

Briefing Summary - Federal Review Letter

Purpose of the Letter

The letter asks multiple federal offices to review whether Arizona properly removed detailed voting-equipment certification procedures from the EPM, whether the federal VSTL accreditation framework was lawfully administered, and what remedies or review mechanisms are available if requirements were not followed.

Arizona Elections Procedures Manual (EPM)

Arizona law ties voting-system certification to HAVA compliance and testing by a HAVA-accredited laboratory, with final state adoption occurring through the Secretary of State after review by the Election Equipment Certification Committee.

The 2019 EPM contained a ten-page Voting Equipment Certification section that remained through the July 2023 public-comment draft but was removed before the September 2023 submission, prompting the County to ask for the legal basis, replacement procedures, and consultation records.

The County specifically questions whether the Secretary of State satisfied A.R.S. § 16-452(A), which requires consultation with each county board of supervisors or other officer in charge of elections when prescribing EPM rules.

EAC Voting System Test Laboratory (VSTL) Accreditation

HAVA directs the EAC to provide for voting-system testing and certification through accredited laboratories, directs NIST to evaluate and monitor those laboratories, and requires a Commission vote before accreditation may be revoked.

The letter describes HAVA § 231(d), now 52 U.S.C. § 20971(d), as the transition provision that kept the pre-2002 testing and accreditation procedures in place only until the EAC established its own program.

The Board asks federal reviewers to determine what legal consequence follows if the EAC or a laboratory later departs from an applicable accreditation or program requirement rather than assuming that the pre-HAVA procedures automatically revive.

Expiration, Reassessment, and NOC 21-01

VSTL Program Manual Version 2.0 said accreditation was valid for no more than two years and expired on the certificate date, while also allowing continued accreditation when a timely renewal was pending or the EAC lacked a quorum.

In 2021 the EAC issued continuation memoranda and NOC 21-01, which treated the two-year period as a reassessment interval rather than automatic revocation and shifted the program away from printed certificate expiration dates.

Pro V&V Accreditation Record and Public Challenge

A 2020 filing in *Feehan v. Wisconsin* highlighted that Pro V&V's 2015 certificate showed an effective-through date of February 24, 2017, but the court dismissed the case without deciding the VSTL accreditation allegation.

The EAC states that Pro V&V remained accredited and in good standing through the period, despite an administrative failure to issue an updated certificate, so the County asks what legal and documentary basis supported that status from 2017 through 2021.

Certificate Duration, NOC Authority, and 2026 Ratification

The letter identifies potential inconsistencies involving a two-year accreditation limit, an SLI certificate showing a three-year period, certificate-signature authority, the 2021 NOC, and the EAC Commission's 2026 ratification of prior certificate signatures.

The Board asks whether the EAC and participating laboratories followed the requirements in force at the time and whether later Commission ratification could cure or alter the legal effect of any earlier procedural defect.

The letter expressly states that the Board is not alleging present laboratory incompetence or voting-system inaccuracy, but is seeking a documented legal basis for accreditation and testing relied upon by Arizona.

Federal-State Legal Obligations and Oath of Office

The letter asks DOJ to identify the proper legal mechanism, jurisdiction, and forum for resolving an alleged conflict between state election directives and controlling federal law.

The County emphasizes that an official's oath does not authorize disregard of state law or a binding court order, but argues that officials need an expedited lawful process for resolving conflicts before election deadlines.

Cochise County's 2022 Experience

The letter recounts the 2022 federal removal effort arising from the County's canvass dispute and notes that the federal court ultimately remanded the matter without deciding the merits of the HAVA and laboratory-accreditation questions.

The County asks for clarification of when removal became effective and what procedure should be used in the future to obtain expedited federal review before an election deadline.

Requested Federal Review and Action

1. DOJ and Arizona consultation review: Determine whether the Secretary of State complied with the EPM consultation requirements and identify any available federal review mechanism or remedy.
2. EAC/HAVA legal-compliance review: Examine the HAVA transition issue, the legal status of EAC program manuals and NOC 21-01, Pro V&V and SLI accreditation records, and the effect of the Commission's 2026 ratification actions.
3. NIST/NVLAP technical review: Confirm laboratory accreditation status, assessment history, monitoring activity, and any recommendations that should have affected reliance on a VSTL.
4. CISA and DHS assessment: Evaluate whether accreditation or certification gaps create cybersecurity, supply-chain, configuration-management, or resilience risks for election infrastructure.
5. White House coordination: Refer overlapping questions to the federal offices with actual statutory or technical authority and seek a coordinated response.

6. Intelligence-community review: Determine whether any foreign cyber, supply-chain, or other national-security nexus exists and coordinate with the appropriate agencies if one does.
7. Records and accountability: Preserve and identify records needed to reconstruct the EAC's decisions on VSTL expiration, renewal, reassessment, certificate duration, signature authority, and reliance on Pro V&V testing.
8. Oath-of-office guidance: Explain the lawful steps county officials should take when state directions appear to conflict with federal or state legal requirements while election deadlines are approaching.
9. 2022 jurisdictional review: Determine the timing and legal effect of the 2022 removal and identify the proper forum for resolving a similar federal-state conflict in the future.

Closing Position

The Board states that it is not asking federal agencies to presume an election result was wrong, a voting system malfunctioned, or a laboratory was incompetent, but is requesting an independent review of whether the legal and technical safeguards were properly followed.

The County asks each receiving office to acknowledge whether it will review the matter, refer it elsewhere, or request additional information as the County continues assembling supporting documentation.