

## **PIMA COUNTY ELECTION INTEGRITY COMMISSION**

<http://www.pima.gov/commission/ElectionIntegrity.shtml>

### **MEETING SUMMARY – October 26, 2012**

The Pima County Election Integrity Commission met in special session on October 26, 2012, in the Pima County Administration Building, Pima County Administrator's 10<sup>th</sup> Floor Conference Room, 130 W. Congress, Tucson, Arizona 85701.

#### **1. ROLL CALL**

Present: Charles Geoffrion, Arnie Urken, Barbara Tellman, Mickey Duniho, John Moffatt, Pat Pecoraro, Tom Ryan, Benny White, and Jim March (telephonically).

Also in attendance: F. Ann Rodriguez and Chris Roads, Pima County Recorder's Office; Carli Brousseau, Arizona Daily Star, Brad Roach, Attorney at Law; Sherry Mann, Member of Occupy Tucson; and John Brakey, Political Activist.

Benny White stated that he was not aware that there was a lawsuit pending of which he is potentially a co-defendant; therefore, he was unable to attend this meeting or offer any comment.

#### **2. PLEDGE OF ALLEGIANCE**

Those in attendance stood for the Pledge of Allegiance.

#### **3. DISCUSSION OF NEED FOR SORTING EARLY BALLOTS BY PRECINCT WITH RESPECT TO AUDIT ACCURACY**

Charles Geoffrion stated that there was only one issue on the Agenda for discussion.

Mickey Duniho discussed his discovery of a publication by Francois Choquette and James Johnson in California - attached), which outlined anomalies found throughout the United States in the Republican Presidential Primary that seemed to favor Mitt Romney. The following is a summary of his comments:

- The phenomenon seemed to indicate a statistical correlation between the software and the size of the Precinct whereby Romney received a higher percentage of the vote in large Precincts than he got in smaller Precincts, but did not correlate with any other logical demographics such as urban versus rural, income, race, etc.
- Using their methods, he analyzed data from the Republican Presidential Primary in 2012, as well as General races throughout the State in 2010, and found the same anomalies and felt that the correlation between what was happening nationally and locally strongly suggested fraud.
- He had suggested numerous times to the Commission that conducting a proper Hand Count Audit (HCA) of Early Ballots could insure integrity of the Election.

- He described a proposed process of sorting the Early Ballots by Precinct, selecting the Precincts randomly from the same Precincts used for the Precinct Audit; and then counting the Ballots by Precinct rather than by batch as is currently done.
- He cited the Stuxnet Virus as an example of how fraud could be introduced into data bases causing computers to malfunction and without confirmation of what comes out of the "black box", there is no confirmation of integrity.

Charles noted for the record that F. Ann Rodriguez and Chris Roads had joined the meeting and invited Tom Ryan and John Moffatt to offer their comments.

Tom noted that:

- The published results are disconcerting because it was done in the Republican Presidential Primary where demographics are not really as complicated as a Partisan Election.
- Considering the software in Pima County's system has not been updated since the initial loading in 2006, how could a perpetrator of such fraud have known that Romney was even going to be a part of this Election at the time? Consequently, if fraud had been perpetrated in Romney's favor, there had to be some other complicated trigger to get information from the outside to the inside.
- If these fraudulent anomalies are generated by computer software, it would not be detected by current auditing methods and require a different form of auditing as Mickey suggested.

In response to an inquiry by Charles, John responded that the software had originally been loaded in 2006, that there may have possibly been an update that Humboldt County did not have, there had been no updates subsequent to that time, and that the current version is 1.18.24.

Jim March offered his theory on how fraud could be accomplished by accessing the system through the removal of the case when the server was turned off and using another data cable to copy changes from another hard drive into the GEMs system. He further commented that such a process would not leave behind any trace on the operating system or hard drive.

Charles noted the arrival of Sherry Mann, Plaintiff in the pending lawsuit and associate of Occupy Tucson to the meeting.

John disagreed with Jim's theory and cited examples of numerous Election Integrity procedures that have been established and implemented since 2006 to prevent this type of activity including placing 4 seals on the CPU case as well as seals on all sides of the computer cabinet with the seals logged and validated by Party observers.

Barbara Tellman reminded the Members, that because this Commission serves as an Advisory Committee, even previous mundane tasks have taken a substantial amount of time. She agreed that these issues were worth addressing in future meetings, but

suggested that discussion at this meeting be limited to items they had the ability to influence between now and the upcoming Election.

Charles agreed that the Commission was not in a position to make any emergency changes at this point and time.

Barbara and Mickey discussed how the sorting and counting of the Early Ballots could be achieved with respect to machinery, manpower, training and timing. Mickey stated that Brad Nelson was going to provide them with some information on how it could be done, but he was not at the meeting.

Jim commented that F. Ann Rodriguez had the type of sorting device they needed, but Chris responded that the Recorder's Office did not have any sorting devices that could accomplish this task.

Arnie Urken offered the following:

- The inconsistencies were apparent and might be considered to be more than an anomaly, but literature on voting also cited numerous examples on the level of analysis of effects that can give inconsistent results.
- There was no evidence of wrong doing.
- If the Commission was concerned about this phenomenon being created intentionally, Jim's suggestion to run a parallel analysis could be done easily to verify if a pattern existed.
- The current lawsuit asked the Court to order sufficient hand counts but did not offer a definition of "sufficient".
- Anything the Commission wanted to do would have to be feasible to accomplish with the next two weeks without burdening workers who were already overloaded at this time.

Tom Ryan then made the following comments:

- He recommended that caution be used when looking at Partisan versus single Party Elections, as most of the plots that have been on the Partisan Elections definitely support this trend.
- He analyzed the Secretary of State's race in three Counties (Pima, Maricopa and Pinal) and determined that they all demonstrated the same behavior.
- Collecting data right after the upcoming Partisan Election could be done in a day, but he questioned how the results could be interpreted whether or not they were related to demographics or turn out.
- The CD8 race was an example of how demographics and political party affiliations can affect voter turnout. The Authors of the article had conducted studies in other States as well, and the Commission would have to do that same level of analysis before any conclusions could be drawn.

Barbara questioned whether there was sufficient time to find and train enough people to sort over 200,000 ballots in a couple of days.

John noted the following:

- Manual sorting of that number of Ballots, and the training of an appropriate number of people to do the Count accurately, would be difficult.
- The logistics of space and the need for Ballots to be moved offsite while remaining in the custody of the Election Officials had to be considered.
- The law requires counting and analysis of 1% of the Early Ballots. He questioned if the Ballots were crated, moved to the side and sealed, how they could be sorted by Precinct without destroying the integrity of the audit batches and violating the law.
- The integrity of the HCA batch has to be considered when determining when the sorting can be done. If the sorting took place after the HCA, the Election process would not be so tightly bound to deadlines and reporting, and space issues would be eliminated.
- The equipment that Mickey referred to sorts envelopes. Ballots are sorted when they come in the mail and over 110,000 have already been opened and processed; consequently, envelopes cannot be sorted at this point in the process.

Barbara asked if sorting Ballots after the HCA had been completed would violate any rules by taking them out of the sealed containers and using them. John explained that the Ballots stay in the custody of the Election Officials until the Canvass for the State. After the Canvass, the law states that they should be turned over to the Treasurer for sequestering and could not be opened without a Court Order. There was, however, a short period of time after the HCA and before the Canvass that the Ballots could potentially be handled. He noted that other issues to consider would be a recount or challenge at the State or Local level which could delay the Canvass date, as well as potential problems that often occur when Ballots are handled subsequent to the counting process.

Charles asked Mickey if the use of Clear Ballot or a similar process would resolve this issue in his mind, and he responded that he thought it would.

Charles stated that this Commission had obtained, with Board of Supervisors approval, the Secretary of State's permission to have a test from Clear Ballot or similar company. Although delays have been encountered due to the General Election, he suggested that re-establishing and proceeding with that agenda could be more productive.

Mickey and Tom stated that they had seen information on promising results of a study conducted in Florida utilizing Clear Ballot. The Members discussed the possibility of obtaining those results and conducting the same type of analysis here.

John emphasized that no one was opposed to doing the HCA of the Early Ballots, but recognized that many of the Members had reservations pertaining to the logistics of

doing it at this time. He also noted that scanning would serve the process well, and asked Mickey if his current concern pertained to Early Ballots or Precinct Ballots because the imaging process did not distinguish between the two.

Mickey responded that the publications did not make a distinction between the two, but if fraud were taking place in the central computer, then theoretically it could involve both types of Ballots. He noted that because Pima County audits 4% of the Precinct Ballots and has not found any evidence of fraud, he assumed that if fraud were taking place it would have to be in the Early Ballots. However, trusting what is generated by the computer without verification could not eliminate the possibility of fraud.

Tom stated that he too had been advocating for a better audit since the Commission started discussing the subject, agreed that the current process would not catch this type of fraud, and supported sorting of Early Ballots by Precincts.

John pointed out that the most egregious example in the data was in Iowa where they used a manual Party process whereby Ballots were slips of paper that were received and manually tabulated for each precinct and results forwarded back to a central point via telephone.. Mickey responded that the fact that irregularities in a hand counted system did not mean that there was no fraud in the computer.

Arnie noted that this was referred to as a Caucus System, and said that many factors could explain the inconsistencies in this Election due to the fact that the Republican Party had been split for such a long time.

Mickey clarified the following points:

- The current system for detecting fraud on the mail-in Ballots seemed to be working fairly well.
- He agreed that fraud activities where software in the computer could alter the outcome of the Election, was not detectable using current methods.
- He advocated an HCA of the Early Ballots as a replacement for, and not in addition to, the current auditing process which could be done after the HCA was completed or within a week or two after the Election.
- He recognized the opposition to this proposal, but the new statistical data scared and motivated him to request this meeting.

Many of the Members said that they were not opposed to this suggestion but questioned the logistics of conducting this process now without more discussion and planning.

Arnie agreed and stated that he believed that the results could not be confirmed but only refuted. He felt that auditing identifies inconsistencies between what happened and what people think happened, and the goal should be to minimize errors so you have confidence that those results have not affected the outcome.

Tom noted that Clear Ballot was almost foolproof and Mickey responded that even if they were to use Clear Ballot, he would still want to check some of the Ballots to check the integrity of that system.

Barbara offered the following:

- She disagreed with Mickey's statement of opposition and stated that the record indicated the Commission's support of methods for improving Election Integrity as demonstrated by the requested test from the State.
- Her main concern right now, however, was that this Election was conducted with the best results.
- This process was something that definitely needed to be addressed by the Commission in the future, but she felt it virtually impossible to do what Mickey suggested with 10 days left before the Election.
- She inquired if the Logic and Accuracy test was being discounted.

Mickey responded that the purpose of those tests determined that the computer was programmed and counting correctly, and not if a virus was altering data on Election Day.

Charles noted that Pat Pecoraro had to leave the meeting and offered the following comments:

- He confirmed that Jim March was still on the phone, noted for the record again that Benny White had recused himself, and stated that he would ask for a motion on how to proceed at 10:00 a.m.
- He reminded the Commission, that as an Advisory Board, the motion may or may not call for Board of Supervisors consideration, further affirm their standing that they all want audit technology to be looked at seriously, not only in Pima County, but throughout Arizona.
- He verified that they currently had one long term strategy that they all tended to support, and one immediate strategy that may or may not receive support.

Pat asked F. Ann to comment on their capabilities of performing this Audit should it be ordered by the Court or the Board of Supervisors.

F. Ann responded with the following comments:

- The Recorder's Office had done this type of sorting before.
- The process is tedious, requires a lot of people as well as room to move around, and that the number of Ballots to be counted by each person had to be reduced from 500 increments to 150 or 200 to reduce mistakes.
- She advised that her office could assist with the audit if they were looking at a smaller number of Ballots and explained a preliminary test had demonstrated that they were able to run a report with a breakdown by Precinct and batch number.

- They would not be able to do this process until after the Canvass because they were doing Provisionals, and would not consider moving because of Early Ballots coming in and being dropped off.

F. Ann stated that they would be able to tell Mickey that this is a Precinct that you need to look for in this batch. Mickey stated that would be helpful and reduce the time required to sort the Ballots, and as long as they knew which Precincts they were going to audit, there was no need to sort all of the Ballots.

Barbara assumed that these Precincts would be used for a Count after the Canvass because they are not chosen by law until the morning of the regular Hand Count. The Members generally discussed the interpretation of this procedures and the law pertaining to this process. Barbara suggested that the Commission amend their Regulation Manual in the event of a change in this procedure.

John reminded everyone that these Audit batches are required by law to be pulled out and maintained from an integrity standpoint, and offered suggestions on how the process could be implemented with the Recorder's Ballots. He noted that because the desired Precinct size to be counted may involve a larger sample than the 400 maximum that the law requires, the attorneys would have to be asked for their opinion. Mickey stated that the maximum batch size is not stipulated in the law, but is identified in the Secretary of State's Manual which merely tells you how to implement the law. John stated that they would still need to stand by the County Attorney's interpretation.

Charles verified that F. Ann had offered an intermediate procedure that could be of some value to looking at this matter on an immediate basis.

F. Ann responded that the Recorder's Office would be able to run an entire Precinct of any size that had been received but they needed to know size and other parameters. Once the report had been run, the batch could be sequestered. John clarified that they would need to move from this point forward and not use batches that had already been turned over, or with Ballots that were opened or already placed in boxes. F. Ann agreed, and stated that if this was a decision the Commission wished to pursue, they should forward their recommendation to the Board of Supervisors through the County Administrator so she could receive formal notification that this is how she should proceed.

Arnie suggested the possibility of running something to ratify the sampling to get an idea of the ranking to help determine what is expected from the Hand Count.

Charles acknowledged a third position as a result of F. Ann's offer to work with the Commission and asked if the Members were ready to consider a motion at this point or wanted to continue additional discussion.

Barbara stated that she wanted to make a formal motion to solidify the Commission's intention to make a more serious effort in this area. It was moved by Barbara Tellman, seconded by Mickey Duniho and carried unanimously by a 7-0 vote, that for the long run, the Commission seriously look at all alternatives whether it be sorting, scanning of

the ballots and anything else that comes up, beginning at the December meeting, to improve the process by the next General Election.

Charles stated that this broad and long term strategy is consistent with other things that have been attempted by the Commission, but does not resolve the immediate situation. He asked for direction from the Commission to do nothing, strategize on F. Ann's offer as a short term strategy subject to John's to obtaining the County Attorney's position, or continue the discussion.

Barbara asked if using F. Ann's strategy would be a post Hand County Audit or part of the Hand County Audit.

Mickey stated that he was prepared to make a motion for the short term and because they are an Advisory body, it would not be necessary to include all of the details because implementation is beyond their control. Charles asked Mickey if the motion would confirm that what F. Ann recommended was acceptable and could help them, and Mickey concurred.

By Mickey Duniho moved that the Commission find a way to do a proper HCA of Early Ballots, sorted by Precinct, so that it can be compared to the early SOVC report that is published on Election night at 8:00 p.m. The audited Precincts should be selected from the Precincts selected for the Precinct Audit. Pat Pecoraro offered a point of clarification that the motion should read that "the Commission is recommending to the Board of Supervisors". The motion was amended accordingly by Mr. Duniho, seconded by Tom Ryan, and unanimously carried by a 7-0 vote.

Charles asked if there was any further discussion.

Pat asked Mickey for clarification about Election night figures or end of the Election figures. Mickey stated that either one would be okay.

John and Tom discussed some of the logistics and procedures that would be involved in the HCA process including:

- The sequestering all of the Ballots that had been done up to a certain point because "Earlies" that are received at the Polls and that come in after that are not counted by Tuesday evening would need to be kept in a totally separate grouping.
- When the early SOVC is published, it would not be the final, and as long as they know what Ballots were used in the SOVC, that would be sufficient for a Hand Count of the Early Ballots.
- At 8:00 pm on Tuesday night, prior to downloading any Precincts, they would run the Summary Report which is published and an SOVC report and secure it to prevent allegations of tampering.

Charles asked for an explanation of an SOVC, and John responded that it means Statement of Votes Cast report by Race and Precinct.

Barbara expressed concern about the timing of getting this on the Board of Supervisors Agenda.

John felt that they needed more specifics on what number of Precincts Mickey would be considered to be "proper and reasonable." Mickey responded that ideally he would like to use the same Precincts used for the Precinct HCA, and noted that they required by law to audit 1% of the Early Ballots, which, in this case, would probably be equal to about 2 Precincts. Tom stated that they were required to count 2% of the Precincts, so that would be 4 or 5. Mickey stated that they normally do 4% of the Precincts, which would equate to would probably equate to 8 Precincts. He stated that this would be his ultimate goal, but acknowledged that actual implementation would certainly be determined by someone other than him.

Barbara inquired if this would go on the agenda on the same day as the Canvass, Pat stated that it would not and John advised that the Canvass was scheduled for November 20, 2012. She confirmed that this would then be a post-hand count, and John replied that based on Mickey's delineation, those Precincts are not picked until the day of the HCA anyway so it could not be done prior to the HCA.

Charles asked if there was a need to amend the motion and if not, he would call for the vote.

Mickey stated that he did not specify when the Count would take place or the number in the motion because he saw those as implementation details. He stated that if the Count gets done after the regular Hand Count, at least it gets done which is his primary goal. In response to a question from Barbara, he stated that his goal was to recommend to the Board of Supervisors that the same Precincts that are used for the HCA would also be used to count the Early Ballots.

With respect to the timing issue, John asked if Mickey wanted to state in the motion that the count had to be done before the Canvass. Mickey stated yes because it was his understanding that the Ballots that are used for the sort and subsequent HCA are sent to the vault following the Canvass.

Charles called for the vote and the motion passed unanimously by a 7-0 vote.

It was moved by Arnie Urken, seconded by Mickey Duniho and passed unanimously by a 7-0 vote, to call upon the Board of Supervisors to ask the Secretary of State to take whatever actions are possible to expedite better auditing including the Ballot Scanning Experiment in which they (The Commission) agreed to participate in.

Charles noted that F. Ann was leaving the meeting and thanked her for her assistance. F. Ann confirmed with Mickey that what they were requesting was a full Precinct Count. Mickey stated they would need to identify which portions of the Early Ballots had the Precincts that they might be interested in, and a series of and the series of

reports would help narrow down that search. John stated that they would have a portion that had already gone through and would not know what Precincts were going to be audited until the end, so they could not predetermine which batch had the desired Precincts in it.

Mickey asked F. Ann if their computer system already had the information needed to generate the reports and she acknowledged that they did. She also stated that the reports had to be generated before they started making legitimate additions and deletions and those changes had to be made as soon as possible for the Provisionals. Mickey responded that if they are working off the SOVC that is produced on Election night, then any ballots processed after that would not be part of the HCA and would not interfere with the Provisionals.

Jim March expressed his opinions on how fraud could possibly occur and stated that they needed to be addressed. John and Charles responded that this topic had been on the agenda for the last five months at his request, but he had not attended the meetings. They suggested that he attend a meeting and the Commission would discuss it.

Charles asked if there were any additional comments.

Tom briefly discussed the value of looking at the sequencing of data bases to try to identify potential inconsistencies. John noted that a program had been written with parameters to do so, and Tom stated that they need to go beyond those parameters and look at the data on a daily basis. John noted that the databases would be turned over to the political parties immediately following the Canvass.

John expressed concern regarding false statements about potential fraud on the part of County staff and inappropriate criticism pertaining to decisions that were made in conjunction with the Commission. He stated that although everyone is entitled to their own opinion, when the word "fraud" is unfairly used or implied in conjunction with the County for things that are out of their control, it is inappropriate. He asked that when offering quotes for the newspaper or being videotaped making these assertions, that the hundreds of thousands of dollars in changes, and hundreds of changes in procedures, and security measures that have already been contributed to protect this process be considered. In fairness, the County is trying to be helpful and supportive, but it is unfair to throw the word "fraud" out there to local folks without proof. He stated that if and when it is determined that fraud exists, all efforts will be made to figure it out and deal with it appropriately.

Mickey responded that he had tried to make it clear that he is not suspicious of anyone in Pima County. Rather, he is suspicious that someone at the National level has figured out some way to gain access to computers all over the Country. He acknowledged the implementation of all kinds of security procedures in Pima County that had hopefully prevented access to our computers, but maintained his recommendation for the Hand Count of Early Ballots based on the argument that the

computer is a black box that generates data which should be verified to prevent corruption.

John stated that they have always accepted input from Mickey and others and taken steps to identify the problem and find a solution to prevent it from happening and would continue to do so in the future.

**4. CALL TO THE AUDIENCE**

John Brakey expressed his opinions about potential fraud through various means.

**5. ADJOURNMENT**

As there was no further business to discuss, the meeting adjourned at 11:52 a.m.