will work with the point of contact to identify voter interest, verify eligibility for those interested, coordinate registering voters, assist with voter registration updates and mitigate barriers (i.e. acceptable proof of identification).
3. The SEB will coordinate appointments for eligible voters to vote their ballot.
4. The SEB will provide information on the voting platform options during the coordination of the appointment (in-person, courier, or video meeting).
5. The SEB may only fulfill in person voting requests if physical distancing of the six feet requirement is possible.
6. The voter will select their preferred method for voting (courier or in-person) and if they meet the criteria of being physically unable to mark their ballot and restricted access to meeting in-person exists (i.e. care facility, nursing home, etc.), then the option for a video meeting in lieu of in-person meeting can be offered to the voter.
7. The SEB will provide the voter details on what they can expect during their voting experience.
8. The SEB will explain the identification requirements to voter and identify potential issues.
9. The SEB will identify if the voter needs to have a device transported to them to hold the video meeting, if they qualify for this video meeting service.

Video Meeting Protocols

1. The SEB will ensure the voter does not have hearing challenges that will prevent them from meeting through a video conference call.
2. The SEB will identify the appropriate ballot for the voter.
3. The SEB will provide a date and time to the voter and/or point of contact to arrange for a video meeting. Prior to the meeting, the SEB will work with the voter to determine if they will use their personal device or if the SEB will provide the device.
4. If the SEB supplies the device to the voter, the team will drive to the location of the voter. Instructions and disinfectant supplies will be provided to the voter and/or designated point of contact.
5. The SEB will be physically located in a confidential space that allows the device to be placed on speaker while observing physical distancing requirements.
6. The physical location of the SEB is contingent on available space and if the team drove to the location of the voter. For example, a facility may have a private room for the SEB or the team may sit in their vehicle outside the facility.
7. The SEB may also be located at the MCTEC facility if the voter chooses to use their personal device.
8. The SEB will contact the voter, identify themselves, follow internal protocols to verify the voter's identity (Voter will physically hold their identification up to the camera) and provide a brief explanation of what will happen on the video meeting.
9. The SEB will begin by reading each office and candidate names on the ballot. The board will stop after each office and request the voter's selection.
10. The SEB will repeat the voter's selection, obtain confirmation from the voter, and mark the ballot based on the voter's choice.
11. The SEB will then hold the device towards the office or measure being voted on the ballot as proof to the voter the correct choice was marked.
12. Once a selection has been made for all offices or measures, the SEB will read all offices or measures and confirm the voter's choice.
13. The SEB will place the voted ballot in the affidavit and request permission from the voter to write on the affidavit. The SEB will print their name in the voter assistance section, sign their name, write "SEB" at the top, and write "voter unable to sign due to COVID-19 rules" in the signature box.
14. The SEB will seal the affidavit.
15. The SEB will then retrieve the device from the voter and/or point of contact (when one has been loaned to the voter).
16. The SEB will disinfect the device upon receiving it from the voter and/or point of contact.
17. The SEB will triage the affidavit and ballot packet for processing and tabulation.

Affidavit

The affidavit shall be sealed in the presence of the bipartisan two member SEB team. Upon return back to the MCTEC secure facility, the SEB team will transfer custody of the packet to the team responsible for ensuring the remaining protocols for handling of the packet are adhered to. All transactions are tracked within the system and all affidavits are imaged for retention and archive. The image itself will include the SEB team members names and signatures for further accountability.

Devices

The SEB will use and provide County issued iPad devices for video meetings. Each iPad device is operated using cellular data connection (not Wi-Fi).

EXHIBIT B



Assisting Voters in Caregiving and Hospital Facilities During the COVID-19 Pandemic

This guidance provides recommendations from the Arizona Secretary of State's Office to county election officials for assisting voters in long term care facilities (including nursing homes and intermediate care facilities), residential health care facilities (including assisted living centers/homes and behavioral health residential facilities), and hospitals during the COVID-19 pandemic. These recommendations were developed in consultation with the Arizona Department of Health Services (ADHS) and based on existing guidance from the Centers for Disease Control and Prevention (CDC) and ADHS. These recommendations are aimed at facilitating the exercise of the right to vote while safeguarding the health and safety of voters, their family members and caregivers, other facility residents and staff, and election officials.

The information below should also be consulted by facility and hospital staff, caregivers, and family members to understand the options that may be available and applicable rules for assisting residents, patients, and family members in these circumstances. Contact your County Recorder's Office for more information regarding voter registration, early voting, including receiving a ballot-by-mail, and the availability of special election boards.

RECOMMENDATION 1: BALLOT-BY-MAIL

Arizona voters in long-term care and residential health care facilities (collectively, "caregiving facilities") or hospitals should primarily be encouraged to request a ballot-by-mail if at all possible. If the voter needs assistance marking or returning their ballot, they are encouraged to enlist the assistance of a trusted caregiver (including facility staff, where appropriate), family member, or household member. Assisters must sign and complete the appropriate portion of the ballot affidavit envelope. This option is a safe and secure means of voting that minimizes the risk of COVID-19 transmission.

A. Voters Should Request a Ballot-by-Mail Whenever Possible

The most convenient way for voters residing in caregiving facilities to receive a ballot is through the mail, either by signing up for the Permanent Early Voting List or by making a one-time request for a ballot to be sent to their residence location by mail. Receiving a

ballot by mail minimizes the risk of exposure to COVID-19 for both the voter and third parties, and is a long-established, secure, and safe means of voting in Arizona.¹

County Recorders are encouraged to coordinate with caregiving facilities in their county to provide relevant voting information to voters and remind voters who need special assistance to request a ballot-by-mail by the October 23, 2020 deadline, and preferably as early as possible to ensure sufficient time to receive, vote, and return the ballot. The Secretary of State's Office will also be issuing an AZVoteSafeGuide for voters in caregiving facilities and will coordinate with ADHS to distribute to appropriate facilities.

B. A Person of the Voter's Choice May Help Mark the Ballot at the Voter's Direction

If the voter is able to mark their own ballot, they should do so. A voter who needs assistance marking their ballot may rely on a trusted third party of the voter's choice, such as a caregiver (including facility staff, if appropriate), family member, or household member. See A.R.S. § 16-547. The person who assisted the voter in marking their ballot must complete the appropriate section of the early ballot affidavit stating that they provided assistance because the voter "was physically unable to mark the ballot solely due to illness, injury or physical limitation," and acknowledging that "there is no power of attorney for voting and that the voter [was] able to make their selection even if they cannot physically mark the ballot." A.R.S. § 16-547(A).

Please note that a power of attorney is not permitted in any procedure or transaction concerning elections, including requesting or voting a ballot. A.R.S. § 16-102. Therefore, the voter must be able to make their own selections even if they require assistance marking the ballot.

C. Caregivers, Family Members, Household Members, and Election Officials May Help Voters Return Their Voted Ballot

Only certain people may help return a voter's ballot. Voters may rely on a caregiver, family member, household member, or election official to help mail back or otherwise return their voted ballot to county election officials. A.R.S. § 16-1005. Under current Arizona law, other third-parties not falling into one of these four categories may not help return a voter's ballot.

Arizona law defines these categories broadly:

- A caregiver is "a person who provides medical or health care assistance to the voter in a residence, nursing care institution, hospice facility, assisted living center,

¹ Step-by-step instructions on how to sign up for the Permanent Early Voting List or make a one-time request for a ballot-by-mail is available at www.azsos.gov/votebymail. If needed, voters may request that a ballot be mailed to a designated temporary address.

assisted living facility, assisted living home, residential care institution, adult day health care facility or adult foster care home.”

- A family member is “a person who is related to the voter by blood, marriage, adoption or legal guardianship.”
- A household member is “a person who resides at the same residence as the voter.”

Therefore, voters who reside in caregiving facilities may rely on the assistance of facility caregiving staff or visiting family or household members to both complete and return their ballots. Family visitors should take appropriate precautions and comply with the most recent guidance from the Arizona Department of Health Services for visiting congregate settings for vulnerable adults.²

Where practicable, counties are encouraged to coordinate with facility staff to establish designated pick-up date(s) on which County Recorder staff are scheduled to pick up voted ballots from voters in the facility.

RECOMMENDATION 2: SPECIAL ELECTION BOARDS

Voters who require physical assistance in completing and/or returning a ballot and who may not have a trusted caregiver, family member, household member or other third-party to turn to for assistance may request a Special Election Board from their County Recorder. A.R.S. § 16-549(C) permits counties to appoint and deploy SEBs to assist electors “who [are] confined as the result of a continuing illness or physical disability and [are], therefore, not able to go to the polls on the day of the next election and who do[] not wish to vote by the mailed early ballot procedure.”

SEBs “shall consist of two members, one from each of the two” major political parties. A.R.S. § 16-549(A). County Recorders may appoint “such number of special election boards as needed” to deliver ballots to ill or disabled electors. *Id.* The statute does not limit who can serve on a Special Election Board, except for any “person who is a candidate for an office other than precinct committeeman.” *Id.*

Prior to providing a voter a ballot, the SEB must first verify the voter’s identity by asking for appropriate voter identification consistent with A.R.S. § 16-579; *see also* Elections Procedures Manual ch. 2, section IV.B (specifying that a voter must provide identification before receiving a ballot from a special election board).

Voters generally must request SEB assistance by 5:00 p.m. on the second Friday before the election. A.R.S. § 16-549(C). This year, that day falls on October 23, 2020. Voters who

² Arizona Department of Health Services, Covid-19 Guidance for Visitation At Congregate Settings For Vulnerable Adults and Children (Aug. 28, 2020), <https://www.azdhs.gov/documents/preparedness/epidemiology-disease-control/infectious-disease-epidemiology/novel-coronavirus/community/congregate-visitation.pdf>.

become ill or physically unable to complete their ballot after that date, including those who are hospitalized, “may nevertheless request personal ballot delivery” by an SEB, but must sign a statement under penalty of perjury stating that the person is experiencing or experienced an emergency after 5:00 p.m. on the second Friday preceding the election and before 5:00 p.m. on the Monday immediately preceding the election that would prevent the person from voting at the polls. A.R.S. § 16-549(D). The County Recorder “shall, when possible honor such requests up to and including the last day before the election.” A.R.S. § 16-549(D); *see also* Elections Procedures Manual ch. 2, section IV (outlining timelines for requesting Special Election Boards).

Counties should coordinate with caregiving facilities within their jurisdiction to facilitate the use of SEBs by voters inside the facility. The Arizona Department of Health Services maintains databases listing all the caregiving facilities registered in a particular county.³ Counties are also encouraged to prepare outreach materials that can be distributed to residents of caregiving facilities to inform them about how to request SEB assistance and the various options that are available in the county.

A. Personal Ballot Delivery by a Special Election Board

If the SEB is not permitted to physically meet with the voter due to COVID-19 visitation and access restrictions (or the voter is not comfortable receiving assistance through an in-person meeting due to COVID-19), and the voter is either: (1) physically able to mark their own ballot; or (2) can rely on a trusted caregiver (including facility staff, where appropriate), fellow resident, or family member with visitation access to assist with marking their ballot, the SEB may personally deliver a ballot to the voter in the facility and return the voted ballot to the County Recorder’s Office.

The SEB should contact the voter (or voter’s designated assistant or caretaker) upon arriving on-site, identify themselves, follow internal procedures to verify the voter’s identity by examining valid voter identification consistent with A.R.S. § 16-579, transfer the ballot to the voter (or the voter’s designated caretaker), ensure the voter receives the ballot, and retrieve the voter’s sealed and signed ballot envelope for transport back to the County Recorder’s Office.

1. The SEB members should wear a face covering/mask and, if available, face shield when approaching or interacting with any staff or residents of the facility.
2. The SEB should wear gloves to handle the signed ballot envelope, or thoroughly wash hands with soap and water or sanitize hands immediately before and after handling the envelope.

³ Arizona Department of Health Services, Provider and Facility Databases, <https://www.azdhs.gov/licensing/index.php#databases> (providing databases for, among other licensed providers, Long Term Care Providers, Residential Services Providers, and Group Homes for the Developmentally Disabled).

3. The envelope should be immediately placed in a designated plastic zip-lock bag for transport back to the County Recorder's Office.
4. If time permits, the plastic bag containing the voted ballot envelope should be stored in a secure area and quarantined for three days before being retrieved for processing and tabulation.

B. In-Person Assistance by a Special Election Board

Due to COVID-19, many facilities have imposed visitation and access restrictions to protect the health of residents and staff. On August 25, 2020, however, the Governor's Long Term Care Facility Task Force voted to reopen caregiving facilities pursuant to several recommendations, including that visitors provide proof of a negative COVID-19 test taken within the past 48 hours and follow specified safety precautions during the visit. On August 28, 2020, ADHS published additional guidance for visitation at congregate settings for vulnerable adults.⁴ Pursuant to this guidance:

- Indoors in-person visits, including by SEBs, should be permitted only when the community spread levels in the county of the particular care facility are deemed "minimal" by ADHS benchmarks.
- Outdoors in-person visits may be permitted when community spread levels are "moderate" in the county.⁵

Where in-person visits by SEBs are permitted and requested by voters in caregiving facilities or hospitals, counties should supplement existing in-person SEB procedures with the following additional health and safety recommendations. Further, SEBs should follow all rules set by the facility to safeguard the health and safety of residents and facility staff.

1. Even where community spread is minimal, outdoor visits present lower risk than indoor visits and should be utilized whenever possible.
2. Any in-person meetings should take place in designated areas of the facility with ample ventilation and minimal exposure to other individuals. For example, caregiving facilities or hospitals could reserve a section of a courtyard, a spare

⁴ Arizona Department of Health Services, Covid-19 Guidance for Visitation At Congregate Settings For Vulnerable Adults and Children (Aug. 28, 2020), <https://www.azdhs.gov/documents/preparedness/epidemiology-disease-control/infectious-disease-epidemiology/novel-coronavirus/community/congregate-visitation.pdf>.

⁵ Current community spread levels (minimal, moderate, or substantial) by county are available at ADHS's Business Operations Dashboard, <https://www.azdhs.gov/preparedness/epidemiology-disease-control/infectious-disease-epidemiology/index.php#novel-coronavirus-community>.

room, a corner of a building with a window or similar partition, or other such space to be used exclusively for meetings between SEBs and voters.

3. Counties and/or facilities should consider acquiring temporary plexiglass or acetate panels that can be assembled into portable, lightweight partitions to separate SEB members from voters in the designated meeting space. These partitions should be sanitized after each use.
4. SEB members should undergo symptom/temperature screening before entering facilities, particularly patient care and living areas.
5. Whenever possible, SEB members should arrange for a COVID-19 test within 48 hours of the scheduled visit and ensure a negative test result prior to the visit. In some circumstances, the SEB may be required to present proof of negative test results as a condition of entry. SEB members should isolate between the time of their COVID-19 test and their visit to the facility, and should provide their names on the facility visitor log for contact-tracing purposes.
 - a. ADHS can assist in arranging rapid testing for a limited number of SEB members in advance of their dispatch to caregiving facilities or hospitals. Counties needing such assistance should contact the Secretary of State's Office to arrange for testing.
6. Counties should supply SEBs with adequate personal protective equipment (PPE) including face coverings/masks, face shields, and gloves, and sanitation supplies, including alcohol-based hand sanitizer and disinfecting wipes or spray.
7. When entering the facility or meeting with a voter, SEB members should:
 - a. Wear a face mask/covering at all times;⁶
 - b. Thoroughly wash hands with soap and water before and after entering and leaving, or use an alcohol-based hand sanitizer if hand washing facilities are not readily available;⁷
 - c. Remain 6 feet from all residents/patients and staff;
 - d. Not use patient facilities/restrooms; and

⁶ The CDC recommends wearing masks without an exhalation valve or vent. Centers for Disease Control and Prevention, Coronavirus Disease 2019: How to Wear Masks, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-to-wear-cloth-face-coverings.html>.

⁷ Pursuant to CDC guidelines, any alcohol-based hand sanitizer should be comprised of 60 percent alcohol by volume, at minimum. Centers for Disease Control and Prevention, Coronavirus Disease 2019: Hand Hygiene Recommendations <https://www.cdc.gov/coronavirus/2019-ncov/hcp/hand-hygiene.html>.

- e. Plan in advance, and make sure the voter does too, to ensure the appointment can be completed as efficiently and quickly as possible.
8. The SEB should meet with the voter in the voter's residential living space inside the facility only if: (1) the voter does not have a roommate or share a room; and (2) the SEB members provide proof of a negative COVID-19 test, taken within the past 48 hours. Further, the SEB should remain in patient care/living areas for less than 15 minutes if at all possible.
9. Upon completion of the appointment, the voted ballot envelope should be immediately placed in a designated plastic zip-lock bag for transport back to the County Recorder's Office.
10. If time permits, the plastic bag containing the voted ballot envelope should be stored in a secure area and quarantined for three days before being retrieved for processing and tabulation.

C. Virtual Special Election Boards Using Videoconferencing Technology

If the SEB is not permitted to enter a caregiving facility or hospital due to COVID-19 visitation and access restrictions (or the voter is not comfortable receiving assistance through an in-person meeting due to COVID-19), but the voter needs physical assistance in marking their ballot and does not have a trusted caregiver, fellow resident, or family member or other third-party with visitation access to provide that assistance, counties are encouraged to develop procedures for facilitating virtual SEB assistance with the aid of videoconference technology.

1. Counties should equip their SEB teams with pairs of county-issued tablet devices with a secure videoconferencing application, and one of which can be hand-delivered to the voter inside the caregiving facility or hospital who wishes to receive SEB assistance via video conference.
 - Counties should rely on their procurement and IT departments to purchase the tablets and install any necessary applications that will be used to assist voters. The tablets should be programmed to allow a voter to accept a videoconference invitation by the SEB simply by pressing one button.
 - Counties should consult IT personnel regarding security measures that can be implemented to ensure videoconferencing proves to be a safe and secure method of connection. For example, this may be achieved by using a secure connection to a county's secure wireless network enabled by a portable wireless internet hotspot device (MiFi), or other secure means.
 - Counties may also permit voters to conduct a virtual SEB appointment using the voter's own device, and should consult IT personnel regarding any security measures that should be implemented when this option is utilized.

2. The SEB should make advance arrangements with the voter (or the voter's designated assistant or caregiver) to confirm technology arrangements and, if necessary, coordinate the transfer of a county-provided tablet at the beginning of the meeting. Any county-supplied tablet device should be sanitized using alcohol-based wipes⁸ before transferring to a third-party. Once the video connection is established, the SEB should ensure that the voter is able to properly hear and see the tablet screen.
 - If the voter chooses to use their personal device, the SEB team may be located at the County Recorder's Office during the videoconference SEB appointment.
 - If the SEB is to provide the device to the voter, the SEB team will have to drive to the location of the voter. During the meeting, the SEB team should be physically located in a confidential space that allows the device to be placed on speaker, while observing physical distancing requirements. For example, a facility may have a private room from which the SEB may conduct the videoconference appointment, or the SEB team may sit in their vehicle outside the facility or a voter's home.
3. During a virtual SEB session, the SEB members need not be in the same room as the voter who requires assistance, so long as the SEB can verify the voter's identity consistent with A.R.S. § 16-579 and the voter is able to effectively communicate their selections through the videoconference technology.
4. At the start of the appointment, the SEB should ask the voter (or voter's caregiver inside the facility) to physically hold up to the camera the voter's valid form(s) of voter identification for inspection. Alternatively, the voter or voter's caregiver may bring the voter's identification documents (or copies thereof) for the SEB to review at the start of the meeting.
5. Once the SEB verifies the voter's identity, the SEB meeting should proceed as they would during a regular in-person SEB meeting. The following steps are recommended to ensure clear communication:
 - a. The SEB should read one office at a time, followed by the candidate names on the ballot for each office, as well as each ballot measure. The SEB should stop after each office/ballot measure and request the voter's selection.

⁸ Consistent with CDC guidance, counties should equip SEBs with alcohol-based wipes that are at least 70% alcohol by volume for sanitizing tablets and may also consider procuring wipeable covers for any county-supplied devices. See Centers for Disease Control and Prevention, Coronavirus Disease 2019: Cleaning and Disinfection for Community Facilities, <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>.

- b. The SEB should repeat the voter's selection, obtain confirmation of that selection from the voter, and mark the ballot based on the voter's choice.
 - c. The SEB should then hold the device towards the selection on the ballot to show the voter the correct choice was marked.
 - d. Repeat for each office and ballot measure on the ballot. Once a selection has been made for all offices and ballot measures, the SEB should read all offices and get a final confirmation of the voter's choice for each office and ballot measure, and give the voter the opportunity to view the marked selection for each office and ballot measure before sealing the ballot in the affidavit envelope.
 - e. The SEB should then place the voted ballot in the affidavit envelope, seal the affidavit envelope, and show the voter on the video that the envelope has been sealed with the ballot in it.
 - f. The SEB will then request permission from the voter to write on the affidavit. The SEB will print their name in the voter assistance section, sign their name, and write "SEB" at the top. If it is not possible to transmit the ballot envelope to the voter for them to physically sign or make their mark, the SEB should write "voter unable to sign due to COVID-19 rules" in the voter signature box.
6. At the conclusion of the appointment, the SEB should retrieve any county-provided tablet (if necessary, with the assistance of facility staff) and sanitize the equipment for transport back to the County Recorder's Office.
 7. Upon completion of the appointment, the voted ballot and envelope should be immediately placed in a designated plastic zip-lock bag for transport back to the County Recorder's Office.
 8. If time permits, the plastic bag containing the voted ballot envelope should be stored in a secure area and quarantined for three days before being retrieved for processing and tabulation.

EXHIBIT C



STATE OF ARIZONA
OFFICE OF THE GOVERNOR

DOUGLAS A. DUCEY
GOVERNOR

EXECUTIVE OFFICE

September 21, 2020

Secretary of State Katie Hobbs
1700 W. Washington St., 7th Floor
Phoenix, Arizona 85007

Dear Secretary Hobbs,

I write today after receiving concerns expressed by a certified election officer regarding election policies and practices that have been proposed and/or recently implemented. Over the last two years, our offices have worked closely to maintain and strengthen the integrity of our election system. From the approval of the 2019 Election Procedures Manual, to fully funding and investing in the 2020 Presidential Preference Election, to a \$9 million investment to support safe and secure voting in Arizona during the COVID-19 pandemic— I appreciate your partnership.

As you are aware, the integrity of the election system is attributed in large part by the commitment of election officers to uphold our constitution, laws, and the state election procedures manual. The reports received by my office regarding the proposed election policies and procedures seem to break with that tradition, and appear in conflict with state law and the election procedures manual.

Specifically, my office received reports of the following:

- The establishment of a hotline by your office that would allow individuals to register to vote telephonically, without submitting a required registration form.¹ State law and the election procedures manual very clearly require a voter registration form to be submitted by a voter, precluding the ability of your office to register voters telephonically.
- The facilitation of special election boards in Maricopa County, by virtual means, in violation of state law, which requires that these services be, “delivered to the elector *in person* by a special election board...” (emphasis added).² Further, the \$9 million

¹2019 Election Procedures Manual, p. 1.

² A.R.S. § 16-549(C)

investment in response to COVID-19 was, in part, to ensure election officials have adequate resources to ensure safe and secure *in-person* special election board services.

Across all spectrums, COVID-19 has changed the way we operate and we've had to quickly evolve to accommodate the unforeseen demands and challenges of this pandemic — but at no point in addressing these challenges should we disregard the laws, policies, and procedures that exist to protect the integrity of our election systems. Substantive policy changes such as the ones described by election officials should endure legislative scrutiny or approval by the attorney general and the governor through the rigorous election procedures manual process prescribed in state law.

These policy changes should be suspended immediately so that Arizonans can continue to have confidence and faith in the integrity of our election system. If you have any questions, please do not hesitate to reach out to my staff.

Sincerely,

A handwritten signature in black ink that reads "Douglas A. Ducey". The signature is written in a cursive, flowing style.

Douglas A. Ducey
Governor
State of Arizona

CC: Mark Brnovich, Attorney General