



COUNTY ADMINISTRATOR'S OFFICE

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C.H. HUCKELBERRY
County Administrator

October 3, 2008

The Honorable Jan Brewer
Secretary of State
State of Arizona
1700 West Washington Street, 7th Floor
Phoenix, Arizona 85007-2888

Re: Your September 23, 2008 Letter Regarding Ballots Cast by Pima County Voters During the September 2, 2008 Primary Election

Dear Secretary Brewer:

Thank you for your letter and inquiry. As you know, Pima County has gone to great lengths to provide complete and open transparency in our election process. We are, at this time, completing a full report to the Board regarding the September 2, 2008 Primary. A copy is being provided to your office as an attachment to this letter.

Regarding the issue raised in your letter related to ballots discovered after tabulation and canvass, during the process of retrieving all the ballots for storage post canvass, ballot bags for all precincts were audited with respect to seals, security, tabulated ballots, and whether the bags contained any items that should not have been placed within those specific bags, as well as information required, such as the unofficial results tape signed by the poll workers.

In opening the bags from our precincts, one bag, for Precinct 377, contained seven early ballots and one ballot with a note attached saying "This ballot not counted," which we assume means that it could not be read by the Accuvote machine.

The seven early ballots were turned over to the Recorder for processing. As in all late ballots, they are simply classified as "arrived late." These seven early ballots and one un-tabulated ballot have been noted as "arrived late" due to poll worker error. These ballots obviously should have been counted, however, they were discovered unfortunately too late to be included in the canvass.

The Honorable Jan Brewer
Your September 23, 2008 Letter Regarding Ballots Cast by Pima County Voters During the
September 2, 2008 Primary Election

October 3, 2008

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To eliminate the possibility of this occurring again, the County will establish election night processes that will include the procedure of inspecting and opening, under political party observation, all ballot bags to eliminate the possibility of precinct worker error in placing early, provisional, conditional provisional, or write-in ballots in the ballot bag. This procedure will differ from our past practice of only opening ballot bags with potential problems.

Yes, our procedure to allow the greatest possible time to pass, allowing anyone interested in challenging an election before the canvass to do so, left us with no time to file an amended canvass to include these ballots. This is an item we will review with the parties and try to receive their consensus to conduct the canvass earlier than the last day available to eliminate this possibility and allow the County to file an amended canvass if necessary.

During the opening of the ballot bags, it may have also been reported to you that two other bags from Precinct 45 and Precinct 215 may have appeared to contain uncounted ballots. That is not the case. The ballot bag from Precinct 45 contained the early ballot addendum list, not early ballots. The ballot bag from Precinct 215 contained empty early ballot affidavit envelopes, not envelopes containing voted ballots. Additionally, in the bags for Precincts 31, 32, 33, 34, 172 and 200, ballots with invalid write-in candidates were discovered. All valid votes reflected on the ballots had been previously counted at the polling place as the ballot was scanned at the polling place.

We appreciate your interest and assistance in conducting this election and will continue to improve both accountability and transparency in our election process for the November 4, 2008 General Election. I believe the attached report should provide you with insight into how the County will administratively conduct this election in cooperation with the parties to ensure the greatest degree of security, accuracy and transparency.

Sincerely,



C.H. Huckelberry
County Administrator

CHH/jj

Attachment

- c: The Honorable Chairman and Members, Pima County Board of Supervisors
Brad Nelson, Pima County Elections Director
Sallee Hunter, Acting Chair, Pima County Green Party
David Euchner, Chair, Pima County Libertarian Party
Vince Rabago, Chair, Pima County Democratic Party
Judi White, Chair, Pima County Republican Party



JAN BREWER
SECRETARY OF STATE
STATE OF ARIZONA

September 23, 2008

C.H. Huckelberry,
County Administrator
Pima County Administration Office
130 W. Congress
Tucson, Arizona 85701-1317

Dear Mr. Huckelberry:

It has just recently come to my attention that lawful ballots cast by Pima County voters during the September 2, 2008 primary election were not tabulated. Apparently these ballots were discovered after the tabulation and canvass were completed.

Please provide me with a complete accounting regarding this matter, including how many ballots were not counted and the reason why these ballots were not discovered until after the canvass was complete. Moreover, I would like to know what steps you plan to take to ensure that no voters in Pima County are disenfranchised during the November 4, 2008 general election as a result of such administrative errors or lack of oversight.

I cannot help but question whether this unacceptable and unfortunate incident would have occurred if the Pima County Board of Supervisors had fully considered the serious concerns I raised in my June 5, 2008 letter about implementing your proposed election tabulation process in Pima County. It is obvious to me that your new procedures not only unnecessarily delayed the election results for the entire state; they also left the county no time to properly account for all ballots prior to your canvass.

I look forward to receiving your response and once again urge the Pima County Board of Supervisors to seriously reconsider the unilateral changes it made to the ballot tabulation procedures in Pima County. We cannot afford another major mistake in the face of the upcoming presidential election.

Sincerely,

Janice K. Brewer
Arizona Secretary of State

JKB/kt



MEMORANDUM

Date: October 3, 2008

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

From: C.H. Huckelberry
County Administrator 

Re: Primary Election Report and Other Related Election Issues

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I. Introduction

The purpose of this memorandum is to provide the Board with factual information regarding the September 2, 2008 Primary Election, as well as responses to certain complaints that have been made, particularly at the September 2, 2008 Primary Election canvass and at a subsequent Board meeting where members of the public appeared under Call to the Public. In addition, this report on the Primary Election allows the Board to have specific information regarding election processes and administrative procedures that may be modified to improve performance related issues documented during the Primary Election.

The report will highlight various procedural matters that continue to be ongoing, discussions with Party Chairs regarding the election, and requests of the County Attorney for clarification of a number of matters related to legal issues associated with the Primary Election of 2008.

It is my belief and that of the Elections Director that the public discussion and interaction associated with our election processes and procedures will yield improved election security, election result reporting and hence faith and confidence in our election process. Accordingly, we welcome an open and honest dialogue on these matters.

II. Criticism and Response Regarding the September 2, 2008 Election Canvass Occurring on Friday, September 12, 2008

As planned, the canvass of the Primary Election occurred at the last possible date available to conduct the canvass. It is important to note this was a planned action since previous memoranda regarding delaying the canvass to the last possible date in order to allow the political parties or anyone to challenge the election results were in effect. This would allow the longest possible time to begin a challenge to an election after it occurred. Even when the canvass occurred on Friday, September 12, 2008, ten days after the Primary Election, there was debate about whether or not the canvass could be delayed. It took a post-meeting memorandum from the County Attorney to clearly indicate the legal necessity of conducting the canvass on that date. This legal memorandum and attorney client privileged document from the County Attorney is included as Attachment 1 to this report.

III. Issues Raised at the Primary Election Canvass of September 12, 2008 and Responses

At the canvass on Friday, September 12, 2008, a number of speakers raised issues regarding the canvass and election processes and/or procedures. Below is a summary of their particular concerns and my responses to these concerns and/or issues.

1. Mickey Duniho

Issue: The Recorder's Office delivered 5,000 ballots to the Elections Division on Thursday that could have been scanned before Election Day, but weren't. Why weren't those ballots scanned starting on Thursday?

Answer: The Elections Department received 5,881 ballots from the Recorder on Saturday, August 30, 2008. These ballots were counted on Monday, September 1, 2008. Of the 65,031 early ballots turned over by the Recorder that could be counted, 63,510 were counted. Those that were not counted, or the difference, were sent to a Duplication Board since they were rejected by the scanners. The early vote counting began on Thursday based on a decision of the political Party Chairs.

Issue: Brad did not begin hand count audit the day after the election as required by law because he had to recover AccuVote machines and precinct ballots. Delayed the selection of precincts until Friday and hand count until Saturday.

Answer: One section of Arizona law requires that the hand count audit begin within 24 hours of the closing of the polls. Another requires that the random selection of precincts not begin until all ballots voted in the precincts have been returned to the counting center. Because some poll workers failed to return material (machines and ballots) properly, Pima County did not have all of the precinct voted ballots returned to the counting center until approximately 48 hours after the closing of the polls. Therefore, the hand count audit process could not begin until all these materials were secured.

Issue: On Friday Brad insisted that only 9 would be hand counted, despite Chuck's plan, approved by the Board, that that number be doubled. I objected and told Brad that I would take up issue with you, Board and if necessary the press. An hour later when I got home I found an e-mail from Brad that said they would pick an additional 9 precincts on Saturday morning. Why did Brad attempt to thwart the will of the Board?

Answer: Arizona law requires for no less than 2 percent of the precincts to be selected for hand count audit. The drawing of 9 precincts (2 percent) was accomplished by the political parties. In addition to the random selection of precincts, the parties drew randomly selected state level contested races to be audited. Two of the parties (Democratic and Libertarian) wanted to increase the number of precincts and also to include County level contested races. Mr. Nelson, after consultation with the County Attorney, indicated that there were not enough party representatives to conduct a larger precinct hand count. The Democratic and Libertarian party representatives strongly urged Mr. Nelson to reconsider and noted that the Board of Supervisors had directed the number of precincts to be increased from 2 percent to 4 percent. The Elections Director then consulted with the County Administrator and verified that 4 percent of the precincts were to be included in the hand count audit if agreed to by the parties given the selected number of party participants. The Elections Director then e-mailed the parties regarding the need to select additional precincts for audit and that the selection of the additional precincts would take place the following morning. Mr. Nelson did not "thwart" the will of the Board of Supervisors, only attempted to fully comply with the law.

Issue: At the hand count audit on Saturday, I asked Brad if missing and broken and mismatched seals and security anomalies were being recorded. Checking anomalies against Receiving Board logs to determine if problems were at the precinct or where? Brad indicated he was not. When I suggested that he should provide hand count auditors a log to document anomalies, Brad said he would need to check with his lawyer. Why would he need a lawyer to authorize him to document possible security issues, and why was he not already doing that?

Answer: During the hand count audit, the Elections Director was asked if the missing or broken seals were being recorded. He stated that they were not being recorded at that time for that was not the purpose of the hand count audit. The purpose of the audit was to compare the hand count to the computer count. The fact that some of the seals were missing or not recorded properly could be reported on the forms provided to each audit board. But, since the bags had been under constant video surveillance and law enforcement surveillance, the integrity of the ballots contained in the bags was sound, as was verified by a successful hand count audit. Ballot bag and other anomalies were being documented. Seal and security issues are part of each precinct polling place critique and will be documented in addition to the hand count audit.

Issue: In the last few days, Jim March has confirmed from public records that at least 8 of the 18 selected audit precincts did have problems with security seals. Of those 8, 7 were among those selected on Friday afternoon and only 1 of those selected on Saturday. A statistical phenomon that cannot be explained by random chance. Why did those on Friday have so many security seal problems?

Answer: Mr. March apparently notes that of the 18 ballot bags selected for hand count audit, 8 had problems with security seals. Of the 9 precincts selected for hand count audit on Friday, 7 bags did not match with the original security seals. Only 1 of the 9 precinct bags had a seal issue from the precincts selected on Saturday. Although there were 7 issues with seals in the precincts selected on Friday, there were only 2 problems that could not be properly documented. Five of the 7 bags did have seals changed at some point during the election process; however, documentation was maintained by either the receiving center personnel, Sheriff's deputy, or technical center personnel as seals were removed or changed. Hence, the chain of custody issues, because of no explanation related to changed seals, occurred in only 3 of 18 bags selected, not 8. Therefore, the integrity of the bags and their contents was maintained.

2. Benny White

No questions.

3. Ben Love

Issue: Regarding DREs, why are we burdening understaffed Elections Division people and poll workers with these machines when everyone is overworked? Why start that thing up when no one uses it and have to shut it down again in the evening, taking up a lot of time?

Answer: It should be noted that 69 percent of the troubleshooter calls on Election Day were related to the TSx or DRE devices associated with the election. This is an unusually high number of troubleshooter calls for a particular machine. The Board and County asked the Secretary of State to be relieved of the obligation to use these devices. The response from the Secretary of State was that they are required pursuant to law, and that the Department of Justice requires these machines to meet the terms and conditions of the Help America Vote Act. Therefore, the County is obligated to continue using the machines, even though they are: A) problematic in their use, and B) record an unusually low number of total votes cast. In the Primary Election of 2008, a total of 97 ballots were cast on these machines as opposed to 114,590 ballots cast for the entire election. This represents eight one-hundredths of one percent (.08%) of the total votes cast.

Issue: Diebold Equipment, Premier now, issued a letter saying you couldn't upload two of the diskettes from the DRE or the AccuVote simultaneously. What action was taken on that? No communication on that. Don't know what happened on that.

Answer: Premier issued a PAN (Product Advisory Notice) identifying the possibility of a "sharing violation" when multiple uploads into the posting part of the database occurred. There is a clear methodology for identifying this condition and a simple resolution. No votes are lost. In addition to the Premier notification, this issue was well publicized in many newspaper articles as well as the internet. We were aware of this problem and did not simultaneously upload any machines on election night. On election night, Jim March asked several workers independently whether machines were being simultaneously uploaded and the answer was consistently no.

Issue: When he was looking for his seal for the election ballot bag and couldn't find it, suddenly a policeman pulled one out of his pocket and said you don't need to look anymore, here it is, you can just use this one. That destroyed the chain of custody. What does that do for elections? Destroys the integrity of all of those ballots.

Answer: The chain of custody was not destroyed by using the law enforcement officer's seal. Security was enhanced by using the seal. Mr. Love or his precinct workers just needed to document the "new" seal number on the Ballot Report & Certificate of Performance Form.

Issue: Assigning of 11 workers, good people and a great day, taking 220 votes from voters. Could those people have been used elsewhere? Happy to have them, but a waste of resources? Giving 220 ballots to a poll worker that has to account for the unused ballots at the end of the day.

Answer: Given the light turnout for the recent Primary Election, poll workers did not have a very busy day. However, the experience they received during the Primary Election provided each one of them with additional training that will be invaluable at the polls for the coming General Election where over 80 percent of eligible voters are expected to participate.

Another comment of Mr. Love relates to the number of ballots supplied to each polling place. He notes that only 220 voters appeared at his polls on Election Day and that many ballots went unused; however, State law requires the County to print a ballot for each eligible voter regardless of expected or historic turnout. Consequently, with a low turnout many ballots go unused.

Issue: A simple checklist for every worker at the polling place would solve a lot of these problems, explaining every single step for every person at the polling place.

Answer: We have a number of checklists already, but additional checklists are being prepared.

4. Jim March

Issue: Out of 19 bags that had seals checked, John Brakey noticed 7 messed up seals. County's records confirm 6 out of 7 of them. And then another 2 with paperwork issues. Two were picked up by deputies and the serial numbers were different. Called the deputies and one of them said legitimately we swap seals.

Answer: There were only 18 bags, not 19. Of the 9 bags that Mr. Brakey might have seen, 7 did have some issue with a seal. However, documentation from 5 of those bags provides a record of seals changed by Receiving Boards, deputies or technical center personnel. Therefore, only 2 of the 7 bags involved lacked proper documentation.

Issue: Brad Nelson did not document which seals were messed up and in what fashion -- missing, wrong, or what.

Answer: There was documentation. However, the documentation did not provide enough detail as to why the variance occurred. The forms are being redesigned to require greater detail regarding any anomalies that might occur.

Issue: At one of the receiving boards at 3500 River Road a party observer who noted what was going on during election night as paperwork came in produced a report precinct by precinct.

Answer: No comment. Have not seen the report, but sounds like very good documentation. We will follow up with this observer.

Issue: What Brakey tried to document at hand count and Brad stopped him.

Answer: Mr. Brakey could have had any information available if the requests were directed to the proper Elections authority as provided in State law.

Issue: Terrible poll worker training, no checklists – bad procedures.

Answer: Mr. March is welcome to his opinion regarding the quality of the poll worker training. However, to our knowledge he has never attended any Pima County poll worker training classes. Poll worker training efforts were redoubled this year. The poll worker academy was established with 1,785 poll workers attending the academy and receiving passing scores on written performance exams. In addition, standard election training occurred for all poll workers, and the County produced a DVD regarding poll worker responsibility and the various actions that were required of poll workers, including the security and custody of ballots and equipment. The same training materials were available on the Elections Department website for review at home. As indicated in another portion of this memorandum, each precinct will be given a scorecard regarding their performance during the Primary Election. Any deviations will require all poll workers to be retrained if they received a scorecard with any deviations or corrections required. Simple human error continues to be the biggest problem associated with election security and integrity issues. We will continue to work with and redouble our training efforts for poll workers, particularly those in critical task areas associated with ballot security or equipment tabulation security. Hopefully, these efforts will result in significantly less poll worker errors than recorded by transparency and audit procedures now being employed by the County. It should be noted that no other County has gone to the extent that Pima County has regarding poll worker training nor has been as transparent in deficiencies or errors that occur in the election process. This transparency is designed to achieve only one purpose, which is to improve performance without pointing the finger of blame.

5. John Brakey

Issue: I said to Brad on one of them and said show me the white and yellow sheets in the bag and see if they verify, and Brad picks up a white sheet and says he recognizes the two scribbles. Out of about 3,000 poll workers?

Answer: The white sheet of paper Mr. Brakey refers to was signed by one of the Election employees and a Sheriff's deputy, not by poll workers. Obviously, Mr. Nelson recognized the signatures or handwriting of his employee and all law enforcement personnel sign their name with their badge number.

Issue: Never got to the last bags because I got arrested. Kept civility. Very watchful of this field and the chain of custody because of another audit and Noel Day testified that he walked into warehouse and they had the bags open and questioned why he was there, telling him he shouldn't be there.

Answer: Mr. Noel Day was a seasonal employee for approximately 90 days in late 2006. The allegations are not specific as to what point in the overall process this occurred. After the audit and canvass of an election, it is a normal process for the bags to be opened and the ballots removed and stored for safekeeping. A hand count audit of the 2006 Primary and General elections established that the count for those 2 elections was accurate.

Issue: The first 9 bags had 7 failures. The second batch picked that morning had only 2 errors. Possibility they are poll worker errors. Bothersome that the poll workers are always blamed.

Answer: As noted earlier, there were 7 issues with the first 9 bags checked by the audit boards. However, 5 of those issues have documentation showing seal changes and chain of custody for the bags. Only 2 of the first 9 bags had seal issues that did not have documentation to support any seal change. However, all ballots contained in the bags audited accurately. The second batch of bags had only 1 seal issue that did not have documentation concerning any seal issues, but those ballots in that bag also audited accurately.

Issue: Brad makes things up as he goes. Lacks character. Lacks the capacity to tell the truth, which destroys his credibility. Lack of courage. Cannot admit a mistake. Does he love his country? I don't know. Has a responsibility to the people, and Brad, please resign.

Answer: I am offended by Mr. Brakey's comments. Mr. Nelson, the Elections Director, is too polite to object to such offensive criticism. What I find most offensive regarding Mr. Brakey's comments on Mr. Nelson's love for his country is that Mr. Nelson's daughter recently returned from a tour in Iraq as a Military Police Specialist at a military base north of Bagdad. I would not question Mr. Nelson's patriotism.

Issue: Don't assign responsibility to one guy. Huckelberry has known about the back door to our voting system since 1996. Testimony that Bryan Crane was authorized to merge that data and learn about how Microsoft Access works.

Answer: This issue has been rehashed several times. In 1996, two voting systems were in use. One was the punch card system and one was the new Global Election Systems electronic vote tabulation system. With the results existing in two formats, a decision was made to enter the punch card vote totals into the GEMS database so a single, consolidated report could be produced identifying the total vote count. For all elections following the 2006 Primary Election, Elections technical staff has used a two part password to access the GEMS system, preventing the ability of a single person to access the system. It should also be noted that there is no evidence of Microsoft Access ever being loaded onto the present GEMS server.

6. Ted Downing

Issue: Board has up to 20 days to complete a canvass.

Answer: See County Attorney memorandum dated September 12, 2008 (Attachment 1).

Issue: In observing the bags something happened. The suggestion is you need to go through and open some unopened bags. The Elections Director failed miserably when he saw those bags were compromised by not pulling one that hadn't had its seal broken. Because of that he had cast a shadow over the election.

Answer: The consensus of the Party Chairs was that they especially wanted to audit a bag that appeared to have an integrity issue.

7. Dale Roose

Issue: Important to maintain the integrity of the seals because if you don't and the ballots are tampered with, you can't prove it. Arguing that there is no proof that they've been tampered with becomes a circular argument.

Answer: The reason for the logs and tracking the seals is to identify possible integrity problems. There are multiple ways to cross check the results. An undocumented broken seal requires the checking of these other sources to validate the results. This is done under party observation.

IV. Audit of Remaining Ballot Bags Associated with the September 2, 2008 Primary Election

Eighteen ballot bags were selected by party officials for hand audit. These ballot bags were retrieved, opened and ballots were counted by hand. One thousand eight hundred fifty-two (1,852) ballots were counted and they accurately reflected machine vote tabulation outcomes. Therefore, the remaining ballot bags can now be opened where ballots are required to be transferred to secure storage as required by law. These transfers will occur

in the very near future. In preparation for the transfer process, accurate records are kept regarding ballot bags containing ballots, and whether they are properly sealed and secured with correct seals being reported, whether the chain of custody was broken or seal changes properly documented, and whether or not the remaining ballot bags contain any materials that are not to be included in the ballot bag pursuant to established election procedure. The results are shown in Attachment 2. This audit will provide a good indication of various issues that may require additional poll worker training related to post-election precinct closeout procedures and the provision of appropriately documented chain of custody of the ballots, ballot bags and associated election materials. The audit results regarding the remaining 355 precinct ballot bags is provided in the next section of this report.

V. Ballot Bag Audit Results

As stated in the portion of this memorandum dedicated to poll worker re-training, Section XI(3), it is indicated that this is the first election in which specific precinct performance has been disclosed. This is also the first election in which audits relating to ballot bag seals, ballot information and ballots have also been disclosed by precinct. Many of these same issues, errors or irregularities have occurred in all past elections, but have not caused any reason for an election challenge or resulted in the outcome of an election being altered. Elections staff, management and I hope that all elections are perfect. However, they are not. What is important is whether or not all votes cast in an election have been accurately and timely recorded within the time frames for reporting the results. This has occurred in the past and will continue to occur in the future. We hope that by disclosing the inconsistencies and irregularities by voting area or precinct and sharing the results with the poll workers, our transparency will lead to improved performance and operations. No other county in Arizona, and quite probably the West, has an election process as open and transparent as Pima County. Election integrity activists and others have advocated and demanded such openness and transparency. It is our belief that such, while sometimes difficult due to increased complexity, will lead to much improved and verifiable, as well as accurate, election results.

The detailed results of the opening of 355 ballot bags, other than those opened for the hand count audit, is attached as Attachment 2.

Regarding properly sealing and securing the ballot bag, 91 percent of the precincts or voting areas actually were able to properly secure, seal and document seal chain of custody of the ballot bag, while 9 percent were not. It should be noted that this is the first time this seal/zipper lock combination has been used in an election. It is likely that this compliance percentage will improve in the General Election. The most common error occurred with the seal that was inserted in the plastic ballot bag clip, which was to cover and secure the ballot zipper. Typically, the seal was inserted before the zipper was in the plastic clasp.

Regarding the original seal being reported from initial Election Day precinct seal to the seal recorded upon opening the ballot bags by Elections staff observed by party observers, only 58 percent of the original bag seals provided to each precinct were recorded as being used on the ballot bag post audit. This simply means that 42 percent of the precincts have utilized an alternative seal during the process. There are a number of valid reasons why an original seal might not be used, however, the use of an alternative seal must be documented to establish a verifiable chain of custody for the particular bag. The chief reason that poll workers failed to utilize the seal provided was their inability to find the seal in their supplies. Alternative seals were also utilized on a small number of occasions when the poll workers broke their original seal. It is perfectly proper to provide a change of seals during a chain of custody process. However, the change must be fully documented and verifiable. Unfortunately, in 10 percent of the 355 precincts this did not occur. Such is unacceptable. As stated previously, 58 percent of the audited bags had the original seals and another 32 percent had documented seal changes.

Regarding the contents of the ballot bags, 97 percent of the audited voting areas or precincts reported that the ballots were in the bag without write-in candidates. Three percent of the opened and audited ballot bags contained write-in ballots where there was no valid write-in candidate. However, these ballots have been placed in a specific envelope and should not have been included in this ballot bag. The ballot bag is also to contain the signed election results summary tape from the AccuVote. Eighty-two (82) percent of the precincts in voting areas properly included this documentation, while 18 percent did not. The ballot bag is also to contain a copy of the official ballot report. Seventy-nine (79) percent of the audited precincts were reported as containing this documentation, while 21 percent did not.

VI. Delayed Election Day Results

The election integrity recommendation number 6 in my July 1, 2008 report to the Board recommended discussing with the parties modification of two election security procedures, the first being the start date for the tabulation of early ballots, and the second being modem of precinct level election results. Meetings were held with the parties and unanimous consensus was reached on early election ballot tabulation. For the Primary Election of September 2, 2008, early ballot tabulation began on Thursday, August 28, 2008, and continued through September 1, 2008. In total, over 63,000 early ballots were tabulated, with the results available for release after 8:00 p.m. on Election Day. These results were actually released at 8:20 p.m.

The other recommended election procedure modification related to Election Day modeming of on-site tabulation results to the elections central computer. This modification was not unanimously approved by the parties; hence, precinct level tabulation machines had to be secured at the precinct and physically transported to the elections central computer where security procedures were rechecked and the tabulated information downloaded to the central

computer. This action resulted in a significant delay prior to downloading each voting area for tabulation in the GEMS computer. Near final results were not available until 4:00 a.m. on the day following Election Day. This "slow" election result has been criticized by the media, as well as the Secretary of State.

VII. Request to Modify Modem Tabulation Procedure

On September 3, 2008, I communicated with the Party Chairs (Attachment 3) and requested reconsideration of the modem transmission prohibition and suggested either resumption of the precinct level modem transmission or a modified procedure where modem transmission could occur from a number of receiving stations and distributed geographically throughout Pima County. On September 15, 2008, the Party Chairs met to review this request. The result of this meeting was that the Democratic and Libertarian parties continue to have concerns over the modeming of Election Day vote tabulation; therefore, Election Day results will continue to be slow.

VIII. Estimated Time Associated with Vote Tabulation for the November General Election

Prior to the Primary Election, the Parties agreed that they will issue a brief statement to the media and general public before the election, signed by all representatives of the four recognized parties, that the public should expect a long delay in compiling the General Election results of November 4, 2008, due to delays associated with non-modem transmission of election results. This signed statement will go out as a press release to the public and general media. The time frames anticipated regarding the delay will be similar to those in the September 2, 2008 Primary Election.

IX. Precinct Level Download Tabulation Queue at the Central Tabulation Location

While the steps necessary to secure, transport, recheck and download precinct level tabulation are time consuming, perhaps the most time consuming component or critical path associated with tabulation of precinct level results occurs at the queue of precincts awaiting security re-verification prior to central tabulation downloading. During the September 2 Primary, at one point in the evening a queue of over 100 precincts occurred at the security/seal check station. This is simply because the volume of machines delivered to the central location was so great that the security of the machines could not be checked fast enough.

X. Administrative Actions Designed to Accelerate Election Day Vote Tabulation

A number of administrative improvements are being designed to accelerate Election Day vote tabulation given the decision that the modeming of Election Day results is unacceptable. These are:

1. Early Initial Transfer of Election Day Vote Tabulation Equipment, Both the AccuVote and Touchscreen TSx Machines - Normally this equipment would be transported at the end of the precinct closure post-election. A procedure is being developed whereby the vote tabulation machines will be transported to the designated receiving center immediately after the polls close, and the vote total receipts of both machines are printed and executed by poll workers. This should allow vote tabulation equipment to begin arriving at the receiving centers and hence central accounting facility much earlier than during the September Primary Election.
2. Defer Touchscreen Voting Device Tabulation - Since so few votes are cast on the Touchscreen devices (a total of 97 votes were cast on these devices during the Primary Election), processing and vote tabulation of the Touchscreen TSx machines will be deferred from election night to the following day. They will only be inventoried and secured upon receipt at the technical or central counting center on election night.
3. Dual or Triple AccuVote Security Line Checking - Deferring touchscreen device processing will free party observers performing security checks on vote tabulation equipment to concentrate their efforts on the AccuVote scanners. During the Primary Election, one AccuVote scanning security line was in place. By deferring security checks and tabulation of the Touchscreen voting devices to AccuVote, additional security lines can be initiated, and with the assistance of additional party observers, perhaps a third and fourth line can be implemented. Since it is the security clearance by party observers of the voting machines that is the critical path for the downloading of precinct level results to the central tabulating computer, dual or triple processing should speed up vote tabulation. Hopefully, the political parties will be able to provide observer staffing for dual or triple security line checking.

With these modifications, it is hopeful that Election Day results can be somewhat accelerated. However, delays should continue to be expected regarding the release of Election Day results.

XI. Remedial Measures to Reduce or Eliminate Primary Election Issues

The following actions are being taken with party consultation and assistance to reduce the problems identified in the various audits of the Primary Election process.

1. Mandatory Retrieval of Election Tabulation Equipment, Either AccuVote or Touchscreen TSx Equipment - As reported to you in my memorandum dated September 11, 2008, during the Primary Election, 3 AccuVote machines and 18 Touchscreen TSx machines were not recovered on election night. This is unacceptable. A procedure is being developed whereby specific poll workers, the Judge of the Opposite Party and Marshal, will be responsible for security and

transfer of the election AccuVote and Touchscreen TSx election equipment to a receiving center, and the receiving center will be responsible for validating that the appropriate materials have been returned and for the transfer of this equipment to the central tabulation center. If, during the course of election night, one or more precincts do not securely transfer this equipment on election night, law enforcement officials will be requested to directly contact the responsible election workers, at home if necessary, to ensure that the election equipment is secured and recovered during election night, not the next day. This procedure will be clearly explained to the election workers, and Elections Department staff will have each poll worker's home phone and, if appropriate, cell phone numbers so that necessary law enforcement follow-up can occur if the equipment is not properly reported and transferred on election night. In addition, we will also require contact information for the polling place for those instances where equipment was left behind at the polling place and it is necessary to re-enter the polling place after it is closed and secured.

2. Ballot Security, Transfer, and Retrieval on Election Night - During the September 2, 2008 Primary Election, one precinct placed their ballots in an improper ballot bag, thereby "losing" the ballots for a period of time since that bag would not be opened until after the canvass. Such is also not acceptable. Ballot transfer and security will receive the same law enforcement attention as the transfer of election vote tabulating equipment. The Precinct Inspector will be the individual designated responsible for ballot security and ensuring that all ballots are properly accounted for, along with one poll worker of the opposite party or the Inspector from that precinct. In addition, Elections officials will have personal contact information, including home phone and cell phone numbers of the Precinct Inspectors and polling place facility, and will have the authority to immediately follow-up with them on election night if the ballots are not found in a proper and secure manner as required by election processes.
3. Poll Worker Re-Training - Poll workers, by precinct, will be evaluated on the completeness of materials and other actions they were responsible for during the Election Day process. Poll workers will be graded on all areas of election performance. If any of these areas are deficient, the poll workers will be required to be re-trained and attend the longer training session required of new poll workers. If poll workers decline to be retrained they will not be re-employed. The scorecard that each precinct will receive is attached as Attachment 4.

In providing this scorecard and publicly disclosing the issues and/or errors made by poll workers in each precinct, our only intent is to improve performance, not criticize. Election poll workers are very dedicated to conducting an accurate election at each polling place. They take their jobs very seriously and each individual desires to perform exceptionally. Unfortunately, the infrequency in which elections occur, the compressed training that they receive, the 15-plus hour day, and the new

procedures added by the County in efforts to improve security make their work more and more complicated. Our interest in providing the scorecards to the election workers is to have them understand areas where improvement is necessary in their performance during the General Election. In addition, when Elections staff concentrate election training efforts with poll workers in the areas of noted deficiencies, we believe they can and will do better. Finally, it must be noted that this is the first public disclosure of poll worker by precinct. Some of these problems, irregularities and errors have occurred in the past, but they were not publicly disclosed. In an effort to provide absolute election transparency, we have now chosen to disclose this information in the hopes that such disclosure and transparency will lead to improved performance.

4. Establish Mini-Receiving Boards at Receiving Centers to Improve Chain of Custody - In the past, the satellite receiving centers accepted and documented the reception of all equipment and materials. Any discrepancies were noted and, if necessary, poll workers were directed to return to their polling place to retrieve critical items they left behind. To improve chain of custody of both ballot tabulation equipment and ballot materials, as well as voted ballots, with the assistance of the parties, mini-receiving boards consisting of at least two individuals of opposite parties will be set up at each receiving center to accept and verify security measures associated with tabulating equipment transfer as well as ballot materials and ballots. These receiving center boards at each individual receiving center, a total of which are 13, will be in a position to verify and substantiate tabulation equipment as well as ballot chain of custody. The existing receiving center checklist will be expanded to assist in identifying any discrepancies at this point, which should improve the ability to send workers back to their precinct to retrieve any missing material or equipment.
5. Accelerated Tabulation Equipment Transfer to Receiving Centers and Central Counting Center - After the polls close, two poll workers from opposing parties would leave the precinct with the scanner and touchscreen (after proper closeout) and proceed to the assigned receiving center as soon as possible. There the equipment would be reviewed and any variances documented. If the poll workers fail to bring all the necessary equipment, they will be sent back to the polls to retrieve the needed material. Poll workers who provide the necessary equipment to the receiving center will be given a receipt and dismissed. The machines will then be transported by vehicle directly to the central counting center for additional security processing and vote tabulation. A map showing the receiving centers and the geographical areas they serve is shown in Attachment 5.
6. Formal Receiving/Inspection/Snag Boards to be Convened on Election Night at Congress Avenue - Receiving/Inspection Boards will be convened on A level at the Congress facility and at the Central Counting or Tech Center on Mission Road. On A level, the Receiving Boards begin cataloging and separating the various materials and directing them to additional boards (provisional ballot boards, write-in boards,

etc.) and the Recorder. At the central counting center, the boards will verify and process AccuVote scanning devices for vote tabulation by the central tabulating computer.

A new large, secure "blue ballot bag" has been introduced into the process to securely carry ballots back to the Central Counting area. As demonstrated earlier, in the Primary Election these bags had a variety of materials in them. While it will be important to catalog the various equipment being received from the polling places and separating early ballots dropped off at the polls, provisional ballots and conditional provisional ballots as well as write-in ballots for processing, it is also important to retrieve and transfer to the Recorder the polling place rosters.

However, the most important task for these Receiving/Inspection/Snag Boards will be to open each blue ballot bag upon receipt on election night to ensure and document that the blue ballot bag contains all of the appropriate materials and nothing that is not supposed to be contained within the blue ballot bag. Any discrepancies discovered during opening can then be handled immediately by an appropriately convened Snag Board. This procedure should ensure that all ballots are properly accounted for and handled on election night, not days after the election as has been past normal practice. Immediate transfer of these poll rosters to the Recorder will ensure that voters have not voted more than once in the election. Following inspection, and while still under party observation, the blue ballot bags will immediately be resealed with a new tamper-proof seal and the change documented.

7. Checklist Development - As suggested and discussed at my meeting with the Party Chairs on Monday, September 15, Elections staff will develop several important checklists associated with the proper methods of closing down a polling place post-election, as well as security of the election equipment and transporting same to a receiving center and, finally, the important checklist associated with ballot bag contents and security. These checklists will allow for appropriate notation that the correct action has been taken, initialed by the appropriate party and signed by party observers, or the next individual to which the equipment and/or ballot bag is transferred to ensure an appropriately documented chain of custody for these critical election elements. Clearly identifying roles and responsibilities will allow Elections staff to use the scorecard results to form re-training for individual roles and hold specific poll workers accountable for critical steps in the process.

XII. Hand Count Rules and Code of Conduct

Given the disruption that occurred at the last hand count, it is appropriate to establish both a code of conduct for the participants, including party observers, as well as County officials. To ensure that ballot tampering does not occur, appropriate rules regarding what type of documents, writing instruments and other items that are allowed in a hand count procedure are also necessary. These rules, procedures and code of conduct will be developed and

presented to the parties for their review and approval prior to the next hand count required in the General Election. In addition, it is appropriate to establish an administrative process whereby the hand count audit boards are simply tasked with that requirement only, not any other security verification measures. Hence, it will be necessary to develop an appropriate administrative procedure, with the consent of the parties, to ensure that the ballots from the selected precincts are audited regarding security and that the hand count board is tasked only with tabulation and hand count verification of selected contested races.

XIII. Organizational Improvements

Below are a number of organizational improvements that are possible to assist in the orderly conduct of the General Election:

1. Single Party Coordinator and Required Number of Observers Appointed by the Chair of Each Political Party for Each of the Following Components

During the Primary Election there were occasions where multiple people indicated that they were responsible for certain aspects of a party's role in the election. A written designation will be required from each Party Chair identifying the one person that will speak for the party in each of the areas below, including communication of a list of volunteers to work in their respective roles. The designation shall be received at least one week prior to the commencement of that segment of the election process. The designee as well as the workers assigned to the various functions must be a registered member of the party they represent. Below is a list of required observers or participants.

<u>Function</u>	<u># of Observers/ Party Participants</u>
a) Boards to process early and provisional ballots	8 per party
b) Election night field receiving teams	25 per party
c) Congress Receiving/Inspection/Snag Boards	10 per party
d) Technical Center Receiving and Observation Boards	8 per party
e) Hand Count Boards	36 per party

2. Master Election Calendar - During the summer, the Elections Division created a Master Calendar identifying critical dates and tasks required for the Primary and the General Election. This calendar was used to communicate among various County departments as well as with the political parties and the press. For the General Election, the calendar will continue to be expanded to reflect critical dates as well as any additional processing dates agreed upon with the parties.

3. On Demand Ballot Printing - In prior elections, thousands of early ballots were printed, at significant cost, in order for any voter to be able to cast an early vote at numerous early voting sites. In the Primary Election of 2008, there were 1,668 different ballot styles. To avoid having to print thousands of potential ballots, most of which go unused, an alternative approach to printing ballots on demand has been implemented at the early voting sites as well as for use by the Duplication Board. Specific controls over the printing and audit processes associated with each printer have been established by the Recorder's Office and Elections Department. It should be noted that votes are not cast or counted using these printers.
4. Hand Count Technical Assistance by County Internal Auditors - One of the suggestions made at the Party Chair's meeting was that we should have a staff "Quality Control Officer" assigned to each of the hand count boards to assist in audit processing. I have requested that County Internal Audit staff be trained to provide administrative support for this audit function.
5. Technical Troubleshooters - The addition of technical troubleshooters has allowed the Elections Department and their Election troubleshooters to focus on election oriented issues and leave the technology to a team of up to 50 County technicians from various departments throughout the County. For the Primary Election, Pima County was divided into 28 separate areas for troubleshooting technical support, and 33 County employees provided technical support assistance during Election Day. These employees came from 11 different County departments. During Election Day, a total of 314 troubleshooting technical calls were made; 217, or 70 percent of the total, occurred between the hours of 5:00 a.m. and noon. From noon to 5:00 p.m., 71 calls were received, and from 5:00 p.m. to poll closing, 26 calls. In summary, most troubleshooting calls came early in the morning, typically during poll setup. Of the types of calls received, 69 percent related to the touchscreen TSx voting devices, either at setup or during operation associated with the touchscreens or operation of the touchscreen printers. While the touchscreen devices accounted for 69 percent of all troubleshooting calls during Election Day, they only tabulated 97 ballots out of 114,590, or 0.08 percent. The balance of the calls, or 31 percent, were distributed in areas related to the AccuVote scanners, seals, memory cards, etc. This team also provided wireless scanning random checks at voting locations. For the General Election, an additional 15 to 20 County employees will be used for technical troubleshooting at the polling locations.

One of the benefits of having County technical staff involved is that their experiences identified a need for simple mapping of each precinct and how to locate each polling place. The outcome of this is a series of maps for the troubleshooters to use in the General Election as well as a plan to place a link to the maps on the Elections Web Page where a voter can simply enter their precinct number and see a map showing their specific polling place.

6. Weapons Prohibited at the Central Counting Location and the 22nd Street Election Facility - Concern has been expressed by some regarding the presence of weapons, either open carry or concealed by permit, that may be brought to election facilities, at both the central counting station and the Elections Department 22nd Street facility. Board Policy C2.7 provides for the posting of certain public buildings where weapons will be prohibited. Both locations will be posted as weapons prohibited, which simply means that those who present themselves with any weapons firearms or regulated knives will be asked to lock them in a safe and secure facility provided at the location. Weapons lockers are available at the counting center and will be installed at the 22nd Street location.

XIV. Written Legal Opinion Requested of the County Attorney on Various Election Matters

During the course of the hand count audit for the September Primary, a request was made to hand count the local contested races for Supervisor. Such was not permitted by law. In addition, the number of precincts counted was doubled, and there arose some confusion over the number of party-provided hand count auditors necessary to conduct the hand count. A formal written request for a legal opinion by the County Attorney has been made (see Attachment 6) that relates to the following areas at issue.

1. Whether or not local races are permitted to be included in the races for hand count audit.
2. Whether or not the County can select twice the number of precincts specified as required by law for the hand count audit.
3. The number of party auditors required to participate in the hand count audit based on the number of precincts selected.
4. What occurs with a hand count audit if the number of party participants falls below the number required to perform the hand count audit?
5. Can other precincts be selected for hand counting after the drawing of selected precincts if those precincts are found to have some form of defect such as a seal that has been changed or does not match other documentation?
6. What is the authority of the Elections Director to conduct the hand count process and maintain order and control of the process to ensure that it is accomplished in an accurate manner?

These issues either have or could occur related to the required hand count audit of the General Election. Hence, it is necessary to have a pre-determined written County legal opinion regarding these issues.

XV. Sorting of Early Ballots by Precinct

There has been a great deal of discussion regarding the pros and cons of sorting early ballots. The advantage identified by some of the activists is that it would allow for a more complete audit of a precinct. The negative issues relate to the fact that early ballots are tracked from the time they are received through the entire process including creation of audit batches for potential use following the Election. The ballots arrive in random order and batches are created in the Recorder's Office based on batches of mail received. As the ballots move forward through the validation process, the contents of the batch are tracked. When the batch is subsequently transferred to the Elections Division for processing, the ballots are verified, and errors and other exceptions identified and the batch count rectified. At the counting center, the audit batches are selected from each counting machine to insure that each central count scanner is processing properly. If the ballots are sorted following the central count process, then it would be impossible to retrieve and reprocess all ballots processed on that scanner should the audit identify a discrepancy. We understand the value of sorting the early ballots by precinct, but when discussed with the Party Chairs, the consensus was that there was no good place to perform the sort and match up with the control processes that currently exist (see Attachment 7 from the Recorder regarding early ballot sorting).

XVI. Pima County Ballot Process Flow Chart

In order to design appropriate and adequate security and administrative control, the ballot flow process has been charted from initial development and printing all the way through final storage in the vault of the Pima County Treasurer for storage and disposition pursuant to statute. Attached as Attachment 8 is a draft of the ballot processing paths and options that are available to any voter in Pima County. The analysis is quite extensive and covers 19 pages of process development and analysis. This is our first attempt to clearly and graphically define the various administrative and security paths of processing election ballots in Pima County. Such will be helpful in designing future ballot and security processes, including improving chain of custody techniques, inventory control and security automation. This first draft has been developed by a business analyst in the County Information Technology Department with detailed assistance from Elections management staff. We will ask the parties to review the information and ask for development of a parallel process flowchart identifying key observation and party participation for transparency, security, and verification checks. Given the significant additional number of party observers and participants, it is appropriate to clearly identify their security and verification roles in ballot processing, and to formalize same in a ballot process flowchart. This will also aid the parties in focusing on specific roles and common expectations. To our knowledge this is the first time that ballot processing has been flowcharted in the detail now available regarding Pima County ballot processing.

The Honorable Chairman and Members, Pima County Board of Supervisors
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Attachments

- c: Sallee Hunter, Acting Chair, Pima County Green Party
- David Euchner, Chair, Pima County Libertarian Party
- Vince Rabago, Chair, Pima County Democratic Party
- Judi White, Chair, Pima County Republican Party
- Brad Nelson, Elections Director
- Chris Straub, Chief Civil Deputy County Attorney
- Dan Jurkowitz, Deputy County Attorney, Civil Division