PIMA COUNTY ELECTION INTEGRITY COMMISSION
http://www.pima.gov/commission/ElectionIntegrity.shtml

MEETING SUMMARY – September 21, 2012 (Amended 10/19/12)

The Pima County Election Integrity Commission met in regular session on September 21, 2012, at the Pima County Administration Building, 6th Floor Conference/Training Room, 130 W. Congress, Tucson, Arizona 85701.

1. **ROLL CALL**

   Present: Charles Geoffrion, Arnie Urken, Mickey Duniho, John Moffatt, Pat Pecoraro, Tom Ryan, Barbara Tellman, and Benny White

   Absent: Jim March and Andrew Spencer

   Also in attendance: Brad Nelson, Pima County Elections Department; Chris Roads, Pima County Recorder's Office; and Ray Molindes, Pima County Elections Department

2. **PLEDGE OF ALLEGIANCE**

   Those in attendance stood for the Pledge of Allegiance.

3. **APPROVAL OF THE AUGUST 17, 2012 MINUTE SUMMARY**

   Charles Geoffrion reported that the minutes were distributed electronically to all Members. Noting that there were no comments or changes, it was moved by Pat Pecoraro, seconded by Barbara Tellman and unanimously carried, to approve the August 17, 2012 Minute Summary.

4. **MEMBERSHIP VACANCIES – Charles Geoffrion**

   Charles distributed an attendance roster and reminded the Commission that the end of the year was approaching and, according to the bylaws, Members could not miss more than 40% of the meetings in the year.

   He noted that Supervisorial District 5 had not appointed a replacement in spite of frequent reminders by Dr. John Moffatt. John advised that he had made numerous attempts to reach the Green Party which resulted in no response as well. He reported that Andrew Spencer had relocated to Washington, D.C., and suggested that he be removed from the Commission and all Members agreed.

   Charles reported that Jim March was unable to attend the meeting due to his involvement with Election matters elsewhere.

5. **2012 ELECTION UPDATE – Brad Nelson (CONTINUED)**

   Primary Election

   Brad Nelson advised that Pima County experienced a 34% turnout with approximately 80% of ballots cast through the mail, and the remaining 20 percent cast at the polls. The hand count audit, which included members of this Committee as participants, reflected 100% accuracy.

Charles asked how individuals were selected to participate in the hand count process. Brad explained the participants primarily consist of a representative from each Political Party and stated that as of September 1, 2012, the audit had been completed, filed with the Secretary of State's Office and posted on the web page. He distributed a summary of poll worker report cards and stated that a more comprehensive report would be forthcoming which would reflect marked improvements in the process since the Presidential Preference Election.

Mickey Duniho about the significance of the three letter code noted on the signature roster when registered Independent voters requested a different Party ballot. Chris Roads explained that State Law now required reporting the total of Independent voters who requested a specific Party ballot with the Canvass and the coding helped to facilitate the count.

Chris reported that Pima County and Graham Counties were the only two who turned in their hand count of the poll roster information with their Canvass to the State. It was noted that the cost of compiling the information was approximately $2,500. He said that a report with report card results and additional Election information would be forwarded to Brad in the near future, and Benny White requested that the Members also receive a copy. Barbara Tellman asked if the percentage of legitimate write in votes would be included in the report and Chris stated it would.

Tom Ryan inquired what would be done to reduce the discrepancies on the report card summary. Brad responded that reviewing report card results with all poll workers, implementation of new procedures, on line refresher training, reduction of marginal poll workers, providing a glossary of elections terminology for new poll workers, and specific task assignments would reduce errors. He commented that installation of improved audio and video systems in the training rooms had generated positive feedback from the poll workers. He also reported that IT was working on completion of the on-line comment form project and anticipated that it would be operational by October 10, 2012.

Charles noted that there were 3 or 4 deficiencies between June and August that trended upward and inquired about corrective action to be taken with those poll workers. Several of the Members also asked what happens to poll workers who receive multiple, substandard report cards. Brad explained that poll workers who demonstrate a blatant disregard for policies and procedures were terminated; however, those who received reports on more common infractions would be counseled and receive additional training before the next Election.

Charles commended the staff for the upward trends and efforts expended in improving the quality of the Election processes. Benny White complimented Election staff stating that this was the first Primary Election without the distribution of any incorrect ballots and noted the marked improvement on the security seals as the machines came back in on Election's night facilitated a more efficient inspection and reconciliation process. On the Recorder's side, the Political Parties get daily reports on early ballots requested and returned. He expressed his appreciation for their assistance in reconciling his missing ballots with a report generated by their office.

Materials Provided by Brad Nelson: Proposition 121 – *Ballot Format; and* <u>*Voting Area*</u>
<u>*Discrepancy: Analysis June 12, 2012 Congressional District 8 General Election*</u>

<u>GEMS Software/Production of Election Information for Parties</u>

Benny inquired if the Parties were picking up the hard drives produced by the Elections
Department in compliance with the Court order. Brad stated that only the Green Party
picked up the data for the most recent Election, and John noted that the one prepared
for the public records request by Jim March was never picked up.

Benny stated that he had an issue with the Court Order which mandated the production
of these drives with respect to the time and cost of compiling and reproducing the
material. He suggested that John be directed to discuss with the County Administrator
and County Attorney a motion to consider a possible rescission of the provision that
mandates this process. John noted that the format was difficult to read as the Parties
currently maintain an older version of the GEMS software than the one Pima County
uses, agreed with the proposal, but felt it was important to have the full support of the
Commission before proceeding.

The Members discussed the merit of continuing the process. Benny stated producing
this information for the Parties in an unreadable version of GEMS was a wasteful
expenditure of taxpayer money and served no purpose. Tom Ryan stated the process
served the purpose at one time of identifying irregularities in the data bases. He
questioned whether that type of analysis was possible now, but did not think that the
information should be rescinded. Benny responded that the information would not be
rescinded as it would continue to be available as part of the permanent public record
archived by the Elections Department. He felt this would be a more appropriate
mechanism for accessing this information, and stated that the only thing that was not
done during the archiving process was to run the software developed to insure that none
of the data bases or the registers had been changed. John advised that process was
their contribution to insure transparency for all parameters of the Election process.

<u>Benny White moved that John Moffatt be requested to talk to the County Administrator
and County Attorney to determine if it was prudent to forward a motion to consider a
possible rescission of the provision that mandates this process.   Barbara Tellman
seconded the motion for discussion and questioned the legal costs of rescinding the
provision versus continuing with the current process. John explained that it would be a
one-time cost, and that attorney fees would not be significant as this process could be
handled by the Pima County Attorney's Office versus outside counsel. Charles noted
that this request fit into the Commission's mandate to review costs, look at changing
technology and move forward.   With no further discussion, Charles called for the vote
and the motion was carried by a 6-2 vote, with Tom Ryan and Mickey Duniho voting
"Nay".</u>

<u>Overseas/Military Ballots</u>

Chris reported that September 22, 2012 was the Federal deadline to transmit ballots to
military and overseas voters. He noted that military voters were overwhelmingly using
email as their source of choice to return their ballots. He also said that over 270,000
ballots, including requested and those on the PEVL, had been uploaded to meet the
October 11, 2012 deadline. He discussed ongoing mail delivery problems with the
Denver, Colorado Regional U.S. Postal Station, and stated they were expecting a
substantial mid-surge in voter registration prior to the General Election due the
Presidential race.

<u>National Voter Registration Forms</u>

Chris received over 2000 National Voter Registration Forms (NVRF) and advised that he was continuing to work with the Secretary of State's Office and the other Counties on developing a State-wide procedure that would help to deal with the shift of focus from Arizona State law back to the Help America Vote Act (HAVA) provisions. HAVA requires a voter to provide a driver's license number or the last 4 digits of their Social Security number, but the instructions on the NVRF requires that it be an <u>Arizona</u> Driver's License. The Recorder's Office has been receiving out of state driver's licenses and Social Security numbers. Under HAVA, if that information is verified, the voter does not need to present any further ID except, according to State Law, at the polls. However, if the information cannot be verified, the voter must show an acceptable form of identification before they will be allowed to vote in the Election. Chris reported that because they have experienced major issues in verifying the information, letters were being issued to advise these individuals that they cannot vote by early ballot or at the polls without showing the required identification.

Benny understood that the Secretary of State had determined that early ballots would not be sent to any of these voters and they would be required to vote at the polls for the first time. Chris responded that if the driver's license or social security number could be verified, then, under Federal Law, they would be registered and allowed to vote. Those individuals who could not be verified, even if they had previously been on the PEVL, would be blocked from receiving an early ballot or voting until the identification requirements were met. Chris noted that another issue impeding the process related to the Secretary of State's data base not getting information back from the Social Security Administration.

Benny stated that it was his understanding that this Legislation must go through the Secretary of State, Attorney General and Governor before it can be forwarded to the Department of Justice (DOJ) for Section V preclearance, and questioned whether this could be obtained before November 2, 2012. Chris responded that the process was being expedited. He noted however, that as uncomfortable as it was to proceed without DOJ approval, they had no choice but to move forward due to time constraints for the Election. Charles inquired about the number of voters who were currently suspended and Chris responded that there were approximately 1300 to date.

6.   **2012 ELECTION LEGISLATION – Brad Nelson (Continued)**

Brad reported that Legislation pertaining to the lawsuits was ongoing at the Federal level, the "Top Two Party Proposition" would appear on the ballot, and the arguments for and against would be received in the mail by the voters. He anticipated that if the Proposition passes, the entire Election process will change. Charles inquired if the language on the proposition was obtuse or transparent, and Brad responded the most significant problem with the language was that it did not answer questions or provide specific details on how the implementation process would be handled.

7.   **COST OF ELECTION ANALYSIS – John Moffatt (Continued)**

Chris advised that the Recorder's Office was in data gathering mode and trying to breakdown labor and material costs related to specific tasks. Brad reported that he was breaking down costs by function rather than line item. John stated that part of the goal was to identify costs while they were going through the actual processes, as this would help generate base numbers as well as establish the gathering process.

8. **DISCUSS REVENUE GENERATING STRATEGIES - Arnie Urken (Continued)**

Arnie reported that he had not heard anything from the contact at Eller Business College, and asked Benny if he had spoken with his son about the possibility of working on this process. Benny stated that his son offered to assist the Commission with names of potential contacts, but the Commission already had that information. Arnie suggested revisiting this subject after the Election.

9. **BEST ELECTION PRACTICES – Mickey Duniho (Continued)**

Mickey stated that he had not received any comments regarding the prioritization of the recommendations presented at the last meeting. He referenced the material forwarded to the members from the Symposium he attended also contained information relevant to best election practices. The Members agreed to begin with the Post-Election Audit process.

A variety of issues were discussed including interpretation of the governing legislation, what could be changed without amending the legislation, and the value of those potential changes. Mickey stated that he thought that the hand count process should include sorting by Precincts in order to have a better method of comparing actual ballots to the numbers generated by GEMS. He felt that the primary purpose of the audit should be to determine if the Election was honest by identifying fraud or confirming that there was no fraud rather than verifying the accuracy of the equipment.

Tom Ryan agreed and noted that the part of the current early ballot auditing process misses everything that happens after the machine has seen the ballots and the report is processed. He suggested that under the current system, if someone were to manipulate the data, the new totals would be undetectable and not auditable unless Mickey's proposed process was followed.

Charles inquired about potential safeguards and Mickey suggested that there were none other than trusting the vendor. He stated that he had conducted his own experiment and discovered that he could manipulate the GEMS data using Microsoft Editor. He affirmed that the numbers could be changed in the data base and a final report produced on the Election results without immediate detection. Tom suggested that perhaps a system where changes in sequences of data bases would have to be justified could help indicate manipulation; however, manipulation in the early stages would still be untraceable.

Benny stated that he has personally reviewed the Election data and conducted complete comparisons. The results consistently correlated statistically comparisons and abnormal results were evident. Benny questioned the motivation for someone to manipulate the data, and Barbara asked how sorting by Precincts would reduce the risk of manipulation. Mickey responded that sorting by Precinct would provide an official report to compare against the GEMS election results. Tom suggested that the Clear Ballot approach could help insure a thorough audit of Canvass numbers; however that was not currently an option.

Mickey clarified that he was not saying that fraud was being committed in Pima County, but felt that it was important to have the ability to prove that there was no fraud. He and the Members discussed several Counties that were successfully using electronic equipment to sort by Precinct, scan and store ballots for counting on Election Day.

Mickey advised that Oregon sorts and counts by Precinct as ballots come in but each batch represents a Precinct; however, the process requires that the ballots be recounted each day. King County, which has all mail votes, uses Pitney Bowes equipment to scan the envelopes with signatures as they are sorted and compares video images so that the paper does not need to be handled multiple times. Pat Pecoraro inquired about the time required for sorting with the Pitney Bowes equipment. Mickey responded that it took King County approximately one hour to sort all of their ballots, taking into consideration that have all mail votes and are larger than Pima County.

He also stated that the current GEMS report was by Precinct and that the auditing process should include comparing the Precincts with the actual ballots.

John stated that he did not disagree with Mickey's theory, but noted that the Legislature came up with the process that was currently being used. He thought that the electronic imaging was a better way to accomplish what Mickey was suggesting, however he was not sure whether Arizona law would allow it. Benny stated that dispensation could be obtained from the Secretary of State to try this as an experimental project. Charles asked Mickey if he had any idea of costs for this process. Mickey responded that he did not, but Tom thought that the Oregon people had some numbers.

Chris commented that any holding process runs the risk of being accused of tampering. He noted that Maricopa County had been taking ballots and scanning the images and had already received allegations of potential tampering. Tom stated that either the data needed to be checked from end to end or the alternative, which did not necessarily require sorting, would be to conduct a large enough sampling to insure integrity.

John stated that, although everyone knows that there were ways to manipulate data, there had been physical barriers as well as numerous security measures and procedures implemented to prevent fraud and enhance security and wanted to make sure that these types of options also remained on the table for consideration.

Barbara referred to Mickey's list and noted that there were many processes that have already been implemented. She asked him what could be done before the Election. Mickey stated that he thought that some of the processes, procedures and standards could be developed in more depth and documented more comprehensively. He noted that there should also be minimum standards established for performance of tasks and assignments.

The Members generally discussed the current procedures and offered suggestions on how they could be enhanced. Charles inquired if most of the issues referenced to date could be resolved with the implementation of Clear Ballot. Mickey thought they could as long as the individuals who were running Clear Ballot were different from those who would run GEMS. Charles stated that since considerable effort had already been expended in looking at Clear Ballot and its equivalents, he suggested that they continue to move in this direction next year, which would also give the Secretary of State an opportunity to recover from the load of the Election. Mickey also suggested that the purchase of the new GEMS system be considered due to its capacity for scanning. Due to time constraints, Charles suggested that General discussion on this item be continued to the next meeting and Mickey agreed.

Materials Provide by Mickey Duniho: University of California at Irvine: Foxes, Henhouses, and Commissions: Assessing the Nonpartisan Model in Election Administration, Redistricting, and Campaign Finance; and Best Practices to Enhance Pima County Election Integrity – Submitted by Mickey Duniho

10. **ELECTION INTEGRITY – Brad Nelson (Continued to December 2012 Meeting)**

11. **MAXIMUM TRANSPARENCY IN ELECTIONS – Jim March (Continued)**

   No discussion or action.

12. **TRACKING OF EARLY BALLOTS – Charles Geoffrion**

   Charles stated that he was marginally more familiar with the ballot handling process on the Elections side, but would like more information on how early ballots were handled on the Recorder's side. Chris provided an overview of the processes as they related to two types of ballots referred to as non-voted and voted. The comprehensive processes included pickup, delivery, counting, separation, distribution to the appropriate sites, as well as implementation of all of the checks and balances used for quality control, problem resolution to insure accuracy, transparency and integrity of the system.

13. **CALL TO THE AUDIENCE**

   The Chairman inquired if anyone wished to address the Commission. No one appeared.

14. **NEXT MEETING DATE AND TIME**

   In anticipation of potential absences during the holiday months, the following dates were approved by the Committee Members:

   o October 19, 2012 - 9:00 am to 12:00 pm, Board of Supervisors 1st Floor Conference Room, 130 W. Congress, Tucson, AZ

   o November, 2012 - No Meeting

   o December 14, 2012 - 9:00 am to 12:00 pm, Board of Supervisors 1st Floor Conference Room, 130 W. Congress, Tucson, AZ

   Charles inquired about Brad's progress with bringing in some of vendors. Brad responded that he has talked to some of the vendors and asked them to keep the two middle weeks of December open for a potential presentation. Tom also asked if there had been any feedback on the certification process or requirements for the vendors and/or their products from the Secretary of State. Brad said had received nor information from to date, but would follow up.

15. **NEW BUSINESS**

   The Chairman asked if there was any new business. No new business items were brought to the table.

16. **ADJOURNMENT**

   As there was no further business to discuss, the meeting adjourned at 12:15 p.m.

PROPOSITION 121 ~ BALLOT FORMAT

PROPOSITION 121

PROPOSED AMENDMENT TO THE CONSTITUTION BY THE INITIATIVE RELATING TO DIRECT PRIMARY ELECTION LAW
[C-03-2012]

PROPOSITION 121

CREATING AN OPEN PRIMARY GIVING ALL QUALIFIED VOTERS THE RIGHT TO VOTE FOR THE CANDIDATES OF THEIR CHOICE, PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE VII OF THE CONSTITUTION OF ARIZONA RELATING TO DIRECT PRIMARY ELECTION LAW

DESCRIPTIVE TITLE

REPLACES THE CURRENT PARTY PRIMARY ELECTION WITH A "TOP-TWO" PRIMARY ELECTION IN WHICH ALL VOTERS, REGARDLESS OF PARTY AFFILIATION, VOTE IN A SINGLE, COMBINED PRIMARY AND THE TOP TWO VOTE-GETTERS FOR EACH SEAT ADVANCE TO THE GENERAL ELECTION BALLOT.

A "yes" vote shall have the effect of replacing the current party primary election with a "top-two" primary election in which all voters, regardless of party affiliation, vote in a single, combined primary, and the top two vote-getters for each seat advance to the general election ballot. This "top-two" primary will not apply to the election of the U.S. President or to elections in which no party affiliation appears on the ballot.	**YES**☐
A "no" vote shall have the effect of keeping the current party primary election in which each recognized political party selects a candidate to appear on the general election ballot.	**NO**☐

BALLOT FORMAT FOR PROPOSITION 121

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PROPOSITION 121

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OFFICIAL TITLE
AN INITIATIVE MEASURE
CREATING AN OPEN PRIMARY GIVING ALL QUALIFIED VOTERS THE RIGHT TO VOTE FOR THE CANDIDATES OF THEIR CHOICE, PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE VII OF THE CONSTITUTION OF ARIZONA RELATING TO DIRECT PRIMARY ELECTION LAW

TEXT OF PROPOSED AMENDMENT
Be it enacted by the People of the State of Arizona:

Section 1. Title. This initiative amendment shall be known as the "Open Elections/Open Government Act."

Section 2. Purpose.

A.   This initiative will ensure that every person qualified to vote, including those not affiliated with any political party, has the right to vote at any election for any candidate, regardless of the voter's or the candidate's party affiliation or lack of party affiliation.

B.   To provide more choice to all the voters and candidates of Arizona, this proposition:

(1) Abolishes the existing system of taxpayer-funded primary elections to select nominees for political parties.

(2) Creates in its place an Open "Top Two" Primary Election, in which all candidates running for an office appear together on the same ballot and all qualified voters (regardless of party affiliation or lack thereof) are able to vote for the candidate of their choice. The two candidates receiving the highest vote totals for each office would then go on to face each other in the general election.

C.   This proposition applies to all Arizona elections in which a candidate's party affiliation, registration, or preference may appear on the ballot. It does not apply to elections in which no party affiliation, registration, or preference appears on the ballot, and it also does not apply to the system for the election of President and Vice President of the United States.

Section 3. Article VII section 10, Constitution of Arizona, is amended by repealing section 10 and replacing it as follows:

~~§ 10. Direct primary election law~~

~~Section 10. The Legislature shall enact a direct primary election law, which shall provide for the nomination of candidates for all elective State, county, and city offices, including candidates for United States Senator and for Representative in Congress. Any person who is registered as no party preference or independent as the party preference or who is registered with a political party that is not qualified for representation on the ballot may vote in the primary election of any one of the political parties that is qualified for the ballot.~~

§ 10. OPEN TOP TWO PRIMARY

A.   APPLICABILITY. THIS SECTION SHALL APPLY TO THE ELECTION OF CANDIDATES FOR ALL FEDERAL, STATE, COUNTY, AND LOCAL ELECTIVE OFFICES EXCEPT (1) THOSE IN WHICH NO PARTY AFFILIATION, REGISTRATION, OR PREFERENCE MAY APPEAR ON THE ELECTION BALLOT AND (2) THE SYSTEM FOR THE ELECTION OF PRESIDENT AND VICE PRESIDENT OF THE UNITED STATES.

B.   RIGHTS OF VOTERS. ALL QUALIFIED VOTERS SHALL BE GUARANTEED THE UNRESTRICTED RIGHT TO VOTE FOR THE QUALIFIED CANDIDATE OF THEIR CHOICE IN ALL ELECTIONS. NO VOTER SHALL BE DENIED THE RIGHT TO VOTE FOR THE QUALIFIED CANDIDATE OF HIS OR HER CHOICE IN A PRIMARY OR GENERAL ELECTION BASED UPON HIS OR HER PARTY AFFILIATION OR LACK THEREOF. VOTERS SHALL BE PERMITTED TO STATE THEIR PARTY PREFERENCE (IF ANY) IN THEIR OWN WORDS ON THEIR VOTER REGISTRATION FORM, AND SHALL NOT BE LIMITED TO SELECTING FROM A LIST OF RECOGNIZED PARTIES OR AFFILIATIONS.

C.   PROCEDURE. FOR OFFICES TO WHICH THIS SECTION APPLIES, AN OPEN PRIMARY ELECTION SHALL BE CONDUCTED TO SELECT THE CANDIDATES WHO COMPETE IN THE GENERAL ELECTION. ALL REGISTERED VOTERS MAY VOTE IN THE OPEN PRIMARY ELECTION FOR ANY QUALIFIED CANDIDATE, PROVIDED THAT THE VOTER IS OTHERWISE QUALIFIED TO VOTE FOR CANDIDATES FOR THE OFFICE IN QUESTION. THE TWO CANDIDATES WHO RECEIVE THE MOST VOTES IN THE PRIMARY ELECTION SHALL COMPETE IN THE GENERAL ELECTION; EXCEPT THAT, FOR ANY OFFICE TO WHICH MORE THAN ONE CANDIDATE WILL BE ELECTED, THE NUMBER OF CANDIDATES WHO WILL COMPETE IN THE GENERAL ELECTION SHALL BE THE NUMBER OF CANDIDATES TO BE ELECTED TIMES TWO. THIS SECTION DOES NOT PROHIBIT WRITE-IN VOTING IN EITHER THE PRIMARY OR GENERAL ELECTION AS OTHERWISE PRESCRIBED BY LAW.

D.   FILING REQUIREMENT. ALL CANDIDATES WISHING TO RUN FOR AN ELECTIVE OFFICE TO WHICH THIS SECTION APPLIES SHALL FILE, WITH THE APPROPRIATE ELECTIONS OFFICER, PETITIONS CONTAINING THE SIGNATURES OF REGISTERED VOTERS IN AN AMOUNT TO BE ESTABLISHED BY LAW. THE SIGNATURE REQUIREMENTS ESTABLISHED PURSUANT TO THIS SECTION SHALL BE BASED ON THE TOTAL VOTES CAST FOR THAT OFFICE IN THE PREVIOUS GENERAL ELECTION AND SHALL BE THE SAME FOR ALL CANDIDATES FOR THAT OFFICE, REGARDLESS OF PARTY AFFILIATION OR LACK THEREOF.

E.   RIGHTS OF CANDIDATES. AT THE TIME THEY FILE TO RUN FOR PUBLIC OFFICE, EVERY CANDIDATE SHALL HAVE THE CHOICE TO DECLARE HIS OR HER PARTY PREFERENCE (IF ANY) AS IT IS STATED ON THEIR VOTER REGISTRATION FORM, UP TO A MAXIMUM OF 20 CHARACTERS. THAT PARTY PREFERENCE (IF ANY) SHALL APPEAR ON THE CANDIDATE'S NOMINATION PETITIONS AND ON THE PRIMARY AND GENERAL ELECTION BALLOTS USING THE PHRASE "REGISTERED AS _____." ON THE BALLOTS, THE WORDS "REGISTERED AS" MAY BE USED IN A COLUMN HEADING OR OTHER PREFATORY TEXT RATHER THAN BEING REPEATED NEXT TO THE PARTY PREFERENCE OF EACH CANDIDATE, SO LONG AS THE WORDS "REGISTERED AS" REMAIN PROMINENTLY STATED AND CLEAR TO THE READER. IF NO PARTY PREFERENCE IS STATED ON A CANDIDATE'S VOTER REGISTRATION FORM, THEN NO DESIGNATION SHALL APPEAR ON THE NOMINATION PETITIONS OR BALLOT WITH THE CANDIDATE'S NAME.

F.   BALLOT LANGUAGE. IN ALL GOVERNMENT-ISSUED VOTER EDUCATION MATERIALS THAT CONTAIN A LIST OF CANDIDATES STANDING FOR ELECTION AND ON EVERY PRIMARY AND GENERAL ELECTION BALLOT, THE FOLLOWING LANGUAGE SHALL BE PROMINENTLY DISPLAYED: "THE PARTY REGISTRATION (IF ANY) STATED WITH THE CANDIDATES' NAMES ON THIS BALLOT IS NOT AN INDI-

CATION THAT A CANDIDATE HAS BEEN NOMINATED OR ENDORSED BY THAT PARTY, BUT ONLY REFLECTS THE PARTY REGISTRATION (IF ANY) OF THE CANDIDATE."

G. RIGHTS OF POLITICAL PARTIES. NOTHING IN THIS SECTION SHALL RESTRICT THE RIGHT OF INDIVIDUALS TO JOIN OR ORGANIZE INTO POLITICAL PARTIES OR IN ANY WAY RESTRICT THE RIGHT OF PRIVATE ASSOCIATION OF POLITICAL PARTIES. NOTHING IN THIS SECTION SHALL RESTRICT THE PARTIES' RIGHT TO CONTRIBUTE TO, ENDORSE, OR OTHERWISE SUPPORT OR OPPOSE CANDIDATES FOR ELECTIVE OFFICE. POLITICAL PARTIES MAY ESTABLISH SUCH PROCEDURES AS THEY SEE FIT TO ELECT PARTY OFFICERS, ENDORSE OR SUPPORT CANDIDATES, OR OTHERWISE PARTICIPATE IN ALL ELECTIONS, BUT NO SUCH PROCEDURES SHALL BE PAID FOR OR SUBSIDIZED USING PUBLIC FUNDS.

H. LEVEL PLAYING FIELD. ALL QUALIFIED VOTERS AND CANDIDATES SHALL BE TREATED EQUALLY BY STATUTES AND REGULATIONS GOVERNING ELECTIONS REGARDLESS OF THEIR PARTY AFFILIATION OR LACK THEREOF. TO THE EXTENT THAT ANY PRIVILEGES OR PROCEDURES ARE MADE AVAILABLE TO CANDIDATES OR POLITICAL PARTIES, THEY SHALL BE MADE EQUALLY AVAILABLE TO ALL CANDIDATES OR POLITICAL PARTIES, REGARDLESS OF PARTY AFFILIATION, RECOGNITION, OR LACK THEREOF.

Section 4. Severability

If any provision of this initiative is held invalid for any reason, the remaining portions of this initiative will be severed from the void portion and given the fullest possible force and application. The people of Arizona declare their intention that the provisions of this initiative are severable.

Section 5. Submission to voters

The Secretary of State shall submit this proposition to the voters at the next general election as provided by Article XXI, Section 1, Constitution of Arizona.

Section 6. Effective date and implementation by Legislature

If approved by the voters, this Constitutional Amendment shall apply to all elections occurring after January 1, 2014, and shall supersede any existing state statutes, regulations, and elections procedures to the extent that they are inconsistent with this Constitutional Amendment. The Legislature, Secretary of State and local officials shall promptly make such changes in and additions to state statutes, regulations, and elections procedures as are necessary to fully implement the provisions of this Constitutional Amendment in time for the open primary election in 2014 and for every open primary and general election thereafter. Legislation, regulations, and elections procedures implementing this amendment must be consistent with and further the purpose of this amendment to permit and encourage all qualified voters in Arizona to vote in primary and general elections for the candidates of their choice, regardless of the political affiliation of voters and candidates.

ANALYSIS BY LEGISLATIVE COUNCIL

Beginning with the 2014 elections, Proposition 121 would amend the Arizona Constitution by eliminating the longstanding primary election that allows each recognized political party in Arizona to select its own nominee for the general election. In its place would be a primary election system in which registered voters may vote for candidates regardless of political affiliation. A funding source has not been identified that will pay the cost of the open top two primary election that will replace the current system. Additionally, the number of candidates who appear on the general election ballot would be limited to only the two who receive the most votes and any qualified write-in candidates, except that, for any office to which more than one candidate shall be elected, the number of candidates who will compete in the general election shall be the number of candidates to be elected times two. Currently, all candidates who receive the most votes in their party primary appear on the general election ballot. This often results in more than two candidates appearing on the general election ballot.

Proposition 121 would not apply to the election of United States President, nor to any office for which political party affiliation may not appear on the ballot.

Under Proposition 121, the signature requirement for candidates wishing to run in the open primary election for an office would be based on the total votes cast for all candidates for that office at the previous general election and would be the same for all candidates regardless of party affiliation or lack of affiliation. Each candidate who declared a party preference on their voter registration form would have that preference listed, up to twenty characters, on the nominating petition and on the primary and general election ballots. If no party preference is declared on a candidate's registration form, no preference would be listed on the petition and ballots. All government-issued voter education materials and ballots would contain a notice that any political party registration listed for a candidate is not an indication that the candidate has been nominated or endorsed by that political party.

Proposition 121 provides that individuals may organize or join political parties and that political parties may elect party officers, support or oppose candidates and otherwise participate in all elections, if the party activity is not paid for or subsidized using public funds. All voters, candidates and political parties must be treated equally, regardless of party affiliation or lack of affiliation. When registering to vote, voters would be allowed to state any party preference in their own words and would not be limited to selecting from a list of recognized political parties or affiliations.

The proposition leaves to future Legislatures and governing bodies a number of issues, including who will have access to the statewide voter database, how vacancies will be handled, what percentage of votes will be set each year as the number of petition signatures required by each candidate for each office to qualify for the ballot, how to pay for the two tier election and how to pay for the cost of implementation and conforming legislation. The Department of Justice must pre-clear any changes.

ANALYSIS BY THE JOINT LEGISLATIVE BUDGET COMMITTEE

State law requires the Joint Legislative Budget Committee Staff to prepare a summary of the fiscal impact of certain ballot measures. Proposition 121 would replace the partisan primary election with an open "top two" primary election. The state government is currently responsible for the cost of sample ballots sent to voters. By consolidating the different types of party sample ballots, Proposition 121 is projected to reduce printing costs and result in a state government savings of $(165,000) to $(278,000).
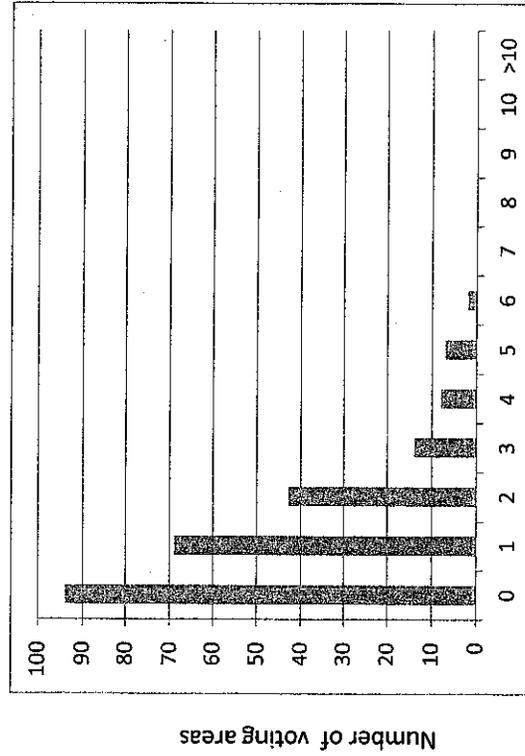
Local governments currently pay the other primary election expenses. Proposition 121 is expected to increase these expenses due to greater production and mailing of ballots primarily to independent voters on the early voting list who do not currently receive a primary ballot. The open primary may also increase the number of ballot pages. The additional local government cost is projected to range from $440,000 to $2 million.

PROPOSITION 121

Voting Area Discrepancy: Analysis
June 12, 2012
Congressional District 8 General Election

Number of Voting Areas With 0 Discrepancies	94	39.66%
Number of Voting Areas With 1 Discrepancies	69	29.11%
Number of Voting Areas With 2 Discrepancies	43	18.14%
Number of Voting Areas With 3 Discrepancies	14	5.91%
Number of Voting Areas With 4 Discrepancies	8	3.38%
Number of Voting Areas With 5 Discrepancies	7	2.95%
Number of Voting Areas With 6 Discrepancies	2	0.84%
Number of Voting Areas With 7 Discrepancies	0	0.00%
Number of Voting Areas With 8 Discrepancies	0	0.00%
Number of Voting Areas With 9 Discrepancies	0	0.00%
Number of Voting Areas With 10 Discrepancies	0	0.00%
Number of Voting Areas With more than 10 Discrepancies	0	0.00%

Total Number of Voting Areas: 237

Number of Discrepancies Involving	
Blue Ballot Transfer Bag	52
Accu-Vote Tapes	19
TSX Tapes	1
Ballot Reports	57
Red Poll Lists	61
Provisional Poll List / Signature rosters	58
Others	4

Average Discrepancies	1.16
Min discrepancies	0
Max discrepancies	6

Number of voting areas vs. Number of Discrepancies (0, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, >10)

Voting Area Discrepancy: Analysis
August 28, 2012 Primary Election

Number of Voting Areas With 0 Discrepancies	119	42.50%
Number of Voting Areas With 1 Discrepancies	78	27.86%
Number of Voting Areas With 2 Discrepancies	43	15.36%
Number of Voting Areas With 3 Discrepancies	22	7.86%
Number of Voting Areas With 4 Discrepancies	7	2.50%
Number of Voting Areas With 5 Discrepancies	7	2.50%
Number of Voting Areas With 6 Discrepancies	3	1.07%
Number of Voting Areas With 7 Discrepancies	1	0.36%
Number of Voting Areas With 8 Discrepancies	0	0.00%
Number of Voting Areas With 9 Discrepancies	0	0.00%
Number of Voting Areas With 10 Discrepancies	0	0.00%
Number of Voting Areas With more than 10 Discrepancies	0	0.00%

Total Number of Voting Areas: 280
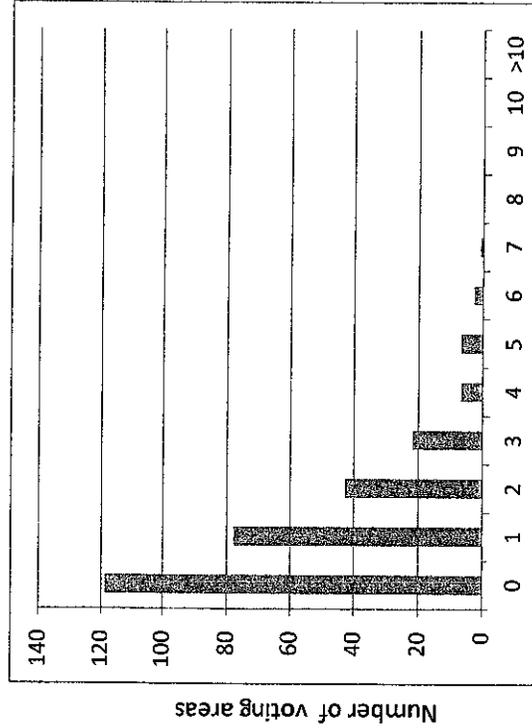
Number of Discrepancies Involving	
Blue Ballot Transfer Bag	69
Accu-Vote Tapes	29
TSX Tapes	19
Ballot Reports	79
Red Poll Lists	50
Provisional Poll List / Signature rosters	48
Others	1

Average Discrepancies	1.14
Min discrepancies	0
Max discrepancies	7

Number of Discrepancies

University of California at Irvine: Symposium on Sep 14, 2012

Foxes, Henhouses, and Commissions: Assessing the Nonpartisan Model in Election Administration, Redistricting, and Campaign Finance

Summary by Mickey Duniho for the Pima County Election Integrity Commission

The one-day symposium was led by **Professor Richard Hasen** of UC Irvine, the author of the book <u>Voting Wars</u> that we received recently. The symposium included three sets of papers presented by their authors, plus discussants critiquing the papers. During lunch there was a keynote address plus a discussant.

The first session was on the subject of "Do Redistricting Commissions Work?"

The first presentation was by **Bruce Cain** and **Karin McDonald** of UC Berkeley. They talked about how the California redistricting commission elicited and then processed public input. They concluded that public input was messy but desirable.

The second presentation was by **Bernard Grofman** and **Peter Miller** of UC Irvine. Peter had traveled all over the country observing redistricting hearings (including Arizona), and they concluded that citizen redistricting commissions worked very well.

The third presentation was by **Nick Stephanopoulos** of University of Chicago Law School. He compared redistricting in the US with that in other major democracies. He found that the US is the only country that still involves politicians in the redistricting process. All other countries have gone to a technical commission of some kind that has complete authority to do the redistricting. His conclusion was that we need to follow the other countries' leads to get politics out of the redistricting process.

Discussants for the first three papers were **Pamela Karlan** of Stanford Law School and **Richard Pildes** of New York University School of Law. Mr. Pildes criticized the papers on some points but generally agreed with their conclusions. Ms. Karlan argued that it is unrealistic to expect that we can remove politicians from the redistricting process.

The second session was on the subject of " Partisanship and Campaign Finance Reform".

The first presentation was by **Michael Franz** of Bowdoin College. He had reviewed the effectiveness of the FEC over 30 years and found that the FEC had done a pretty good job of handling campaign finance in an even-handed manner, but he found that in the last five years or so the FEC had issued more conflicted opinions because the commissioners were unable to agree on issues.

The second presentation was by **Jeff Milyo** of University of Missouri, Columbia. He studied state ethics commissions and their relationship to criminal prosecutions of public officials. He found no causal connection.

The discussants were **Richard Briffault** of Columbia Law School and **Daniel Lowenstein** of UCLA Law School. They criticized both papers for methodology and suggested numbers of extensions, to help understand the FEC and state ethics commissions' effectiveness better.

The lunch keynote speaker was **Edward Foley** of Ohio State University School of Law. His topic was *"Virtue over Party: Electoral Heroism & Why It Matters."* He discussed at some length one hero, Samuel J. Randall of Pennsylvania, who was the Speaker of the House during the contentious 1876 election involving Rutherford B. Hayes and Samuel J. Tilden. The dispute was complicated but the heroism involved the Speaker denying radical Democrats a controversial vote to overturn a compromise that had been reached. He was physically threatened on the floor of the house and several Congressmen threatened to shoot him. Foley's conclusion was that we need to teach students in civics classes about electoral heroes in the hope that people would better understand the need for integrity when close elections occur.

The discussant, **Heather Gerken** of Yale Law School, argued that we cannot rely on heroes but rather need to reform the election process so that heroes are not required. I spoke with her briefly afterwards, and asked her if she thought academia might develop a set of best practices for reforming elections, and formal training programs leading to certification for election officials. Her response was that political scientists think law schools should do this and law schools think political scientists should do it, so nothing is being done.

The last session was on the subject "Is Nonpartisan Election Administration Possible? Desirable?"

Christopher Elmendorf of UC Davis School of Law and **Douglas Spencer** of UC Berkeley School of Law presented the first paper. They had reviewed ballot titles on California initiatives to see if people thought the elected Attorney General had been biased in writing them. The surveyed students at Berkeley and in Utah (liberal and conservative) in what they called a blind test of ballot titles. The only bias they found was in differing opinions by the students.

Martha Kropf of University of North Carolina, Charlotte and **David Kimball** of University of Missouri, St. Louis presented the second paper, based on a survey they had done of local election officials across the country. They asked these officials if they thought the election process was biased. Not surprisingly, they generally felt it was not biased, except in many large jurisdictions. They said that most local election officials are either elected or are appointed by election officials, so you would not expect them to be unbiased observers of themselves.

The last paper was presented by **Dan Tokaji** of Ohio State University College of Law. His subject was Wisconsin election administration. Wisconsin is the only US state that has a non-partisan state administration of elections. He found that election administration is Wisconsin is unbiased, but then said that their system probably could not be copied in other states because Wisconsin people are uniquely in favor of obeying the law.

The discussants for the last session were **Samuel Issacharoff** of New University School of Law and **Justin Levitt** of Loyola Law School, Los Angeles. They criticized the first paper for its failure to include additional ballot titles as a point of reference, the second paper for its failure to survey voters in addition to election officials, and the last paper for not finding any features that could be replicated in other states.

This last session was the one I had looked forward to most, and I was disappointed that none of the papers actually discussed the question of the possibility of achieving nonpartisan election administration (except in Wisconsin, which was considered a special case). Very little attention was even given to the desirability of nonpartisan election administration, except to say that of course it was desirable.

A member of the audience asked about requiring election officials to dissolve their party affiliation or discontinuing the registration of voters by party to reduce election partisanship. Answers from the panel were all over the map.

Overall, I found the symposium interesting but not as informative as I had hoped. It appears that academia's concern with election administration is still in the "studying" stage and has generally not yet reached an "advocacy" or "implementation" stage. I was impressed with the number of people who are involved in studying election administration and that gave me some hope for the future.

Additional recommendations not included in either book

Best Practices to Enhance Pima County Election Integrity

General election administration

1. A citizen election board should oversee election administration. [Requires BOS Approval]
2. Ballot processing (early and polling place) should be integrated into a single organization. [Probably requires BOS Approval]
3. Best practices not covered in the State procedures manual should be codified in a supplemental County procedures manual.

Voter Registration

1. Every effort should be made to ensure that legitimate voters are not disenfranchised.
2. Registration purging should be randomly tested to ensure that legitimate voters are not being removed from voting lists.

Early Voting Process

1. Transparent chain of custody of all early ballots should be required, with good documentation.
2. Early ballots should be sorted by precinct, or a Summary report should be printed after every batch so that any batch can be randomly selected for audit.

Polling place Voting Process

1. Poll workers' performance should be reviewed after every election and should be required to meet quality standards.
2. All poll operations should be in full public view. Registered, qualified observers should be permitted in polling places.
3. Poll results should be publicly announced at each polling place when available if there is any member of the public available to hear them.
4. Transparent chain of custody of polling place ballots should be required with good documentation.

Handling ballots and moving them

1. Handling of ballots should always involve two people, with good documentation.
2. Transparent chain of custody of all ballots should be required, with good documentation.
3. Application and removal of seals should be thoroughly documented, always involving two people for each transaction.

Counting ballots

1. All counting and handling of ballots should be done in full public view.
2. All early ballot batches should be 150-200 ballots and the size should not vary between audited and non-audited ballot batches.

Post-Election Audits

1. Post-election audits should be performed whether parties participate or not. County employees should be used when needed.
2. Each election should be hand-audited in at least a few precincts (or batches), and close elections should be audited in a larger number of precincts/batches. Number of audit precincts/batches should be according to a statistical table of risk limitations.
3. Audits of early ballots should be done by precinct, or all early batches should be eligible for random auditing. (This could be accomplished with the present system by printing a summary report after each early batch's End Card has been scanned.)

Recounts

1. A hand recount of any election should be permitted within ten days of the final result having been reported, upon the payment by a registered voter of a nominal sum of money to cover the cost. Partial recounts should be allowed, of specified precincts. If a hand recount shows a significant difference (say, 5%) from the official result, the posted money should be refunded and (in the case of partial recounts) the election should be hand counted in its entirety. (This is an updated version of the recommendation made by Joseph Harris in 1934) [Requires State Legislation]