



**PIMA COUNTY ELECTION INTEGRITY COMMISSION  
MEETING MINUTES FOR SEPTEMBER 16, 2016**  
<http://www.pima.gov/commission/ElectionIntegrity.shtml>

The Pima County Election Integrity Commission met in regular session on September 16, 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: Jeff Rogers, Bill Beard, Beth Borozan, Brad Nelson, Karen Schutte, Chris Cole, Barbara Tellman, Mary DeCamp; Tom Ryan attended via phone conferencing.

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

Absent: Brian Bickel, Arnie Urken.

**ITEM 2. PLEDGE OF ALLEGIANCE**

The American flag was saluted with the Pledge of Allegiance.

**ITEM 3. APPROVAL OF MINUTE SUMMARY – August 19, 2016**

It was moved by Chris Cole, seconded by Karen Schutte and carried unanimously to approve the Minutes of the August 19, 2016 meeting.

**ITEM 4. CALL TO PUBLIC**

Richard Hernandez gave his impressions of election fraud.

John Brakey gave his impressions of destruction of ballot images.

**ITEM 5. RISK LIMITING AUDIT PILOT STUDY – Tom Ryan / Brad Nelson**

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

Tom would just like an update from Brad to see if they are on track. Brad responded that the Elections Department is still on schedule and he would like to firm up the date by the next meeting if Dr. Stark or others would like to attend.

## **ITEM 6. ELECTION DATABASE STRUCTURE AND DISTRIBUTION – Tom Ryan**

- **Letter to Board of Supervisors**
- **Analysis of CVR Process**

Tom referenced the letter that the Commission sent to the Board and to Mr. Huckelberry [a copy of this letter is incorporated into these Minutes as Attachment 1]. As far as Tom knows, the ballot images are being retained for the Primary Election, and he has received a copy of the CVR and a copy of the final SOVC from Tom Quigley. He has also found out that it is possible to transfer the CVR without transferring all the images, so access to the CVR is really not an issue any more. Tom still hasn't been able to get the daily SOVC, but he has confirmed that the CVR for the Primary Election is consistent with the final SOVC vote totals. Brad said that he had spoken to the same individual in ES&S that Tom had spoken to, and received the same information regarding the CVR.

Karen Schutte noted that there are different meanings for the term "cast vote record" within the ES&S world and what the parties are accustomed to receiving. Tom agreed that there needs to be better definition of the term. Tom has been using the term the way Dr. Stark uses it, where it is a spreadsheet where every row is a ballot, and every column is a contest, which is what Tom is looking for.

Bill asked if the letter to the Board was sent out in time for the September 6<sup>th</sup> Board of Supervisors meeting; it was sent on August 23<sup>rd</sup>. Bill commented that the potential for a lawsuit would have warranted some type of response. Tom responded that these letters should also go to Mr. Huckelberry, who ends up making the decisions on this kind of thing. He also mentioned that the letter was a recommendation but there weren't really any decisions to be made.

Karen Schutte wanted to clarify that the results file is completely separate from the image file, which Tom concurred with. Karen also stated that, if the ballot images are to be treated as the paper ballots, the Arizona Constitution assures the secrecy of our ballots, thereby prohibiting the viewing of ballots. Addressing the issue of ballot secrecy, Mary DeCamp questions that in the big haystack of ballots, which needle is her ballot, and which ballot is someone else's? Karen responded with some examples: precinct committee candidates, those who write in their own names somewhere on the ballot, those who write notes on their ballots, etc., become identifiable.

Bill restated that, based on what Tom Ryan has said, the problem of producing the SOVC and the CVR has been solved and no longer of concern, and should allow the Commission to be reassured that for the General Election, with more data and more time to process, the parties can still provide the oversight required for election transparency. Brad concurred; Tom's and the Election Department's discussions with ES&S have greatly clarified the process, which will not be as time-consuming as previously thought.

Barbara said that in conversations with Tom Quigley, the directions for separating the data need to be programmed into the system at the beginning. It cannot be changed in the middle of an election. Bill also added that the software update in the beginning of the year should solve the issue of how long it takes to transfer all of the information; Brad said that is what they have been told.

Barbara made another point; one of her concerns about putting images out for the public to view is that different entities may have different methods for counting votes. If they arrive at different numbers, whose are correct? The election system in Pima County is carefully examined, tested and certified. Paper ballots would not be put out for the public to look at. Jeff added that he would like to see them published, but the Secretary of State's office has made it abundantly clear that under current state law, ballot images cannot be posted. Mary agrees there can be honest disagreement,

but there should not be a screen of secrecy around the ballots with the attitude that, "our interpretation of the ballots is the superior one, and yours does not count."

Bill reiterated that the law has not kept up with technology and these images will become public somehow, somewhere and at some time, whether the law allows it or not. His point of contention is that if the Legislature doesn't get ahead of that discussion and start thinking about the consequences, the situation will blow up in everyone's face.

Barbara asked if anyone cared to make a motion to recommend to the Secretary of State that a determination be made on this issue. Karen said the lawsuit will result in a decision, but Barbara responded that the decision will only be for the Primary Election on a local level. Bill and Chris both said the recommendation needs to be made to the Board of Supervisors, who can then make a request of the Secretary of State for a determination. Karen and Bill suggested making the recommendation after the court's decision.

Barbara ended the discussion by suggesting that Commission members contact Legislators on the issue.

#### **ITEM 7. BALLOT IMAGES AND PUBLIC RECORDS REQUEST**

- **Hernandez Lawsuit**
- **Public Records Request**
- **BOS Request / Mr. Huckelberry's Letter**

Tom asked about the status of the public records request from Brad's perspective. Brad responded that he had received two public records requests from Mr. Brakey, the first on August 15<sup>th</sup> that included nine individual items requested as public records. Some of those nine had to be denied because the records do not exist; however, Brad answered the request as best he could. Another request was for Mr. Brakey to come and inspect the ES&S operations manuals for our system. When Brad contacted ES&S about this, they were concerned about trade secrets perhaps being revealed. The County Attorney's office told ES&S they are in no position to determine which were and which were not trade secrets. ES&S had until today to file something in local Superior Court to keep Pima County from revealing that information. If they do not, then Monday, the manuals will be available for inspection to anyone who requests to do so. On September 14, a request from Mr. Brakey was received for the cast vote record for the August 30<sup>th</sup> Primary Election and the ballot images; the ballot images are subject to ongoing litigation which will be heard on October 14 in Pima County Superior Court, and that request is still pending. Brad's IT personnel in the Elections Department are working very hard to complete the programming necessary for the General Election, but the cast vote record for the Primary Election should be available either Monday or Tuesday of next week. That should complete Mr. Brakey's public records requests.

Tom requested that Brad provide the copy of the CVR and SOVC to each member of the Commission so they can see what the information is, especially since it is part of the database distribution that has been discussed; Brad responded that will be no problem.

Tom said there is a document created by the U.S. Attorney General's office on public records. In this is a listing of documents that are not discloseable by counties and state governments. There are only a few items that are related to elections, including voter registration materials and the election software filed with the Secretary of State's office. There is no mention of ballots or anything associated with an election. So according to the U.S. Attorney General's office ballot images would be a discloseable record. Some states such as Colorado, Wisconsin and some counties in California

do treat ballots as public records. In Colorado and Wisconsin, there is the requirement for redacting any identifying marks in order to maintain anonymity. But it is illegal in Arizona to put an identifying mark on one's ballot. Also, Arizona law does allow ballot selfies. You can put a picture of your ballot on Facebook or anywhere else. The issue of selling your ballot is a "red herring" as it would be very easy to do so with early ballots; if there are objections to revealing ballot images publically, there needs to be another argument.

Jeff Rogers suggested that an opinion from the Attorney General might be a good subject to incorporate into a recommendation to the Board of Supervisors. Periodically, when requested to do so, the Attorney General's office will issue an opinion. While AG opinions do not carry the force of law, they do provide some guidance. Perhaps that is the direction the Commission should go with the recommendation to the Board. It would be a starting point.

Since the hearing is on October 14, Barbara suggested waiting to make the recommendation during the next EIC meeting.

Bill mentioned Mr. Huckelberry's letter of September 6<sup>th</sup> [a copy of this memo is incorporated into these Minutes as Attachment 2]. He asked if there was any action required of the Commission by this memo. Jeff Rogers also mentioned Mr. Huckelberry's memo to Brad of August 25<sup>th</sup> [a copy of this memo is incorporated into these Minutes as Attachment 3]; this had also been provided to the Commission. Brad responded that the last paragraph of Mr. Huckelberry's September 6<sup>th</sup> letter states Pima County's position on this matter.

#### **ITEM 8. TUSD CANDIDATES' CAMPAIGN DONATIONS – Karen Schutte**

Karen requested this Item be added to the Agenda after getting an email from Michael Hicks with the attached press release [a copy of the press release is incorporated into these minutes as Attachment 4], not to discuss the complaint, but procedures for school board candidates relevant to campaign finance. For example, do they have the same minimums for campaign donations as other candidates? Brad would need to review the laws governing campaign finance, but he believes the answer is yes. Karen said Michael didn't know where to go with his complaint; is it to the Elections Department that maintains the campaign finance records, the courts, or to another entity? Brad responded that school board candidates are different from other candidates in that they file their campaign finance information with the Elections Department, but they file their nomination paperwork with the County School Superintendent. The Elections Department is just a repository for campaign finance reports. The reports are public and available online for review. If someone has a question about a filing or feels there is a violation, they can bring it to the Elections office. As the Elections Department is not law enforcement, if there is anything further than research, the Elections office will forward the complaint to the County Attorney's office and County School Superintendent if it concerns school board candidates. In the Elections Department's due diligence research of a reported violation, they will contact the campaign treasurer; perhaps they will amend their report. If an amendment is made, Elections Department will notify the interested parties. If it does not appear that everything is in sync, the Elections Department has no authority to issue a legal opinion, so the matter will be turned over to the County Attorney. Bill asked if an investigation had been started in this particular matter; Brad responded that the only information he has seen is this media release, which came informally as part of the request to include this Item on the Agenda.

Jeff Rogers added that someone can always contact the Attorney General's Office, as they have state-wide jurisdiction.

## **ITEM 9. ELECTION UPDATE – PRIMARY & GENERAL – Brad Nelson**

Brad reported that there were approximately 176,000 ballots cast out of 509,000 eligible voters for a 34.6% turnout. Statewide, the turnout was 29%. Approximately 149,000 early ballots were cast; 85% of ballots were cast early, and 15% (including verified provisional) were cast at the polls. There were some municipalities on the ballot. City of South Tucson, Marana, Sahuarita and Oro Valley had council and/or mayoral candidates; all of those were elected outright during the Primary so there will be no run-off elections for the municipalities in November. Some of the municipalities will have questions on the November ballot pertaining to expenditures and general plans. Brad estimates an additional 100 man-hours were needed to retain the images of the ballots. Overall, it was a quiet election. Chris Cole asked how many ballots are in a package, relevant to the Libertarian ballots at his polling place, most of which were probably unused. Brad responded that by statute, they must order 101% of registered voters worth of ballots. Chris estimated, if there are 24 Libertarians in his precinct, the package probably contained 25 ballots; Brad concurred.

Jeff reported that during every election, there are some polling places that will not allow campaigning and sign placement, particularly churches. They sign a contract stating they must allow electioneering but then forget that on the day of the election. Brad said that they have issues not only with houses of worship, but community centers and mobile home parks where they have a "No Soliciting" rule. He will be reminding all polling places prior to the coming General Election that when they sign that consent form, they understand they will have to allow some kind of campaigning activity on the property. Brad is also sensitive to their concern that a campaign sign driven into the ground might pierce an irrigation line and if they prohibit yard signs that is fine, but they must allow some form of campaigning on the property outside of the 75-foot limit, perhaps a sandwich sign.

Brad looked up turnouts for past presidential elections in Pima County; in 2008 there was a 79.3% turnout; in 2012, it was 77.8% turnout. If there is a similar turnout for 2016, there should be a total of 410,000 ballots counted, of which approximately 105,000 will be cast at the polls.

Brad will be sending out a mailer to every registered voter household not already on the early voting list, approximately 125,000. The cover will have "Why wait in line to vote?" and the inside will give information on how to obtain an early ballot. This is an invitation for voters to vote early. Lines at the polling place are the scourge of election officials; by sending this out, voters will have the opportunity to avoid lines on Election Day.

Programming of the tabulating equipment for the General Election is underway; overseas ballots must be ready for distribution by September 23<sup>rd</sup>. The official Logic and Accuracy Test with the Secretary of State will be on October 10 at 8:20 in the morning. Barbara asked if that day is a holiday; Brad responded that it is a holiday for many jurisdictions but not for the State, or for Pima County since that holiday was given up to have the Friday after Thanksgiving off.

Early voting starts October 12<sup>th</sup>. Since the State only has two proposition questions, the ballot should easily fit on a double-sided 19-inch ballot. The Board of Supervisors has a regularly-scheduled meeting on November 22<sup>nd</sup> and that is when they intend to canvass the November 8 election.

**ITEM 10. BALLOT DISTRIBUTION AT THE POLLS DURING PRIMARY – Bill Beard**

Bill reported that there were some folks that reported that, even though they were at the correct polling location, the first impulse of the Inspector and Marshal was to hand the voter a Fed Only ballot. These instances were eventually remedied, but Bill is concerned that the information is not clear to the poll workers as to when to issue this type of ballot. During the General Election, we definitely don't want long lines caused by a similar situation. Brad was familiar with the scenario Bill mentioned; his understanding is this happened over a lunchtime break when the Special Situations poll workers were not at the table. The ones filling in for the break did not fully understand what they were supposed to do; however, the Inspector stepped in and instructed them on how to handle those situations.

Karen got a call from about a voter who voted at a location that had 16 variations of ballot styles; this voter apparently received a ballot that did not have Oro Valley candidates on it but Karen was never able to verify the residence address of the voter to see if they received the correct ballot or not. Karen mentioned that there is some responsibility on the voter to know what they should be voting on.

Jeff asked how many Fed Only voters are in Pima County; Brad responded that he would need to verify with the Recorder's office, but thought there are a couple of hundred. When the Recorder's office receives a Federal form which does not require proof of citizenship, they immediately contact the voter with the information that is required for being able to cast a full ballot. If the voter does not respond, they are entered as a Federal Only voter. As the General Election gets closer, many voter registration drives will be taking place such as Rock the Vote, Campus Outreach; these organizations will be using that Federal form because it can be used nation-wide.

To address the issue of poll workers incorrectly using the Fed Only ballots, the Elections Department is planning on putting these ballots in an envelope with a sign that says "Use these ballots only after contacting the Elections Department or Recorder's office."

Mary DeCamp reported that at the polling place where she worked an independent voter came in requesting a Libertarian ballot; the poll workers had learned in training that the Libertarian Party had closed their Primary. When the Inspector called the help line, he was told to give a Libertarian ballot to that voter. She described a few other problems with setting up. She also wondered how much attention was given to the evaluation form when poll workers describe personality conflicts with other poll workers, etc.? Brad described this comment sheet as given to all poll workers for them to report their experience at the polling place. He said about 50% of comments made on these forms address training. Mike Dale who does the training looks over each and every comment form submitted; sometimes he will flag one for Brad to review, or for other appropriate personnel in the Elections Department.

Barbara asked what a Fed Only sample ballot would look like; Brad responded it shows only the Federal offices on it, so that should give Fed Only voters an additional heads up of what they will be allowed to vote on.

**ITEM 11. ELECTION SYSTEM SECURITY – Arnie Urken**

Since Arnie is out of town, he asked to postpone this Item for a future meeting. Barbara referenced a document on election security that was circulated [a copy of the Brennan Center for Justice voting system security document is incorporated into these Minutes as Attachment 5]. As Barbara read the document, it seems that Pima County is doing almost everything that can be done.

**ITEM 12. FUTURE AGENDA ITEMS**

Recommendation to BOS to contact the SOS and AG on ballot images.

**ITEM 13. NEXT MEETING DATES**

October 21, 2016 and November 18, 2016

**ITEM 14. ADJOURNMENT**

It was moved by Chris Cole and seconded by Bill Beard and unanimously carried to adjourn the meeting. The meeting adjourned at approximately 10:25.

# **ELECTION INTEGRITY COMMISSION**

Pima County, Arizona

TO: Honorable Chair and Members  
Pima County Board of Supervisors

FROM: Tom Ryan, Chair   
Election Integrity Commission

C.H. Huckelberry  
County Administrator

DATE: August 23, 2016

RE: Delay of Database Distribution for August 30, 2016 Primary Election  
and Preservation of Ballot Images

---

## **SUMMARY:**

Following the 2006 RTA election, the Superior Court ordered Pima County to provide a distribution of the "election databases" to the political parties on request after each election. Pima County has been fulfilling this obligation for each election. In the past year, however, Pima County has upgraded to a new ES&S ballot tabulation system. The new system has a different design with respect to databases and that has required rethinking how the database distribution should best be handled. This memo provides a recommendation for the form of the distribution and explains why the required distribution may not be timely for the August 30 Primary Election. We also recommend that ballot images be preserved until their legal status is established.

## **DESCRIPTION OF THE DISTRIBUTION:**

The Election Integrity Commission (EIC) recommends that the database distribution consist of two election system products, namely the Cast Vote Record (CVR), and the Daily Statement of Votes Cast (DSOVC), both produced as quickly as possible after the official canvass is prepared for approval by the Board of Supervisors.

The CVR is essentially a large spreadsheet in which each row represents a ballot, each column represents a contest, and each entry shows how a ballot was interpreted by the official tabulation system. The SOVC is a canvass, showing tabulation results for each contest and precinct. The SOVC can be produced for each day that the central count tabulation system is counting ballots, usually starting several days before Election Day. This Daily SOVC has many of the properties of the previous distribution of backup GEMS databases, also produced daily. The combination of CVR and DSOVC will provide a rich source for sanity-checking election tabulations. The CVR must be consistent with reported outcomes and with the daily vote totals obtained from the DSOVC. The DSOVC must also be internally consistent from day to day. The CVR product is also a necessary component of risk-limiting audits, a technique that is being evaluated by the Commission together with the Elections Department.

Pima County Board of Supervisors  
C.H. Huckelberry  
August 23, 2016  
Page 2

#### **TIMELINESS OF THE DISTRIBUTION:**

For the upcoming August 30 Primary Election, the production of these distribution products may not be "timely," that is, they may not occur within a period that would allow critical analysis within the 5-day challenge period following approval of the canvass. This could be an issue for someone deciding whether or not to challenge the election outcome and wanting the usual distribution products for analysis.

The reasons for potential delays in producing these database products are

- a) an unfortunate property of the new system in which access to the CVR requires that ballot images be transferred from the individual scanners to the election management server, a time-consuming process that will hopefully be alleviated by future software upgrades;
- b) the Election Department staff must begin working on programming the General Election as soon as possible; and,
- c) the CVR and DSOVC products have not been produced before, except for small mock elections, so there may be unforeseen hurdles.

It should be possible to produce the DSOVC more quickly than the CVR, and we request that the Elections Department investigate the possibility of distributing the DSOVC prior to the CVR.

#### **BALLOT IMAGES, A RELATED ISSUE:**

While not part of the database distribution, *per se*, the ballot images must be transferred from scanners to system server in order to access the CVR. Some EIC members have expressed reservations about the subsequent handling of these images, suggesting that they be retained for a period of time equivalent to the paper ballots and not be deleted (as they were for the recent Prop 123/124 election).

The new system creates an image of each paper ballot and the tabulation software deciphers each image. The images are thus an important intermediate product that might need to be examined if any questions should arise about the validity of election outcomes. Also, these images are currently the subject of a public records request, so the Commission recommends saving them while that request is being evaluated. Deleting them too soon could make Pima County vulnerable to legal action.

#### **EIC RECOMMENDATION:**

The EIC is recommending that the database distribution products, as described above, be produced for the August 30 Primary Election whenever it is convenient for the staff to do so. We do not want the creation of these products to interfere with standard election procedures or the preparations for the General Election, but we think it is important that we learn how to produce these distribution products in an efficient manner. The August 30th Primary Election will provide estimates of the manpower, computation, and time requirements so that we can better engineer these products for future elections. The Commission also recommends that the ballot images for the election be transferred to the server and preserved until their legal status is established, or until the corresponding paper ballots are destroyed as required by state law.



---

# MEMORANDUM

---

Date: September 6, 2016

To: The Honorable Chair and Members  
Pima County Board of Supervisors

From: C.H. Huckelberry  
County Administrator 

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

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

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

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

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

The Honorable Chair and Members, Pima County Board of Supervisors  
Re: **Primary Election Issues Raised at the September 6, 2016 Board of Supervisors Call to  
the Public**  
September 6, 2016  
Page 2

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

CHH/anc

Attachment

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

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

8. Election Integrity.

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

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

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

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



---

# MEMORANDUM

---

Date: August 25, 2016

To: Brad Nelson, Director  
Elections Department

From: C.H. Huckelberry  
County Administrator

A handwritten signature in black ink, appearing to read "CHH", is written over the printed name "C.H. Huckelberry".

Re: **Election Integrity Commission Request and the Current Lawsuit Filed by Mr. Richard Hernandez versus Pima County**

I would appreciate knowing the steps necessary, cost and delays in election reporting that would be incurred by complying with either the request of the Election Integrity Commission or the lawsuit filed by Mr. Richard Hernandez, which is currently pending.

As we have discussed on numerous occasions, scanning ballot images, while constructive, is not yet structured into the Arizona election legislative agenda. This means that current Arizona election laws are close to 10 to 20 years behind current technology. Hence, counties and other elected officials are hamstrung by arbitrary rules enacted by the State that inhibit our ability to utilize modern electronic systems for election verification.

Unfortunately, those who receive the brunt of criticism regarding using these systems and devices are local officials rather than the State where the responsibility lies. Both the Legislature and the Secretary of State need to modernize Arizona election law and implement policy concurrent with present technology. Such does not exist and has led to the present situation we now find ourselves in; defending an irrational lawsuit to retain images that cannot be used for anything, based on Arizona law.

I fully support using scanned images to verify election results, as it is the easiest way to assure the public an election has been fairly and accurately counted.

Please inform the Court in the Hernandez versus Pima County litigation that we would be happy to use ballot images as part of an election verification program specifically authorized by Arizona law; however, as ballot images cannot be used to verify an election based on present law, there is no legal justification for their retention.

CHH/anc

c: Daniel Jurkowitz, Deputy County Attorney  
Ellen Wheeler, Assistant County Administrator

## ATTACHMENT 4

### For Immediate Release: Call For Investigation Of ESI Related Campaign Contributions

Contact: Michael Hicks 520-400-7434 michael.hicks@tusd1.org

In his continuing effort to increase the public's trust in the Tucson Unified School District, Governing Board member Michael Hicks is calling for an investigation into unusually large donations made to the campaigns of Governing Board members and candidates for re-election Cam Juarez and Kristel Foster.

According to ARS 16-907: *prohibited contributions; standing political committees; classification*, makes any person who knowingly accepts a contribution made by one person in the name of another person guilty of a class 6 felony.

"By TUSD Board Members Cam Juarez and Kristel Foster accepting campaign contributions totaling \$10,000 from the spouse of an established vendor with TUSD, we risk losing all public trust. This has the potential to be a criminal act. We must hold ourselves to the highest ethical standards," stated Hicks.

The unprecedented \$5,000 contributions made to each Foster, and Juarez were made by a Ms. Carly Brooks. Ms. Brooks' husband, Mr. Rob Brooks, is the Vice President of Marketing for ESI. ESI's contract was recently approved in a vote of Consent Agenda item. No discussion was allowed by Board president Adelita Grijalva.

In July, Ms. Foster and Mr. Juarez joined TUSD Board President Mrs. Adelita Grijalva in approving the \$21 million contract with ESI, a company out of Phoenix that TUSD is now using to outsource its substitute teachers. In August, Ms. Brooks made the contributions, according to campaign finance records.

"I am demanding that we bring integrity and transparency back to the TUSD Board of Governors and to our election system, I will be filing a formal complaint with the Arizona Secretary of State," said Hicks. "We must have an impartial investigation into these campaign contributions. We cannot afford further erosion of confidence in our public schools. Our kids' education is at stake.

[Attached: Copies of relevant documents obtained thus far]

#####

## Voting System Security and Reliability Risks

The last few weeks have brought renewed attention to the security and reliability of our voting systems. After [credible reports](#) last month that Russia was attempting to influence American elections by hacking into the DNC email server and other campaign files, new reports show the [FBI has determined](#) foreign hackers penetrated two state election databases.

This fact sheet describes what the risks to America's voting system security really are — and what states, localities, and voters can do to prevent successful attacks against the integrity of our elections.

The Brennan Center has studied the use of computerized voting systems for [over a decade](#). In a [comprehensive study](#) released last year, we found the use of outdated voting equipment across the country presents serious security and reliability challenges.

The United States has made important advances in securing our voting technology in the last few years. Relatively few votes are cast over the internet or machines connected to the internet,<sup>1</sup> and the vast majority of ballots will be cast on systems that have a paper trail that allows election officials to independently verify software totals. This makes it highly unlikely that a cyberattack against our voting machines could have a widespread impact on the results of a national election.

Still, there is much more we should do to promote the security and accuracy of our voting systems. Computer scientists have [demonstrated](#) that older equipment, in particular, can be very insecure. It is also more difficult to maintain, and more likely to fail (even without interference from an attacker) on Election Day. While small-scale attacks or failures of individual machines might not have a widespread impact on national vote totals, they can severely damage voter confidence, and would be particularly troubling in very close contests.

Similarly, while proper safeguards can ensure attacks on voter registration databases don't prevent a legitimate voter from casting a ballot or having her vote counted, an attack on these systems could put voters' personal information at risk. Election officials must take all steps necessary to protect such information.

[In the short run](#), we should do everything we can to [minimize the impact of such attacks or failures](#). In the long run, we must treat our election infrastructure like other critical infrastructure, with regular investments and upgrades.

\*\*\*

---

<sup>1</sup> Several states [allow](#) military and overseas voters to cast ballots by fax, e-mail or internet portal. Alaska allows any qualified voter to request and return an absentee ballot via facsimile.

BRENNAN CENTER FOR JUSTICE

Before detailing how election security and reliability can be improved, it is important to understand the significant steps that have been taken to protect the integrity of our elections over the last several years.

Improvements to Election Security

- Today, 47 of 50 states rely on the Election Assistance Commission's (EAC) federal certification process when purchasing voting machines. This process includes much more rigorous security testing than previously existed.
- While recent hacks deserve our attention, the overwhelming majority of voting is not done over the internet.
- In recent years, voting machines that could be accessed remotely have been taken out of service,<sup>2</sup> making widespread, remote attacks much more difficult.
- Many jurisdictions have replaced their paperless machines with systems that scan paper ballots filled out by voters, or produce a paper trail that can be reviewed by the voter.
- This November, at least 80 percent of registered voters will make selections on a paper ballot, or vote on an electronic machine that produces a paper trail.

Despite these advances, there is still more work to do to ensure that all voting machines are as secure and reliable as possible.

Outdated Voting Machines Pose Serious Reliability and Security Risks

- In November, 42 states will use voting machines that are at least 10 years old. This is perilously close to the end of most machines' expected lifespan. Using aging voting equipment increases the risk of failures and crashes — which can lead to long lines and lost votes.
- Aging voting systems use outdated hardware and software. For this reason, replacement parts for older voting systems can be difficult, if not impossible, to find. Aging systems also rely on unsupported software, like Windows XP and 2000, which does not receive regular security patches and is more vulnerable to the latest methods of cyberattack.
- While nearly all of today's voting machines go through a federal certification and testing program, many jurisdictions purchased voting machines before this process was in place. Older machines can have serious security flaws, including hacking vulnerabilities, which would be unacceptable by today's standards.
- In November, some voters in 14 states will vote on paperless electronic voting machines. These machines do not produce a paper record that can be reviewed by the voter, and allow election officials and the public to confirm electronic vote totals.<sup>3</sup>
- While the need for more up-to-date, secure and reliable voting equipment is clear, funders at the state and federal level seem unconcerned about our aging voting infrastructure. In at least 31 states, election jurisdictions will need new machines in the next five years, but officials from 22 of those states said they did not know how they would pay for them.

<sup>2</sup> For instance, in 2015 Virginia decertified a voting system after [finding](#) that an external party could access its wireless features to "record voting data or inject malicious data." That system had been eliminated in Pennsylvania in 2007 and Mississippi in 2013, and is no longer in use anywhere in the United States.

<sup>3</sup> Delaware, Georgia, Louisiana, New Jersey and South Carolina use paperless electronic voting machines as their primary polling place equipment statewide. In Arkansas, Indiana, Kansas, Kentucky, Mississippi, Pennsylvania, Tennessee, Texas, and Virginia, some portion of polling places use such paperless machines as the primary equipment.

BRENNAN CENTER FOR JUSTICE

Short Term Solutions: Voters and Local Election Officials Can Enhance Security and Reliability

- Voters should vote early when possible, to avoid potential delays caused by machine breakdowns on Election Day.
- If voters experience [problems while voting on machines](#), or if those machines fail, they should immediately report the problem to local officials or poll workers, and then call 866-OUR-VOTE, the Election Protection hotline, to report the problem.
- Election officials should report machine problems to the EAC so other jurisdictions using the same voting system are aware of potential issues.
- All state and local election officials should ensure the physical security of voting equipment and paper records at all stages of the process — whether in storage, in transit to polling places, or during an election — by implementing strong chain of custody procedures.
- All local election officials should conduct thorough pre-election testing on every voting machine and ensure emergency paper ballots are available at all places where electronic machines are used.
- All states should mandate thorough post-election audits to confirm that paper records match electronic results. Officials should also review and, where necessary, improve “reconciliation policies” to guarantee that the number of signed-in voters matches ballot totals, and that machine and polling place totals match county and state totals.

Long Term Solutions: State and Federal Action for Improving Security and Reliability

- Congress and state legislatures need to allocate the funds for new, reliable, and secure voting systems. Grants to fund voting technology improvements can ensure more secure voting systems for decades to come.
- Congress and state legislatures should require audits of election results, using paper ballots or voter verifiable paper records, to confirm electronic totals. Today, only 25 states require that election officials conduct paper audits.
- The next president and Congress must ensure the EAC has a full slate of commissioners and fill any vacancies in a timely manner. The work of the agency is critical to ensuring that local and state election officials have the best information to ensure our voting machines are secure and accurate.

Protecting the Integrity of Voter Registration Databases

- As long as states and local jurisdictions keep backups, including paper copies of their registration lists, no manipulation of state computer registration databases should prevent legitimate voters from casting a ballot, or having their votes counted.
- Voter registration databases can and should be programmed to run frequent, automated scans of registration activity to monitor for and alert election officials to potentially fraudulent or abnormal activity, such as a high volume of traffic or oddly timed traffic.
- Voter registration databases should be constructed to record transaction logs for all requests submitted to the site. This would allow officials to trace suspicious activity, or review activity after-the-fact for abnormal site traffic patterns.

BRENNAN CENTER FOR JUSTICE

- Websites providing online voter registration should employ best practices to protect against large-scale attacks, such as forcing an application to “time out” automatically after a certain period of inactivity, and using [CAPTCHA](#) tests.
- Voter registration databases should not contain any information other than what’s required to register, or specified information relevant to the administration of elections.
- States should publish — and enforce — a policy detailing use limitations (including user authorizations) and security safeguards to protect voters’ personal information in the data transfer process, the online or telephone interface, and the maintenance of the voter registration database.