



MEMORANDUM

Date: September 6, 2016

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 be "CH", is written over the printed name "C.H. Huckelberry".

Re: **Primary Election Issues Raised at the September 6, 2016 Board of Supervisors Call to the Public**

On September 6, 2016 at the Board of Supervisors Call to the Public, several members of the public raised the issue of being able to verify election results using scanned ballots. The current election equipment, now County-owned, has the ability to scan and count ballots. The scanned images are downloaded to an election server for retention; however, the County currently lacks any authority to do anything with these images. We do not have specific approval from the Secretary of State through written elections procedures for the use of scanned images to verify election results.

As you will recall, this issue was included in our 2016 Legislative Agenda. Attached for your information is an excerpt of Item 8 in our December 15, 2015 communication to the Board of Supervisors regarding election integrity. Our request was exceptionally clear to use scanned ballot images in auditing election results. Nearly a year ago, we requested the ability to utilize scanned images, as is now desired by election activists. Unfortunately, the Arizona Legislature did not act on our request, nor has there been any clarifying rule or amendment to the Arizona Elections Manual to allow same.

This matter is now before Pima County Superior Court Judge Richard Gordon. Judge Gordon has heard the initial case requesting a temporary restraining order to keep the County from destroying scanned images. The County stipulated we would retain the scanned images until the litigation is complete. It is possible Judge Gordon could determine if the County has any ability to verify election results via scanned ballots or if we must continue to rely on the current method of vote count verification by selecting specific races and a number of early and Election Day ballots for verification. It should be noted this traditional method of election verification did occur this past weekend via an observed hand audit of selected races, precincts, and early and Election Day ballots. The hand count audit verified the results.

Under current law and per the present Arizona Elections Manual, the County has no authority to use the scanned images to verify election results, and we have no authority to declare the scanned images a public record. A Court could certainly determine otherwise, but any findings related to such in the Superior Court would be subject to review by both the Court of Appeals and the Arizona Supreme Court.

The Honorable Chair and Members, Pima County Board of Supervisors
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September 6, 2016

Page 2

Clearly, the preferred method is to have the Arizona Legislature modernize Arizona Election Law to reflect modern elections technology.

CHH/anc

Attachment

c: Ellen Wheeler, Assistant County Administrator
Brad Nelson, Director, Elections Department

**Excerpt from December 15, 2015 Board of Supervisors Memorandum,
"Resolution 2015-____, Recommended Legislative Agenda for 2016"**

8. Election Integrity.

Arizona's elections laws are at least two decades behind election technology. Current election laws do not take into account significant advances that have occurred in ballot tabulations, scanning and sorting; nor have they kept pace with the dramatic shift from Election Day voting to early mail-in ballot voting. The entire series of election laws in Arizona needs to be revamped by the Secretary of State; but until that occurs, there are a number of significant modifications to existing election laws that can improve voter confidence in reported election results. Pima County has been a leading proponent of improved election integrity and is the only county in Arizona that has an Election Integrity Commission. The County also continues the tradition of checks and balances by dividing election responsibilities between the County Recorder and County Administration, similar to most other counties in Arizona.

The County has been significantly constrained in our ability to provide voters with the transparency needed to reassure the integrity of election results. On numerous occasions, we have asked the County Attorney for legal opinions regarding the flexibility of the County to address modern day election integrity issues. The most recent example was the legal inability to hand count a local County election. The response received from the Secretary of State, as well as the Attorney General, did not confirm the County has the legal authority to hand count local county election results even though they both concurred the idea was sound.

In addition, the County has desired to scan and post scanned ballots as a public record so any interested citizen can count ballots to verify the electronic results. Attached is an opinion from the County Attorney's Office dated April 10, 2008 indicating the County lacks the authority to scan voter ballots and post the scanned images on the internet. These legal obstacles to the County's election integrity initiatives need to be removed, and election laws in Arizona should be modernized to reflect the current technology in election processing and tabulation. Therefore, I recommend the Board endorse the following election integrity modifications to State election laws:

- A. Modify any State law that prevents or precludes hand count or automated audits of local county elections.
- B. Allow the County, in conducting an election, to scan and sort ballot images for auditing election results.
- C. Allow the County to perform tabulation audits using independent software to process ballot images.
- D. Provide authority for the County, at the County's option, to conduct their elections by mail.
- E. Declare as public records, ballots cast in any election if the ballots have been scanned as electronic images. If an electronic image of a ballot has been created, the electronic image can be treated as a public record and be available for public inspection upon request.