



**PIMA COUNTY ELECTION INTEGRITY COMMISSION  
MEETING MINUTES FOR NOVEMBER 18, 2016**  
<http://www.pima.gov/commission/ElectionIntegrity.shtml>

The Pima County Election Integrity Commission met in regular session on November 18, 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, Bill Beard, Jeff Rogers, Brad Nelson, Karen Schutte, Chris Cole, Arnie Urken and Tom Ryan. Beth Borozan and Mary DeCamp arrived after the roll call.

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

**ITEM 2. PLEDGE OF ALLEGIANCE**

The American flag was saluted with the Pledge of Allegiance.

**ITEM 3. APPROVAL OF MINUTE SUMMARY – October 21, 2016**

It was moved by Brian Bickel, seconded by Barbara Tellman and carried unanimously to approve the Minutes of the October 21, 2016 meeting.

**ITEM 4. CALL TO PUBLIC**

No one else in attendance.

**ITEM 5. GENERAL ELECTION UPDATE – Brad Nelson**

All polls opened on time; turnout was steady but there were no excessive wait times. There were party observers inside the polls, and voter protection advocates outside the polls; the Elections office received no reports of any consequence. Results from all polling places were counted and reported by approximately 3:00 a.m. on Wednesday morning [November 9], with approximately 85,000 ballots cast at the polls on Election Day plus an additional 21,000 provisional ballots; including verified provisionals, approximately 102,000 total ballots were cast at the polls. The number of early ballots cast is approximately 321,000, including approximately 28,000 early ballots dropped off at the polls on Election Day. Approximately 25% of the ballots were cast at the polls, and 75% early ballots. Though ballots are still being counted today [Friday, November 18], Brad projects a 77% turnout overall for Pima County.

The hand count audit was conducted on November 12<sup>th</sup>, which included about 2,800 early ballots from fourteen batches, and about 4,400 ballots cast at the polls at ten precincts. The results were within the variance (less than .11% as noted by Karen), and the report is posted on the Secretary of State's website. Barbara reported that two batches that had discrepancies were reviewed by Barbara, Karen and a staff member, who found the problem; it was due to human error, either due to fatigue or carelessness.

The Board of Supervisors will canvass the election on Tuesday, November 22<sup>nd</sup> and it does not appear there will be any automatic recounts that will impact Pima County.

When asked how many of the provisional ballots were approved, Brad responded that he does not have the report from the Recorder's office yet, but if history is any indicator, about 80% to 85% of them will be verified for tabulation.

Comments from Commission members about Election Day included [from the point of view of observing the process at a polling location]: Bill Beard noted that a 3-ring binder containing the roster sprung open sending roster pages flying; Karen Schutte received reports from poll observers with the descriptive words "efficient" and "cooperative"; Chris Cole's observations were that most problems were caused by the voters, except that trying to reach the Recorder's office was very difficult; Barbara said the state Democratic Party coordinator had observers in every county and said that Pima County is a model; Mary reported that other than problems with the Inspector, everything went smoothly, though she was surprised at the 2:1 ratio of regular ballots to provisionals. Tom asked how many votes total were cast on the DRE's; Brad responded between early voting sites and polling places, a total of 45 were cast on the TSX machines. Tom asked how votes on these machines could be read on the new equipment. Brad explained that the TSX has a paper audit trail that is then used to duplicate to a ballot readable by the new equipment. There are teams of two people who duplicate the ballot and verify that the duplication is done correctly. There is then another team that double checks the first team. There is also an audit trail for the duplication.

During discussion of Team Voting, where the Recorder's office sends out a team to assist voters who are home- or hospital-bound, Brad explained that the Recorder sent out an email asking for County employees to volunteer to serve, because the Recorder's office itself does not have enough staff to cover all the requests.

To Arnie's question about an extra day for collecting ballots, Brad explained that Arizona recorders are required to provide emergency voting. In Pima County, the Recorder offered emergency voting at all three locations, and early ballots could also be dropped off. Tom noted that Colorado has drop boxes all over the place that look like mail boxes; Brad added that some of the Arizona counties use them, but does not know what their procedures for use or the results are.

Mary commented that the tabulation process in the Elections Department was very smooth and the staff very professional. The only thing that concerned her was, because the transmission process was not functioning properly, previously-used thumb drives had to be used to transfer information. It was explained to her that these are special thumb drives issued by ES&S and are very expensive, \$200 apiece. Karen and Brad clarified that this transfer was only for images, not counts and it was done on a daily basis. They had attempted to transfer images overnight, but the system timed-out and had only transferred images from one machine.

Bill asked if, since this is the first Presidential election without the use of scanners at the polling locations, the late counting into the early morning was a result of not having scanners. Brad estimated that the use of scanners would have saved only about an hour, since every scanner would

have had to be uploaded into the server. Karen also noted that many of the polling locations did not get their equipment and ballots to the receiving stations till 8:30 or so, according to observers, due to problems with reconciliation of ballots, or not having the proper paperwork with them and having to go back and get it, etc. That holds up the receiving station's ability to deliver equipment and ballots for all their precincts. Brad explained that if the workers at a polling location cannot balance their paperwork after a couple of tries, they add a note to their paperwork as to why they think they don't balance, and then that precinct's ballots get put aside for review. In most cases, it is because the poll workers do not fill out the paperwork correctly.

The serial numbers were not applied to the ballots; the mock election will prove whether this creates problems or not. Barbara explained that the serial numbers are actually added after the image is taken; she added that the function was designed for a business application where numbers weren't critical. Tom said that the CVR has a correlation between the record number for the image and the serial number.

Mary mentioned that the ES&S technician present on Election Day had a laptop, and she had understood that there were to be no portable electronic devices in the counting room. Barbara noted that the computer has no way of communicating with the laptop. Tom asked if there was any way of determining whether or not the computer could communicate with the laptop; Brad responded that a "sniffer" could be brought in, as has been done in the past. He explained that the technician was also the support for surrounding counties and needed to keep in touch with them; Brad saw him with the laptop in the adjacent room.

#### **ITEM 6. UPDATE ON HERNANDEZ LAWSUIT & PUBLIC RECORDS REQUEST – Brad Nelson**

Brad said Judge Gordon did declare that ballot images are public record and need to be maintained by Pima County. Whether they are discloseable, the court will decide in the future. The plaintiff's attorney amended their filing to include a public records request, as the original filing was a temporary restraining order. The request is for images for both the Primary and General Elections. The County Attorney's response to the second filing is in process and should be done shortly. There has not been a court date set.

Brian asked how the images will be distributed; Brad responded that he does not know at this point. Barbara noted that, once the images are saved to the server, they can be downloaded to other media. Arnie asked how long Brad will need to store images; Brad responded that statute requires that elections without any Federal offices be kept for six months, and with any Federal offices for 24 months, whether ballots or images.

Karen said that apparently, the request for images has been placed with other counties. Pima County Election staff spent time responding to other counties on how to save images. Barbara added that a problem for the other counties is they can't start saving images in the middle of the cycle. It has to be programmed at the beginning of the election.

#### **ITEM 7. RECOMMENDATION TO BOS ON BALLOT IMAGE CLARIFICATION – Barbara Tellman**

Barbara did not proceed with this when she became aware that Mr. Huckelberry had made public a memo with recommendations on elections issues, including saving images [a copy of the relevant portion of this memo is incorporated into these Minutes as Attachment 1]. This memo was apparently sent to the Board of Supervisors and the media.

Brad added that images have been the subject of discussion by the Board of Supervisors since 2008. In 2008, Jan Brewer was asked about the legality of putting images online; her response was that this needed to be vetted through the Legislature. During the Bennett administration, the subject was raised again. This is the path that Pima County has been on since 2008.

Barbara quoted the last sentence in the Election Integrity section [see Attachment 1, Page 3], which precludes the EIC's recommendation to ask for clarification from the Secretary of State on the status of images. Barbara is very opposed to making ballot images available for public inspection upon request.

Bill reiterated his point that ballot images are here to stay and these images, even unintentionally, will be manipulated at some time, by some one and they will find a way to store them and disseminate them to the public.

When asked to explain her position on release of ballot images in the context of transparency, Barbara explained that her argument is based on her experience with the hand count and human error, and the interpretation of voter intent. Tom said that one way to release ballot images would be with instructions on how to challenge an election. The person could be required to actually identify which ballot was interpreted incorrectly. Barbara clarified that she is not worried about court challenges, but the perception in the media which will affect public perception.

Regarding making ballot images public, Karen pointed out the concept of the privacy of the ballot, and gave the examples of a voter who initialed their mistakes, and the ballot with one vote for a precinct committeeman. These kinds of things make the voter identifiable.

Arnie added it should be considered that, from the voters' point of view, there should be a system in place to allow people to identify themselves for purposes of distributing information about their ballot. He would go back to the specifications of an election system from the point of view of the voters. Then you could argue about what kind of systems could be in place, whether images, not images, images with limited disclosure, images with *quasi* private identification. Arnie thinks we are missing the point by not talking about what we think the election system ought to do.

To address a comment that Brian made about human eyes being better than technology, Brad noted that there was a hand count under human eyes of an entire county election and there were still people who said it hadn't been done correctly and that ballots had been switched. There are a certain percentage of people who are not going to believe you no matter what you do.

Jeff would like to find out where everyone stands on this issue, and it sounds to him like there is a pretty good consensus to agree with that last sentence Barbara mentioned earlier. Karen said she agrees with Barbara. He asked if anyone else takes that position and no one else concurred.

Bill added that the main reason he comes down on the side of transparency is that there will always be those that question an election. Once the canvass is done, and if there is a challenge within the legal timeframe and the judge says "no more," it is no more.

#### **ITEM 8. 2017 RECOMMENDED LEGISLATIVE AGENDA – Barbara Tellman**

Bill suggested that the EIC come up with a list of recommendations on high priority election integrity issues, possibly including the status of ballot images, to request the Board to pass along with their

legislative agenda for next year. The Commission would discuss it at the December meeting and then forward a formal proposal to the Board so that it can be in the "hopper" for the January legislative session.

Barbara added that the Secretary of State's *Procedures Manual* needs to be much more specific about ballot duplication and how to interpret voter intent. That is very vague in the *Manual* and in the law.

Bill suggested that they pick a due date for members of EIC to forward their ideas on priority legislation to Sara. Have two or three members get together after that date to meet and boil down the ideas, hash them out at the December meeting, and present them in a formal letter as the EIC's recommended legislative priorities for election integrity. Barbara asked if this included a subcommittee; Bill said yes so that if there are 16 variations on the same issue, it can be summed up into one idea by the committee.

#### **MOTION:**

Bill made a motion that, as a body, the EIC submit recommendations for election law changes by November 30<sup>th</sup> to Sara who will forward them to a subcommittee to be determined, to boil down the topics, and discuss them at the December meeting. Barbara seconded the motion.

#### **DISCUSSION:**

Although Brad is not a voting member of EIC, he would like to see the subject of electronic poll books revisited, not as a matter for legislation. As we go into 2017 and the Recorder is perhaps preparing her budget for the 2018 election cycle, if the EIC agrees that this is a good idea, Brad would support that.

#### **MOTION WITHDRAWN:**

Tom did not believe this needed a motion and vote, but they will need to vote on the list of legislation. Bill agreed.

Bill asked who would be on the subcommittee; Barbara, Tom, Bill, Arnie agreed to be on the subcommittee.

#### **ITEM 9. RISK LIMITING AUDIT PILOT STUDY – Tom Ryan / Brad Nelson**

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

Tom wants to specify a date; Brad responded that the Elections Department is prepared to do as the EIC chooses.

Arnie asked if Elections Department staff could draft a procedure; Brad said this is the EIC's experiment and Elections will implement EIC procedures. The ballots are ready to go for a risk limiting audit, and how do the EIC members envision this happening?

Tom would like to have the 300 blank ballots divided up among EIC members who would like to participate, and have them fill out the ballots the way they want. Two elections would be run. One would include the ballots previously marked plus the ones filled out by hand; then the 300 ballots

filled out by EIC members would be run in a separate election. The reason for this is so it does not become *pro forma*.

Tom said he would write up some procedures for the RLA. Barbara asked who would be pulling the ballots; Tom responded that it should be done in the way it will be done in the future if it is ever instituted as a requirement. He would prefer that Elections Department staff conduct the RLA so they will know how to do it in the future.

Bill asked if the City of Tucson will be involved; Jeff responded that he has made multiple attempts to contact Roger Randolph. The last email that Roger sent Jeff indicated they are still thinking about it. Jeff interprets their lack of response as they are not interested.

Tom requested that Brad bring the 300 blank ballots to the next meeting to distribute, and that David Wisely come. Tom is thinking of the third week in January to conduct the RLA. Chris asked how long it will take to run the 30,000 ballots through the scanners; Barbara said that the most ballots that have been counted in a day was 87,000. The 30,000 plus a separate run of 300 could be done in about six hours. But fishing ballots out of boxes will be an entirely different thing. And saving images will take another several hours.

Tom suggested January 18<sup>th</sup> for the RLA; Barbara added that with everything that needs to be done it will take two days at least. Brian noted that when counting early ballots in batches, there is a lot of paperwork and staff time to process each batch.

Tom will see if Dr. Stark is available on the 18<sup>th</sup>; Mr. Huckelberry offered to pay for his trip expenses one time. The EIC members also thought it would be a good idea to extend the invitation to the Roger Randolph and the City Council members. Barbara asked what the next step would be if everything turns out right; Tom noted that popularity of this approach is spreading and the topic is becoming more familiar in discussion groups. Unless there are problems and since it is a statistically meaningful audit, Tom would go forward in the next go around and propose that as a legislative change.

Arnie said that for the record, he remains a skeptic; one of the big questions has to do with the assumptions about the likelihood of certain things happening, particularly voter preferences, whether they are similar or diverse, and how that could affect the outcome. He doesn't think that this experiment will produce a better understanding of those issues. He has spoken with people who are surprised that there is no analysis of the likeliness of things happening.

#### **ITEM 10. ELECTION DATABASE STRUCTURE AND DISTRIBUTION – Tom Ryan**

Tom asked Brad if he is planning on distributing the CVR and daily SOVC's; Brad responded that they will be distributed as soon as the canvass is completed on November 22<sup>nd</sup>. It will consist of one CVR file and multiple SOVC files.

#### **ITEM 11. FUTURE AGENDA ITEMS**

Refresher on Open Meeting Laws

**ITEM 12. NEXT MEETING DATES**

December 16, 2016.

**ITEM 13. ADJOURNMENT**

It was moved by Bill Beard and seconded by Brian Bickel and unanimously carried to adjourn the meeting. The meeting adjourned at approximately 11:10.



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# Board of Supervisors Memorandum

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November 22, 2016

**Resolution 2016 - \_\_\_\_**  
**Recommended Legislative Agenda for 2017**

## Introduction

Proposed Resolution 2016 - \_\_\_\_ sets forth Pima County's Recommended State Legislative Agenda for 2017 (Attachment 1). The continuing challenges faced by all levels of government as a result of the economic downturn have been substantial and, in Arizona, unprecedented. As was the case for the past six years, the 2017 legislative session will likely be dominated by budget-related discussions, issues and activities. It is imperative Pima County continue to work to minimize and reverse the many cost and program shifts, revenue reductions and fund sweeps enacted by the State Legislature that negatively affect our County. These maneuvers by the State have reduced County services and prevented more substantial property tax relief at the local level.

## Background

As Arizona's economy begins to recover, the recovery presents a number of opportunities for investment, as well as tax reform, that have not existed since the beginning of the Great Recession. Our successful legal challenge to the State Legislature's attempt to force counties and other local taxing jurisdictions to provide funding for State Aid to Education will undoubtedly provide an opportunity to suggest significant additional property tax reform as the Legislature addresses State education funding and the Constitutional one-percent cap on homeowners. It will be important to combat any attempt to again look to other entities to provide this funding. It is and always has been a State funding obligation.

The priority themes for this Legislative Agenda follow. For the most part, they parallel the Legislative Policy Items and County Legislative Proposals resulting from the County Supervisors Association 2016 Legislative Summit, which is included as Attachment 2 to this memorandum. If Arizona's job growth and economic expansion are to be sustained, we must find solutions to fund one of the key drivers of economic expansion – transportation system improvements – whether they be surface, rail or air. I believe our top priority must be transportation funding. I recommend the following areas be legislative priorities:

## Transportation Funding

1. Repairing our streets and highways. Local streets and highways throughout Arizona are in a state of disrepair. This disrepair has resulted from a lack of adequate transportation funding and the diversion of Highway User Revenue Funds by the Legislature to balance the State budget during the Great Recession. Adequately repairing all of the streets and

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methods of providing medical services. Maricopa County provides support directly through ownership of hospital facilities and physician groups, while Pima County contracts with a private, nonprofit provider to operate our community-based hospital facility. Pima County historically has provided direct property tax support to the entity operating our hospital. This support has averaged \$15 million annually, which is included in our primary property tax levy. In Maricopa County, their property tax support has now reached \$110.5 million, which is funded through a special-district secondary tax levy at a rate of \$0.3053. We ask that the Legislature consider giving Pima County the same flexibility to create a special hospital district and transfer our \$15 million appropriation from our primary property tax to a secondary property tax.

These reduced property taxes would further enhance our statewide economic competitiveness, position the County for significantly increased tax base expansion, and be more in line with all other counties in Arizona.

#### Election Integrity

Third on the overall Legislative priority list is election integrity. With one of the major candidates for President in 2016 claiming our election system is rigged, now is the time to ensure full transparency in the election process. Technical advances make this transparency very easy; however, Arizona election law needs to enter the 21<sup>st</sup> Century. We have advocated for such in previous years, but the Legislature has not responded. The Legislature must enact significant, modern election system reform.

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

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

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In addition, the County has desired to scan and post scanned ballots as public records so any interested citizen can count ballots to verify the electronic results. The County Attorney has indicated the County lacks the authority to scan ballots and post the scanned images on the internet. Provided it can be clearly demonstrated this practice does not conflict with the constitutional requirement to preserve "secrecy in voting" (Arizona Constitution Article VII, § 1.), these legal obstacles to the County's election integrity initiatives need to be removed, and election laws in Arizona modernized to reflect the current technology in election processing and tabulation. Therefore, I recommend the Board endorse election integrity modifications to State election laws that a) modify any State law that prevents or precludes hand count or automated audits of local county elections; b) allow the County, in conducting an election, to scan and sort ballot images for auditing election results; c) allow the County to perform tabulation audits using independent software to process ballot images; d) provide authority for the County, at its option, to conduct their elections by mail; and e) declare as public records, ballots cast in any election if the ballots have been scanned as electronic images. If an electronic image of a ballot has been created, the electronic image can be treated as a public record and be available for public inspection upon request.

#### Economy Recovery and Job Creation

Pima County has been actively engaged in economic expansion and job creation activities. The Board has adopted and implemented a number of economic development initiatives, all related to our Pima County Economic Development Plan, which will be updated and reaffirmed. The plan discusses a number of strategies, ranging from primary employment expansion to job training, creating a regional logistics center and workforce investment; as well as enhancing tourism and trade with Mexico, Canada, East Asia and South Korea.

State and local incentives are essential to ensure Arizona is economically competitive and can readily attract new employers and entice our existing employers to expand. The County will support expansion of incentives that can be offered by the Arizona Commerce Authority to primary export-based employers that choose to locate to or expand in Pima County.

Recently, the County has provided economic-development incentives, in the form of leases, which are expressly permitted by A.R.S. § 11-254.04, which states:

*"A. In addition to the authority granted under section 11-254, a board of supervisors may appropriate and spend public monies for and in connection with economic development activities.*

*B. To fund economic development activities under this section, a county shall not impose a new fee or tax on a single specific industry or type of business.*