



KRISTIN K. MAYES
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL
SOLICITOR GENERAL'S OFFICE

JOSHUA D. BENDOR
SOLICITOR GENERAL
(602) 542-8958
JOSHUA.BENDOR@AZAG.GOV

August 5, 2025

Molly C. Dwyer
Clerk of the Court
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Re: Notice of Supplemental Authority
American Encore, et al. v. Fontes, et al., No. 24-6703
Argued and Submitted: July 15, 2025
Before: Wardlaw, Mendoza, and Johnstone, Circuit Judges

Dear Ms. Dwyer:

Pursuant to Rule 28(j), Appellants notify the Court that, on August 1, 2025, Arizona's Secretary of State released a draft of the 2025 Elections Procedures Manual ("Draft 2025 EPM") for public comment. The draft is available at <https://azsos.gov/elections/about-elections/elections-procedures/epm>.

The Secretary must submit the EPM to Arizona's Governor and Attorney General by October 1, 2025. A.R.S. § 16-452(B). After the Governor and Attorney General approve, the Secretary must issue the EPM by December 31, 2025. *Id.*

Appellants previously explained that "[s]ome or all of this case may become moot later this year" given the 2025 EPM, and therefore pledged to "keep the Court apprised." Dkt. 31.1 at 39–40.

The Draft 2025 EPM makes clarifying changes, including the following:

- Adds a clarifying statement at the beginning: “Unless expressly stated otherwise, this manual does not create rules that govern the conduct of members of the public not engaged in the work of conducting elections.” (Preface.)¹
- Clarifies Chapter 9, § III(D) (“Preventing Voter Intimidation”), including by rephrasing the first sentence to make clear it is summarizing criminal statutes, and by removing examples from the last paragraph. The revised first sentence states: “State law prohibits voter intimidation, threats, and coercion.” The last paragraph no longer lists “raising one’s voice” or using “insulting” or “offensive language” as possible examples of intimidation. (Pages 202–04.)
- Clarifies Chapter 13, § II(B) (“Secretary of State’s Canvassing Duties”), including by adding this sentence: “If a Board of Supervisors fails to meet its own statutory duty to canvass an election and transmit the official canvass by its own statutory deadline, the Secretary of State will use all available legal remedies to compel the Board to comply with Arizona law and protect voters’ right to have their votes counted.” (Pages 280–81.)

These changes clarify what was intended in the 2023 EPM and may render the case moot. Appellants can provide a supplemental brief if the Court prefers.

Sincerely,

s/ Joshua D. Bendor

Joshua D. Bendor

Solicitor General

Arizona Attorney General’s Office

¹ As explained at argument, the EPM is “for elections workers,” so courts should not interpret the EPM as governing members of the public without a “clear statement” to that effect. Arg. at 39:28-55.