



June 6, 2023

Via Email

Mohave County Board of Supervisors
Hon. Travis Lingenfelter, Chairman lingen@mhove.gov
Hon. Hildy Angius angiu@mhove.gov
Hon. Buster Johnson johnsb@mhove.gov
Hon. Jean Bishop bishoj@mhove.gov
Hon. Ron Gould gouldr@mhove.gov

Re: Agenda Item 57; Board Meeting of June 5, 2023

Dear Supervisors:

Last night, the Board of Supervisors approved an agenda item instructing the Mohave County Election Director to develop a plan for the Board's consideration to hand count all ballots for the 2024 election. It is my understanding that the intent of this directive is to develop a proposal to tabulate ballots by hand count instead of using election equipment to tabulate and then conduct a separate post-election hand count audit using a random sample of ballots. I write today to express my concerns regarding any plan that fails to adhere to federal and state law as well as Election Procedures Manual requirements.

I understand that part of the basis for your consideration of this plan is Senator Sonny Borrelli's letter to county boards of supervisors, which uses the existence of a Senate Concurrent Resolution that has neither the force nor effect of law to try to persuade county officials to flout the existing requirements of our federal and state election statutes.

There are three items of concern to my office:

First, the Help America Vote Act of 2002 (HAVA) requires a state plan and certification of compliance with applicable laws and requirements. The voting systems that a state adopts and uses under HAVA allow votes to be cast and counted, among other things, by those systems. As a policy matter, this has enabled all jurisdictions in Arizona to quickly

and accurately count voters' ballots and provide election results in a timely and efficient manner. I recognize that many people would prefer to have those results even more quickly. However, if greater speed in reporting election results is the goal, changing to solely a hand count would not be taking us in the right direction. The Arizona State Plan, developed under the leadership of then-Governor Jan Brewer, outlined how the monies given to our state would be used; to that end, the State adopted voting system guidelines and processes consistent with the requirements of HAVA Sec. 301.

Second, even prior to HAVA, Arizona had a history of secure and efficient vote tabulation due to our own state laws and the Election Procedures Manual, which was bolstered by the new federal requirements and funding. All of these requirements ensure that electronic voting systems used in Arizona elections are secure and accurate. As you are aware, state law requires pre- and post-election logic and accuracy testing of the election equipment and provides for post-election hand count audits. State law and the Election Procedures Manual provide for many different layers of security to ensure that no single point of breakdown will lead to systemwide failure. These types of strict processes and procedures to ensure integrity, accuracy and security are not in place for a full hand count. This lack of accountability could result in significant human error.

Third, while I appreciate that the Board is considering this well in advance of the 2024 elections, having more time available to consider such a plan does not address the many substantive problems with such a proposal. A full hand count, whether in addition to, or in lieu of using electronic tabulation equipment, raises many logistical as well as legal concerns. For the 2022 Primary Election, almost 50,000 Mohave voters cast ballots. For the 2022 General Election, that number rose to 82,758 ballots cast. An even higher voter turnout is likely in the 2024 elections. As referenced above, hand counting ballots is incredibly prone to human error, which results in a time-intensive process to arrive at correct, final results. However, even assuming correct and final results, state law does not allow county boards, which are specifically granted limited authority to canvass election results, to unilaterally substitute a hand count for certified and tested electronic tabulation equipment. County boards of supervisors have only those powers "expressly conferred by statute," and the Board "may exercise no powers except those specifically granted by statute and in the manner fixed by statute." *Hancock v. McCarroll*, 188 Ariz. 492, 498 (App. 1996) (quotations omitted). Additionally, hand counting ballots may raise additional security and ballot chain of custody concerns and threaten Mohave County's ability to timely canvass election results within 20 days of the election, as required by state law.

You may be aware that prior to the 2022 General Election, then-Secretary Katie Hobbs joined litigation against another county which approved undertaking a hand count outside of the scope of its statutory grant of authority. In that case, *Arizona Alliance of Retired*

Persons v. Tom Crosby, et al., (Ruling, Case No. CV2022-00518 (Nov. 7, 2022)) the trial court agreed with the plaintiffs and the Secretary of State when considering the legality of the Board's action and decided against the Board. That matter is currently on appeal before Division 2.

I wanted to take the opportunity to share my concerns regarding the action taken by the Board last night, and I appreciate your consideration. I had planned to visit Mohave County in person recently, but was unable to make that trip. However, I plan to visit as soon as I can, and I sincerely hope I will have the opportunity to meet with each of you to discuss this and other matters in which my office can continue to support you and your professional elections staff.

Sincerely,



ADRIAN P. FONTES
Secretary of State

cc: Ginny Anderson, Clerk of the Board anderg@mohave.gov
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