



KATIE HOBBS
SECRETARY OF STATE
State of Arizona

Governor Doug Ducey
1700 W. Washington St., 9th Floor
Phoenix, AZ 85007

September 21, 2020

VIA EMAIL ONLY

Dear Governor Ducey,

I write in response to your letter dated September 21, 2020 expressing concern regarding certain election policies and practices. As you noted in your letter, our Offices have enjoyed a strong bipartisan partnership over the past two years—a partnership that has benefitted Arizona voters and a partnership that I appreciate. I am hopeful that that partnership will continue, and the misunderstandings that prompted your letter will be quickly dispelled.

The commitment of elections officials to uphold our constitution and laws is certainly crucial to the integrity of our elections, and Arizonans rightfully place great faith in their elections officials. But the integrity of our elections also requires a deeper commitment from elections officials: a commitment to maximize the enfranchisement of voters and to facilitate and ease the process of voting within the contours of our constitution and laws. During the COVID-19 pandemic, voters face new barriers to the ballot box, barriers which our Offices have collaborated to reduce. But those who have been most affected by the pandemic—particularly those in long-term care facilities, those who are hospitalized, and members of tribal nations—still face barriers to democratic participation that may remain insurmountable despite our shared efforts.

Against this backdrop, my Office developed internal procedures for voter registration assistance and issued guidance—in close collaboration with your staff and the Arizona Department of Health Services (ADHS)—with recommendations on providing special election board assistance, including assistance aided by video conferencing technology, to voters in long term care facilities, residential care facilities, and hospitals when face-to-face visitation is not permitted or safe due to COVID-19. As explained further below, both these efforts were developed to be consistent with existing law.

First, my office has not established a hotline that would allow individuals to register to vote telephonically without submitting a paper registration form. We agree that voters must register to vote either by submitting a paper registration form or completing an online registration through the ServiceArizona website. As you may know,

however, COVID-19 has made registering to vote difficult for tribal communities because: (1) in-person voter registration efforts, both by election officials and civic engagement organizations, have been significantly curtailed, and (2) online registration is often not available to these Arizonans due to lack of internet access and/or lack of an Arizona driver's license or state identification card, which is necessary to use ServiceArizona. When these very valid concerns were brought to our attention, our Office developed procedures to provide limited assistance to eligible Arizonans in initiating the submission of a paper voter registration form by the October 5, 2020 voter registration deadline if the voter cannot register through ServiceArizona and cannot otherwise submit a complete voter registration form on their own by the registration deadline. In that circumstance, we would expressly instruct the voter that their registration will not be complete until they sign the copy of the registration form that we mail to them and submit a signed form to their County Recorder's Office. *See* A.R.S. § 16-134(B). You can rest assured that no one is being registered telephonically without submitting a complete voter registration form. This process is entirely consistent with existing law, and I am proud of our multifaceted efforts to work within the existing framework and develop creative solutions that will assist Arizonans who—due to pre-existing socio-economic challenges, exacerbated by the impact of COVID-19—may otherwise be shut out of the democratic process. Tribal communities, such as the Navajo Nation, have been hard hit by the pandemic. The least we can do is ensure they can still exercise their fundamental right to vote and participate in our democracy despite these challenges.

Second, and as noted above, my Office worked with ADHS and members of your staff to develop guidance and recommendations on providing special election board (“SEB”) assistance, including assistance aided by video conferencing technology, to voters in long term care facilities, residential care facilities, and hospitals when COVID-19 restrictions prevent SEBs from physically entering those facilities. So it comes as a surprise to hear, after the guidance has now been issued, that your Office believes it is contrary to state law. Raising these objections during the development of the guidance would have certainly been preferable and would have presumably eliminated any need for the current correspondence.

The guidance provided by my Office recommends that an SEB use videoconferencing technology only 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)” and “the voter...does not have a trusted caregiver, fellow resident, or family member or other third-party with visitation access to provide that assistance.” I believe this guidance will, if necessary, protect the voting rights of those who rely on an SEB to vote and is within the reasonable contours of state law. The guidance also minimizes the potential number of voters who may use this process.

Your letter notes that state law requires an SEB to deliver a ballot “in person” to an elector. However, “in person” requirements have, in other areas of law, been allowed to proceed through the use of technological means. For example, Arizona Attorney General Opinion No. I91-033 explained that for the purposes of conducting open meetings, a Community College District governing board would be approved to use electronic media such as a telephone or video conference. 1991 WL 488347 (Ariz. 1991) (citing Arizona

Attorney General Opinion I83-135, which determined that one or more members of a public body unable to be present in person may participate by telephone or video conference). These principles were recently reaffirmed in Arizona Attorney General Opinion No. I20-002 (Ariz. 2020). And Arizona Attorney General Opinion No. I85-125, 1985 WL70374 (Ariz. 1984) permitted the use of telephonic or videoconference technologies to conduct in-person parole hearings. Moreover, under my Office's guidance, SEBs who provide the voter with a county-issued device will be physically present at the same location as the voter (just not in the same room), thus satisfying any "in person" requirement, even strictly construed. This option is also consistent with your repeated admonitions regarding the importance of protecting elderly and vulnerable Arizonans from COVID-19, and the flexibility you have implemented to mitigate the risk of COVID-19 spread. *See, e.g.*, Exec. Order 2020-28 ("[A]n introduction of COVID-19 into nursing care institutions can result in an outbreak and have devastating consequences for both healthcare providers and residents."); Exec. Order 2020-22 (requiring virtual visitation for all residents of facilities where visitation has been restricted); Exec. Order 2020-53 ("[A]voiding close contact with others, especially for Arizonans 65 or older, remains an important precaution to mitigate COVID-19 impacts...[modifications of requirements] are necessary to ensure that Arizonans are able to obtain governmental services and participate in government functions as Arizona responds to and recovers from COVID-19.").

If, despite these authorities, your Office still believes that SEB assistance aided by videoconferencing technology is impermissible under current law, I would respectfully disagree, but urge you to promptly: (1) issue an Executive Order authorizing such a practice where necessary due to COVID-19; (2) order ADHS to issue emergency directives to safely facilitate voting in long term care, residential care, and hospital facilities under A.R.S. § 26-307; (3) designate my Office to issue emergency orders regarding SEBs under A.R.S. § 26-307; or (4) otherwise authorize another solution to ensure our most vulnerable citizens—elderly and ill Arizonans, who have faced the gravest risk from the pandemic—are not also deprived of their fundamental right to vote due to the pandemic.

Sincerely,

A handwritten signature in black ink, appearing to be 'KH' followed by a long horizontal flourish.

Katie Hobbs
Arizona Secretary of State

CC: Mark Brnovich, Attorney General