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**ARIZONA COURT OF APPEALS**

**DIVISION TWO**

ARIZONA ALLIANCE FOR  
RETIRED AMERICANS, INC. and  
STEPHANI STEPHENSON,  
  
Plaintiffs/Appellees,

No. 2CA-CV2022-0136

Cochise County Superior Court Case  
No. S0200CV202200518

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v.

TOM CROSBY, ANN ENGLISH, and PEGGY JUDD, in their official capacities as the Cochise County Board of Supervisors; DAVID STEVENS, in his official capacity as the Cochise County Recorder; and BOB BARTELSMEYER, in his official capacity as the Cochise County Elections Director,

Defendants/Appellants.

**APPELLEES' RESPONSE TO  
APPELLANTS' NOTICE OF  
SUPPLEMENTAL AUTHORITY**

Appellees submit this response to Appellants' Notice of Supplemental Authority, which claims to address the question of "whether Title 16 contains specific procedures for counting ballots by hand *in the first instance*." Notice ("Not.") at 2.

Appellants have made clear that their appeal is limited to the question of whether, during the 2022 election, the Cochise County Board of Elections (the "Board") could conduct an initial audit of 100% of ballots. The Board did not seek to conduct a hand count as a substitute for a machine count. *See* Appellants' Reply Br. at 1 ("As a threshold matter and to prevent any confusion, Defendants wish to clarify that this case has never been about whether the Board could conduct a 100% hand count *in the first instance* such that it need not use tabulators for the initial tallying of ballots (though it may do so under Arizona law)" (emphasis in original)).

Nonetheless, the authorities that Appellants raise in their Notice do not support their argument that Title 16 was "written with the default assumption that ballots will be counted by hand." Not. at 2. A.R.S. § 16-442(D)(1) does not refer to the use of any

electronic tabulators as “experimental”—it states that the Secretary may revoke certification of any voting system or device “that is not certified for use or approved for experimental use in this state pursuant to this section.” A.R.S. § 16-442(F) further explains: “The secretary of state or the governing body may provide for the experimental use of a voting system or device without a final adoption of the voting system or device, and its use at the election is as valid as if the machines had been permanently adopted.” In other words, a particular voting system can be either “experimental” or “permanently adopted” for use in an election. But nothing in A.R.S. § 16-442 even remotely suggests that *all* electronic tabulators are “experimental,” as Appellants suggest.

Appellants list various other election statutes, but none addresses a “specific procedure[] for counting ballots by hand *in the first instance*.” See Not. at 2–3 (citing A.R.S. §§ 16-607 (regarding statements of tally “[i]n each election precinct where voting machines are used”), 610 (instructions for counting ballots with uncertain selections), 611 (instructions for counting overvoted ballots), 612 (instructions for counting write-in votes), 615(B) (discussing procedure for delivery of official returns), 621(B) (discussing requirements for “electronic vote adjudication feature[s]” that are certified and authorized for use at counting centers), and 622(A) (providing for releasing unofficial returns when ballots are being counted by “vote tabulating equipment”)).

Arizona law simply does not set forth any procedure by which election officials might hand count ballots in the first instance. *See* Appellees’ Answering Brief at 2–3 (“[B]allots may only be counted by hand in the first instance if ‘it becomes impracticable to count all or a part of the ballots with tabulating equipment.’ A.R.S. § 16-621(C). Otherwise, using a hand count is limited to a post-election random sample audit to confirm the accuracy of the electronic tabulation. A.R.S. § 16-602.”).

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DATED this 21st day of July, 2023.

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**CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the foregoing Motion to Take Judicial Notice was e-filed with the Clerk of the Arizona Court of Appeals, Division Two via the Court's e-filing system on July 21, 2023, and that a copy was served via email on this same date to the following:

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