



PIMA COUNTY ELECTION INTEGRITY COMMISSION
MEETING MINUTES FOR OCTOBER 21, 2016
<http://www.pima.gov/commission/ElectionIntegrity.shtml>

The Pima County Election Integrity Commission met in regular session on October 21, 2016 at 9:00 a.m. in the Herbert K. Abrams Building, 3rd Floor Conference Rooms 3108/3110 at 3950 S. Country Club Road, Tucson, Arizona.

ITEM 1. ROLL CALL

Present: Brian Bickel, Barbara Tellman, Beth Borozan, Brad Nelson, Karen Schutte, Chris Cole, Mary DeCamp, Arnie Urken and Tom Ryan.

Also in Attendance: Ellen Wheeler, County Administrator's Office.

Absent: Jeff Rogers, Bill Beard.

ITEM 2. PLEDGE OF ALLEGIANCE

The American flag was saluted with the Pledge of Allegiance.

ITEM 3. APPROVAL OF MINUTE SUMMARY – September 16, 2016

It was moved by Brian Bickel, seconded by Barbara Tellman and carried unanimously to approve the Minutes of the September 16, 2016 meeting.

ITEM 4. CALL TO PUBLIC

No one else in attendance.

ITEM 5. PROHIBITION ON ELECTIONEERING AT POLLING PLACES – Brad Nelson

Brad handed out a letter that lists the relevant statute and polling place facilities that do not want any campaigning whatsoever on their property [a copy of this letter is incorporated into these Minutes as Attachment 1]. This was distributed to poll workers at the respective polling places, party chairs and County School Superintendent. The statute says that if an alternative polling place cannot be found, the campaigning restrictions can apply. This includes posting signs, passing out of fliers, etc.

Brad clarified that voters wearing buttons, hats, etc. for a certain candidate or proposition are not subject to the restriction.

ITEM 6. GENERAL ELECTION UPDATE – Brad Nelson

The Secretary of State Logic and Accuracy test was successfully completed on October 10th. To date, approximately 360,000 early ballots have been sent out; as of yesterday, the Elections Department has received over 71,000 verified ballots for processing; processing by the Early Boards will begin Monday, October 24th. The political party L&A will be conducted right before tabulation begins. Sample ballots will begin hitting mailboxes October 24th. Tabulation of early ballots will begin on or about November 1st.

In Arizona, only individuals appointed by the county political party chairs may be inside a polling place as an observer. Brad had sent out a letter to the political party chairs with information and a deadline for submitting names [a copy of this letter is incorporated into these Minutes as Attachment 2].

Mary DeCamp brought up issues in VA064 because the Inspector is unprofessional and will not do a Monday night setup, causing numerous errors to be made on Election Day. Karen Schutte asked if the Elections Department is still looking for poll workers; Brad responded that all assignments have been made and they have a stand-by list. Brad is projecting at least 100,000 ballots to be cast at the polls for the General Election, which is approximately four times as many ballots cast in the Primary. In the areas where they are expecting a large turnout, the Elections Department has “beefed up” the number of poll workers substantially. As in past elections, many of the voters on the Permanent Early Voting List will get their ballot but won’t use it and come to the polling place to vote. Due to this, the Special Situations Tables in those areas will have additional clerks to accommodate an increase in provisional ballots. The Elections Department will hire and train approximately 2,100 poll workers for the General Election.

The Hand Count Audit is scheduled for November 12th in the Abrams Building. The Pima County canvass is scheduled for approval on November 22nd and the State canvass is scheduled for December 5th.

Brad explained how the voter registration inactive process works. This is part of the National Voter Registration Act (NVRA). If a person who is registered misses two elections with a Federal candidate, the voter registration official sends a card to verify the address; if the card comes back undeliverable or does not come back at all and the voter did not respond, they are placed on inactive status. How long they stay on the inactive list before cancellation, Brad does not know.

ITEM 7. UPDATE ON HERNANDEZ LAWSUIT

Barbara stated that saving images as required by the lawsuit will take a lot of time. What they have proposed is to transfer part of it during tabulation, then set the backing up and saving for overnight, probably about five hours worth. The computer will be operational under multiple seals with cameras on 24 hours. Karen and Barbara agree that the security measures are good enough.

Brad referred to the Minute Entry from Judge Gordon [a copy of the Minute Entry is incorporated into these Minutes as Attachment 3]. Brad’s understanding is that images are public record and need to be retained. What has not been determined is whether those public records are discloseable. Mr. Hernandez’s attorney will be amending his filing within ten days to include a public records request.

In 2008, the Board of Supervisors voted unanimously that auditing elections with images that might be available online sounds like a good idea, but it needs to be done legally. They sent a letter to then Secretary of State Jan Brewer. Secretary Brewer responded that no Arizona county can make up their own rules. This needs to be vetted through the legislative process so that everyone is doing it uniformly. Absent that, Pima County may not use images for auditing purposes. In 2012, Secretary Ken Bennett's office responded to the same query that given the fact that Pima County had just had a number of elections with the hand count audits and everything looked good, there is no need to use images for that purpose. Eric Spencer, during a meeting with this Commission, said that although images may become public record, he doubted they would become discloseable.

Brad noted that the scanning equipment known as the DS850 is actually a document scanner, not a ballot scanner, with the primary purpose of scanning all kinds of documents for archival purposes. It included the document scanning/numbering capability. Brad doesn't believe that the vendors considered the capability for more than looking at the image, interpreting it within the software and being done with the image. When Brad asked ES&S what type of ink cartridge was needed for the numbering, they seemed to be caught off-guard. It turns out to be a standard little HP ink cartridge. It didn't appear that they considered how that might be used in an auditing application.

ITEM 8. RECOMMENDATION TO BOS ON BALLOT IMAGE CLARIFICATION – Barbara Tellman

It had been suggested in a previous meeting that the EIC recommend to the Board of Supervisors that they send a letter to the Secretary of State and the Attorney General requesting clarification on the status of ballot images, and also to request legislation. She would like to have a letter to the Board ready to go once all the election stuff is over. It needs to be clarified before the next big election.

MOTION:

Barbara made a motion that a couple of the Commission members draft a letter for the Board of Supervisors that will be ready for the Commission at the next meeting, and then ready to go to the Supervisors after that. Arnie seconded the motion.

VOTE:

Tom called for a vote on the motion and it was passed unanimously. The letter will be drafted by Barbara, Karen and Arnie.

Tom has viewed videos of public review and audit of ballot images in Wisconsin; he will forward the website address to members of the Commission.

There was discussion as to whether or not ballot images can be sorted by precinct; Tom thought that the ES&S representative had said it could be done, and Tom will try and get a definitive answer on that. Barbara interjected that human error is a big factor in auditing.

ITEM 9. ELECTION SYSTEM SECURITY – Arnie Urken

Arnie pointed out that the County has not hired a "red team" to try and break into the election system, whereas ES&S hires the same company that Lockheed Martin uses to test their equipment. And even though the system is not connected to the internet, an insider could break in due to

blackmail or bribery. The County's standards are lower than the vendor's. Karen pointed that every command and key stroke on the 850's or the computer are logged. Tom noted that testing done at the Federal level is documented online. Arnie noted that ES&S said they have procedures in place to screen their employees for susceptibility to blackmail but the County has not reported any such screening.

Tom asked Brad if he was aware of any policy within the County that applies generally to computer system security. Brad is not aware of a policy generally. But within the Elections environment, specifically within the tabulation environment, there are protocols; there is a criminal background check on anyone who will be touching a ballot. In addition, all the personnel who work with the tabulating equipment have a limited number of administrative rights, and there are two-part passwords for many of the tasks. There is the hash value, which is a signature of the program and is on file with the Federal government; before every election, this is checked to make sure the program has not been altered in any way and is exactly the same as it is at the Federal level. Tom asked Brad if he could look a little deeper to see if the County has any protocols on computer security, and to also share the Elections Department written procedures.

ITEM 10. RISK LIMITING AUDIT PILOT STUDY – Tom Ryan / Brad Nelson

- **Status on Elections Department Preparations for Mock Election**
- **Possible City of Tucson Participation**

Tom suggested setting dates for this after the General Election, perhaps mid-December. Brad said the State will canvass the election on December 5th, and there is always the potential for a recount or contest for a State or Federal office; then there are the holidays. He is throwing out the suggestion of January for the risk limiting audit.

Brad can draft up some potential procedures for the Commission for how the Elections Department will do the RLA. Tom noted that there are documents online that detail step by step what the procedure is. Brad and his IT staff have been in touch with some of the counties in Colorado that have the same type of equipment as Pima County has and have done risk limiting audits.

Barbara and Karen would like to post the RLA as a public meeting, so that a quorum of the EIC can be present.

ITEM 11. ELECTION DATABASE STRUCTURE AND DISTRIBUTION – Tom Ryan

CD's with data for the Primary Election were available to all EIC members. Tom has spent some time reviewing the data. The cast vote record on the CD is an accurate reflection of the canvass for the election. So this data is appropriate for distribution. The SOVC and CVR data is available pretty quickly without having to move images. Tom asked Brad how quickly this information can be distributed; Brad responded that the canvass is given to the Board for review in advance of approval, so the SOVC can be generated "in a snap." Tom requested that the CVR and SOVC be made available on the Elections Department website; Brad agreed that would be a good idea. He will let Tom know.

Barbara suggested that EIC members spend time observing the early ballot signature verification process and the ballot preparation for tabulation. Democratic Party observers have gained more confidence in the elections process by doing that. Karen added election night, also.

ITEM 12. FUTURE AGENDA ITEMS

Risk Limiting Audit
Election Database Structure & Distribution
BOS Recommendation Letter on Ballot Image Clarification
Hernandez Lawsuit & Public Records Request

ITEM 13. NEXT MEETING DATES

November 18, 2016. Karen advised that she will need to leave by 10:30.

ITEM 14. ADJOURNMENT

It was moved by Barbara Tellman and seconded by Beth Borozan and unanimously carried to adjourn the meeting. The meeting adjourned at approximately 10:50.

ATTACHMENT 1



ELECTIONS DEPARTMENT

PIMA COUNTY GOVERNMENT
6550 SOUTH COUNTRY CLUB RD. TUCSON, AZ 85756
(520) 724-6830 FAX (520) 724-6870

To whom it may concern:

Per Arizona Revised Statute 16-411(l)(2), campaigning is prohibited at the following polling place locations for the November 8, 2016 General Election in Pima County.

Precinct #	Location	Address
061/088/238	Unity of Tucson Church	3617 N. Camino Blanco
068	St. James United Methodist Church	3255 N. Campbell Ave
108	Tucson Woman's Club	6245 E. Bellevue St
224	Empire High School	10701 E. Mary Ann Cleveland Way
174	El Camino Baptist Church	7777 E. Speedway Blvd
077	Church of the Apostle	12111 N. La Cholla Blvd, Oro Valley
117	Fellowship Bible Church	6700 E. Broadway Blvd
225	Orange Grove Mobile Estates	3635 W. Mango Drive

This prohibition is for the entire property noted above, regardless of the location of the room used as a polling place.

This prohibition includes, but is not limited to, campaign signs, fliers and personnel campaigning in favor of or opposition to a candidate, political party or proposition reflected on the ballot.

Your cooperation with this prohibition is appreciated. Please contact the Pima County Election Department with any questions you may have.

Brad R. Nelson, Director



ELECTIONS DEPARTMENT
PIMA COUNTY GOVERNMENT
6550 SOUTH COUNTRY CLUB RD. TUCSON, AZ 85756
(520) 724-6830 FAX (520) 724-6870

Chair Jo Holt
Pima County Democratic Party

Chair Bill Beard
Pima County Republican Party

Chair Mike Cease
Pima County Green Party

Chair Ted Glenn
Pima County Libertarian Party

September 26, 2016

Re: Election Day Observers – November 8, 2016

Dear Party Chairs:

As election day draws ever closer it might prove beneficial to discuss the topic of Election Observers. Observers serve as your party's witness to the proceedings at the polls and other areas where ballots are handled.

Here are a few rules/highlights pertaining to Observers:

- By statute, only County Party Chairs, that have candidates on the ballot, may appoint Observers. Appointments must be in writing and reflect the appointees name and the precinct(s) where they are appointed to observe. An appointment is not transferable to another individual. Candidates cannot be Observers.
- Appointments must be printed on County Party letterhead and reflect the signature of the Chair.
- Parties must provide the County Election Department with a list of appointed Observers and associated precincts by no later than 5PM on November 4, 2016. An appointee must be reflected on the list in order to be authenticated. Any appointee not on the list will not be permitted to observe.
- No more than one Observer per Party may be in the polling place at one time.
- An Observer may be appointed to observe in more than one location. Observers who are appointed to observe in multiple locations need only one appointment in writing designating the various precincts where the Chair desires observation.

- Observers at the polls must immediately present the written appointment to the election board upon entering the polling place. The election board will return the appointment to the Observer after authenticating the document. Observers may be present during the opening and closing of the polls.
- Observers are prohibited from wearing apparel or paraphernalia that supports the election or defeat of any candidate, political party or ballot proposition.
- The Inspector will direct the Observer where they may position themselves within the polling place. Observers must not sit at the tables with the election board.
- Observers may not touch or handle election materials, rosters, ballots, mail ballot envelopes, provisional ballot envelopes, voting machines, or machine components.
- Observers may not interfere with or impede the election procedures or staff. If an Observer has a question about the proceedings, the Observer should communicate the question to the polling place Inspector and the Inspector should respond in a timely and reasonable manner. An Observer that does interfere/impede procedures may be ejected.
- Observers must not use a mobile phone or other electronic device to make or receive a call, nor take or record pictures, video, or audio inside any polling location. Phone calls must be taken/made outside of the 75 ft. limit. Observers may use an electronic device inside the polling place to take notes pertaining to their observations.
- Observers may not talk to voters while in the polling place or within 75 ft. of the polling place.
- Observers can enter and leave a polling place as long as their entering and leaving does not interfere with or impede the election procedures or staff.

Hope this information helps. Please contact me with any questions. I am at your service.

Respectfully yours,



Brad R. Nelson, Director

FILED
TONI HELLON
CLERK, SUPERIOR COURT
10/17/2016 8:53:15 AM
By: Elizabeth Wilshin

ARIZONA SUPERIOR COURT, PIMA COUNTY

HON. RICHARD E GORDON

CASE NO. C20163926

COURT REPORTER: Mary Bernal
Courtroom - 586

DATE: October 14, 2016

RICHARD HERNANDEZ
Plaintiff

Kasey C Nye, Esq. counsel for Plaintiff

VS.

PIMA COUNTY
Defendant

Karen S. Friar, Esq. and Daniel S Jurkowitz, Esq.
counsel for Defendant

MINUTE ENTRY

PIMA COUNTY'S MOTION TO DISMISS

Plaintiff is present. Defendant is not present.

Brad Nelson, Pima County Elections Director, is present.

Mr. Jurkowitz, Mr. Nye, and Ms. Friar argue to the Court.

The Court and counsel confer as to procedural matters.

Mr. Nye orally moves to amend the complaint to include another Plaintiff.

Mr. Jurkowitz and Mr. Nye argue to the Court.

IT IS ORDERED GRANTING the Plaintiff's oral motion to amend the complaint; the Second Amended Complaint shall be filed within ten (10) days of this date.

Based upon the Plaintiff's impending amended complaint,

THE COURT FINDS that it has subject matter jurisdiction in this case under the public records statute as well as some general statutes that confer jurisdiction in the Superior Court that allow it to carry out its duty, specifically A.R.S § 12-124(C).

THE COURT FINDS that the images at issue are public records for purposes of public records statutes.

In consideration of the arguments this date,

IT IS FURTHER ORDERED DENYING Pima County's Motion to Dismiss.

Upon inquiry of Mr. Jurkowitz,

THE COURT FINDS Titles 39 and 41 are applicable in this matter, namely Title 39 in regard to a public record request.

Elizabeth Wilshin
Deputy Clerk

MINUTE ENTRY

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Date: October 14, 2016

Case No.: C20163926

The Court declines to make a determination as to whether the records would be disclosable under the facts of this case.

IT IS ORDERED entering a Preliminary Injunction that these records be preserved until the full public records request is resolved.

THE COURT FINDS the merits and irreparable harm by the destruction support the preliminary injunction.

Mr. Jurkowitz moves for ballot images to not be disclosed, maintaining that they are secret and confidential.

IT IS ORDERED GRANTING Defendant's request that the ballot images be treated as secret. The Pima County Board of Supervisors and Elections Department shall take any and all precautions to keep the material, being ballot imaging, secret as if it were a paper ballot, not to be disclosed until further order of the Court.

The Court and counsel hold the any requests for Special Action and/or Rule 54(b) language in abeyance.

The Court signs this minute entry in lieu of a more formal order.


/s/
HON. RICHARD E. GORDON
(ID: 91f34aa3-0d67-453f-ae19-439d367118ca)

cc: Hon. Richard E Gordon
Daniel S Jurkowitz, Esq.
Karen S. Friar, Esq.
Kasey C Nye, Esq.

Elizabeth Wilshin
Deputy Clerk