



Arizona Recommended Election Law Modifications

Below is a condensed list of policy recommendations to improve Arizona's election administration procedures and bolster election integrity in Arizona.

Poll Observers

Overview of Arizona's Law Relating to Poll Observers

Arizona Revised Statutes (A.R.S.) § 16-590, Arizona's law regarding poll observers, falls short in two respects. First, the law gives too much discretion to county election officials, and second, the law does not mandate poll observers in many important aspects of the election process that should be monitored to ensure election integrity.

This past election cycle, counties were able to use COVID-19 restrictions as a justification to prevent meaningful observation of the election process by poll observers. Despite a provision in the Secretary of State's Election Procedures Manual that "procedures shall allow political party observers to effectively observe the election process, counties nonetheless were able to limit poll observers' ability to see by requiring them to distance themselves from the process. Additionally, counties like Cochise County began mandating that observers satisfy a county residency requirement despite a provision in the Elections Procedures Manual that "[a]ppointed political party observers need not be qualified electors in the precinct or county of observation." *Election Procedures Manual*, State of Arizona, 140 (Dec. 2019). Obviously, the legal provisions currently in place are insufficient to prevent counties from unduly impeding the observation process.

Arizona law only requires observation at voting locations and "central counting places." This does not include other locations where ballots are processed, such as the offices of county recorders where election workers verify signatures. Likewise, many counties utilize third-party vendors to print and process ballots away from voting locations and county facilities. Although these vendors process a significant amount of ballots, the law currently fails to include opportunities to observe the process in these locations. This is especially concerning because ballots are being processed in these locations away from the public eye.

Recommendations

Arizona should consider changing its laws to clarify several of these issues.

First, the Legislature should clarify the degree of discretion election officials have to limit opportunities for party observers to monitor ballot processing and other important election processes. This should include an express prohibition on county officials implementing any *de facto* residency requirement whatsoever for poll observers and further limit the discretion local officials have to distance poll observers from the process in their enforcement of any public

health or safety measure by including a maximum distance that observers can be kept from any portion of the processing of ballots or other important election tasks.

Second, it should expand opportunities for poll observers to include any location where meaningful ballot processing occurs, including the county recorder offices and third-party vendor locations. Any other locations where important parts of the voting process occur should also be included in these opportunities. This change would ensure that the process is adequately monitored at each significant step to bolster honest and open elections.

Permanently Early Voting List

Arizona's Permanent Early Voting List

Arizona's Permanent Early Voting List (PEVL) allows voters to elect to permanently receive their ballot by mail. Once a voter enrolls in the PEVL, the voter is automatically mailed their ballot ahead of the general election.¹ Under current law, voters remain on the PEVL until they move or request to be removed. Thousands of voters on the PEVL have not participated in the past several elections, yet they are still mailed a ballot for each election. The result is numerous unused ballots that can then potentially be acquired by bad actors.

Senate Bill 1069

Currently pending in the Arizona Legislature is SB 1069, a bill requiring the removal of voters from the PEVL that have not voted in the past two election cycles.

SB 1069 would improve the current PEVL system by increasing the degree to which ballots are effectively delivered to voters without allowing unused mail ballots from non-participating voters to float around at the expense of election integrity. This small reform would go a long way toward preventing opportunity for bad actors to manipulate the election process and increasing public confidence in election security.

Post-Election Audits

Overview of Arizona's Hand-Count Audit System

A.R.S. § 16-602 sets forth Arizona's current hand-count audit system used to verify the accuracy of election results. The current process requires the hand-counting of at least two percent of the precincts or voting locations in each county, or two precincts or voting locations, whichever is greater, in order to verify that the election day results from in person voting is accurate. These precincts are selected at random from a pool consisting of every precinct or voting location in that county. A similar audit is conducted with 2% of early votes cast by mail.

Risk Limiting Audits

¹ An exception arises with independent voters. Any registered independent voter must select a particular party's ballot in order to vote in the primary. If the voter fails to do so by the statutory deadline, the ballot will not automatically be sent.

There has been interest in changing Arizona's hand-count audit to what is known as a risk limiting audit (RLA). Rather than conducting a hand-count of a percentage of votes to ensure accuracy, RLAs are an electronic audit that uses a random sample of the total number of ballots cast to verify whether the votes are accurate.

- RLAs are an effective method to ensure ballots are being counted accurately, and officials can utilize the random sample to discover any discrepancies in the tabulation process. RLAs can be used to verify whether election technology is accurately tabulating votes, detect any election software issues, and troubleshoot any issues with voting equipment.
- By eliminating human error, RLAs are statistically more accurate in verifying election results and are viewed by experts as a viable option in the alternative to burdensome and costly hand-count audits. Because officials are less involved, the nonpartisan nature of the RLA weighs in favor of honesty in the civic process and removes opportunity for malfeasance.
- RLAs are far more efficient than hand-count audits. The greater the margin of difference between the candidates, the smaller the sample size needed. The smaller the margin of victory, the larger the sample size needs to be. When a race is too close to call, however, a random sample will likely not be sufficient to confirm a winner due to the need to review every vote.
- Nevertheless, RLAs are a method by which officials can determine whether ballots are being counted accurately and whether the election result appropriately reflects the ballots cast.

Recommendation

Technology will continue to be used effectively to administer elections in Arizona and an accurate and efficient method for verifying election results needs to be developed now. While there is concern that switching to an RLA process would defeat the purpose of A.R.S. § 16-602's hand-count audit, which allows the public to sit and count paper ballots and therefore increases transparency, implementing an RLA in Arizona would bolster the honesty, accuracy, and efficiency of election auditing. Therefore, Arizona should consider amending its current hand-count process to fix the flaws mentioned above or consider implementing an RLA.

Settlements and Consent Decrees

Overview of Settlements and Consent Decrees

When litigation is brought to challenge an election procedure, which occurred frequently in the 2020 election cycle, the Secretary of State will often enter into a settlement with the party bringing the cause of action. When these settlements, or consent decrees are entered into, the Secretary of State usually agrees not to enforce or to enforce differently a specific law or set of laws. Consent decrees, while convenient to avoid further litigation, have an immense influence on election administration and greatly impact election officials down the chain of command. In addition, consent decrees can change the law significantly without the input of the legislature, governor, or other representatives of the people.

House Bill 2302

The Arizona Legislature is currently considering HB 2302, which would require the Secretary of State to consult with county recorders and election directors before entering into a settlement if the settlement will impact the operations of those election officials. This bill gives county recorders and election directors, who are largely responsible for carrying out the consent decree, an opportunity to be heard before the settlement is finalized.

Recommendation

HB 2302 is a strong start to ensuring the Secretary of State cannot unilaterally enter into consent decrees that affect hundreds of election officials and millions of voters; however, the bill could go further than it currently does to protect the rights of Arizona voters.

HB 2302 would be improved by a requirement that the Secretary of State consult the Legislature before being permitted to enter into a settlement agreement, considering the Legislature thoughtfully passed the laws at issue through the legislative process. This prevents these duly enacted laws from being tossed to the side due to a consent decree. Additionally, when the Secretary of State is more inclined to enter into a consent decree because it favors their partisan leaning, this would limit the Secretary's ability to do so unchecked. Because consent decrees greatly impact elections, HB 2302 should go further in solidifying the way in which the Secretary can enter into them.

Voting Equipment Storage and Security

Arizona Law Regarding Voting Equipment Storage and Security

Arizona lacks laws regarding the proper storage and security of election equipment after Election Day. As it stands currently, counties typically leave tabulation equipment unmonitored at the voting location. While these locations are locked from the outside, the law does not adequately provide procedures for election equipment after voting has concluded.

Recommendation

Arizona law should be reformed to set forth the standards by which voting equipment is stored and secured. The procedures should require voting equipment to be promptly secured after Election Day, require counties to pick up and secure all equipment by the next business day after Election Day, and provide physical security and data retention requirements specific to each type of equipment.

Causes of Action

Standing for Parties and Candidates

Arizona law does not currently provide parties and candidates the opportunity to bring causes of action to enforce election integrity provisions and ensure these safeguards are being properly and adequately enforced.

Recommendation

The law should be reformed to grant standing to parties and candidates to bring causes of actions to compel election officials to enforce these important election integrity safeguards. Having a law of this nature would boost public confidence by ensuring duly passed election laws are being adequately enforced.