



Election Transparency Rules for Arizona *Current as of October 23, 2020*

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OVERVIEW

Significant access restrictions limit reporters’ election day access to voting locations in Arizona. However, journalists may be able to obtain substantial access to post-voting tabulation efforts at central counting places via in-person attendance and access to live video of the proceedings.

1. State and local elections authorities

A key source of authority cited frequently in this document is Arizona’s 2019 Elections Procedures Manual. See Arizona Secretary of State, 2019 Elections Procedures Manual (hereinafter “2019 Manual”). By law the Arizona Secretary of State must “prescribe rules” for voting and early voting in “an official instructions and procedures manual,” issued by “December 31 of each odd-numbered year immediately preceding the general election.” Ariz. Rev. Stat. Ann. § 16-452. The governor and attorney general must approve the document before it is issued. *Id.* Once they do so, the manual goes into effect and “has the force of law.”¹

The “county board of supervisors” is the authority generally in charge of elections. *See* Ariz. Rev. Stat. Ann. § 16-405. It is responsible for appointing election boards for specific voting locations. The “county officer in charge of elections” has “overall authority” for voting locations. 2019 Manual, at 135.

At least twenty days before an election, the board of supervisors must appoint “one inspector, one marshal, two judges and as many clerks of election as deemed necessary” for each precinct containing three hundred or more electors. Ariz. Rev. Stat. Ann. § 16-531(A) (discussing the

¹ Arizona Secretary of State, Documents, <https://azsos.gov/about-office/media-center/documents>.

appointment of election precinct officials). These individuals comprise the “election board” for the precinct. *Id.*; 2019 Manual, at 133.²

Where an election precinct contains fewer than three hundred qualified electors, only “one inspector and two judges” must be appointed. Ariz. Rev. Stat. Ann. § 16-531(B).

2. Types of voting locations

Election Day voting may occur at two types of voting locations: (1) precinct-level polling places and (2) vote centers (or a combination thereof). Ariz. Rev. Stat. Ann. § 16-411. Any voter within the county may vote at a county vote center, regardless of their assigned precinct. *Id.* Vote centers tabulate ballots “exclusively at the central counting place, without the use of precinct voting equipment that will warn voters of an over-vote.” 2019 Manual, at 129.

At a voting center any voter within the county may vote, regardless of what precinct they live in. *Id.*

ELECTION DAY ACCESS TO POLLING LOCATIONS

1. Rules concerning access and transparency at polling places generally

General rules

Only certain people may be within 75 feet of a polling location, namely members of the election board, election officials, voters (and any accompanying minor children), individuals chosen to assist a voter with voting, authorized political party observers, and federal government observers. Ariz. Rev. Stat. Ann. § 16-515; Ariz. Rev. Stat. Ann. § 16-580; 2019 Manual, at 179.

People immediately outside the voting area should be able to see the ballot boxes and the voting booths. Ariz. Rev. Stat. Ann. § 16-562. Generally only election officers, voters, party officials, and challengers (discussed below) are permitted within six feet of the ballot boxes or voting booths. *Id.*

Within the room where votes are cast, sample ballots should be available “in plain view.” Ariz. Rev. Stat. Ann. § 16-563. While polls are open, ballots should be kept “within the polling place in plain view of the public” Ariz. Rev. Stat. Ann. § 16-572.

Voters are not to reenter the voting area after depositing their ballots. Ariz. Rev. Stat. Ann. § 16-580(D).

Rules for challengers and party representatives

Election challengers can be appointed by the county chairman of each party via written appointment to the precinct election board. Ariz. Rev. Stat. Ann. § 16-590.

“One challenger for each political party may be present and act” at each voting place, but they may not enter a voting booth other than for the purpose of casting their own votes. *Id.* All political

² The 2019 Manual refers to officials serving on the election board as “poll workers” or “board workers.” See 2019 Manual, at 133.

parties on the ballot may agree to permit more than one challenger to be present at the polling place. *Id.*

“Any qualified elector of the county may orally challenge a person offering to vote as not qualified . . . or on the ground that the person has voted before at that election.” Ariz. Rev. Stat. Ann. § 16-591. Challenges may not be used against absentee voters or against ballots already cast. Op. Atty. Gen. No. 64-44-L. *See also* Ariz. Rev. Stat. Ann. § 16-592 *et seq.* (challenges proceedings and disposition of the ballot).

Election precinct clerks must keep a list of “the names of all persons challenged, the grounds of the challenge and the determination of the board upon the challenge.” Ariz. Rev. Stat. Ann. § 16-594. These lists are public records. *Id.*

2. Rules concerning entry to a polling place for news reporting purposes

Journalists cannot enter a polling place for news reporting purposes; they may enter polling places only to cast their own ballot. Ariz. Rev. Stat. § 16-562(B).

3. Rules concerning journalists’ approaches to voters at or near polling places, for exit polling or newsgathering

Members of the media and persons conducting exit polls cannot be within 75 feet of the polling location. *See* 2019 Manual, at 179.

No guidance affirmatively states that journalists may engage in exit-polling and other forms of news-gathering once outside the 75-foot limit. Attempts to restrict journalists’ activities outside of that limit probably would not survive a court challenge.³

4. Rules concerning the taking of photographs at or near polling places

No one may take photographs or videos within 75 feet of a polling place. Ariz. Rev. Stat. § 16-515(G). Persons who violate this rule are guilty of Class 2 misdemeanors. *Id.* No exception exists for members of the media. 2019 Manual, at 179.

No guidance affirmatively states that journalists may take photography once outside the 75-foot limit, but attempts to restrict the taking of photographs outside of the limit probably would not hold up in court.

³ Arizona’s elections statutes do not explicitly state that news media may approach voters once outside the 75 foot-limit for exit-polling or other news gathering purposes, or engage in the taking of photographs and videos outside the 75 foot limit. However, Arizona law specifies that other activities banned within 75 feet of the polling location, namely “electioneering and other political activity,” are generally permissible outside the 75 foot-limit. *See* Ariz. Rev. Stat. Ann. § 16-411(H). (An exception is made for polling places with “emergency designations” identified on the official website of county elections officials. *Id.*; *see also* Ariz. Rev. Stat. Ann. § 16-411(I) (setting out the criteria for designating a polling place as an “emergency polling place”).) Presumably, then, news media may engage in other practices banned within the 75 foot-limit, such as outreach to voters and photography. The Ninth Circuit, which oversees Arizona, struck down a Washington State ban on exit polling within 300 feet of a polling place. *Daily Herald Co. v. Munro*, 838 F.2d 380 (9th Cir. 1988).

Voters may “make[] available an image of the [their] own ballot by posting on the internet or in some other electronic medium.” Ariz. Rev. Stat. Ann. § 16-1018. However, journalists generally may not “[k]nowingly solicit[] a voter to show the voter's ballot, or receive[] from a voter a ballot prepared for voting” *Id.*

5. Rules concerning privacy/ identification of voters and voting officials at polling places

We did not find any rules pertaining to the identification of voters and voting officials at polling places or, more generally, implicating voters’ privacy.⁴

6. Content restrictions on speech at or near polling places

No electioneering may occur within 75 feet of a voting location. Ariz. Rev. Stat. Ann. § 16-515(A).⁵ This rule extends to elections officials, county political party representatives, and challengers permitted to be within 75 feet of the voting location. *Id.* § 16-515(F).

“No electioneering may take place outside the 75-foot limit if it is audible from a location inside the door to the voting location.” 2019 Manual, at 178.

Elections officials, county political party representatives, and challengers permitted to be within 75 feet of the voting location “shall not wear, carry or display materials that identify or express support for or opposition to a candidate, a political party or organization, a ballot question or any other political issue.” Ariz. Rev. Stat. Ann. § 16-515(F).

“[V]oters and voters’ assistants” may “wear clothing with political messages.” 2019 Manual, at 179.

7. Who controls physical access to a polling place?

The precinct elections board is responsible for “taking appropriate measures to preserve order” at the voting location. *Id.* at 134 (citing A.R.S. § 16-562; A.R.S. § 16-512). The inspector serves as “chairman of the election board,” Ariz. Rev. Stat. Ann. § 16-534. As such, this official “exercises authority over all election-related activities at the voting location” 2019 Manual, at 135.

Marshals serving on the precinct elections board are responsible for “preserv[ing] order at the polls and permit[ting] no violation of the election laws from the opening of the polls until the count of the ballots is completed.” Ariz. Rev. Stat. Ann. § 16-535. The 2019 Manual notes that the inspector must use the marshal to “remove disruptive persons from the voting location.” *Id.* at 180. Furthermore, “[t]he inspector and/or marshal must use sound judgment to decide whether to

⁴ Note, however, that journalists are permitted within 75 feet of a polling place only for the purpose of casting their own ballots, where applicable. Thus they may face restrictions if they attempt to engage in newsgathering, such as by taking out a camera or notebook.

⁵ This code provision defines “electioneering” to mean:

[W]hen an individual knowingly, intentionally, by verbal expression and in order to induce or compel another person to vote in a particular manner or to refrain from voting expresses support for or opposition to a candidate who appears on the ballot in that election, a ballot question that appears on the ballot in that election or a political party with one or more candidates who appear on the ballot in that election.

Ariz. Rev. Stat. Ann. § 16-515.

contact law enforcement, and any higher-level decisions should be raised through the [county] officer in charge of elections.” *Id.*

8. What state official is responsible for correcting improper denials of access or application of laws at polling places?

According to the 2019 Manual, “[t]he [precinct-level] inspector usually acts as the single point-of-contact with the [county] officer in charge of elections, poll worker hotline, troubleshooters, or other entity designated by the [county] officer in charge of elections to provide assistance on Election Day.” *Id.* at 179.

The 2019 Elections Procedures Manual provides that “[l]aw enforcement officials may be contacted to help enforce the ban [on electioneering within the 75-foot limit of a voting location] in exceptional circumstances.” *Id.*

ACCESS TO VOTE COUNT AND TABULATION PROCESS

1. Rules concerning access/transparency at locations where votes are counted or vote counts aggregated

General rules

“All proceedings at the counting center . . . shall be conducted . . . under the observation of representatives of each political party and the public.” Ariz. Rev. Stat. Ann. § 16-621(A).⁶

“A security officer or an election official may conduct tours through the central counting place for the public. At no time shall any public observance of the election process interfere with or interrupt the normal ballot flow, nor shall members of the public touch a ballot, computer, or tabulation device (except as permitted by the officer in charge of elections during demonstrations).” 2019 Elections Manual, at 195.

Contingent on legislative appropriation, “the county recorder or officer in charge of elections shall provide for a live video recording of the custody of all ballots while the ballots are present in a tabulation room in the counting center. The live video recording shall include date and time indicators The secretary of state shall post links to the video coverage for viewing by the public.” Ariz. Rev. Stat. Ann. § 16-621(C).

“If the live video feed is disrupted or disabled, the recorder or officer in charge of elections is not liable for the disruption but shall attempt to reinstate video coverage as soon as is practicable. Any disruption in video coverage shall not affect or prevent the continued tabulation of ballots.” Ariz. Rev. Stat. Ann. § 16-621(C).

“The electronic tallying of write-in votes must be performed in a secure location . . . [and must be] open to public viewing.” 2019 Manual, at 210.

Rules for political party observers

According to the 2019 Elections Procedures Manual, authorized political party representatives (i.e. “challengers” discussed above) “may observe at a central counting place and at each point where ballots are handled or transferred from one election official to another” 2019 Manual, at 141; *see also id.* (discussing requirements for observers’ conduct).⁷

⁶ Note that this code section is not written in a manner that necessarily envisions the press or ordinary members of the public having physical access to counting centers. In particular, it does not discuss how representatives of the public would be chosen to observe the proceedings in person. (By comparison, the code provision describes a detailed process for choosing by lot three observers representing either candidates for nonpartisan office or a political committee in support of or opposition to a ballot measure. And Arizona law elsewhere specifies a formal process for appointing political party observers to central counting places. *See, e.g.*, 2019 Manual, at 139.) The code section only elaborates on the public’s observation rights when discussing the provision of live video recordings of the proceedings for public viewing. Ariz. Rev. Stat. Ann. § 16-621(D). But, although the code section does not explicitly authorize journalists to be physically present at counting centers, it could provide a legal hook for seeking physical access to counting centers if the video feed provided appears insufficient.

⁷ The 2019 Manual explicitly notes that political party representatives may observe “areas where the following activities take place: [r]eceiving the ballots at the County Recorder’s office or central counting place; [i]nspecting the ballots; [r]eviewing ballots by the Write-in Tally Board; [d]uplicating ballots by the Ballot Duplication Board; [a]djudging

Verifying the accuracy of computer programs for processing ballots

“All L&A tests shall be observed by the Accuracy Certification Board, and open to representatives of political parties, candidates, the press, and the general public.” *Id.* at 203

“Political party observers are distinguished from members of the general public, who may view the central counting place activities from the public viewing area. Properly credentialed political party observers may observe the proceedings from inside the room where they happen.” *Id.*

“[U]nder no circumstances should a political party observer touch or operate the election server computer or any scanning device.” *Id.*

2. Rules concerning observation of the vote count for news reporting purposes

We did not locate any rules that specifically pertain to the observation-related rights of members of the news media.

3. Rules concerning the taking of photographs of the vote counting process

We did not locate any rules that specifically pertain to the photography-related rights concerning the vote counting process.

4. Rules concerning access to ballots during or after the vote count

No rules permit access to ballots during or after the vote count.

During the vote count, “[o]nly those persons who are authorized for the purpose shall touch any ballot or ballot card or return.” Ariz. Rev. Stat. Ann. § 16-621.

“After the canvass has been completed, the officer in charge of elections shall deposit the package or envelope containing the ballots in a secure facility managed by the county treasurer, who shall keep it unopened and unaltered for twenty-four months for elections for a federal office or for six months for all other elections, at which time he shall destroy it without opening or examining the contents.” Ariz. Rev. Stat. Ann. § 16-624.

“If a recount is ordered or a contest begun within six months, the county treasurer may be ordered by the court to deliver to it the packages or envelopes containing the ballots, and thereupon they shall be in the custody and control of the court.” Ariz. Rev. Stat. Ann. § 16-624.

ballots by the Electronic Vote Adjudication Board; [r]eceiving electronic media or processing voting results by the Accuracy Certification Board; [t]abulation of ballots; and/or [a]ny other significant tabulation or processing activities at a central counting place provided that it does not interfere with or impede the election procedures or staff.” 2019 Manual, at 141.

ELECTION TRANSPARENCY INFORMATION

1. Election Day basics

When do the polls open, when do they close?

By law, the polls must be open from 6am to 7pm on Election Day. Ariz. Rev. Stat. § 16-565(A).

Must voters be online when polls close be allowed to vote?

“Any qualified voter who at the moment of closing is in the line of waiting voters shall be allowed to vote.” Ariz. Rev. Stat. Ann. § 16-565. Similarly, early voting ballots (discussed below) must be received by 7pm in order to “be counted and valid.” Ariz. Rev. Stat. Ann. § 16-548.

Who do you call when something goes wrong at a polling location?

According to the 2019 Elections Manual, “[p]ersons who witness problems at a voting location should not speak to or accost a voter in an attempt to ‘enforce’ the law, but rather inform the inspector or marshal to allow them to resolve the issue.” 2019 Manual, at 180.

2. Vote counting rules and procedures

What are the rules/ procedures for the vote count? Where are they located?

Early voting

The 2019 Manual sets out procedures for processing and tabulating early ballots to be followed “unless the Secretary of State has granted a jurisdiction permission to use another method otherwise consistent with applicable law.” *Id.* at 68.

County recorders will verify the validity of the early ballots and accompanying ballot affidavits by comparing the signatures recorded on them with the voter’s registration record. Ariz. Rev. Stat. Ann. § 16-550. County recorders must make “reasonable efforts” to contact voters regarding any inconsistent signatures associated with their early ballots and allow them to address the issue, and they may permit signatures to be corrected up through “the fifth business day” after federal general election (as well as through “the third business day” after local elections). *Id.*

Each party represented on the ballot may have a certain number of “early ballot challengers” present to challenge early ballots. *Id.* § 16-552. These challenges may center on claims that the potential voter is not actually qualified to vote, see Ariz. Rev. Stat. Ann. § 16-121.01 (“[r]equirements for proper registration”), or that the would-be voter has already participated in the election. See Ariz. Rev. Stat. Ann. § 16-591; see also *id.* § 16-552 (describing the procedure for adjudicating early ballot challenges).

Verified early ballots must be kept safely by the County Recorder “until they are transferred to the [county]]officer in charge of elections for further processing and tabulation.” 2019 Manual, at 68; see *id.* at 70-71 (discussing the sending of early ballots to the central counting place for tabulation).

“After the election official has confirmed with the secretary of state that all election equipment passes the logic and accuracy test, the election official may begin to count early ballots.” Ariz. Rev. Stat. Ann. § 16-552.

“[T]allying of ballots shall not begin any earlier than fourteen days before election day.” Ariz. Rev. Stat. Ann. § 16-550.

On Election Day

After the polls close, election precinct poll workers must compare the number of votes cast with the number of voters who signed in on the poll lists and prepare a written report of this information. Ariz. Rev. Stat. Ann. § 16-602; *see also* Ariz. Rev. Stat. Ann. § 16-516 (discussing poll lists). Additionally, at election precincts where voting machines are used, a “statement[] of the tally” must be printed for each voting machine. Ariz. Rev. Stat. Ann. § 16-607.

The election board must transmit a report specifying the number of voters who voted, per the poll list, along with the voted ballots “promptly” to the central counting place or other designated receiving station. Ariz. Rev. Stat. Ann. § 16-608; 2019 Manual, at 192-94 (discussing information that must be recorded on Official Ballot Report forms prepared by the precinct elections board and items that must be transmitted from the voting location to the designated receiving site for election night returns).

“Regular ballots cast on Election Day that are not processed and tabulated at the voting location are . . . transmitted to the central counting place for processing and tabulation. Central counting place operations are conducted under the direction of the Board of Supervisors or the officer in charge of elections.” *Id.* at 195.

“The result printed by the vote tabulating equipment, to which have been added write-in and early votes, shall, when certified by the board of supervisors or other officer in charge, constitute the official canvass of each precinct or election district.” Ariz. Rev. Stat. Ann. § 16-622

Who controls the vote count process?

“All proceedings at the counting center shall be under the direction of the board of supervisors or other officer in charge of elections” Ariz. Rev. Stat. Ann. § 16-621; *see also* 2019 Manual, at 194 (stating that the officer in charge of elections tabulates early and provisional ballots at the central county place).

3. Vote counting timing

What rules govern when information about the vote count can and should be made public?

“In no event shall partial or complete tallies of the early election board be released or divulged before all precincts have reported or one hour after the closing of the polls on election day, whichever occurs first” Ariz. Rev. Stat. Ann. § 16-551. “[A]ny person who unlawfully releases information regarding vote tallies or who possesses a tally sheet or summary without authorization from the recorder or officer in charge of elections is guilty of a class 6 felony.” *Id.*

At any time following the period discussed above, “unofficial returns may be released during the counting of the ballots by vote tabulating equipment” Ariz. Rev. Stat. Ann. § 16-622(A).

“[U]pon completion of the count the unofficial results shall be open to the public.” *Id.*

“[A]ll unofficial returns that are released during the counting of the ballots and all unofficial results that are open to the public shall when released to the public be transmitted by telephone, by telefacsimile or by other electronic means to the secretary of state.” Ariz. Rev. Stat. Ann. § 16-622(B).

If there is a recount, “the officer(s) in charge of elections may not publicly release vote totals from the recount” while it is in progress. 2019 Manual, at 246. At the conclusion of a recount, the sealed official results are to be made public in open court. *Id.* at 246-57.

The Reporters Committee for Freedom of the Press notes that “[t]he Arizona secretary of state website and the Maricopa County recorder website will post election results when they become available.”⁸

What deadlines exist for the vote count?

The Secretary of State should canvass the results of a general election “[o]n the fourth Monday following a general election.” Ariz. Rev. Stat. Ann. § 16-648. That is, the stipulated deadline for the canvass is November 30, 2020.

Under Arizona law “the canvass shall be postponed from day to day, not to exceed thirty days from the date of the election, until canvasses from all counties are received.” *Id.* The 30th day after the election is December 3, 2020.

4. Early voting transparency and control

Overview

All elections “shall provide for early voting,” and “[a]ny qualified elector may vote by early ballot.” Ariz. Rev. Stat. Ann. § 16-541(A). Early voters may cast their ballots by mail or at designated early voting locations. *See* 2019 Manual.

Who collects mail in ballots?

“In order to be counted and valid, the ballot must be received by the county recorder or other officer in charge of elections or deposited at any polling place in the county no later than 7:00 p.m. on election day.” Ariz. Rev. Stat. Ann. § 16-548. The “office of the county recorder or other officer in charge of elections” must remain open until 7:00 pm for this purpose. *Id.* § 16-551. “The County Recorder or other officer in charge of elections” is responsible for ensuring “secure ballot retrieval and chain of custody procedures” 2019 Elections Procedures Manual, at 61-62.

⁸ Reporters Committee for Freedom of the Press, *Election Legal Guide*, <https://www.rcfp.org/resources/election-legal-guide/#additional-resources>.

In 2016, the Arizona state legislature enacted a statute prohibiting people from collecting others' ballots and delivering them to polling places, vote centers, or authorized election officials' offices. The Ninth Circuit ruled en banc that the law violated Section 2 of the Voting Rights Act and the Fifteenth Amendment. 948 F.3d at 999. However, the Supreme Court granted cert on October 2, 2020 to review the case and the law remains in place while under review. *See Democratic Nat'l Comm. v. Hobbs*, 948 F.3d 989, 1005 (9th Cir. 2020), *cert. granted sub nom. Arizona Republican Party v. Democratic Nat. Comm.*, No. 19-1258, 2020 WL 5847129 (U.S. Oct. 2, 2020), and *cert. granted sub nom. Brnovich v. Democratic Nat. Comm.*, No. 19-1257, 2020 WL 5847130 (U.S. Oct. 2, 2020).

Where are mail in ballots stored?

Affidavits and early ballots verified by elections officials must be “safely kep[t] . . . in the recorder’s or other officer’s office until delivered [to the early election board for processing].” *Id.* § 16-550 - § 16-551.⁹

When are early votes counted?

“[T]allying of ballots shall not begin any earlier than fourteen days before election day,” Ariz. Rev. Stat. Ann. § 16-550, and only after the necessary equipment for tallying ballots has been approved. Ariz. Rev. Stat. Ann. § 16-552
Where are they counted?

Early votes are sent to the central counting place for tabulation. 2019 Manual, at 70-71.

Who releases early results?

The officer in charge of elections can release early results subject to certain timing constraints (discussed below). *See also id.* at 235 (discussing when the “officer in charge of elections may publicly release election results”).

When are mail in results released?

“In no event shall partial or complete tallies of the early election board be released or divulged before all precincts have reported or one hour after the closing of the polls on election day, whichever occurs first” Ariz. Rev. Stat. Ann. § 16-551. “[A]ny person who unlawfully releases information regarding vote tallies or who possesses a tally sheet or summary without authorization from the recorder or officer in charge of elections is guilty of a class 6 felony.” *Id.*
What data is generated on early ballots and by whom? (E.g., How many absentee/mail-in ballots mailed out, how many completed ballots turned in?)

The county recorder generates data on early ballots, including “who ha[s] requested an early ballot” and “who ha[s] returned their early ballots.” Ariz. Rev. Stat. Ann. § 16-168.

⁹ Note that Arizona also provides that “[t]he county recorder shall send a list of all voters who were issued early ballots to the election board of the precinct in which the voter is registered.” Ariz. Rev. Stat. Ann. § 16-550. However, this code provision does not specify where the list is to be sent, or whether it is to be made automatically public.

Voter registration records available for public inspection for news gathering purposes include “all data relating to permanent early voters and nonpermanent early voters, including ballot requests and ballot returns.” Ariz. Rev. Stat. Ann. § 16-168.

“Not later than ninety days” following Election Day the Secretary of State must publish a public report that contains “information on the number of ballots transmitted to absent uniformed services voters and overseas voters and the number of ballots returned and cast in the election.” Ariz. Rev. Stat. Ann. § 16-142.

Who confirms the authenticity of mail-in early ballots and how?

As discussed above, county recorders will verify the validity of the early ballots and accompanying ballot affidavits by comparing the signatures recorded on them with the voter’s registration record. Ariz. Rev. Stat. Ann. § 16-550. Ariz. Rev. Stat. Ann. § 16-550.

PUBLIC ACCESS TO INFORMATION

1. How can reporters access information about who voted?

Voter registration forms constitute “official public record[s].” Ariz. Rev. Stat. Ann. § 16-161. *See also* Ariz. Rev. Stat. Ann. § 16-163 (discussing the provision of registration records to “the Arizona state library, archives, and public records” and records maintained in “the voter registration database”)

“Public inspection of voter registration records at the office of the county record” is permitted “for news gathering purposes by a person engaged in newspaper, radio, television or reportorial work, or connected with or employed by a newspaper, radio or television station” Ariz. Rev. Stat. Ann. § 16-168(F).

Available registration information includes voters’ names, party preferences, dates of registration, residence addresses, occupations, “voting history for all elections in the prior four years,” and “all data relating to permanent early voters and nonpermanent early voters, including ballot requests and ballot returns.” Ariz. Rev. Stat. Ann. § 16-168(C).

State and county elections officials “on a request for an authorized use” must provide copies of voter registration records for a fee, set based on the number of records requested.” Ariz. Rev. Stat. Ann. § 16-168(E).

2. What records exist regarding the vote count?

The live video feed of the ballots at the central counting center must exist “as a public record for at least as long as the challenge period for the general election.” Ariz. Rev. Stat. Ann. § 16-621.

“The county recorder or other officer in charge of elections shall maintain records that record the chain of custody for all election equipment and ballots during early voting through the completion of provisional voting tabulation.” Ariz. Rev. Stat. Ann. § 16-621

“After the canvas has been completed, the officer in charge of elections shall deposit the package or envelope containing the ballots in a secure facility managed by the county treasurer, who shall keep

it unopened and unaltered for twenty-four months for elections for a federal office or for six months for all other elections, at which time he shall destroy it without opening or examining the contents.” Ariz. Rev. Stat. Ann. § 16-624(A) (discussed above).

Ballots are not available as publicly accessible records of the vote count. Ariz. Rev. Stat. Ann. § 16-624.

3. What private details are not included in publicly accessible voter registration records?

When inspecting voter registration records, the public may not access the following information: the month and day of voters’ birth dates, voters’ “social security number[s] or any portion thereof,” voters’ “driver license number[s] or nonoperating identification license number[s],” voters’ “Indian census number[s],” voters’ “father’s name or mother’s maiden name,” voters’ “state or country of birth,” and “the records containing a voter’s signature and a voter’s e-mail address.” Ariz. Rev. Stat. Ann. § 16-168. This information shall be “accessible or reproduced” only by the voter. *Id.*

Certain public officials and former public officials can request that the state keep the general public from accessing their residential address, telephone number, and voting precinct number. Ariz. Rev. Stat. Ann. § 16-153;¹⁰ see *Primary Consultants, L.L.C. v. Maricopa Cty. Recorder*, 210 Ariz. 393, 397-98, 111 P.3d 435, 439-40 (Ct. App. 2005) (noting certain instances when public access to voter registration records may be restricted).

Forms indicating that an individual declined to register to vote are confidential records, not permanent public records, and may be used only for voter registration purposes. Ariz. Rev. Stat. Ann. § 16-140(C).

Each month the Department of Health must provide death records to the Secretary of State “for the sole purpose of canceling the names of deceased persons from the statewide voter registration database.” Ariz. Rev. Stat. Ann. § 16-165(D). “Public access to the records is prohibited.” *Id.* Code marks on ballots used in optical scanning systems “shall not be printed or used in any manner that will disclose the identity of the voter who votes that ballot.” Ariz. Rev. Stat. Ann. § 16-468(2).

WEBSITES, GUIDES AND OTHER KEY SOURCES OF INFORMATION

1. 2019 Manual:

https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf

- See also Arizona Secretary of State, Summary of Significant Changes in the Final 2019 Elections Procedures Manual from Oct. 1, 2019 draft:
https://azsos.gov/sites/default/files/epm_summary_since_2019_oct_1.pdf

¹⁰ An “eligible person” is defined within the statute as “a former public official, peace officer, spouse of a peace officer, spouse or minor child of a deceased peace officer, justice, judge, commissioner, public defender, prosecutor, code enforcement officer, adult or juvenile corrections officer, corrections support staff member, probation officer, member of the board of executive clemency, law enforcement support staff member, employee of the department of child safety or employee of adult protective services who has direct contact with families in the course of employment, national guard member who is acting in support of a law enforcement agency, person who is protected under an order of protection or injunction against harassment or firefighter who is assigned to the Arizona counter terrorism information center in the department of public safety.” Ariz. Rev. Stat. Ann. § 16-153.

2. Arizona Secretary of State, Guidance for Reducing COVID-19 Risks at In-Person Voting Locations:
https://azsos.gov/sites/default/files/AZSOS_Polling_Place_Guidance_2020.pdf
3. Lawyers Committee for Civil Rights Under Law, Election Protection Arizona 2020: Frequently Asked Questions, https://866ourvote.org/wp-content/uploads/2019/10/Arizona-FAQ_July-2020.pdf.

CURRENT VOTING LITIGATION

Democratic Nat'l Comm. v. Hobbs, 948 F.3d 989, 1005 (9th Cir. 2020), *cert. granted sub nom. Arizona Republican Party v. Democratic Nat. Comm.*, No. 19-1258, 2020 WL 5847129 (U.S. Oct. 2, 2020), and *cert. granted sub nom. Brnovich v. Democratic Nat. Comm.*, No. 19-1257, 2020 WL 5847130 (U.S. Oct. 2, 2020)

In 2016, the Arizona state legislature enacted a statute prohibiting people from collecting others' ballots and delivering them to polling places, vote centers, or authorized election officials' offices. In *Hobbs*, the Ninth Circuit ruled en banc that the law violated Section 2 of the Voting Rights Act and the Fifteenth Amendment. 948 F.3d at 999. However, the Supreme Court granted cert on October 2, 2020 to review the case and the law remains in place while under review.

Arizona Democratic Party v. Hobbs, No. 2:20-cv-1143 (D. Ariz.), No. 20-16795 (9th Cir.)

Currently, voters who do not sign their ballots have only until 7:00pm on election day to correct the error. The Arizona Democratic Party sued to change the elections procedure so that these voters could fix their error up to five days after voting ends.

The district court granted the plaintiff's motion for a preliminary and permanent injunction on September 10, 2020. The defendants appealed the decision. On October 6, 2020, the Ninth Circuit granted a stay of the district court's injunction pending adjudication of the appeal.

KEY PAST ACCESS CASES AND LAWS

In *Daily Herald Co. v. Munro*, the Ninth Circuit determined that a Washington State ban exit polling within 300 feet of a polling place was unconstitutional on its face. 838 F.2d 380 (9th Cir. 1988). As the court explained, "[t]he statute regulate[d] speech on the basis of content in a traditional public forum," but it "was not narrowly tailored to advance a significant government interest" and was "not the least restrictive means available." *Id.* at 389.

In 2017, Arizona settled a lawsuit brought by Project Vote, agreeing to make voter registration data more affordable and thus accessible to the public. The same year the state legislature passed a bill setting maximum fees counties could charge for voter registration data.¹¹

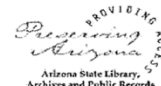
¹¹ Ron O'Dell, *Arizona settles lawsuit to make voter-registration data more accessible, affordable*, *AZCentral* (June 29, 2017), <https://perma.cc/EN3B-5LPY>.

APPENDIX I: Retention Schedule — Election Records (from the 2019 Elections Procedures Manual)

*Note that the Secretary of State's Office, Elections Services Division may have an updated version of this document.



ARIZONA STATE
LIBRARY, ARCHIVES AND PUBLIC RECORDS
A DIVISION OF THE ARIZONA SECRETARY OF STATE



General Records Retention Schedule Issued to: All Public Bodies Election Records

Schedule Number:
GS-1058

- Authority:** Pursuant to ARS 41-151.12(3), only the Arizona State Library, Archives and Public Records has the authority to set retention periods, including the sole authority to modify, extend or decrease records retention periods. The retention periods listed herein are the required time records must be retained. Records should be promptly and orderly disposed of at the end of their retention period. Keeping records longer than the retention period poses financial, legal, audit and investigative risks to the Agency. These risks need to be considered by State and Local Agencies when there is a compelling need to retain records for a longer period of time than the approved retention period. Records required for ongoing or foreseeable official proceedings such as audits, investigations or lawsuits, must be retained until released from such official proceedings, notwithstanding the instructions of this schedule.
- Archival Value:** Records designated as Permanent on the retention schedule must not be destroyed (ARS 39-101). If it is believed that special circumstances warrant other records to be retained permanently, contact the Arizona State Archives for assistance in determining historical or archival value. All records created prior to 1912 must be retained permanently. This retention schedule does not authorize the transfer of records to any repository other than the Arizona State Archives (ARS 41-151.09).
- Disposition:** This schedule is used in conjunction with the Certificate of Records Destruction. All records disposed under this schedule must be reported on the Certificate of Records Destruction, unless transferred to the Arizona State Archives.
- Format:** Retention periods listed on this schedule apply to all records regardless of physical form or characteristics. Records, regardless of format (including electronic, paper, microfilm, etc.) not listed in this schedule or on the approved General Retention Schedule, are not authorized to be destroyed.
- Copies:** Additional copies created for convenience or reference purposes should not be retained longer than the record copy listed in this schedule. Copies do not need to be reported on the Certificate of Records Destruction when they are disposed.
- Supersedence:** This schedule supersedes schedule dated July 10, 2012.

Records Analyst, Secretary of State: Richard Carroll	State Records Management Officer, Arizona State Archives & Records Management Center: Dr. Ted Hale
<i>Records Series Electronically Approved in RSM Database</i>	<i>Records Series Electronically Approved in RSM Database</i>
Assistant Director of Archives: Dennis Preisler, Ph.D.	Records Management Officer:
<i>Records Series Electronically Approved in RSM Database</i>	Records series approval on file

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General Records Retention Schedule Issued to:
All Public Bodies
Election Records

Schedule Number: GS-1058

Record Series Number	Record Series Title	Retention Period	Retention Remark	Legal Citation(s)	Approval Date
20323	Candidate Records, If elected State and local, including campaign finance records, nomination papers, petitions, affidavits, financial disclosure statements, statements of organization, threshold statements and other related records.	3 Years	After term in office ended.		7/10/2012
20324	Candidate Records, If not elected State and local, including campaign finance records, nomination papers, petitions, affidavits, financial disclosure statements, statements of organization, threshold statements and other related records	3 Years	After PAC terminated or after date of election, whichever is later.		7/10/2012
20325	Candidate Records, Federal elections State and local, including campaign finance records, nomination papers, petitions, affidavits, financial disclosure statements, statements of organization, threshold statements and other related records.	2 Years	After date of election.		7/10/2012
20326	Court Challenge Records, Historical	Permanent	Preserve pursuant to ARS 39-101.	ARS 39-101	7/10/2012
20327	Court Challenge Records, All others	2 Years	After calendar year resolved.		7/10/2012
20328	Cumulative Independent Expenditure Notification Forms	3 Years	After date of election.		7/10/2012

Dr. Ted Hale, Director – Arizona State Archives and Records Management

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General Records Retention Schedule Issued to:
All Public Bodies
Election Records

Schedule Number: GS-1058

Record Series Number	Record Series Title	Retention Period	Retention Remark	Legal Citation(s)	Approval Date
20329	Department of Justice Records Including submissions and Americans with Disabilities Act (ADA) records.	Permanent	Preserve pursuant to ARS 39-101.	ARS 39-101	7/10/2012
20330	Election Records, State and Local Elections Voted ballots, voting abstracts (ARS 16-618, 619) and related voting materials, including voted ballots, official and unofficial returns envelopes, unofficial results, early voting requests, county special election records, write-in tally sheets, official poll lists, tally lists and voted ballots (ARS 16-615); unofficial poll lists and tally lists(ARS 16-616); chain of custody documents, logic and accuracy test records, hand count/ early ballot audit documents and related records.	6 Months	After date of election.		7/10/2012
20331	Election Records, Federal and Presidential Preference Elections Voted ballots, voting abstracts (ARS 16-618, 619) and related voting materials, including voted ballots, official and unofficial returns envelopes, unofficial results, early voting requests, county special election records, write-in tally sheets, official poll lists, tally lists and voted ballots (ARS 16-615); unofficial poll lists and tally lists(ARS 16-616); chain of custody documents, logic and accuracy test records, hand count/ early ballot audit documents and related records.	2 Years	After date of election (ARS 16-624(A); USC 42-1974).	ARS 16-624(A); USC 42-1974)	7/10/2012

General Records Retention Schedule Issued to:
All Public Bodies
Election Records

Schedule Number: GS-1058

Record Series Number	Record Series Title	Retention Period	Retention Remark	Legal Citation(s)	Approval Date
20332	Election Records, Political Subdivision Records, If not retained by office Voted ballots, voting abstracts (ARS 16-618, 619) and related voting materials, including voted ballots, official and unofficial returns envelopes, unofficial results, early voting requests, county special election records, write-in tally sheets, official poll lists, tally lists and voted ballots (ARS 16-615); unofficial poll lists and tally lists(ARS 16-616); chain of custody documents, logic and accuracy test records, hand count/ early ballot audit documents and related records.		Transfer to political subdivision after election.		7/10/2012
20333	Election Records, Political Subdivision Records, All other records Voted ballots, voting abstracts (ARS 16-618, 619) and related voting materials, including voted ballots, official and unofficial returns envelopes, unofficial results, early voting requests, county special election records, write-in tally sheets, official poll lists, tally lists and voted ballots (ARS 16-615); unofficial poll lists and tally lists(ARS 16-616); chain of custody documents, logic and accuracy test records, hand count/ early ballot audit documents and related records.		After calendar year 2 regular elections held or after political subdivision ceases to exist or after political subdivision begins holding own elections, whichever comes first.		7/10/2012
20334	Election Violation Complaint Records, Resolved through litigation	5 Years	After litigation completed.		7/10/2012
20335	Election Violation Complaint Records, Resolved without litigation	2 Years	After date of election.		7/10/2012

General Records Retention Schedule Issued to:
All Public Bodies
Election Records

Schedule Number: GS-1058

Record Series Number	Record Series Title	Retention Period	Retention Remark	Legal Citation(s)	Approval Date
20336	Maps (Precincts and districts, including legal descriptions)	Permanent	Preserve pursuant to ARS 39-101.	ARS 39-101	7/10/2012
20337	Official Canvass (ARS 16-646)	Permanent	Preserve pursuant to ARS 39-101.	ARS 39-101	7/10/2012
20338	Political Action Committee (PAC) Records, Standing PAC, Initial filing records	3 Years	After PAC terminated.		7/10/2012
20339	Political Action Committee (PAC) Records, Standing PAC, Jurisdictional filing records records filed with jurisdictions where PAC is campaigning.	3 Years	After PAC terminated or after date of election, whichever is later.		7/10/2012
20340	Political Action Committee (PAC) Records, All others	3 Years	After PAC terminated.		7/10/2012
20341	Polling Place Records, Presidential Preference Election (PPE) Including consent forms.		After next PPE held.		7/10/2012
20342	Polling Place Records, All others Including consent forms.	2 Years	After date of election.		7/10/2012

General Records Retention Schedule Issued to:
All Public Bodies
Election Records

Schedule Number: GS-1058

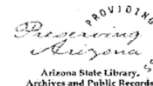
Record Series Number	Record Series Title	Retention Period	Retention Remark	Legal Citation(s)	Approval Date
20343	Poll Worker for Election Day Records Including financial records, names, addresses, poll worked, sign-in sheets, reports and handouts and other related records.	2 Years	After date of election.		7/10/2012
20344	Publicity Records, Historical Including pamphlets and other educational documentation for election issues.	Permanent	Preserve pursuant to ARS 39-101.	ARS 39-101	7/10/2012
20345	Publicity Records, All others Including pamphlets and other educational documentation for election issues.		After fiscal year election held.		7/10/2012
20346	Report of Voter Statistics (if issued)	10 Years	After date of election.		7/10/2012
20347	Signature Rosters Including for traditional elections, this is the actual signature roster and may include notation for voters that mail-in ballots and for elections that are fully conducted via mail-in I on-line, this can be a roster I checklist of citizens that actually.	Permanent	Preserve pursuant to ARS 39-101.	ARS 39-101	7/10/2012
20348	Title 19 Records, Historical Including initiatives, recalls and referendum.	Permanent	Preserve pursuant to ARS 39-101.	ARS 39-101	7/10/2012
20349	Title 19 Records, Petitions, certification sheets and related correspondence Including initiatives, recalls and referendum.	1 Year	After calendar year of election. If no election held, return petitions to petitioner.		7/10/2012
Record Series Number	Record Series Title	Retention Period	Retention Remark	Legal Citation(s)	Approval Date
20350	Title 19 Records, Application for initiatives, recalls and referendum Including initiatives, recalls and referendum.	10 Years	After calendar year filed.		7/10/2012
20351	Video Recording of Ballot Counting and Related Records For any statewide, county or legislative election.			ARS 16-621	7/10/2012

APPENDIX II: Retention Schedule — Recorder Records (from the 2019 Elections Procedures Manual)

*Note that the Secretary of State's Office, Elections Services Division may have an updated version of this document.



ARIZONA STATE
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A DIVISION OF THE ARIZONA SECRETARY OF STATE



General Records Retention Schedule Issued to: All Arizona Counties Recorder Records

Schedule Number:
GS-1070

- Authority:** Pursuant to ARS 41-151.12(3), only the Arizona State Library, Archives and Public Records has the authority to set retention periods, including the sole authority to modify, extend or decrease records retention periods. The retention periods listed herein are the required time records must be retained. Records should be promptly and orderly disposed of at the end of their retention period. Keeping records longer than the retention period poses financial, legal, audit and investigative risks to the Agency. These risks need to be considered by State and Local Agencies when there is a compelling need to retain records for a longer period of time than the approved retention period. Records required for ongoing or foreseeable official proceedings such as audits, investigations or lawsuits, must be retained until released from such official proceedings, notwithstanding the instructions of this schedule.
- Archival Value:** Records designated as Permanent on the retention schedule must not be destroyed (ARS 39-101). If it is believed that special circumstances warrant other records to be retained permanently, contact the Arizona State Archives for assistance in determining historical or archival value. All records created prior to 1912 must be retained permanently. This retention schedule does not authorize the transfer of records to any repository other than the Arizona State Archives (ARS 41-151.09).
- Disposition:** This schedule is used in conjunction with the Certificate of Records Destruction. All records disposed under this schedule must be reported on the Certificate of Records Destruction, unless transferred to the Arizona State Archives.
- Format:** Retention periods listed on this schedule apply to all records regardless of physical form or characteristics. Records, regardless of format (including electronic, paper, microfilm, etc.) not listed in this schedule or on the approved General Retention Schedule, are not authorized to be destroyed.
- Copies:** Additional copies created for convenience or reference purposes should not be retained longer than the record copy listed in this schedule. Copies do not need to be reported on the Certificate of Records Destruction when they are disposed.
- Supersedence:** This schedule supersedes General Schedule GS-1070, dated September 12, 2018.

Records Analyst, Secretary of State: Richard Carroll	State Records Management Officer, Arizona State Archives & Records Management Center: Dr. Ted Hale
<i>Records Series Electronically Approved in RSM Database</i>	<i>Records Series Electronically Approved in RSM Database</i>
Assistant Director of Archives: Dennis Preisler, Ph.D.	Records Management Officer:
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Revised: 5/21/2019

General Records Retention Schedule Issued to:
All Arizona Counties
Recorder Records

Schedule Number: GS-1070

Record Series Number	Record Series Title	Retention Period	Retention Remark	Legal Citation(s)	Approval Date
21082	Blotters	Permanent	Created and preserved pursuant to ARS 11-472.	ARS 11-472	5/6/2010
21083	Fee Collection Records	3 Years	After fiscal year created.		5/6/2010
21084	Indices to Recorded Instruments, Maps and Plats	Permanent	Created and preserved pursuant to ARS 11-462 and 463).	ARS 11-462, ARS 11-463	5/6/2010
21085	Index Reports Printed out from index database	3 Years	After calendar year created.		5/6/2010
21086	Official Oaths, County Recorder's		After reference value served. Official copy with Clerk of the Board.		5/6/2010
21087	Official Oaths, Other Elective County and Elective Precinct Officers	5 Years	After term of office expires.		5/6/2010
21088	Recorded Instruments, Original Instruments, Maps and Plats Including all recorded documents, maps and plats.		Returned to requestor or destroyed after recorded on permanent quality medium and all other provisions of ARS, 11-479 are met.	ARS 11-479	5/6/2010

General Records Retention Schedule Issued to:
All Arizona Counties
Recorder Records

Schedule Number: GS-1070

Record Series Number	Record Series Title	Retention Period	Retention Remark	Legal Citation(s)	Approval Date
21089	Recorded Instruments, Microfilm Including all recorded documents, maps and plats., original silver halide master.	Permanent	Retain and secure in separate location pursuant to ARS 11-479.	ARS 11-479	5/6/2010
21090	Recorded Instruments, Non-Silver Halide Microfilm Or Electronic Including all recorded documents, maps and plats.		After reference value served.		5/6/2010
21091	Recorded Instruments, Returned Mail Instruments Including all recorded documents, maps and plats.		After final attempt to mail is returned.		5/6/2010
21092	Signature Rosters I Voter History, For Traditional Elections This is the actual signature roster and may include notation for voters that mail- in ballots.	Permanent	Preserve pursuant to ARS 39-101. When the public body no longer wishes to maintain the permanent records, they should be transferred to the State Archives	ARS 39-101	5/6/2010
21093	Signature Rosters / Voter History, For Elections That Are Fully Conducted Via Mail-In / On-Line This can be a roster/checklist of citizens that actually voted in the election.		Will be provided by the Arizona Secretary of State through the Voter Registration Records database.		5/6/2010
21094	Voter Notification Records Including returned mailed information.	1 Year	After mailed, but no less than 6 months after date of election.		5/6/2010

Dr. Ted Hale, Director – Arizona State Archives and Records Management

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General Records Retention Schedule Issued to:
All Arizona Counties
Recorder Records

Schedule Number: GS-1070

Record Series Number	Record Series Title	Retention Period	Retention Remark	Legal Citation(s)	Approval Date
21095	Voter Registration Records Database, Output Records, Affidavits of Registration (Voter) Records		After reference value served.		5/6/2010
21096	Voter Registration Records Database, Output Records, Cancellation of Affidavits of Registration (Voter) Records		After reference value served.		2/20/2019
21097	Voter Registration Records Database, Output Records, Early / Absentee Voter Records		After reference value served.		2/20/2019
21098	Voter Registration Records Database, Output Records, Audit Logs		After reference value served.		2/20/2019
21099	Voter Registration Records Database, Output Records, General Register		After reference value served.		3/12/2019
21100	Voter Registration Records Database, Database and Data Fields Last name, first name, middle name, suffix, date of birth, birthplace, name of parent, former name, driver license number, social security number, Indian census number, party, occupation, poll worker status, mailing address, mailing city, mailing state, mailing zip, residence address, residence city, residence state, residence county, residence zip, telephone, precinct, county assigned Voter ID number, registration status, NVRA source, last modified date, restriction status, record status.		5 years after voter registration cancelled or after reference value served, whichever is later. (Official copy with Secretary of State's Office).		5/6/2010

General Records Retention Schedule Issued to:
All Arizona Counties
Recorder Records

Schedule Number: GS-1070

Record Series Number	Record Series Title	Retention Period	Retention Remark	Legal Citation(s)	Approval Date
21101	Voter Registration Records Database, Input Records, Voter Registration Affidavits		After scanned and verified and after reference value served.		5/6/2010
21102	Voter Registration Records Database, Input Records, Voter Registration Cancellations		After scanned and verified and after reference value served.		2/20/2019
21103	Voter Registration Records Database, Input Records, United States Citizenship and Immigration Services - Systematic Alien Verification For Entitlements (SAVE)		After scanned and verified and after reference value served.		2/20/2019
21104	Voter Registration Records Database, Input Records, Juror Questionnaire-Related		After scanned and verified and after reference value served.		2/20/2019
21105	Voter Registration Records Database, Input Records, Death Notifications		After scanned and verified and after reference value served.		5/13/2019
21106	Voter Registration Records Database, Input Records, US Postal Service - Change Of Address Notifications		After scanned and verified and after reference value served.		2/20/2019

Dr. Ted Hale, Director – Arizona State Archives and Records Management

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General Records Retention Schedule Issued to:
All Arizona Counties
Recorder Records

Schedule Number: GS-1070

Record Series Number	Record Series Title	Retention Period	Retention Remark	Legal Citation(s)	Approval Date
21107	Voter Registration Records Database, Input Records, Confirmation Notices		After scanned and verified and after reference value served.		2/20/2019
21108	Voter Registration Records Database, System Records Including configuration and setup, installation and implementation, design, program operation, software-related, site logs and statistical compilations, site maps, comprehensive list of urls referenced and related records.	1 Year	After superseded or obsolete or after reference value has been served, whichever is later.		5/6/2010