

NEWS RELEASE

Arizona House of Representatives

Representative Jacqueline Parker (R-15)

Representative Alexander Kolodin (R-3)

1700 West Washington • Phoenix, Arizona • 85007

Tuesday, January 17, 2023

FOR IMMEDIATE RELEASE

Reps. J. Parker & Kolodin Seek Answers from Secretary of State Fontes on Elections Procedures Manual

STATE CAPITOL, PHOENIX – State Representative Jacqueline Parker, Chair the House Committee on Municipal Oversight & Elections, and Vice Chair, Representative Alexander Kolodin, sent a letter today to new Arizona Secretary of State Adrian Fontes to find out whether he seeks to remedy the errors and mishandling of the state’s Elections Procedures Manual (EPM) by former Secretary Hobbs, as identified in recent court decisions.

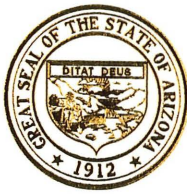
“Recent Arizona court decisions give us serious concerns about the lawfulness of former Secretary Hobbs’ 2019 EPM and 2021 draft EPM. Arizona law purports to authorize the EPM to achieve and maintain the maximum degree of correctness, impartiality, uniformity and efficiency in voting procedures throughout the state. But we question whether these mandates have been followed. We hope Secretary Fontes more fully evaluates where the prior Secretary overstepped her bounds and look forward to hearing how those errors will be corrected,” Representatives Parker and Kolodin said in a statement about their letter.

Representatives Parker and Kolodin are seeking further information from Secretary Fontes about his plans to correct the errors in the EPM as they evaluate which reforms are needed to Arizona laws. A copy of their entire letter is attached below.

Jacqueline Parker is a Republican member of the Arizona House of Representatives serving Legislative District 15, which includes East Mesa, Queen Creek, and San Tan Valley. She serves as Chair of the House Municipal Oversight and Elections Committee. Follow her on Twitter at @electjacqparker.

Alexander Kolodin is an attorney and Republican member of the Arizona House of Representatives serving Legislative District 3, which includes North Scottsdale and Fountain Hills in Maricopa County. He serves as Vice Chair of the House Municipal Oversight and Elections Committee. Follow him on Twitter at @Alex4Arizona.

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Arizona House of Representatives
Phoenix, Arizona 85007

January 17, 2023

Via hand-delivery & email

Hon. Adrian Fontes
Secretary of State
1700 W. Washington St., 7th Floor
Phoenix, Arizona 85007

Dear Secretary Fontes:

Congratulations on your new role as Arizona's Secretary of State. As you know, both the federal and state constitutions vest the Legislature with broad power and responsibility to oversee elections, to include investigating the implementation of existing election laws and exploring the advisability of potential reforms. The Speaker has placed that subject within the purview of the Municipal Oversight and Elections ("MOE") Committee, which will also need to hear and evaluate a significant amount of legislation related to the topic.

The Arizona Revised Statutes purport to authorize the Secretary of State to "prescribe rules to achieve and maintain the maximum degree of correctness, impartiality, uniformity and efficiency on the procedures for early voting and voting, and of producing, distributing, collecting, counting, tabulating and storing ballots." A.R.S. § 16-452(A). These rules are prescribed in "an official instructions and procedures manual," known as the Elections Procedures Manual ("EPM"), which must be approved by the Governor and Attorney General every two years before each general election. A.R.S. § 16-452(B). It appears that these statutory mandates have not been followed.

Indeed, recent Arizona court decisions give us serious concerns about the lawfulness of former Secretary Hobbs' 2019 EPM and 2021 draft EPM. *See Attachment*. We are fully cognizant that you did not draft either of these documents. However, we hope that these cases will be a useful starting point as your office more fully evaluates where the prior Secretary overstepped the proper bounds of the executive branch with respect to the 2019 EPM and draft 2021 EPM's provisions.

We also appreciate your commitment to transparency in your new role as Arizona's Secretary of State. It is common to involve stakeholders in the EPM drafting process at an early stage. Please know that both of us would be pleased to participate in the stakeholder input process.

To aid the MOE Committee in making important legislative decisions relevant to the EPM, we request that you please supply us with the following information:

1. In drafting the 2023 EPM, will you be disregarding former Secretary Hobbs' draft 2021 EPM, which was neither approved by the former Attorney General or Governor, nor sanctioned as lawful by any court?
2. For each provision of the 2019 EPM, your position on:
 - a. whether the provision is properly included in the EPM pursuant to A.R.S. § 16-542 or other applicable law;
 - b. what statute authorizes the provision's inclusion, as drafted; and
 - c. whether you believe the provision has the force of law or is merely directory.
3. Copies of any supplemental guidance, statements, emails, or directives that former Secretary Hobbs (or her agents) gave to county election officials in connection with the 2022 General Election that are not written in the 2019 EPM.
4. Copies of any and all drafts of the 2023 EPM, including without limitation any partial, preliminary or working drafts, and copies of any documents or communications reflecting input or proposals from third parties concerning the contents of the 2023 EPM.
5. Any other relevant information you wish to share.

Though the 56th Legislature has only just been sworn in, this information is essential to our ability to engage in the legislative decision-making process with our colleagues.¹ Accordingly, we would be greatly appreciative if you could please provide this information by **5:00 p.m. on Tuesday, January 24, 2023.**

Sincerely,



Jacqueline Parker
Chair, MOE Committee



Alexander Kolodin
Vice-Chair, MOE Committee

¹ The documents identified in items #3 and #4 above are public records within the meaning of the Arizona Public Records Act, A.R.S. § 39-121, *et seq.*, and are requested on that alternative basis as well.

Attachment – Case Summaries

Brnovich v. Hobbs, Yavapai County Superior Court No. P1300CV202200269 (June 17, 2022)

In *Brnovich v. Hobbs*, a Yavapai County Superior Court judge observed that the Secretary of State, Attorney General, and Governor had failed to “properly work with one another to improve the Secretary’s initial draft” of the 2021 EPM and that the parties did not comply with the timing requirements set forth in A.R.S. § 16-452, even though the statute “builds in ample time and opportunity to iron out any and all disputes (from October 1st to December 31st).” 6/17/22 Ruling at page 2.

The trial court decided the Attorney General’s Complaint, which challenged the lawfulness of various provisions in the 2021 EPM, was filed too late. *Id.* Accordingly, the court declined to consider the merits of the case and ruled that the 2019 EPM manual was in effect for Arizona’s 2022 General Election. *Id.*

McKenna v. Soto, 250 Ariz. 469 (2021), and Leach v. Hobbs, 250 Ariz. 572 (2021)

In *McKenna v. Soto* and *Leach v. Hobbs*, the Arizona Supreme Court cautioned that the Secretary’s authority in promulgating the EPM is not limitless.

In *McKenna*, the supreme court held that because A.R.S. § 16-452 does not mention “candidate nomination petition procedures” or “the regulation of petition circulators,” the 2019 EPM’s procedures relating to those topics are inconsistent with statute and do not have the force of law. 250 Ariz. at 473, ¶ 20.

Six weeks later, in *Leach*, the supreme court again reiterated that “an EPM regulation that exceeds the scope of its statutory authorization or contravenes an election statute’s purpose does not have the force of law.” 250 Ariz. at 572, ¶ 21. In that case, the court rejected the notion that an individual could circumvent an election regulation codified in statute by relying on a contrary provision in the EPM. *Id.*

Leibsohn v. Hobbs, 254 Ariz. 1 (2022)

In another case involving the EPM, the Arizona Supreme Court declared that “it is th[e] Court’s role, not the Secretary’s,” to interpret a statute. *Leibsohn v. Hobbs*, 254 Ariz. 1, ¶ 22; *see also* Ariz. Const. art. III. In *Leibsohn*, the supreme court concluded there were no consequences for a political action committee’s non-compliance with A.R.S. § 19-118(B), which requires petition circulators to submit a notarized affidavit for each petition a circulator wishes to circulate. *Id.* at ¶¶ 24-28. The court reached this result because the Secretary’s electronic registration process was legally deficient and did not allow the petition circulators to comply with the law. *Id.* at ¶¶ 24-32. The court presumed that the Secretary “will change the circulation registration process to permit compliance with [A.R.S.] § 19-118(B)(5).” *Id.* at n.5.