

June 27, 2018

Hon. Steve Yarbrough, President, Arizona Senate

Hon. J.D. Mesnard, Speaker, Arizona House of Representatives

Subj: LULAC v Reagan, Violation of Certain Provisions of Arizona Constitution and Statutes

The League of United Latin American Citizens Arizona (LULAC) and the Arizona Students' Association (ASA) filed suit against Michele Reagan, Arizona Secretary of State (Secretary) and Adrian Fontes, Maricopa County Recorder on November 7, 2017. (Attachment 1) In their suit plaintiffs claimed that Arizona's method of voter registration requiring proof of citizenship violated the First and Fourteenth Amendments of the U.S. Constitution. Secretary Reagan answered the complaint on December 29, 2017 denying plaintiffs's claims and allegations. (Attachment 2) Then on June 4, 2018, Secretary Reagan and Adrian Fontes entered into a Consent Decree agreement with plaintiffs implementing numerous changes to Arizona election law. (Attachment 3) Judge Campbell (Dist. Ariz) issued an Order implementing the agreement on June 18, 2018. See https://ecf.azd.uscourts.gov/cgi-bin/DktRpt.pl?202609554251389-L_1_0-1

This agreement by the Secretary, when implemented, will violate numerous provisions of the Arizona Constitution and statutes as follows:

Arizona Constitution

- Art. III – Separation of Powers
- Art. IV, Sec. 1, Part 1, Section 1 – Legislative authority vested in legislature
- Art. IV, Sec. 1, Part 1, (6)(c) – Amendment of initiative measure requires approval by three-fourths of members in both houses of legislature
- Art. IV, Sec. 1, Part 1, (14) – Adoption of measures to further the purpose of initiative measure legislation requires approval by three-fourths of members in both houses of legislature
- Art. V, Sec. 9 – Powers and duties of secretary of state as prescribed by law

Arizona Statutes

- § 16-166 F – County recorder shall reject any application [for voter registration] that is not accompanied by proof of citizenship
- § 16-452 – Secretary permitted to publish rules, not create new law, and only after consultation with each county board of supervisors or other officer in charge of elections
- § 16-584 – Verification of provisional ballots
- § 38-231 E – Oath of office, Secretary must support the laws of the State of Arizona

The consent decree creates new law by implementing the following:

- a new method of registering for federal elections, namely submit a state form application with no proof of citizenship. This is prohibited by § 16-166 F.
- new methods for a FED ONLY voter to update their voter registration after the registration cutoff date and vote a full state ballot.

- state form applications that have already been rejected by the various county recorders will be rejuvenated and reconsidered for registration as FED ONLY voters.
- F-type license holders (non-citizens) will be considered for registration as FED ONLY voters
- voters who move from one county to another will not have to submit a new voter registration application

The Secretary of State is “responsible for *coordination* of state responsibilities under the national voter registration act of 1993 (P.L. 103-31; 107 Stat. 77; 42 United States Code section 394) and under the uniformed and overseas citizens absentee voting act (42 United States Code section 1973).” A.R.S. § 16-142 [Emphasis added]. County recorders are responsible for voter registration under A.R.S. §§ 16-131 through 16-141, 16-151 through 16-153 and 16-161 through 16-173.

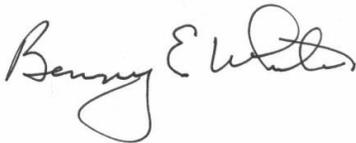
The Secretary has violated the trust of Arizona voters and the oath she took to uphold and support Arizona laws by entering into this agreement. Its implementation will cause further violence to the Arizona Constitution and our election laws. It is questionable whether the Secretary has the legal authority to enter into an agreement that implements such sweeping changes to election law in direct violation of the will of the voters demonstrated by their approval of Proposition 200 in 2004.

The Secretary violates the separation of powers included in the Arizona constitution and challenges the authority of the legislature to carefully consider and approve new laws.

Time is of the essence in this situation. The court order provided that the changes must be implemented by July 18. In order for the changes to be implemented statewide, the procedures manual must be revised, approved by both the Attorney General and the Governor and then published so that the public, candidates and campaigns can be aware of the rules that apply for the August 28 election. The ballots for UOCAVA voters must be sent out 45 days prior to the August 28 election. Precinct registers for voters receiving Early Ballots must be provided to the political parties 33 days prior to the election. Voter registration cutoff is 29 days before the election. It is not at all clear that the required administrative actions can be completed by the Secretary or Recorders in a timely manner.

Please consider this issue carefully and take appropriate action to uphold Arizona’s constitution and election laws and respect the will of Arizona voters when they approved Proposition 200.

Respectfully submitted,

A handwritten signature in black ink that reads "Benny E White". The signature is written in a cursive, flowing style.

Benny E White, J.D.