



MEMORANDUM

Date: November 25, 2014

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator

A handwritten signature in black ink, appearing to read "CHH", is written over the printed name "C.H. Huckelberry".

Re: **Election Integrity Commission Memorandum Regarding the Recount of the Congressional District 2 Race**

On November 24, 2014, Pima County Election Integrity Commission (EIC) Chair Tom Ryan provided the Board of Supervisors with a memorandum regarding the tabulation process for the statutorily required recount in Congressional District 2 (CD2). Mr. Ryan stated it is the opinion of the EIC the recount may not lawfully be conducted on the existing central count tabulation equipment due to a provision in State statute that says the "programs" to be used in the recount of votes must differ from the programs used in the initial tabulation of the votes (A.R.S. § 16-664(C)). Mr. Ryan indicated the EIC sees only two options for the recount: either a hand count of the more than 274,000 ballots cast or contracting with a company called Clear Ballot Group that uses ballot imaging for ballot tabulation and audits.

Both of the paths suggested by the EIC are problematic under State law. Under A.R.S. §§ 16-663 and 16-664, votes tabulated on "electronic voting equipment" must be recounted on an automatic tabulation system; therefore, a hand recount would not be indicated for the initial recount. A.R.S. § 16-663(B) specifies a hand recount of five percent of the precincts as verification of the electronic tabulation, so a limited hand count will occur. As to the use of Clear Ballot Group, this company is not certified in Arizona as required by State statute and the Secretary of State's Election Procedures Manual; and the Secretary of State's office has confirmed it would not consider using an uncertified system during the recount. Thus, neither of these options appears viable.

We have shared the EIC memorandum with Arizona State Election Director Christina Estes-Werther and Deputy Election Director Kris Kingsmore. They have assured us the use of a different "program" for the recount means only that the tabulation program will be reset to count just the CD2 race and that the program as changed will be subject to a new round of logic and accuracy testing by both the Secretary of State and the County. They said it is important to use the same equipment that was used in the General Election to ensure the ballots are treated exactly the same. A statewide recount of a ballot proposition in 2010 and a recount in a Congressional District primary in 2012 were both successfully conducted in this manner by the Secretary of State.

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Finally, the EIC memorandum suggested the Board of Supervisors might need to make a decision regarding the method in which the recount will be conducted. The State Election Director has confirmed that the Secretary of State, as the "Recount Official" designated by A.R.S. § 16-662, will be directing the recount.

Following the statewide canvass on December 1, the Secretary of State will initiate the recount by certifying the facts requiring the recount to the Maricopa Superior Court, which will then order the recount and establish a timeframe for its completion. The Secretary of State makes the determinations regarding the method in which the recount will be conducted and will delegate the actual tabulation to Pima County. The Secretary of State plans to have a staff member present in each county throughout the recount.

The County Elections Department will work closely with the Secretary of State to conduct the CD2 recount consistent with Arizona law and the Secretary of State's oversight.

CHH/mjk

Attachment

c: Chair and Members, Election Integrity Commission
Ellen Wheeler, Assistant County Administrator
Brad Nelson, Elections Director

ELECTION INTEGRITY COMMISSION

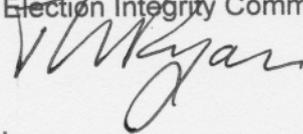
Pima County, Arizona

TO: Honorable Chair and Members
Pima County Board of Supervisors

FROM: Tom Ryan, Chair
Election Integrity Commission

DATE: November 24, 2014

RE: Recount of CD2 Using Existing System Violates State Law



The 161 vote margin between candidates Ron Barber and Martha McSally in CD2 will trigger an automatic recount of the ballots as required by state law. Pima County Elections is planning to recount all of the paper ballots on existing central count equipment using the same software and hardware used for the General Election, but only recording votes from ballots that contain the CD2 race. The program that would do the recount, GEMS, is exactly the same program used for the initial tabulation. A review of Arizona law shows that the proposed recount plan violates state law.

ARS §16-664(C) states:

The programs to be used in the recount of votes pursuant to this section shall differ from the programs prescribed by § 16-445 and used in the initial tabulation of the votes. (ARS § 16-445 refers to the filing of computer programs with the Secretary of State.)

The State of Arizona Election Procedures Manual, revised 2014, page 226, states:

The programs used shall not be the programs submitted to the Secretary of State and used in the initial tabulation of the votes.

ARS § 16-444 defines "computer program":

"Computer program" includes all programs and documentation adequate to process the ballots at an equivalent counting center.

ARS §16-664(A) states, in part:

... the secretary of state shall order the ballots recounted on an automatic tabulating system to be furnished and programmed under the supervision of the secretary of state. In the event of a court-ordered recount for elections other than for the office of supervisor, the secretary of state may designate the county board of supervisors to perform the duties assigned to the secretary of state.

This last paragraph suggests that the Board of Supervisors might find itself in the position of directing the recount and therefore selecting an alternative program for the recount.

It is the opinion of the Commission that use of the GEMS program to recount CD2 votes does not constitute a different program as required by law. Since the recount must be done using a different program, the Commission sees only two viable options:

Option 1. Hand counting all of the ballots (274,449 less the few ballots cast on touchscreen devices), or

Option 2. Engaging the services of Clear Ballot Group, a company that uses ballot imaging and automated image analysis to tabulate elections and conduct audits. Clear Ballot has demonstrated the capability of handling the style of ballots used in Pima County.

The Commission does not have another regular meeting scheduled until January, but we are available to have a special meeting to address any issues regarding the recount as requested by the Board.

TR:ssb