



Board of Supervisors Memorandum

July 1, 2008

Election Integrity Issues and Actions

Background

With completion of Superior Court litigation between Pima County and the Democratic Party regarding the release of election databases, it is appropriate to continue our efforts at election integrity reform. Recently the Secretary of State commented on this matter in a letter dated June 5, 2008. I will be responding to Secretary Brewer's letter, however, she did have a number of comments regarding the last election integrity report dated April 3, 2008, which followed up on my original report dated October 19, 2007. Unfortunately, the lack of a timely response from the Secretary of State delayed the Board's ability to act on recommended election reform procedures. Now that we have received her comments, we are able to move this process forward, hopefully with the cooperation, oversight and concurrence of the Democratic, Republican, Libertarian and Green parties in Pima County.

Actions to Improve Elections Integrity

There are a number of actions that the Board should take to advance election reform as well as implementation of the 2008 September Primary and November General elections. These are:

1. Election software and hardware administration - In my October 19, 2007 report to the Board, I suggested that one method of improving election security would be to eliminate the ability of Elections Information Technology staff to exercise administrative rights over computers and software used to count the vote. These administrative or control rights over Election information systems was transferred on June 23, 2008, at 8:00 a.m. to Information Technology Department staff to provide a separation of control. This proposed election safeguard has now been mimicked by recent state law, H.B. 2451, which requires the Board to designate an individual to observe the installation and modification of election management software and computer programs used for County election administration. Our proposed procedure, I believe, is consistent with this new state law, however, we added an additional step, which is to limit Elections Information Technology staff administrator rights to the election tabulation hardware and software systems during the election process. To comply with H.B. 2451, I would request that the Board appoint Dr. John Moffatt, Office of Strategic Technology Planning, as the individual to observe the installation and modification of any election management software or computer programs used for County election administrative purposes. In addition, I would also request that the Board designate the County's Chief Information Officer, Bill Glasner, as a substitute if Dr. Moffatt is unavailable.

2. Criminal background checks - Attached please find a draft ordinance prepared for advertising. This ordinance expands the fingerprinting and criminal history records check on prospective and current employees, to include those employees involved in the Elections Division and Recorder's Office, particularly those employees who are involved in conducting elections for Pima County. In addition, please note the inclusion of "employees, contract employees, and volunteers." Fingerprinting and criminal history records checks will not be taken to the poll worker level.

Since party observers are not "volunteers" for the County, this requirement would not apply to them.

I would recommend that the Board preliminarily approve the draft ordinance regarding fingerprinting and criminal history records checks on prospective and current Pima County employees, contract employees and volunteers, and direct that the ordinance be advertised as prescribed by law and returned for public hearing and action.

3. Enhanced Elections staff training, compliance and management - Contained within the Department of Elections recommended budget are three new positions to strengthen the compliance, training and management capabilities of the Department. These are new positions that require specifically drafted job descriptions, and these job descriptions and classifications require Board approval. These positions are vitally important to the process of advancing an election integrity plan for Pima County.

The Training Officer will be responsible, on a year-round basis, for the training and activities associated with training approximately 4,000 poll workers that are needed on a periodic basis throughout the year to conduct elections not only for the County but for other jurisdictions and entities. During the Presidential Preference Election, there were some complaints regarding poll worker performance. As the Board knows, we have significantly increased our poll worker training functions by now conducting poll worker academies, which have been described in previous correspondence to the Board.

Another vitally important position is that of Compliance Officer. A compliance officer is needed to ensure immediate and direct compliance with all federal and state election law, and to ensure that all policies and procedures for conducting elections in Arizona as indicated in the Secretary of State's elections manual are complied with without exception.

Finally, to strengthen management performance and control, I have included in the Elections Department budget a Deputy Director.

To ensure complete transparency in the selection and employment process, all applicants will be initially screened through standard Human Resources employment practices for classified employees, even though the Deputy Director position is to be unclassified. Further, all final candidates of not less than five for each position will be interviewed by a panel consisting of the following: Brad Nelson, the Elections Director;

Dr. John Moffatt; F. Ann Rodriguez, the Pima County Recorder, or her designee; a representative of City and Town Clerks; possibly the Superintendent of Schools or her representative; and a member of each political party, i.e. the chair or their designee. This panel will recommend appointment of the most qualified candidate to the County Administrator.

It is recommended that the Board approve the personnel classifications of Deputy Director of Elections, Compliance Officer and Training Officer, and endorse the interview and selection procedure outlined.

4. Future Election database turnover procedure - Based on the outcome of litigation in Superior Court, the County is allowed to turn over future election databases upon request on or after the time of the official election canvass for any future election. Rather than waiting for an official request from any party or the public, at cost, I intend to provide these databases immediately after (same day) the Board canvasses an official election. This will assist any party or candidate to challenge the canvass in the prescribed amount of time. We have established specific technical procedures regarding the turnover of these databases. I will have Dr. John Moffatt work with the Pima County political party chairs or their designees to establish a formal process and procedure to turn over these databases on the day of the official canvass.
5. Improved cooperation and communication with Pima County political party chairs - The Elections Director has been willing to and will continue to work with and meet with all political party chairs on a monthly basis where issues or concerns can be raised or addressed. At their request I would be happy to attend these meetings. I continue to meet weekly with the Elections Director to assist in implementing election integrity reform. Our goal is to substantially improve communications with the political party chairs, understand issues of concern to them, and respond in an appropriate and timely manner. We wish to avoid any future conflict or litigation with the political parties.
6. Early ballot tabulation and precinct level modem transmission procedures for future review with the political parties - Some confusion or concern has arisen over two procedures that we implemented for the Presidential Preference Election that are designed to improve elections security. These two procedures are: 1) discontinuing early ballot tabulation until Election Day, and 2) discontinuing Election Day precinct modem tabulation to the central tabulating computer. Both of these actions were taken to improve elections security and address criticism by one of the political parties, however, at least one party observer has questioned the discontinuation of early ballot tabulation prior to Election Day, and the Secretary of State has taken exception to our discontinuing the modem transmission of precinct scanning tabulations. I believe the Board should authorize staff to revisit these two issues with the Pima County political party chairs or their designees to determine if the present procedure should be altered; and, if altered, the appropriate security safeguards and/or procedures that must be adopted to ensure that, with the exception of audit batches, intermediate results of

election tabulations cannot be either printed, displayed or released if early ballot tabulation is begun before election day. Regarding the modem transmission of precinct ballot tabulation results, appropriate safeguards need to be established to ensure there can be no "man-in-the-middle" attack of the data transmission or receipt.

The primary issue regarding early ballot tabulation is the ability to print the "Summary versus Cards Cast Report." If early ballot processing is agreed to by other parties, a method to prevent the summary report from being printed until after polls close on Election Day must be developed. The only exception would be for early ballot batches selected for hand count audit.

7. Expansion of audit and control systems - One of the attachments to my April 3, 2008 report to the Board was a list of controls that track many critical elements of the election process such as blank ballots, voted ballots, spoiled ballots and establish the controls or logs identifying a ballot's journey through each step in the chain of custody of the processing of early ballots. The logs generated by each of these control processes will serve as another source of information ensuring the transparency of these processes. The controls that will be developed in conjunction with the political parties will serve to ensure that all ballots received have indeed been accounted for as well as serve as a tool to increase the ability to audit each step in the process.
8. Voter confidence - Voters need to have confidence that their vote will be counted accurately and all of the many steps involved are completed as planned. To offset potential threats to security, the extensive existing controls will be expanded further to improve the transparency and documented chain of custody for both ballots as well as the equipment used in the election. A summary version of my April 3, 2008 recommendation on increased controls has been incorporated into H.B. 2451, further reinforcing the need for controls and record keeping currently absent from the Secretary of State's Election Manual. The implementation of these controls will require increased participation by County staff as well as political party observers.
9. Establish Election Integrity Commission - One of the initiatives in my April 19, 2008 report on elections security is the formation of an Election Integrity Commission. The purpose of this committee would be to assist in the implementation of the recommendations made in that report, to provide independent oversight of the County election process, and to continue to review and make recommendations to the Board regarding election information technology systems as well as technical and procedural matters relating to election processes.

The Commission would consist of one member appointed by each Board member, one member appointed by the County Administrator, and Dr. John Moffatt serving as an ex-officio, non-voting member. In addition, the Chair of each party recognized by the Secretary of State per Arizona Revised Statutes § 16-801 would appoint a representative to the Commission.

My appointment to the Commission would be an individual by the name of Dr. Arnold B. Urken, a nationally renowned expert on voting theory who is currently writing a book entitled "*Discovering Voting Systems: Technology, Innovation and the Science of Voting.*" I believe Dr. Urken will provide a valuable voice in the discussion regarding voting integrity.

It is recommended that the Board consider the creation of this Commission at the July 1, 2008 Board Meeting, and identify appointees quickly as there is much work to be done in preparation for the Primary Election occurring on September 2, 2008, since early voting begins on July 31, 2008.

10. Increase the number of ballots by increasing precincts to be hand counted to verify computer tabulation - The relatively new procedure of hand counting ballots to verify computer tabulation was undertaken for the first time during the 2006 election cycle. There was obviously some uncertainty and confusion in implementing this new procedure. There was also some confusion regarding the hand count ballot selection of early ballots in the Presidential Preference Election. These issues require resolution. In addition, rather than complying with the minimum sample size required by law, I suggest that twice the number of the minimum sample size be selected for hand count verification. This will require increased participation by the political parties in the hand counting process, and the establishment of agreed upon protocols and procedures regarding ballot selection, size and races, all of which will be memorialized in a written procedure prior to ballot sample selection, whether it be for early ballots or precinct cast ballots. We will work with the parties to determine how to expand the hand count by either adding more precincts or more races to be counted. In addition, early voting ballots will be doubled for hand counting subject to the limitation of A.R.S. 16-602(G).
11. Adopt independent testing procedures for software and programming compliance - Independent verification of elections software systems, programs and databases is necessary to provide an added layer of security, particularly related to potential internal programming alteration threats. In order to ensure that the software systems, programs and databases meet appropriate national standards and to verify that they have not been altered in any way during the election process, the County will contract with two nationally accredited testing firms or laboratories accredited by the United States Election Assistance Commission. Each will independently validate the integrity of the County's software systems and databases, including a series of GEMS database programs used in each election, starting with the approved Secretary of State's logic and accuracy test, and ending with the final database reflecting all votes tallied.

Recommendations from My October 19, 2007 and April 3, 2008 Reports That Cannot Be Implemented at this Time.

My interim report of October 19, 2007, and my final report of April 3, 2008, which incorporated comments made during the public review period, contain at least three recommendations that cannot be pursued at this time without first obtaining enabling Federal or State legislation. These are:

1. Additional testing computer in the counting center - In my October 19, 2007 report, I recommended an additional computer in the counting center which would be a test computer. It could also be used for the purpose of parallel or nearly simultaneous counting of election results by two independent groups, including independent observers. The results from both counts could then be compared to determine if the results matched. If not, then it would be obvious there were programming or database issues associated with tabulation. Because the ballots would have to be counted sequentially and not simultaneously, such would constitute a recount that is not permitted by present Arizona law. I still believe parallel tabulation processing by independent systems and individuals would be another important safeguard with respect to internal database or programming attacks. However, the logistics of doing parallel processing would be extremely difficult to accomplish.
2. Scan and post voted ballots on the internet - In my April 3, 2008 report, I recommended scanning all ballots and posting same on the internet. The County Attorney's Civil Division has issued a legal opinion indicating that such is not currently permitted under Arizona law. In the Legislature this year there was a scanning legislative proposal that would have allowed the scanning and posting of ballots. That proposal has now died but will certainly be reconsidered in the next legislative session. Furthermore, the Secretary of State, in her letters of January 17 and June 5, 2008, indicated that it was against the law for the County to establish its own procedures for tabulating and storing ballots. The Secretary of State has indicated "Scanning and posting ballots on the internet is a very bad and costly idea." For these reasons, scanning of cast ballots cannot be implemented at this time.
3. Discontinue the use of touchscreen voting devices - In my April 3, 2008 memorandum to the Board, I recommended discontinuing the use of the touchscreen voting devices if the Secretary of State and Department of Justice would approve such an action. In the response from the Secretary of State dated June 5, 2008, it is clear the Secretary of State will not approve such a recommendation. Therefore, it cannot be implemented.

Recommendation

It is recommended the Board:

1. Appoint Dr. John Moffatt, Office of Strategic Technology Planning, as the individual to observe the installation and modification of any election management software or computer programs used for County election administrative purposes, and designate the County's Chief Information Officer as a substitute if Dr. Moffatt is unavailable.
2. Direct for advertising the proposed ordinance requiring fingerprinting and criminal history records check on prospective and current employees, to include only those individuals employed in the Elections Division and Recorder's Office who are responsible for or involved in the conduct of an election in Pima County.

3. Authorize and approved the job classifications of Deputy Director of Elections, Compliance Officer and Training Officer for the Division of Elections, and approve the selection process and panel composition as identified.
4. Develop, in consultation with the political parties of Pima County, a standard procedure for the turnover of future election databases at the time of approval of the official canvass for that election.
5. Direct the Elections Director and, if necessary, County Administrator to meet monthly with all political party chairs to improve communications and to ensure the efficient, effective, as well as secure conduct of elections in Pima County.
6. Ask the political party chairs or their representatives to review County procedures related to early ballot tabulation and precinct level modern result transmission to determine if appropriate modifications are necessary, and implement said modifications if there is unanimous agreement among the political parties and technical experts that modifications will not compromise election vote tabulation or make election outcomes less secure.
7. Direct the County Administrator, in cooperation with the Director of Elections and the County Recorder, to establish a series of controls that ensure the accountability of all ballots and votes cast.
8. Direct the County Administrator, in cooperation with the Director of Elections and the County Recorder, to establish a series of controls that document the chain of custody for ballots as well as equipment used in an election as required by H.B. 2451.
9. Establish an Election Integrity Commission and appoint representatives at the earliest possible date.
10. Double the number of precincts for hand counting verification over the minimum prescribed by law.
11. Direct the County Administrator and Dr. John Moffatt to employ two independent, nationally accredited testing firms or laboratories to independently validate the integrity of software systems and databases used for each election.

Respectfully submitted,


C.H. Huckelberry
County Administrator

CHH/jj (June 26, 2008)

Attachment

ATTORNEY CLIENT PRIVILEGE

ORDINANCE NO. 2008- .

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA REQUIRING FINGERPRINTING OF CERTAIN CURRENT AND PROSPECTIVE COUNTY EMPLOYEES, CONTRACT EMPLOYEES, AND VOLUNTEERS FOR THE PURPOSE OF OBTAINING CRIMINAL HISTORY RECORD INFORMATION FROM THE ARIZONA DEPARTMENT OF PUBLIC SAFETY AND THE FEDERAL BUREAU OF INVESTIGATION.

WHEREAS, the Board of Supervisors, pursuant to A.R.S. §§ 11-251 and 11-251.05, may make and enforce all local, police, and sanitary regulations not in conflict with general law; and

WHEREAS, the Board of Supervisors has determined that it would be in the best interests of Pima County to inquire into the character and past criminal conduct of prospective and current County employees, contract employees and volunteers who work with children under the age of eighteen, with vulnerable adults or who work with or have access to security sensitive data or equipment; and

WHEREAS, the Arizona Department of Public Safety maintains a Central State Repository, pursuant to A.R.S. § 41-1750, for the purpose of procuring and maintaining information concerning arrests and convictions of persons for public offenses in Arizona; and

WHEREAS, the Central State Repository is authorized, pursuant to A.R.S. § 41-1750, to provide criminal history record information to noncriminal justice agencies for the purpose of evaluating the fitness of current and prospective employees, contract employees and volunteers; and

WHEREAS, noncriminal justice agencies may receive criminal history record information from the Arizona Department of Public Safety, pursuant to A.R.S. § 41-1750, only by specific authority granted to that agency by statute, ordinance, or executive order, and subject to the rules of the Arizona Department of Public Safety; and

WHEREAS, the Federal Bureau of Investigation is authorized, pursuant to Public Law 92-544, to exchange identification records with officials of state and local governments for the purpose of employment or licensure, subject to the rules of the Federal Bureau of Investigation.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF PIMA COUNTY:

ATTORNEY CLIENT PRIVILEGE

SECTION 1. Title 9 of the Pima County Code is hereby amended to add as follows:

CHAPTER 9.70

FINGERPRINTING AND CRIMINAL HISTORY RECORDS CHECK OF PROSPECTIVE AND CURRENT PIMA COUNTY EMPLOYEES, CONTRACT EMPLOYEES, AND VOLUNTEERS

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Sections:

- 9.70.010 Authority to receive criminal history record information.**
- 9.70.020 Fingerprinting of prospective and current employees, contract instructors, and volunteers.**
- 9.70.030 Persons authorized to receive criminal history record information.**

9.70.010 Authority to receive criminal history record information.

Pursuant to A.R.S. § 41-1750, Pima County is hereby authorized to receive state and federal criminal history record information for the purpose of evaluating the fitness of prospective and current Pima County employees, contract employees and volunteers who work directly with children under the age of eighteen, or with vulnerable adults, or who work with or have access to security sensitive data or equipment.

9.70.020 Fingerprinting of prospective and current Pima County employees, and contract employees and volunteers.

As a condition of employment or continued employment with the Pima County, all prospective and current employees, contract employees, and volunteers who work for Pima Health System, the Natural Resources, Parks and Recreation Department, the Community Resources Department, the Information Technology Department, the Elections Department or the Recorder's Office described above in Section 9.70.010 shall submit a full set of fingerprints, on a standard fingerprint card, to their employing Department for a state and federal criminal history records check, pursuant to A.R.S. § 41-1750 and Public Law 92-544. Each department will forward those fingerprints, accompanied by the appropriate fees, which will be paid by the department, to the Arizona Department of Public Safety for the purpose of obtaining a state and federal criminal history record check. The Department of Public Safety is authorized to exchange this fingerprint data with the Federal Bureau of Investigation.

ATTORNEY CLIENT PRIVILEGE

9.70.030 Use and dissemination of criminal history record information.

Criminal history record information received by Pima Health System, the Natural Resources, Parks and Recreation Department, the Community Resources Department, the Information Technology Department, the Elections Department and the Recorder's Office shall be used only for the purpose of evaluating the fitness of prospective or current employees, contract employees and volunteers identified in Section 9.70.010. Secondary dissemination of such information is strictly prohibited provided, however, Pima County shall comply with any relevant state and federal rules and regulations regarding the dissemination of criminal history record information.

SECTION 2. If any provision of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

SECTION 3. This Ordinance shall take effect 30 days from the date of its adoption.

PASSED AND ADOPTED by the Board of Supervisors of Pima County, Arizona, this _____ day of _____, 2008.

Chair,
Board of Supervisors

ATTEST:

Clerk, Board of Supervisors

APPROVED:

DEPARTMENT(S)

APPROVED AS TO FORM:

Deputy County Attorney