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October 13, 2026

The Honorable Adrian Fontes
Arizona Secretary of State
1700 W. Washington Street, Floor 7
Phoenix, Arizona 85007

RE: Request for Written Explanation, Legal Basis, and Records Regarding Removal of Voting Equipment Certification Procedures from the Elections Procedures Manual

Dear Secretary Fontes:

The Cochise County Board of Supervisors requests a written explanation, the legal basis, and the supporting records concerning the removal of the detailed Voting Equipment Certification section from Chapter 4 of the Arizona Elections Procedures Manual (EPM). The record shows that these procedures remained in the approved 2019 EPM, were carried forward in the October 1, 2021, EPM submission, and were still included in the July 31, 2023, public-comment draft. They were then removed before the September 2023 submission for approval. Given the significance of voting-system certification and the legal effect of rules adopted through the EPM, the Board believes this change warrants a clear and complete explanation.

The 2019 EPM was submitted for review on October 1, 2019. After revisions, the version submitted on December 18, 2019, was approved by Attorney General Mark Brnovich on December 19, 2019, and by Governor Doug Ducey on December 20, 2019. Chapter 4 of that approved Manual devoted ten pages, manual pages 76 through 85, to Voting Equipment Certification. Those pages established detailed procedures for certification, recertification, decertification, and emergency conditional certification rather than merely restating that certification was required.

The history after 2019 is particularly important. The October 1, 2021, EPM submission retained the Voting Equipment Certification section. During the 2021 review process, the Attorney General sought deletion of that section. In a December 17, 2021, written response, the Secretary of State's Office opposed that request, stating that voting-equipment certification procedures had appeared in Arizona EPMs as far back as 2006,

that the 2021 section was almost entirely identical to the section approved in 2019, and that removing clear, enforceable certification procedures would create uncertainty and undermine election-system security. The 2021 EPM was not ultimately approved, leaving the 2019 EPM in effect.

The certification section was again included in the July 31, 2023 public-comment draft at manual pages 79 through 88. Yet the September 29, 2023 version transmitted with the Secretary's September 30 submission no longer contained that section; Chapter 4 instead began at page 79 with Logic and Accuracy Testing. The Secretary of State's website lists the 2023 EPM as approved on December 30, 2023. The current 2025 EPM, approved December 22, 2025, likewise does not restore the standalone certification section. This sequence raises a straightforward question: why did the Office reverse the position it had defended in 2021 and remove the section late in the 2023 drafting process?

The removed section addressed the state certification application process; review by the Election Equipment Certification Committee; legal and functional standards; demonstration and functionality testing; recertification of updated or modified systems, including de minimis changes and engineering change orders; the Secretary of State's final certification decision and appeal process; equipment decertification; and emergency conditional certification of upgrades or modifications.

Arizona statutes establish important parts of this framework, but they do not reproduce all of the procedures that were contained in the EPM. A.R.S. § 16-442(A) establishes the three-member Election Equipment Certification Committee and gives the Secretary of State final adoption authority following the Committee's recommendation. Section 16-442(B) establishes HAVA and accredited-laboratory requirements for equipment used in federal, state, or county elections. Section 16-442(C) requires the Secretary, after consultation with the Committee, to adopt standards specifying the criteria for loss of certification; subsection (D) authorizes revocation in specified circumstances; and subsection (G) provides limited emergency certification authority. A.R.S. § 16-442.01(C) addresses consultation concerning accessible voting systems, and A.R.S. § 16-446 establishes functional specifications for electronic voting systems. The 2019 EPM supplied detailed implementing procedures beyond those statutory provisions.

A.R.S. § 16-452(A) requires the Secretary of State, after consultation with each county board of supervisors or other officer in charge of elections, to prescribe the rules contained in the EPM within the scope of that statute. Subsection (B) requires approval by the Governor and Attorney General, subsection (C) makes violation of a rule adopted pursuant to § 16-452 a class 2 misdemeanor, and subsection (D) requires the Secretary to provide experts in electronic voting systems, procedures, and security to field check and review electronic voting systems and recommend needed statutory and procedural changes. The Secretary's September 30, 2023, transmittal letter stated that the Office held monthly meetings with local and county election officials and engaged in consultation with county officials. Because the certification section remained in the July 31 public-comment draft but was removed before submission, the Board requests records showing how the statutory county-consultation process addressed this material change.

The need for a clear, publicly identifiable certification framework is also consistent with the constitutional structure governing elections. Article I, § 2, cl. 1 of the United States Constitution provides that Members of the House of Representatives are "chosen every second Year by the People" and ties elector qualifications to those for the most numerous branches of the state legislature. Article I, § 4, cl. 1 separately assigns the States responsibility for prescribing the "Times, Places and Manner" of congressional elections, subject to Congress's authority to alter those regulations. These provisions do not themselves establish voting-equipment certification standards, but they place lawful state election procedures within the constitutional framework through which the people select federal representatives. Arizona's Constitution is more explicit as to election results: Article VII, § 7 provides that, in elections held by the people, the person or persons receiving the highest number of "legal votes" shall be declared elected, and Article VII, § 12 directs that registration and other laws be enacted "to secure the purity of elections and guard against abuses of the elective franchise." Those provisions reinforce the importance of a clear, legally grounded, and publicly accessible process for certification and use of the systems that record and tabulate votes.

Accordingly, the Board requests direct written answers and the supporting records for the following:

- 1. Timing, decision-making, and reason for removal.** Identify the date the decision was made to remove the standalone Voting Equipment Certification section; every person or office that proposed, requested, reviewed, recommended, or approved the removal; and the stated reason for the change. Please provide records sufficient to document that decision, including drafts, redlines, memoranda, legal analyses, correspondence, and meeting notes.
- 2. Relationship to the 2021 review.** Was the 2023 removal based in whole or in part on the position taken by the Attorney General during review of the 2021 EPM that the certification section should be deleted? If so, identify the legal authority or analysis relied upon. If not, explain what changed between the Secretary of State Office's December 17, 2021 defense of the section and its removal in 2023.
- 3. Current governing authority.** Were the procedures formerly contained in the certification section determined to be duplicative of statute, outside the lawful scope of the EPM, superseded by another authority, or relocated to separate written guidance? Please identify the current statute, rule, approved EPM provision, written policy, procedure, or other authority governing each subject that was removed.
- 4. State certification procedure.** Identify the current written procedure governing submission and review of a voting-system certification application, review by the Election Equipment Certification Committee, any demonstration or functionality testing, the Committee's recommendation, and the Secretary of State's final certification decision.

5. **Recertification of changes.** Identify the current written procedure governing upgrades, modifications, engineering changes, or other changes to a previously certified voting system, including the standard used to determine whether a change requires full recertification or a more limited review.
6. **Loss of certification and decertification.** A.R.S. § 16-442(C) requires the Secretary, after consultation with the Committee, to adopt standards specifying the criteria for loss of certification. Please identify and provide the currently applicable standards and procedures for loss of certification and decertification, including where those standards are publicly available.
7. **Emergency certification.** Identify the current written procedures, documentation requirements, review steps, and timelines that apply when a jurisdiction seeks emergency approval of an upgrade or modification under A.R.S. § 16-442(G)
8. **County consultation required by A.R.S. § 16-452.** For each Arizona county, identify whether consultation during development of the 2023 EPM occurred with the county board of supervisors or another officer in charge of elections, identify the person or body consulted and the date and method of consultation, and state whether removal of the Voting Equipment Certification section was presented or discussed. Please provide records sufficient to document that consultation, including notices or invitations, correspondence, drafts distributed for review, meeting agendas or notes, attendance records, written comments, and records reflecting how comments were considered or resolved. If the section was removed after the principal county-consultation process concluded, identify any subsequent consultation or notice provided to counties regarding that change.
9. **Public availability and current roadmap.** If the procedures removed from the EPM now exist elsewhere, identify where each procedure is published and whether those materials carry the same legal status as an approved EPM rule. If they are not currently collected in one location, please explain how counties, governing bodies, election officials, vendors, and the public are expected to determine the controlling certification process.

The Board is not asking for a general description of Arizona's voting-equipment program. The public record shows that a detailed certification section was carried forward for years, expressly defended by the Secretary of State's Office in 2021, included in the July 2023 public-comment draft, and then removed before final submission. The Board requests a specific explanation of that decision the legal authority relied upon, the current procedures that replaced the removed provisions, and the records demonstrating the consultation required by A.R.S. § 16-452.

Given the approaching November 3, 2026, General Election, the Board requests a written response and the requested records as soon as practicable, ideally by October 1, 2026. If any requested records are

maintained by another office or custodian, please identify that office or custodian. A discussion among the Elections Division, Cochise County election officials, and County legal counsel may supplement, but should not substitute for, the requested written response and records.

Thank you for your prompt attention to this request.

Respectfully,

COCHISE COUNTY BOARD OF SUPERVISORS

Frank Antenori
Chairman, District 3

Tom Crosby
Vice-Chairman, District 1

Kathleen L. Gomez
Supervisor, District 2

cc: Cochise County Elections Director; Cochise County Attorney