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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF COCHISE

ARIZONA ALLIANCE OF RETIRED
AMERICANS, INC., and STEPHANI
STEPHENSON,

Plaintiffs,

v.

TOM CROSBY, ANN ENGLISH, PEGGY
JUDD, in their official capacities as members
of the Cochise County Board of Supervisors;
and COCHISE COUNTY, a political
subdivision of the State of Arizona,

Defendants.

CASE NO. CV202200552

**LEAGUE OF WOMEN VOTERS OF
ARIZONA, ACLU OF ARIZONA, ARIZONA
DEMOCRACY RESOURCE CENTER AND
ARIZONA CENTER FOR
EMPOWERMENT'S MOTION FOR LEAVE
TO FILE AMICUS CURIAE BRIEF**

1 The League of Women Voters of Arizona, ACLU of Arizona, Arizona Democracy
2 Resource Center, and Arizona Center for Empowerment (collectively, “amici”) respectfully move,
3 pursuant to this Court’s inherent authority, to file a brief as amicus curiae to provide its perspective
4 on the legal and operational issues presented by Cochise County’s failure to canvass the 2022
5 General Election. *See Exhibit 1* (amicus brief). Plaintiffs consent to the amici’s filing of a brief.
6 At the time of this filing, counsel for amici have not received a response from counsel for
7 Defendants as to whether they consent to the filing of a brief. The amici submit a proposed form
8 of order granting this Motion.

9 **I. Trial Courts Have Inherent Authority to Accept Amicus Curiae Briefs**

10 Courts have “inherent power to do all things reasonably necessary for administration of
11 justice.” *Schavey v. Royston*, 8 Ariz. App. 574, 575 (1968). Consistent with this principle, Arizona
12 trial courts have accepted amicus curiae briefs and permitted amici to present argument to assist
13 the court even in the absence of a specific rule authorizing the appearance of amici. *See Home*
14 *Builders Ass’n of Cent. Ariz. v. City of Apache Junction*, 198 Ariz. 493, 496 n.4 (App. 2000)
15 (“Several amici have appeared, both here and in the trial court, supporting the respective positions
16 advanced by the appellants, the City, and the District.”).

17 **II. Interests of the Amici**

18 **A. League of Women Voters of Arizona**

19 The League of Women Voters of Arizona (“League”) is a non-partisan, grassroots
20 organization that encourages informed and active participation in the democratic process. The
21 League consists of a statewide organization and five local chapters with 900 members statewide.
22 Committed to promoting the democratic processes of government, the League has an interest in
23 the lawful execution of the Cochise County general election.

24 **B. ACLU of Arizona**

25 The ACLU of Arizona is a state-wide nonpartisan organization and the state affiliate of the
26 national American Civil Liberties Union. The ACLU of Arizona has over 25,000 members and
27 active supporters, approximately 483 of whom reside in Cochise County. As a consequence of the
28

1 Cochise County Board of Supervisor's failure to canvass the 2022 General Election results, voters
2 in Cochise County, including ACLU of Arizona members, will not have their valid votes counted,
3 and will thus be deprived of their right to vote and have their votes properly counted. Dedicated
4 to protecting constitutional rights and civil liberties of all Arizonians, the ACLU of Arizona has
5 an interest in ensuring that the right to vote of all individuals in Cochise County, including its
6 members, is unimpaired.

7 **C. Arizona Democracy Resource Center**

8 The Arizona Democracy Resource Center is a non-partisan, non-profit organization
9 dedicated to empowering community members and encouraging civic participation. The Resource
10 Center is committed to dismantling structural barriers to democratic participation, supporting
11 community self-determination, and investing in local leadership. This year, the Resource Center
12 gathered over 6,000 signatures in Cochise County in support of the Free and Fair Elections
13 Initiative, which would have made it easier for Cochise County voters and others to cast their
14 ballots.

15 **D. Arizona Center for Empowerment**

16 The Arizona Center for Empowerment is a non-partisan, non-profit organization that
17 advocates for social, racial, and economic transformation. The Center for Empowerment is
18 committed to human dignity, inclusion, equity, and collective growth. The Center works to reclaim
19 our shared power alongside our families and community and to educate, empower and engage our
20 state's working families to create solutions to issues of social and economic justice.

21 **III. The Amicus Brief Will Assist the Court**

22 Under the Arizona Rules of Civil Appellate Procedure, amicus briefs may be filed where a
23 court determines that amici "can provide information, perspective, or argument that can help the
24 appellate court beyond the help that the parties' lawyers provide." Ariz. R. Civ. App. P.
25 16(b)(1)(C)(iii). While this rule is not binding on this Court, it provides guidance for determining
26 when to accept amicus curiae briefs and allow the appearance of amici. This brief and argument
27 from amici will provide the court with useful background on the implications of Cochise County's
28

1 failure to canvass the election and the critical need for a clear ruling admonishing such conduct.
2 The perspective of these amici is different from the parties in the case. These organizations have
3 as part of their mission non-partisan access to voting, as well as civic engagement. Both the League
4 and the ACLU are part of national organizations defending the right to vote across everywhere.
5 Their perspective will assist the Court in understanding the state national repercussions of
6 Defendants' effort to disenfranchise qualified voters and to undermine the electoral process.

7 **IV. Conclusion**

8 For all these reasons, the League of Women Voters of Arizona, ACLU of Arizona,
9 Arizona Democracy Resource Center, and Arizona Center for Empowerment respectfully
10 requests that the Court grant this Motion and consider the lodged amicus curiae brief.
11

12 Dated: November 30, 2022

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14 By: /s/ Andrew M. Federhar
15 Andrew M. Federhar

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EXHIBIT 1

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IN AND FOR THE COUNTY OF COCHISE

ARIZONA ALLIANCE OF RETIRED
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JUDD, in their official capacities as members
of the Cochise County Board of Supervisors;
and COCHISE COUNTY, a political
subdivision of the State of Arizona,

Defendants.

CASE NO. CV202200552

**BRIEF IN SUPPORT OF PLAINTIFF BY
AMICI CURIAE LEAGUE OF WOMEN
VOTERS OF ARIZONA, ACLU OF
ARIZONA, ARIZONA DEMOCRACY
RESOURCE CENTER AND ARIZONA
CENTER FOR EMPOWERMENT**

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1 **I. INTRODUCTION**

2 The right to vote and have one’s vote counted, in accordance with established election
3 laws, is a foundational principle of our democracy. This right depends on election officials and
4 staff performing a timely and accurate tally of votes so that the candidates with the most votes
5 can be declared winners and assume office. Thus, as the Arizona Supreme Court has held,
6 public officials must follow established election laws in order to protect and safeguard the right
7 to vote and preserve the integrity of the electoral process. *Arizona Pub. Integrity All. v. Fontes*,
8 250 Ariz. 58, 61 (Ariz. 2020). Generations of dedicated public servants in Arizona and across
9 the country have consistently and faithfully upheld these tenets.

10 In recent years, however, these principles have come under increasing threat in Arizona
11 and elsewhere. This case concerns an egregious instance of such a threat: an attempt by two
12 individuals to thwart the outcome of an election. Specifically, Cochise County Supervisors Tom
13 Crosby and Peggy Judd (the “Supervisors”) abused their purely ministerial role in the election
14 process by refusing, by a 2-1 vote, to certify results of the state and federal elections held on
15 November 8, 2022 by the legal deadline of November 28, 2022. Rather than certifying all of the
16 votes cast in Cochise County by the statutory deadline of November 28, the Supervisors willfully
17 violated the statute, opting to convene a post-deadline “evidentiary” hearing regarding
18 “certification” of the voting machines used in the election (an issue irrelevant to the results of the
19 election).¹ By refusing and delaying certification, these public officials seek, “in the middle of
20 an election,” to “change the law based on their own perceptions of what they think it *should* be,”
21 and thereby “undermine public confidence in our democratic system and destroy the integrity of
22 the electoral process.” *Id.* (emphasis in original). This attempt follows on the heels of earlier
23 efforts by the same Board of Supervisors to force an unlawful hand count of all ballots cast in the
24 election—efforts repudiated by this Court, and subsequently by the Court of Appeals and
25 Arizona Supreme Court. *See* Order at 1, *All. For Ret. Ams. v. Crosby*, No. 2 CA-CV 2022-0136
26
27

28 ¹ *See* Video Recording of Nov. 28, 2022, Special Board of Supervisors Meeting at 3:43-5:40,
8:47-9:14, <https://www.youtube.com/watch?v=G013C4rKHGQ>.

(Ariz. Ct. App. Nov. 10, 2022); Order at 1-2, *All. For Ret. Ams. v. Crosby*, No. T-22-0008-CV (Ariz. Nov. 10, 2022).

The Supervisors’ continued refusal to comply with established election law requires the Court’s forceful and unequivocal reaffirmance that *all* public officials of Arizona must protect and enforce the state’s election laws as written—without delay, without compromise, and without excuse. No one may assume for themselves substantive electoral roles that have not been given them by law, and consequently hold an election hostage at their whim. And no one may abuse the certification process as a tool for protest, questioning election rules and procedures, or “chang[ing] the law based on their own perceptions of what they think it should be.” *Fontes*, 250 Ariz. at 61. To allow such behavior would flout the core principle, enshrined in the Arizona Constitution, that “All elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Ariz. Const. Art. II Sec. 21.

As discussed below and in greater detail in Plaintiffs’ complaints, the basis for the Supervisors’ unlawful action—that the County’s voting machines lack appropriate certifications—is pretextual and meritless. But even if there were support for it, the Supervisors nevertheless lack discretionary authority to reject or postpone the canvass. County supervisors “may exercise no powers except those specifically granted by statute and in the manner fixed by statute,” and any other actions are “without jurisdiction and wholly void.” *Mohave County v. Mohave-Kingman Estates, Inc.*, 120 Ariz. 417, 420, 586 P.2d 978, 981 (1978) (citation omitted). And those statutes leave county boards of supervisors with *no authority* to refuse to canvass the election within the 20-day deadline. *See* A.R.S. § 16-642(A).

Amici curiae League of Women Voters of Arizona and ACLU of Arizona are statewide nonpartisan organizations and the state affiliates of their respective national organizations, with thousands of members in Arizona. Amici curiae Arizona Democracy Resource Center (“ADRC”) and Arizona Center for Empowerment (“ACE”) are civic engagement organizations committed to state-level policy change through, among other techniques, protecting voting rights. Together, amici submit this brief to urge the Court to grant Plaintiffs’ petition, order the

Supervisors to canvass the election results immediately, and make crystal clear, once and for all, that Arizona law does not tolerate such gamesmanship over the very foundations of our democracy, and that the certification process is never an appropriate vehicle for officials to air their grievances with how an election was conducted.

II. INTEREST OF AMICI

A. League of Women Voters of Arizona

The League of Women Voters of Arizona (“League”) is a domestic nonprofit corporation in Arizona. The League is a non-partisan, grassroots organization that encourages informed and active participation in the democratic process. The League of Women Voters of Arizona is an affiliate of the League of Women Voters of the United States. For over 80 years, the League has dedicated its efforts to protecting and promoting the democratic processes of government through public service, civic participation, and robust voter education and registration. The League consists of both a statewide organization and five local chapters with 900 members statewide. The League educates voters about upcoming elections; works to encourage individuals to vote; and participates in statewide coalitions with other organizations that share similar goals. The organization envisions a democracy where every person has the desire, the right, the knowledge, and the confidence to participate.

B. ACLU of Arizona

The ACLU of Arizona is a state-wide nonpartisan organization and the state affiliate of the national American Civil Liberties Union. The ACLU of Arizona has over 25,000 members and active supporters, approximately 483 of whom reside in Cochise County.

The ACLU of Arizona defends individual rights through litigation, legislation, and public education, and frequently files amicus curiae briefs in Arizona courts on a wide range of civil liberties and civil rights issues. The ACLU of Arizona is dedicated to protecting the constitutional rights and civil liberties of all Arizonans. This includes protecting the right of individuals to vote and have their votes properly counted.

1 **C. Arizona Democracy Resource Center**

2 The Arizona Democracy Resource Center is a non-partisan, non-profit organization
3 dedicated to empowering community members and encouraging civic participation. The
4 Resource Center advocates for equitable representation for all Arizonans and works closely with
5 community leaders to protect our democracy. It is committed to dismantling structural barriers
6 to democratic participation, supporting community self-determination, and investing in local
7 leadership. This year, the Resource Center gathered over 6,000 signatures in Cochise County in
8 support of the Free and Fair Elections Initiative, which would have made it easier for Cochise
9 County voters and others to cast their ballots.

10 **D. Arizona Center for Empowerment**

11 The Arizona Center for Empowerment is a non-partisan, non-profit organization led by
12 changemakers fighting for social, racial, and economic transformation. The Center is committed
13 to human dignity, inclusion, equity, and collective growth. The Center works to reclaim our
14 shared power alongside our families and community and to educate, empower and engage our
15 state's working families to create solutions to issues of social and economic justice. The Center
16 is a statewide membership organization with several offices including one in Cochise County,
17 and recently supported a ballot cure operation in Cochise County working to ensure that every
18 vote counted.

19 **III. BACKGROUND**

20 The Cochise County Board of Supervisors' attempt to delay certification of the 2022
21 general election is just the latest chapter in a months-long crusade to damage an election process
22 that these very county officials are statutorily mandated to carry out—based on unsubstantiated
23 conspiracy theories regarding the certification of voting machines.

24 **A. The Supervisors' Efforts to Force an Unlawful Hand Count of All Votes**

25 The Supervisors' efforts to undermine the canvassing of the 2022 election began in
26 September, when they began contemplating forcing a full hand count to audit the results of
27 electronically machine-tabulated votes. *See* Ex. A (Sept. 27, 2022, Proceedings of the Cochise
28 County Board of Supervisors). Ordering a full hand count was not something the Board could

1 legally do. County Boards of Supervisors only have power “expressly conferred by statutes,”
2 *Hancock v. McCarroll*, 188 Ariz. 492, 498 (App. 1996) (quoting *State ex rel. Pickrell v. Downey*,
3 102 Ariz. 360, 363 (1967)), and neither the Arizona statutes nor Election Procedures Manual
4 gives the Board authority to conduct a full hand count audit of all votes. Indeed, Arizona law
5 only authorizes recounts when canvassed results fall within a statutorily designated margin. *See*
6 A.R.S. § 16-661. And the Cochise County Attorney, the Legislative Counsel, and the State
7 Elections Director all warned the Supervisors that conducting a hand count audit of all votes
8 would be unlawful. Ex. B (Oct. 19, 2022 Letter from K. Lorick). Nevertheless, on October 24,
9 2022, by a 2-1 vote, the Supervisors adopted a resolution requiring the County Recorder or other
10 officer in charge of elections “to perform a hand count audit of all County precincts for the 2022
11 General Election,” on the basis that it was apparently “widely known that many voters lacked
12 confidence in the voting system.” *See* Video Recording of Oct. 24, 2022, Special Board of
13 Supervisors Meeting, <https://www.youtube.com/watch?v=170xHmbhnJI>.²

14 The Arizona Alliance for Retired Americans, Inc. and Cochise County resident Stephanie
15 Stephensen filed a special action in the Cochise County Superior Court seeking a declaratory
16 judgment and injunctive relief to prevent the Supervisors from proceeding with a full hand count
17 audit. The plaintiffs also filed a petition for a writ of mandamus or alternatively a motion for a
18 preliminary injunction. After a full-day evidentiary hearing, this Court agreed, and on November
19 7, 2022, issued an order finding that the resolution violated Arizona law. The Court enjoined the
20 Supervisors’ resolution requiring a full hand count audit of all votes cast in Cochise County in
21 the 2022 general election. Ex. D at 11 (Order, *All. For Ret. Ams. v. Crosby*, No. CV 202200518
22 (Ariz. Sup. Ct. Nov. 7, 2022)).

23 Despite the Court’s order, the Supervisors remained undeterred. On November 9, 2022,
24 the Supervisors authorized the filing of an expedited appeal of the November 7 order, which the
25 Court of Appeals rejected on November 10, 2022. The Supervisors also filed a motion to

26 _____
27 ² The resolution purported to direct the recorder to proceed with a hand count audit pursuant to
28 A.R.S. § 16-602(B), but it was clear that the Supervisors actually intended for a full hand count
of all ballots cast in Cochise County to be conducted. *See* Ex. C (Oct. 25, 2022, Letter from K.
Lorick).

1 transfer the appeal directly to the Arizona Supreme Court, which the Supreme Court rejected on
2 November 10. Subsequently, the Supervisors and the County Recorder began taking the position
3 that this Court’s November 7 order did not prohibit the County from conducting an expanded
4 hand count short of 100% of the votes cast, and indicated their intention to conduct such an audit
5 of 99.9% or less of the votes. Although the Cochise County Attorney advised the parties of “the
6 potential criminal acts that would be inherent in proceeding with the ‘expanded hand count,’”
7 Ex. E (Nov. 10, 2022, Letter from B. McIntyre), the Board and County Recorder maintained
8 their position.

9 In the interim, the Cochise County Elections Department conducted a hand count audit of
10 the general election in compliance with A.R.S. § 16-602. See Nov. 12, 2022, Letter from L.
11 Marra, available at [https://azsos.gov/sites/default/files/2022GeneralHandCountReport-](https://azsos.gov/sites/default/files/2022GeneralHandCountReport-Cochise.pdf)
12 [Cochise.pdf](https://azsos.gov/sites/default/files/2022GeneralHandCountReport-Cochise.pdf). Four contested races were randomly drawn for the audit, totaling 1,802 ballots that
13 were hand audited by four boards. *Id.* at 7-11. No discrepancies were found in any of the four
14 contested races audited by the four boards. *Id.*

15 Nevertheless, the Supervisors and the County Recorder insisted that an expanded hand
16 count was still required. On November 14, 2022, they filed a special action in the Cochise
17 County Superior Court seeking a writ of mandamus to force County Elections Director Lisa
18 Marra to either perform an unlawful “expanded hand count” or release county election ballots for
19 the Recorder to carry out the unlawful “expanded hand count.” Compl. at 9, *Crosby v. Marra*,
20 No. CV 202200533 (Ariz. Sup. Ct. Nov. 14, 2022). Two days later, the Supervisors and County
21 Recorder withdrew their petition, on the basis that it had become clear that the state-wide race
22 for attorney general is “more likely than not going to require a statewide recount,” and that the
23 recount would be completed “using different machines and software,” thereby “achiev[ing] some
24 of the goals envisioned” by the Supervisors. Mot. to Withdraw at 1-2, *Crosby v. Marra*, No. CV
25 202200533 (Ariz. Sup. Ct. Nov. 16, 2022) Supervisor Judd was blunt as to the intentions behind
26 her actions up to that point—noting that Cochise County elections director Lisa Marra has
27 “really been afraid of us for a while” and that “I think we’ve done all the damage or good — I’m
28

1 not saying that was all damage, I think there was some good that came out of this ... [b]ut we've
2 done all that we can."³

3 **B. The Supervisors' Current Efforts to Delay the Statutorily Mandated Canvass**
4 **of the Election Results**

5 Having failed to force an unlawful hand count audit of all votes, the Supervisors next
6 embarked on a campaign to unlawfully delay certification of the election results. For the
7 November 8, 2022 General Election, county boards of supervisors are required by state law to
8 canvass the election no later than November 28, 2022. *See* A.R.S. § 16-642(A) (requiring each
9 county board of supervisors to meet and canvass the election no later than 20 days after the
10 election).

11 On November 18, 2022, the Supervisors convened a special meeting to consider
12 postponing canvassing the election. At the meeting, three well-known 2020 election deniers and
13 conspiracy theorists—Brian Steiner, Paul Rice and Daniel Wood—raised unsupported claims
14 regarding whether Cochise County's election equipment was properly certified and in
15 compliance with state and federal requirements.⁴ These three individuals had previously filed
16 various lawsuits raising identical—and again completely unsubstantiated—claims regarding
17 voting machine certifications and testing facility accreditations. Those lawsuits were summarily
18 and swiftly dismissed by the Arizona Supreme Court. *See* Order, *We the People v. Governor*
19 *Doug Ducey*, No. CV-21-01114-SA (Ariz. May 11, 2021), 2021 WL 1997667; Order, *Daniel*
20 *Wood et al v. Mark Brnovich et al.*, No. CV-22-0217-SA, (Ariz. Sept. 8, 2022).⁵ After
21 hearing from these individuals (and others), the Supervisors subsequently voted 2-1 to postpone
22

23 ³ *See* Bob Christie, *Cochise County leaders end hand-count lawsuit, cite recount*, Arizona's
24 Family (Nov. 17, 2022), <https://www.azfamily.com/2022/11/17/cochise-county-leaders-end-hand-count-lawsuit-cite-recount/>.

25 ⁴ *See generally* Video Recording of Nov. 18, 2022, Special Board of Supervisors Meeting,
26 <https://www.youtube.com/watch?v=RvAxd054xoM>.

27 ⁵ One of the individuals—Daniel Wood—also previously sought to be placed on ballot for the
28 Republican primary for State Senator in Legislative District 16 by submitting over 400 invalid
signatures on his own nomination petition. *See* Order, *Martinez v. Wood*, No. CV-22-0101-
AP/EL(Ariz. May 9, 2022) (affirming injunction precluding the placement of Mr. Wood's
name on the Republican Primary Ballot for State Senator of Legislative District 16).

1 canvassing the election results to November 28 “until such evidence about lawful certification
2 [of voting equipment] by an accredited laboratory is presented and confirmed by persons with
3 expertise in that field.”⁶

4 Following reports of the Supervisors’ resolution to postpone the canvass, on November
5 21, 2022, the State Elections Director sent a letter to the Supervisors, providing the following
6 information (and supporting documents) confirming that the claims regarding Cochise County’s
7 election equipment were false:

- 8 • Cochise County uses Election Systems & Software (E&S) Voting System (EVS)
9 version 6.0.4.0 (EESVS6040), which the U.S. Election Assistance Commission
10 (“EAC”) certified on May 3, 2019.
- 11 • SLI Compliance, the federal lab that conducted the testing for EESVS6040, was
12 accredited by the EAC throughout the testing process (from October of 2018
13 through May 2019).
- 14 • The EESVS6040 was evaluated by the State’s Equipment Certification Advisory
15 Committee, and then certified by the Secretary of State on November 5, 2019,
16 pursuant to Arizona’s certification requirements.
- 17 • The EAC, specifically in response to concerns raised at the November 18
18 Supervisors’ special meeting, recently provided separate written confirmation that
19 SLI Compliance was properly accredited throughout the evaluation and
20 certification process of Cochise County’s equipment.

21 Compl., Ex. A (Nov. 21, 2022, Letter from K. Lorick), *Hobbs v. Crosby*, No. CV 202200553
22 (Ariz. Sup. Ct. Nov. 28, 2022).

23 On November 23, 2022, County Supervisor Peggy Judd—one of the two supervisors who
24 voted to postpone certification—indicated that she would vote to canvass the election on
25 November 28. Judd reported that she spent several nights reviewing information regarding the
26 laboratories that certify vote tabulation machines and was “good” with certification.⁷

27 However, on November 28 (the statutory deadline for the County to canvass the
28 election), the Supervisors voted 2-1 at a special meeting to table the certification of the election

26 ⁶ See Video Recording of Nov. 18, 2022, Special Board of Supervisors Meeting at 2:15:28-
27 2:15:51, <https://www.youtube.com/watch?v=RvAxd054xoM>.

28 ⁷ Mary Jo Pitzl & Ryan Randazzo, *Cochise County official, once in doubt, now says she will vote
to certify election results*, The Arizona Republic (Nov. 23, 2022), available at
<https://www.yahoo.com/now/cochise-county-official-once-doubt-021711069.html?guccounter=1>

1 results until December 2, 2022.⁸ Despite the unequivocal and uncontested information provided
2 by the Secretary of State and the EAC regarding the certifications of Cochise County’s election
3 equipment, according to Supervisor Tom Crosby, the Secretary had not been “responsive in
4 providing proof of lawful accreditation of voting machine laboratories” to the three conspiracy
5 theorists who previously raised false claims regarding the certification of the county’s voting
6 machines.⁹ This, per Supervisor Crosby, apparently “suggest[s] the inability to provide the
7 requested proof by the secretary.”¹⁰ Despite her previous statement that she would vote to
8 certify, Supervisor Judd reversed course and voted with Supervisor Crosby against certifying the
9 results. The New York Times interviewed her afterward, and reported the following:

10 As justification, [Supervisors Crosby and Judd] have publicly cited an
11 elaborate theory that claims that many voting machines in the state are
12 technically illegal — which has been debunked by federal elections
officials and rejected by the state’s Supreme Court.

13 But in an interview shortly after Monday’s vote, Ms. Judd acknowledged
14 that this was mostly a pretext for a certification delay that was intended
as a protest of Maricopa County’s own certification.

15 “It’s the only thing we have to stand on,” she said, referring to the voting
16 machine claim.¹¹

17 To date: (i) a hand count audit pursuant to A.R.S. § 16-602 has been completed (with
18 zero discrepancies noted); (ii) all votes have been counted; and (iii) the State Elections Director
19 has confirmed the certification of machines concerning the Supervisors, but—notwithstanding
20 their statutory obligation to do so—the Supervisors have yet to canvass the elections results in
21 Cochise County, in violation of their duty under Arizona law.

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23
24
25 ⁸ See Video Recording of Nov. 28, 2022, Special Board of Supervisors Meeting at 3:41-5:40,
8:47-9:14, <https://www.youtube.com/watch?v=G013C4rKHGQ>.

26 ⁹ See *id.* at 2:55-58.

27 ¹⁰ See *id.* at 3:00-3:10.

28 ¹¹ Charles Homans, *G.O.P.-Controlled County in Arizona Holds Up Election Results*, N.Y. Times (Nov. 28, 2022), <https://www.nytimes.com/2022/11/28/us/politics/arizona-county-election-results-cochise.html>.

1 **IV. DISCUSSION**

2 **A. The Supervisors Have Neither Legal Authority Nor Factual Basis to**
3 **Postpone the Canvassing of the Election Results Past the Statutory**
4 **November 28 Deadline**

5 1. Certification of Election Results Is a Statutory, Ministerial Function over
6 which the Supervisors Have No Discretion

7 The Supervisors’ refusal to canvass the results of the November 8, 2022 election is an
8 unequivocal violation of their duty as public officials to certify the election results in Cochise
9 County. The certification of election results for state and federal offices in Arizona is a
10 ministerial function carried out at both the county and state level.

11 Under Arizona law, county boards of supervisors “shall meet and canvass the election not
12 less than six days nor more than twenty days following the election.” A.R.S. § 16-642(a). The
13 statute plainly reflects that this duty is ministerial and not discretionary. “A ministerial duty is
14 one that specifically describes the manner of performance and ‘leaves nothing to the discretion’
15 of the public official or board. *Ponderosa Fire Dist. v. Coconino Cnty.*, 235 Ariz. 597, 601-602
16 (Ct. App. 2014) (citing *El Paso Nat. Gas Co. v. State*, 123 Ariz. 219, 221 (1979)); *see also*
17 *Bowyer v. Ducey*, 506 F. Supp. 3d 699, 710 (D. Ariz. 2020) (holding that A.R.S. § 16-212(C),
18 which provides that “presidential electors of this state *shall cast their electoral college votes for*
19 *the candidate for president*” following the issuance of the statewide canvass is a “ministerial
20 function, ... extremely limited in scope and duration” that leaves “no discretion to deviate at all
21 from the duties imposed by the statute” (emphasis in original)). Here, A.R.S. § 16-642(a)
22 provides that the Board “shall meet and canvass the election” by November 28—which is 20
23 days after the election. Arizona’s 2019 Elections Procedures Manual (“EPM”), promulgated
24 pursuant to A.R.S. 16-452, provides that “[t]he Board of Supervisors has a *non-discretionary*
25 *duty* to canvass returns as provided by the County Recorder or other officer in charge of elections
26 and *has no authority to change vote totals or reject the election results.*” EPM at 240 (emphasis
27
28

1 added).¹² Accordingly, pursuant to A.R.S. § 16-642(a), the Board was required to complete the
2 ministerial act of canvassing the election results on November 28.¹³

3 2. There Is No Basis, In Law or Fact, for the Board to Refuse to Canvass the
4 Results of the Election Based Upon the Need to Confirm Certification of
5 Voting Equipment

6 Nothing in the Arizona statutes gives county officials such as Supervisors Crosby and
7 Judd the ability to unilaterally refuse to canvass elections results based on a purported need to
8 confirm the certification of voting machines. They certainly cannot do so on the basis of
9 completely speculative, unsubstantiated—and disproven—claims by three conspiracy theorists.

10 Indeed, the only situation in which the Arizona statutes permit postponing the canvass is
11 if the county board of supervisors has not received all precinct returns by the certification
12 deadline or is otherwise ordered to do so by a court. *See* A.R.S. § 16-642(C); A.R.S. § 16-647.
13 None of this is discretionary. And neither of the statutorily limited situations in which the
14 Supervisors could lawfully postpone the canvass has occurred: All precincts were returned and
15 all votes in Cochise County were counted before November 28,¹⁴ and there has been no court
16 challenge, much less an order requiring the Supervisors to postpone certification. There are no
17 other statutory grounds upon which the Supervisors can postpone the canvass. They unlawfully
18 exceeded their statutory authority in doing so. *See Hancock*, 188 Ariz. at 498; *Ariz. Pub.*
19 *Integrity All.*, 250 Ariz. at 62 (Defendants’ powers “[are] limited to those powers expressly or
20 impliedly delegated to [them] by the state constitution or statutes”).

21 _____
22 ¹² The 2019 EPM is available at
23 https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVE_D.pdf.

24 ¹³ At the state level, certification is carried out by the Secretary of State, who must canvass all
25 offices after receiving canvass results from the counties on the fourth Monday following a
26 general election. *See* A.R.S. § 16-648(a). Like certification at the county level, certification at
27 the state level is also a ministerial task carried out by the Secretary of State, over which the
28 Secretary lacks any discretion. *See Barber v. Bennett*, No. CV-14-02489-TUC-CKJ, 2014 U.S.
Dist. LEXIS 165748 (D. Ariz. Nov. 24, 2014) (the State acknowledging that “the Secretary of
State . . . has no discretion to delay the Official Canvass”).

¹⁴ *See* Nov. 18, 2022 Report by Cochise County Elections Director Lisa M. Marra on completion
of election in Cochise County, available at
https://destinyhosted.com/cochidocs/2022/SPCL/20221128_2479/6809_Director_Report.pdf.

1 Furthermore, the purported reasons for the Supervisors' postponement of the canvass are
2 wholly unsupported by evidence. The entire (purported) basis for the Supervisors' refusal to
3 certify turns on false concerns about the certifications of the voting machines used in Cochise
4 County, a baseless allegation amplified by three conspiracy theorists who have repeatedly
5 tried—and failed—to challenge the 2020 election on the same bases. But, as set forth above and
6 at greater length in the Secretary's Complaint, there is no evidence of any issues with the
7 Cochise County voting machines. Indeed, Supervisor Judd herself has admitted as much. Pre-
8 election audits, post-election audits, hand counts, and confirmation by the EAC and Arizona
9 Secretary of State have all confirmed that the voting machines were properly tested, certified,
10 and functioned correctly in this election. Put simply, questions regarding certifications of voting
11 machines are not a lawful basis to refuse to certify results. And even if such concerns *could*
12 serve as valid grounds to delay certifying, no evidence supports the Supervisors' purported
13 concerns.

14 **B. This Court Should Compel the Supervisors to Canvass Results by the**
15 **Statutorily Mandated Deadline to Preserve the Integrity of Elections and**
16 **Deter Gamesmanship in the Certification Process**

17 There are additional compelling reasons for this Court to issue an unequivocal order
18 rejecting the Supervisors' unlawful conduct and ensure that Arizona's electoral process is
19 preserved.

20 1. Refusal to Canvass the Cochise County Votes Will Disenfranchise the
21 Voters in Cochise County, Prejudice Candidates, and Undermine the
22 Integrity of the Election

23 Just as boards of supervisors are provided clear mandates and deadlines via statute, so too
24 is the Secretary of State. Under Arizona law, the Secretary of State must provide the statewide
25 canvass of election results no later than December 8, 2022. A.R.S. §§ 16-648, 16-650.

26 If the canvass of Cochise County votes is not obtained by then, those votes may not be
27 included in the final tally. *See* Ex. F (Nov. 21, 2022, Letter from K. Hobbs). This would have
28 three profound effects. First, it would disenfranchise every one of the tens of thousands of
Cochise County voters—the very voters these Supervisors swore an oath to represent. All of the
votes cast in Cochise County simply **may not count**. Second, candidates running for Arizona

1 elected office would also be detrimentally affected because the absence of tens of thousands of
2 votes would affect the margin of victory between candidates in races, at a minimum, and in some
3 cases may even change the outcome, undermining the will of the people. Indeed, preliminary
4 results suggest that Juan Ciscomani, a Republican, defeated Kirsten Engel, a Democrat, in
5 Arizona's Sixth Congressional District (which includes parts of Cochise County) by a smaller
6 margin than the number of votes that may not be counted.¹⁵ The third effect (and a consequence
7 of the first two) would be an irreparable blow to the integrity and legitimacy of the election.
8 Forevermore, those who take issue with the outcome of the 2022 election would be able to claim
9 that the ultimate vote did *not* include tens of thousands of votes cast, rendering the results
10 illegitimate. And this concern will not be addressed by merely pointing fingers at the
11 Supervisors' actions here. At bottom, the Supervisors' dereliction of duty will have caused votes
12 cast by their own constituents not to be counted, inflicting irreparable harm on the democratic
13 process in this State.

14 2. The Unlawful Refusal to Certify Would Also Detrimentially Affect the
15 Various Legal Means for Confirming or Challenging Election Results

16 The Supervisors' unlawful refusal to certify would also have significant detrimental
17 effects on the processes used to confirm and check election results. For example, in tight races
18 where the margin between two candidates or votes casts for and against a ballot measure "is less
19 than or equal to one-half of one percent" of the votes cast, Arizona law provides for an automatic
20 recount. A.R.S. § 16-661(A). In this election, it is expected that the race for Arizona's Attorney
21 General will proceed to an automatic recount. But this process will be disrupted if certification
22 of the state's election results is delayed. Among other things, the Secretary of State cannot
23 certify the facts necessary to obtain a court order to begin the recount until after the statewide
24 canvass is finalized. A.R.S. § 16-648. And again, a recount that proceeds *without* tens of
25 thousands of votes would not be an accurate representation of the will of the electorate—and

26 _____
27 ¹⁵ See Cochise County 2022 General Election Results Pending Certification: Cumulative Report
28 at 2, available at <https://www.cochise.az.gov/DocumentCenter/View/10176/Cumulative-Report-PDF>; Arizona 2022 General Election Unofficial Results, available at
<https://results.arizona.vote/#/federal/33/0> (last accessed Nov. 30, 2022).

1 would provide yet another reason for the loser of the contest to challenge the integrity of the
2 electoral process.

3 Courts are the appropriate venue for those wishing to challenge election results. Of
4 course, to prevail in a court of law, challengers would actually need to substantiate claims with
5 evidence. Not only could the Supervisors not meet that burden, but their attempts to take matters
6 into their own actively undermines the existing legal process for contesting election results, on
7 whatever basis.

8 3. A Clear Rebuke is Necessary to Protect the Integrity of Arizona Elections

9 The Arizona Supreme Court’s admonition that “public officials should, by their words
10 and actions, seek to preserve and protect [elections] laws” is rooted in the understanding that
11 those entrusted with effectuating such laws cannot act as free agents, unmoored, without
12 undermining the entire electoral system. *Arizona Pub. Integrity All.*, 250 Ariz. at 61. The
13 domino result of such vigilantism is readily apparent: if one set of officials starts changing the
14 way votes are counted in their county, delaying the canvass, or refusing to have their county’s
15 votes canvassed, based on their own individual beliefs regarding what is or is not appropriate in
16 any given election, what is to stop others from doing the same? Enshrined in the Arizona
17 Constitution is the principle that “All elections shall be free and equal, and no power, civil or
18 military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Ariz.
19 Const. Art. II Sec. 21. Allowing local county officials to substitute their own whims and
20 override the strict mandates of Arizona law—as the Supervisors have done here—guarantees
21 future violations of this sacrosanct tenet. Elections will no longer be “free and equal,” but
22 tethered to the whims of different officials across the state instead of the will of the voters. In
23 some counties the votes may be canvassed and counted and in other cases not. “Equality,” as
24 between all of the votes cast in Arizona, will cease to exist. Indeed, as it stands, the Supervisors
25 have already treated the tens of thousands of votes cast in their county as unequal to the other
26 votes in Arizona, because they sit in limbo—not officially canvassed, and therefore excluded
27 from the overall state tally.
28

1 This is not a trivial or theoretical concern. Although the Cochise County Supervisors
2 here have gone the farthest in their direct denial of Arizona law and the limitations on their own
3 authority, other officials are already pushing the boundaries. In Mohave County, the Board of
4 Supervisors elected to delay canvassing the votes there in order to “protest” what they considered
5 to be voting issues in Maricopa County. That was just a delay; they certified by the deadline of
6 November 28 (unlike Cochise County). But what about next time? A.R.S. § 16-162 does not
7 give county officials the authority to “delay” certification to “protest” what is happening in other
8 parts of the state. If Mohave County supervisors can elect to take “minor” action in violation of
9 Arizona statutes this time, what is to stop them from following Cochise County’s lead next time?

10 If Cochise County officials can take it upon themselves, contrary to clear statutory
11 direction, to decide when their county’s votes get certified, other county officials may well do
12 the same. Arizona’s Constitution, and clear Supreme Court authority, mandate otherwise.

13 4. Other Courts Have Soundly Rejected Baseless Attempts to Thwart the
14 Integrity and Legitimacy of our Democratic System and Electoral Process

15 Arizona is not alone in making clear that officials tasked with ministerial election tasks
16 must perform those tasks as mandated, and not deviate. While the issue has not come up often in
17 the past—a testament to the extreme nature of the Supervisors’ actions here—there are a number
18 of examples of courts across the nation forcing officials tasked with canvassing or certifying
19 election results to perform those ministerial duties. *See, e.g., Oliver v. The Otero County*
20 *Commission*, Case No. NO. S-1-SC-39426, Sup. Ct. New Mexico, June 15, 2022 (Supreme
21 Court of New Mexico granting writ of mandamus ordering the commission to comply with its
22 statutory duty and certify the election results, notwithstanding claimed concerns about voting
23 machines); *Ex parte Krages*, 689 So. 2d 799, 805 (Ala. 1997) (Supreme Court of Alabama
24 noting that “[t]he duty to canvass election returns and certify a winner is ministerial in nature”
25 and explaining that, in a situation where the law required a municipal governing body to canvass
26 election returns and issue a certificate of election, “the judiciary may not order a municipal
27 governing body to disobey or disregard its clearly expressed statutory duty”); *Weldon v. Sanders*,
28 655 P.2d 1004, 1009 (N.M. 1982) (Supreme Court of New Mexico holding that “canvasses

1 conducted in violation of mandatory provision [sic] of the Election Code are nullities” and
2 affirming conclusion that the election should be decided on the basis of precinct returns only);
3 *Whited v. Fugate*, 94 S.E.2d 292, 294–95 (Va. 1956) (Supreme Court of Virginia remanding with
4 instructions to grant mandamus instructing election officials to count and report the number of
5 votes received by the candidates); *Jones v. Lawless*, 288 S.W.2d 324, 326 (Ark. 1956) (Supreme
6 Court of Arkansas holding that “the only power and duty vested in the County Court was merely
7 to canvass these returns and certify the results[, so it] could not go behind the returns and inquire
8 into the qualifications of the electors and other matters that might affect the validity of the ballots
9 cast”); *Cosby v. Moore*, 65 So. 2d 178, 182 (Ala. 1953) (holding that “canvassers are controlled
10 by the returns of the inspectors and have no power to go behind them or inquire into fraud or
11 irregularity ... and are subject to mandamus to compel a performance when necessary”); *Hunt v.*
12 *Hoffman*, 146 N.W. 733, 734–35 (Minn. 1914) (holding that “mandamus will lie to compel a
13 canvassing board to issue a certificate of election to the party entitled to it on the face of the
14 returns, although the board has, by rejecting certain returns as fraudulent, determined that the
15 opposing candidate has a majority, and a certificate has been issued accordingly”); *State v.*
16 *McFadden*, 65 N.W. 800, 801 (Neb. 1896) (granting mandamus requiring canvassing of returns
17 because “it was the duty of the respondents to cast up the votes received by each person
18 according to the returns of such votes transmitted to the county clerk by the judges and clerks of
19 the election”).

20 Where public officials have unlawfully refused to canvass election returns, a writ of
21 mandamus is necessary and appropriate to bring them into compliance with the law and to
22 uphold the integrity of an election. This Court, like others before it, should act to preserve the
23 integrity of our democratic system.

24 **V. CONCLUSION**

25 For the foregoing reasons, amici respectfully request that the Court grant Plaintiffs’
26 petition for a writ of mandamus and order the Supervisors to canvass the election results
27 immediately, in compliance with State law. Throughout this election, the Supervisors have
28 demonstrated that they are determined to violate Arizona law and undermine established election

1 procedures. Their actions call for a clear rebuke and a clear line for others tempted to abuse their
2 ministerial electoral duties.

3
4 Dated: November 30, 2022

5 SPENCER FANE

6 By: /s/ Andrew M. Federhar
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EXHIBIT A

**PROCEEDINGS OF THE COCHISE COUNTY BOARD OF SUPERVISORS
REGULAR MEETING HELD ON
TUESDAY, SEPTEMBER 27, 2022**

A regular board meeting of the Cochise County Board of Supervisors was held on Tuesday, September 27, 2022 at 10:00 a.m. in the Board of Supervisors' Hearing Room, 1415 Melody Lane, Building G, Bisbee, Arizona.

Present: Ann English, Chairman, telephonic; Peggy Judd, Vice-Chairman; Tom Crosby, Supervisor

Staff Present: Richard G. Karwaczka, County Administrator; Sharon Gilman, Deputy County Administrator; Christine Roberts, Chief Civil Deputy County Attorney; Tim Mattix, Clerk of the Board

Vice-Chairman Judd called the meeting to order at 10:00 a.m.

ANY ITEM ON THIS AGENDA IS OPEN FOR DISCUSSION AND POSSIBLE ACTION

PLEDGE OF ALLEGIANCE

THE ORDER OR DELETION OF ANY ITEM ON THIS AGENDA IS SUBJECT TO MODIFICATION AT THE MEETING

CALL TO THE PUBLIC

Mr. Jeff Sturges discussed reasons for his concerns with the appointment of Mr. Robert Montgomery to the Planning and Zoning Commission (P&Z) and the Palominas Fire District Governing Board (Palominas Board).

Mr. Clyde Morris discussed reasons for his concerns with the appointment of Mr. Montgomery to P&Z and the Palominas Board.

Mr. John Sawyer discussed election integrity and the rule of law.

Mr. Joseph Patterson discussed his proposal of a full hand count of ballots.

Ms. Tricia Gerrodette asked if there are guidelines that guide the background of individuals appointed to various boards and discussed the appointment of Mr. Montgomery.

Ms. Debbie Hickman spoke regarding election integrity, and violation of constitutional laws and individuals' personal beliefs.

Ms. Christie Brown discussed reasons for her concerns with the appointment of Mr. Montgomery to P&Z and the Palominas Board.

Mr. Steven Sarasky requested information about certification and maintenance of the voting

machines.

Mr. Daniel LaChance discussed his various concerns with election integrity.

Ms. Rebecca Richardson discussed reasons for her concerns with the appointment of Mr. Montgomery to P&Z and the Palominas Board.

Ms. Jennifer Druckman discussed reasons for her concerns with the appointment of Mr. Montgomery to P&Z and the Palominas Board.

Ms. Joni Giacomino discussed reasons for her concerns with the appointment of Mr. Montgomery to P&Z and the Palominas Board.

Ms. Catherine Welch discussed reasons for her concerns with the appointment of Mr. Montgomery to P&Z and the Palominas Board.

In response to Supervisor Crosby, Ms. Roberts stated that the Open Meeting Law limits the Board to three options during Call to the Public: to direct staff to investigate; direct staff to put something on a future agenda; or, to respond to criticism of a Board member. Supervisor Crosby stated that he was criticized and cited various sections of the United States Constitution regarding the republican form of government and the Legislature selecting electors; and, the Arizona Constitution regarding separation of powers between the three branches of government.

Mr. William Hargis was called upon to speak but was not present.

PRESENTATION

Presentation by representatives of the Cochise Health & Social Services and Human Resources Departments regarding the Healthy Arizona Worksites Program (HAWP), Cochise County's participation, and awards received.

Mr. Brian Trevino, HR Generalist, and Ms. Daniella Reidmiller, HAPI Program Manager, presented this item using a PowerPoint Presentation. They summarized HAWP and the County's history of participation. The County has received the Platinum award from 2019-2022. The Board thanked Mr. Trevino and Ms. Reidmiller.

CONSENT

Board of Supervisors

1. Approve the Minutes of the regular meeting of the Board of Supervisors of September 13, 2022.
2. Adopt Resolution 22-24 approving the cancellation of uncontested board elections for Special District governing boards listed pursuant to A.R.S. 16-410, and appoint the candidates who filed for the Special District governing board, or declare seats vacant if an insufficient number of candidates giving all those appointed the same powers and duties in accordance with the law.

This item was removed from the Consent Agenda for separate consideration.

Ms. Lisa Marra, Elections Director, presented this item. The Resolution cancels certain Special District elections and declares individuals elected to office. A.R.S. § 16-410 allows this if the number of individuals who file required paperwork is less than or equal to the number of open positions. This is a standard function that occurs every two years to save costs to Special Districts.

In response to the Board, Ms. Marra discussed the difference between elected and appointed. Appointments to Special District governing boards is typically not a Board function. The Bowie Water Improvement District is the only Special District that will hold an election this year; all Fire District elections will be canceled. Members declared elected by the Board have the same powers as those who are elected at an election.

Mr. Karwaczka noted that Chairman English is online but currently muted for technical reasons.

Supervisor Crosby made a motion to adopt Resolution 22-24 approving the cancellation of uncontested board elections for Special District governing boards listed pursuant to A.R.S. 16-410, and appoint the candidates who filed for the Special District governing board, or declare seats vacant if an insufficient number of candidates giving all those appointed the same powers and duties in accordance with the law. Vice-Chairman Judd seconded the motion.

Vice-Chairman Judd noted that Ms. Joan A. Murphy requested that her name be read in opposition to the item.

Ms. Patricia Fleming spoke regarding her concerns with the appointment of Mr. Robert Montgomery to the Palominas Fire District.

Supervisor Crosby reiterated his comments regarding the Constitutional provisions.

Vice-Chairman Judd called for the vote and it was approved 2-0 (English absent).

3. Adopt Resolution 22-25 authorizing the use of Emergency Voting Locations for the General Election on Tuesday, November 8, 2022.

County Attorney

4. Approve the Victims' Rights Program (VRP) Award Agreement (AG) 2023-002, between the Arizona Attorney General and the Cochise County Attorney's Office, in the amount of \$18,000, effective July 1, 2022, through June 30, 2023.

County Schools

5. Adopt Resolution 22-26, canceling the regular elections of November 8, 2022, for certain School District Governing Boards, and appointing those who filed nomination petitions and nomination papers for uncontested district positions, pursuant to A.R.S. 15-424(D).

County Sheriff

6. Approve the Governor's Office and Highway Safety Grant, Contract Number 2023-AL-012, in the amount of \$39,296, for the DUI / Impaired Driver Enforcement program effective October 1, 2022 through September 30, 2023.
7. Approve Contract 2023-PTS-015 between Cochise County and the Governor's Office of Highway Safety, in the amount of \$28,467 (\$13,000 for overtime and employee related expenses; \$15,467 for 3 Radar and 3 Lidar units), for Selective Traffic Enforcement Program, effective October 1, 2022, through September 30, 2023.

Finance

8. Approve demands and budget amendments for operating transfers.

Supervisor Crosby made a motion to approve items 1 and 3-8 on the Consent Agenda. Vice-Chairman Judd seconded the motion and it carried 2-0 (English absent).

PUBLIC HEARINGS

Development Services

9. Adopt Zoning Ordinance 22-18 to revert the zoning from SR-8 (Single-Family Residential, one dwelling per 8,000 square feet) to R-36 (Residential, minimum lot size 36,000 square feet) on parcels 408-03-002 and 408-03-003A, pursuant to a County-initiated request.

Supervisor Crosby made a motion to adopt Zoning Ordinance 22-18 to revert the zoning from SR-8 (Single-Family Residential, one dwelling per 8,000 square feet) to R-36 (Residential, minimum lot size 36,000 square feet) on parcels 408-03-002 and 408-03-003A, pursuant to a County-initiated request. Vice-Chairman Judd seconded the motion.

Mr. Dan Coxworth, Development Services Director, presented this item using a PowerPoint presentation. This County-initiated request is to revert the zoning of two parcels from SR-8 to R-36. He displayed maps of the subject parcels. Staff recommends approval. The Board and Mr. Coxworth discussed the size of 8,000 square foot lots.

Vice-Chairman Judd opened the Public Hearing. No one chose to speak and Vice-Chairman Judd closed the Public Hearing.

Vice-Chairman Judd called for the vote and it was approved 3-0.

10. Adopt Zoning Ordinance 22-19 to rezone parcel 107-23-030B from R-36 (Residential, one dwelling per 36,000 square feet) to LI (Light Industry), pursuant to the application of Diamond AR, LLC.

Supervisor Crosby made a motion to adopt Zoning Ordinance 22-19 to rezone parcel 107-23-030B from R-36 (Residential, one dwelling per 36,000 square feet) to LI (Light Industry), pursuant to the application of Diamond AR, LLC. Chairman English seconded the motion.

Mr. Robert Kirschmann, Planner II, presented this item using a PowerPoint presentation. The request is to rezone a parcel from R-36 to LI. He gave the parcel's location, total acreage, and existing and proposed uses, and displayed the site plan and photos of the area. The Planning and Zoning Commission recommends approval. He reviewed the six factors in favor of approval, noting that none were identified as being against, and the one recommended condition of approval. In response to the Board, Mr. Kirschmann confirmed that everything in the area is currently light industrial.

Vice-Chairman Judd opened the Public Hearing. No one chose to speak and Vice-Chairman Judd closed the Public Hearing.

Vice-Chairman Judd called for the vote and it was approved 3-0.

11. Adopt Zoning Ordinance 22-20 to approve Docket R-22-02 -Definitions, an amendment to the Cochise County Zoning Regulations.

Supervisor Crosby made a motion to adopt Zoning Ordinance 22-20 to approve Docket R-22-02 -Definitions, an amendment to the Cochise County Zoning Regulations. Chairman English seconded the motion.

Mr. Kirschmann presented this item. He stated that two definitions currently in the Zoning Regulations provide regulations for use rather than define the item. This item will move both of these to the proper section of the Zoning Regulations, while leaving a basic definition in the Definitions section. The two definitions are Home Occupation and Site Area, Minimum.

Supervisor Crosby made a motion to table the item. He noted that he did not see the item in the agenda system and would like further time to review. Supervisor Crosby and Mr. Kirschmann discussed it further. The motion failed for lack of a second.

Chairman English and Vice-Chairman Judd noted their support for the item.

Vice-Chairman Judd opened the Public Hearing. No one chose to speak and Vice-Chairman Judd closed the Public Hearing.

Vice-Chairman Judd called for the vote and it was approved 2-0-1 (Crosby abstained).

ACTION

County Treasurer

12. Approve the recommendation of the County Treasurer for the abatement of property taxes and interest on personal property and the removal of personal property tax liens on Treasurer's Certificate of Clearance No. 2022-255 to 2022-289.

Supervisor Crosby made a motion to approve the recommendation of the County Treasurer for the abatement of property taxes and interest on personal property and the removal of personal property tax liens on Treasurer's Certificate of Clearance No. 2022-255 to 2022-289. Vice-Chairman Judd seconded the motion.

Ms. Cathy Traywick, County Treasurer, presented this item. She stated that nearly 300 properties have been abated and removed from the tax roll this year.

Vice-Chairman Judd called for the vote and it was approved 3-0.

Health & Social Services

13. Approve Intergovernmental Agreement (IGA) CTR060579, Immunization Services, between the Arizona Department of Health Services and Cochise Health & Social Services, effective July 1, 2022, through June 30, 2027, for reimbursement of services up to \$118,619.

Chairman English made a motion to approve Intergovernmental Agreement (IGA) CTR060579, Immunization Services, between the Arizona Department of Health Services and Cochise Health & Social Services, effective July 1, 2022, through June 30, 2027, for reimbursement of services up to \$118,619. Vice-Chairman Judd seconded the motion.

Dr. Alicia Thompson, Cochise Health & Social Services Director, presented this item. She introduced Ms. Maira Ibarra, Clinical Services Division Director, and Ms. Tomanie Allen, Immunization Coordinator. This IGA is a fee for services program that reimburses the County for immunization services. The two programs included are the Vaccine for Children and Vaccine for Adult programs. The IGA allows the County to provide services to individuals at no cost to the individuals.

In response to the Board, Dr. Thompson clarified that this is strictly for the two identified programs. Ms. Ibarra and Ms. Allen reviewed who is eligible for each program. The Vaccine for Adults program is for individuals without insurance.

The Board discussed their thoughts and opinions on the item.

Vice-Chairman Judd called for the vote and it was approved 2-1 (Crosby opposed).

Housing Authority

14. Adopt Resolution 22-27 and approve Intergovernmental Agreement (IGA) between the Housing Authority of Cochise County and the City of Douglas, for the Housing Authority of Cochise County to absorb the Housing Choice Voucher and Family Self-Sufficiency programs from the City of Douglas.

Supervisor Crosby made a motion to adopt Resolution 22-27 and approve Intergovernmental Agreement (IGA) between the Housing Authority of Cochise County and the City of Douglas, for the Housing Authority of Cochise County to absorb the Housing Choice Voucher and Family Self-Sufficiency programs from the City of Douglas. Chairman English seconded the motion.

Ms. Anita Baca, Housing Authority Director, presented this item using a PowerPoint presentation. She reviewed the history of the Housing Authority of Cochise County (HACC). HACC serves all of the County outside of Douglas and currently has 493 Housing Choice Vouchers and 34 Family Self-Sufficiency participants. This item will approve HACC absorbing 193 Housing Choice Vouchers and 19 Family Self-Sufficiency participants. She reviewed the steps necessary to complete the absorption, noting the deadline of October 1, 2022 to submit the County and Douglas Resolutions and IGAs to the U.S. Department of Housing and Urban Development (HUD). The absorption will become effective January 1, 2023 and HACC will recruit 2.5 new positions at that time. After absorption, HACC can request an increase in current

administrative fees.

In response to the Board, Ms. Baca detailed Family Self-Sufficiency program graduation. The Board discussed their thoughts and opinions on the matter. Ms. Baca confirmed that Douglas approached HACC and reviewed previous discussions.

Vice-Chairman Judd called for the vote and it was approved 2-1 (Crosby opposed).

REPORT BY RICHARD G. KARWACZKA, COUNTY ADMINISTRATOR -- RECENT AND PENDING COUNTY MATTERS

Mr. Karwaczka deferred his report.

SUMMARY OF CURRENT EVENTS

Report by District 1 Supervisor, Tom Crosby

Supervisor Crosby reported on the negative 1% return for Public Safety Personnel Retirement System pensions and the impact on unfunded liabilities.

Report by District 2 Supervisor, Ann English

Chairman English thanked those who went to the County Fair and noted the record turnout.

Report by District 3 Supervisor, Peggy Judd

Vice-Chairman Judd reported that Rex Allen Days in Willcox will be September 29 through October 2, 2022.

Vice-Chairman Judd adjourned the meeting at 11:35 a.m.

APPROVED:

Ann English, Chairman

ATTEST:

Tim Mattix, Clerk of the Board

EXHIBIT B



KATIE HOBBS
SECRETARY OF STATE

October 19, 2022

Via Email

Cochise County Board of Supervisors
Tom Crosby, tcrosby@cochise.az.gov
Ann English, aenglish@cochise.az.gov
Peggy Judd, pjudd@cochise.az.gov

Re: 2022 General Election Tabulation

Dear Cochise County Board of Supervisors,

We understand that the Cochise County Board of Supervisors will vote next week on whether to conduct a hand count of all votes cast, despite both the Cochise County Attorney's and Legislative Council's determination that doing so would be unlawful. The Secretary of State agrees with the County Attorney and Legislative Council and urges the Board to abandon this misguided effort.

As you know, Arizona has rigorous standards in place to ensure that electronic voting systems used in our elections are secure and accurate, including federal and state certification requirements, pre- and post-election logic and accuracy testing, and post-election limited hand count audits. *See* EPM, Ch. 4, A.R.S. §§ 16-442, -449, -602. The use of electronic tabulation combined with these and other security measures allows counties to fulfill their statutory duties in a timely manner while ensuring the accuracy and integrity of our elections. Indeed, as recently explained by the General Counsel of the Arizona Legislative Council, Arizona law only contemplates manual counting of ballots where "it becomes impracticable to count . . . ballots with tabulating equipment." *See* A.R.S. § 16-621(C).

And this is for good reason: a full hand count raises numerous concerns. Notably, hand counting is necessarily time intensive and prone to human error. Any election director in Arizona—the official responsible for overseeing tabulation of ballots—can attest that it's impossible to complete an accurate hand count of an election with dozens of races on the ballot in time to comply with applicable statutory deadlines, including the county canvass deadline. A.R.S. § 16-642(A) (requiring counties to canvass between six and twenty days after an election). Additionally, transitioning to a full hand count this close to the election raises operational and security concerns. Election procedures are generally developed

through careful consideration and with sufficient time to prepare for an upcoming election. In fact, Cochise County has already filed its election program and emergency contingency plan for the General Election with the Secretary of State, confirming its usage of electronic equipment for this election. *See* A.R.S. § 16-445(A). Early voting for the 2022 General Election began over a week ago, and counties are already permitted by law to begin processing and tabulating ballots. Drastically changing procedures now—mere weeks before Election Day—creates significant risk of administrative error and has the potential to cause voter confusion and mistrust in our elections.

Even if, as indicated at the Board's October 11, 2022 work session, the Board intends to tabulate votes electronically and conduct a full hand count only to audit those machine-tabulated results, the Board has no authority to do so. 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). A.R.S. § 11-251(3) gives the Board the power to canvass election returns. It does not grant the power to unilaterally perform a full hand count audit of all votes. While A.R.S. § 16-602 and the Elections Procedures Manual lay out procedures for a limited post-election hand count audit, nothing in Arizona law authorizes the Board to conduct a full hand count outside of those procedures. Similarly, Arizona law authorizes recounts only when the canvassed results fall within the statutorily designated margin. A.R.S. § 16-661. And when an automatic recount is triggered, it must be done by electronic tabulation. A.R.S. § 16-664. The Board would therefore be exceeding its authority under Arizona law if it conducts a full hand count under the guise of either a hand count audit or a recount. The Board cannot simply make up its own extra-statutory process.

If the Board votes to proceed with a full hand count—putting at risk the accuracy and integrity of our elections—the Secretary will take all available legal action to ensure that Cochise County conducts the 2022 General Election in compliance with Arizona law. If that occurs, we note that Arizona law provides for mandatory fee shifting under these circumstances. A.R.S. § 12-348.01. We are all stewards of taxpayer dollars, and taxpayers should not bear the burden of the Board's contemplated unlawful action. We sincerely hope such action is unnecessary and that the Board will follow the advice of its own attorney, protect the integrity of our elections, and ensure continued compliance with Arizona law.

Please let me know if you need additional information.

Sincerely,



Kori Lorick
State Elections Director
Arizona Secretary of State Katie Hobbs
klorick@azsos.gov

cc

Tim Mattix, Clerk of the Board

tmattix@cochise.az.gov

Christine Roberts, Chief Civil County Attorney

croberts@cochise.az.gov

Richard Karwaczka, County Administrator

rkarwaczka@cochise.az.gov

Sharon Gilman, Deputy County Administrator,

sgilman@cochise.az.gov

Lisa Marra, Elections Director

lmarra@cochise.az.gov

David Stevens, County Recorder

dstevens@cochise.az.gov

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EXHIBIT C



KATIE HOBBS
SECRETARY OF STATE

October 25, 2022

Via Email

Cochise County Board of Supervisors
Tom Crosby, tcrosby@cochise.az.gov
Ann English, aenglish@cochise.az.gov
Peggy Judd, pjudd@cochise.az.gov

Re: 2022 General Election Hand Count Audit

Dear Cochise County Board of Supervisors:

Last week, the Secretary of State's Office wrote to warn you against proceeding with a full hand count of all ballots cast in Cochise County during the November 2022 General Election. As detailed in that letter, a full hand count would not only have been illegal but would also have (1) undermined the orderly administration of this election, (2) raised serious security and ballot chain of custody concerns, (3) caused voter confusion in the middle of early voting and mere weeks before Election Day, and (4) threatened the County's ability to timely canvass the election as required by law.

For all these reasons, the Secretary listened carefully to yesterday's Board meeting and is grateful the Board took her cautionary words seriously and voted unanimously to reject "a hand count of all ballots cast in the General Election to be held on November 8, 2022, to be completed prior to Canvass of Election Results." This item should never have found its way onto the Board's agenda, and the Secretary applauds the other Cochise County officials, including the County Attorney, and numerous Arizonans who also spoke out against that dangerous course of action. Their courage and commitment to uphold the Constitution and laws of the State of Arizona—in the face of unfounded efforts to sow chaos, doubt, and distrust in our elections—deserves our recognition and praise.

Despite the Board's rejection of a full hand count, it did approve the following secondary agenda item:

Pursuant to ARS 16-602 B; the County Recorder or other officer in charge of elections shall take such action necessary to perform a hand count audit of all County precincts for the 2022 General Election to assure agreement with the

voting machine count. Such audit shall be completed prior to the canvass of general election results by the Board of Supervisors.

The Secretary, like the Cochise County Attorney, continues to have serious concerns about the legality of this agenda item, particularly considering the lack of any details as to how the Board intends to proceed and the fact that the election is just two weeks away. But because the Board voted to conduct a full precinct hand count audit “pursuant to” A.R.S. § 16-602(B), the Secretary believes it is important to lay out precisely what that statute and the 2019 Election Procedures Manual (“EPM”) require. After all, the Board has 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) (citations omitted).

Under A.R.S. § 16-602(B) and the EPM, the County’s precinct hand count audit must comply with the following, among other, requirements:

1. Because Cochise County uses a vote center model, each vote center is considered to be a precinct/polling place for the purposes of the precinct hand count audit under A.R.S. § 16-602. EPM Ch. 11, III(A); *see also Arizona Republican Party v. Fontes*, No. CV2020014553 (Maricopa Cnty. Super. Ct. Dec. 21, 2020) (attached as Exhibit 1).
2. The precinct hand count audit may only be conducted on regular ballots cast at vote centers in Cochise County on Election Day and may not include any early ballots (regardless of when or how they were returned). A.R.S. § 16-602(B)(1); EPM Ch. 11, III(A). The early ballot hand count audit is expressly limited to one percent of early ballots and controlled by A.R.S. § 16-602(F), a statute the Board did not—and could not—invoke in approving an expanded precinct hand count audit. *See also* EPM, Ch. 11, III(B).
3. The precinct hand count audit cannot begin “until all ballots voted in the precinct polling places have been delivered to the central counting center” and “[t]he unofficial vote totals from all precincts [have been] made public.” A.R.S. § 16-602(B)(1).
4. The precinct hand count audit cannot be conducted as to all races on the ballot, but instead is limited to four contested races that must be selected “by lot.” Specifically, the participating county political party chairpersons shall select by lot one statewide ballot measure, one race for statewide office, one race for federal office, and one race for legislative office. A.R.S. § 16-602(B)(2), (6); EPM Ch. 11, V-VI.
5. The precinct hand count audit must be conducted by representatives of the political parties entitled to representation on the state ballot through a process that requires the cooperation of those political parties. *See* A.R.S. § 16-602(B)(7). The audit “shall not proceed” unless the political parties provide the recorder or other officer in charge of elections with “a sufficient number of persons by 5:00 p.m. on the Thursday preceding the election and a sufficient number of persons, pursuant to this paragraph, arrive to perform the hand

count.” *Id.* And even then, “for the hand count to proceed, not more than seventy-five percent of the persons performing the hand count shall be from the same political party.” *Id.*

6. Precinct hand count board members and alternates must be registered to vote in Arizona. Candidates appearing on the ballot, except for precinct committeeman, may not serve as board members. And all board members must take the oath specified in A.R.S. § 38-231(E); EPM Ch. 11, I.

7. The precinct hand count must be completed in time for the County to meet its statutory canvass deadline under A.R.S. § 16-642(A). The results of the precinct hand count audit must be provided to the Secretary to be publicly posted on the Secretary’s website. A.R.S. § 16-602(I).

These are just some of the requirements for a precinct hand count audit established by the Legislature and in the EPM, and from which the Board has no discretion to deviate. *Hancock*, 188 Ariz. at 498. Any attempt by the Board to circumvent these mandates and conduct a full hand count audit of all ballots cast in the county, under the false premise that it is proceeding pursuant to A.R.S. § 16-602(B), would be unlawful. And under no circumstance should the Board’s misguided effort to conduct an expanded hand count be permitted to delay the County’s canvass and certification of election results.

The Secretary thus requests that the Board confirm in writing, no later than 5:00 p.m. on October 26, that:

- 1. The Board will not attempt to conduct a full hand count of all ballots cast in Cochise County under the false premise that it is proceeding pursuant to A.R.S. § 16-602(B); and**
- 2. The Board will follow all applicable requirements in statute and the EPM when conducting its expanded precinct hand count audit under A.R.S. § 16-602(B).**

If the County refuses to provide these assurances or takes any action in furtherance of an unlawful full hand count of all ballots cast, the Secretary will take all available legal action, including filing a special action to compel the County’s compliance with these non-discretionary legal duties. If the Board does not respond by 5:00 p.m. on October 26, the Secretary will deem the Board’s silence to be an admission that it is threatening to proceed without or in excess of jurisdiction or legal authority.

Please let me know if you need any additional information. We look forward to your prompt response.

Sincerely,



Kori Lorick
State Elections Director
Arizona Secretary of State Katie Hobbs

cc

Tim Mattix, Clerk of the Board

tmattix@cochise.az.gov

Christine Roberts, Chief Civil County Attorney

croberts@cochise.az.gov

Richard Karwaczka, County Administrator

rkarwaczka@cochise.az.gov

Sharon Gilman, Deputy County Administrator,

sgilman@cochise.az.gov

Lisa Marra, Elections Director

lmarra@cochise.az.gov

David Stevens, County Recorder

dstevens@cochise.az.gov

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Exhibit 1

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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV2020014553

12/21/2020

HONORABLE JOHN R. HANNAH JR

CLERK OF THE COURT

A. Walker

Deputy

ARIZONA REPUBLICAN PARTY

JOHN DOUGLAS WILENCHIK

v.

ADRIAN FONTES, ET AL.

JOSEPH EUGENE LA RUE

EMILY MCRAIGER

JOSEPH I VIGIL

THOMAS PURCELL LIDDY

SARAH R GONSKI

DANIEL A ARELLANO

ROOPALI HARDIN DESAI

KRISTIN ARREDONDO

COURT ADMIN-CIVIL-ARB DESK

DOCKET-CIVIL-CCC

RULING

Arizona law requires election authorities to validate electronic vote counts by manually recounting random batches of ballots. For this process, called the “hand count audit,” election officials enlist representatives of Arizona’s political parties to sample and count the ballots. Following the 2020 general election, Republican, Democratic and Libertarian Party appointees hand-counted 2917 ballots cast on voting machines at polling places in Maricopa County, and 5000 additional early (mail-in) ballots. *The hand counts verified that the machines had counted the votes flawlessly.* Maricopa County, Arizona General Election - November 3, 2020 Hand Count/Audit Report (“Audit Report”), available at <https://azsos.gov/election/2020-general-election-hand-count-results> (last visited December 9, 2020).

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In this lawsuit, the plaintiff Arizona Republican Party asked for a court order directing the defendant Maricopa County officials to redo the hand count audit using different batches of ballots. The plaintiff baldly asserted that this relief was necessary to maintain “confidence in the integrity of our elections,” without alleging any facts to show that the machines might have miscounted the votes. The plaintiff could not explain why the suit had not been filed before the election, or what purpose another audit would serve.

This order explains why the Arizona Republican Party’s case was meritless, and the dismissal order filed November 19, 2020 was required, under applicable Arizona law. What remains is intervenor Arizona Secretary of State’s application for an award of attorneys’ fees. That application will require the Court to decide whether the Republican Party and its attorneys brought the case in bad faith to delay certification of the election or to cast false shadows on the election’s legitimacy. *See* Arizona Revised Statutes § 12-349(A) (court “shall” assess fees and costs against a party or attorney when the party’s claim is brought “without substantial justification” or “solely or primarily for delay”).

ELECTION LAW BACKGROUND; AND THE ISSUE IN THIS CASE

Section 16-602 of the Arizona Revised Statutes requires a hand count audit of any election in which the votes are cast or counted on “an electronic voting machine or tabulator.” A.R.S. § 16-602(A). The hand count audit verifies that the machines are working properly and accurately counting votes by hand counting some ballots and comparing the result to the machine count of those same ballots. The statute calls for the ballots cast on the voting machines at the polling places to be audited separately from the early (mail-in) ballots. *Compare* A.R.S. § 16-602(B)(1) with A.R.S. § 16-602(F). The election results do not become “official” until the hand count audits confirm the accuracy of the machine counts. A.R.S. § 16-602(C).

Subsection (B) of section 16-1602 sets out hand count audit procedures for ballots cast on voting machines at polling places. The process starts before the election, when the county officer in charge of elections tells the county political party chairs¹ how many of the parties’ designees will be needed to perform the hand count. A.R.S. § 16-602(B)(7). At least a week before the election, the party chairs name the individuals who will physically count the ballots. *Id.* After the election, when the polls have closed and the unofficial vote totals have been made public, the party chairs take turns randomly choosing a limited number of specific polling places for audit. A.R.S. § 16-602(B)(1). The party chairs also choose the specific races that will be audited, A.R.S. § 16-602(B)(6), except that the presidential race is always audited. A.R.S. § 16-602(B)(5).

¹ The county political parties are effectively subgroups of the recognized state political parties under Arizona law. *See* A.R.S. section 16-825 (state committee of each party consists of county party chairs and one member of each county committee for every three elected at the county level).

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The hand count must begin within twenty-four hours after the polls have closed. A.R.S. § 16-602(I). If the limited hand count produces evidence that the machine count might be inaccurate in some way, the hand recount expands in stages. A.R.S. § 16-602(C).² But when the limited hand count matches the machine count for a given race, “the results of the electronic tabulation constitute the official count for that race.” *Id.* In all events, the hand count audit must be completed before the canvassing of the county election results. A.R.S. § 16-602(I). The responsible county officials must report the results of the audit to the secretary of state, who in turn must make the results publicly available on the secretary of state's website. *Id.*

The provision of section 16-602 at issue in this case, concerning the selection of polling places for audit, reflects the longstanding Arizona practice of organizing elections around political precincts. When the election is organized by precinct, the county board of supervisors establishes “a convenient number” of precincts before each election, and then designates one polling place in each precinct for the voters who resided in that precinct. *See* A.R.S. § 16-411(B). Consistent with that model, the statute refers to sampling of “precincts.”³

² The hand recount can extend to an entire county or jurisdiction, if necessary. A.R.S. § 16-602(D). Under some circumstances it can be treated as the official count. A.R.S. § 16-602(E). When the hand recount expands to cover an entire jurisdiction, the secretary of state must make available to the superior court “the escrowed source code for that county,” and the judge then must appoint an independent expert with software engineering expertise to review the software and “issue a public report to the court and to the secretary of state regarding the special master's findings on the reasons for the discrepancies.” A.R.S. § 16-602(J).

³ The text of the statute says, in pertinent part:

B. For each countywide primary, special, general and presidential preference election, the county officer in charge of the election shall conduct a hand count at one or more secure facilities. The hand count shall be conducted as prescribed by this section and in accordance with hand count procedures established by the secretary of state in the official instructions and procedures manual adopted pursuant to § 16-452. . . . The hand count shall be conducted in the following order:

1. At least two per cent of the precincts in that county, or two precincts, whichever is greater, shall be selected at random from a pool consisting of every precinct in that county. The county political party chairman for each political party that is entitled to continued representation on the state ballot or the chairman's designee shall conduct the selection of the precincts to be hand counted. The precincts shall be selected by lot without the use of a computer, and the order of selection by the county political party chairmen shall also be by lot.

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In 2011, the Legislature authorized Arizona counties to establish “voting centers” as polling places in place of the traditional precinct locations. 2011 Ariz. Legis. Serv. Ch. 331 (H.B. 2303) (West) section 3, *codified at* A.R.S. § 16-411(B)(4). At a voting center, any voter in the county can receive an appropriate ballot and lawfully cast the ballot on Election Day. *Id.* But the Legislature chose not to amend section 16-602 to specify hand count audit procedures for voting center elections. In fact, section 16-602 does not refer to voting centers at all.

Instead the Legislature delegated to the secretary of state the authority to make rules for hand count audits, including audits of elections conducted at voting centers. It did so by amending a sentence in section 16-602(B) that had read, “[t]he hand count shall be conducted as prescribed by this section.” The sentence as amended in 2011 says, “[t]he hand count shall be conducted as prescribed by this section *and in accordance with hand count procedures established by the secretary of state in the official instructions and procedures manual adopted pursuant to § 16-452.*” 2011 Ariz. Legis. Serv. Ch. 331 (H.B. 2303) (West) section 8, *codified at* A.R.S. § 16-602(B) (emphasis added).

The “official instructions and procedures manual adopted pursuant to § 16-452” is known as the Elections Procedures Manual. Arizona Secretary of State, State of Arizona Elections Procedures Manual (December 2019) (“Election Procedures Manual”), *available at* <https://azsos.gov/about-office/media-center/documents> (last visited November 25, 2020). The Elections Procedures Manual comprehensively lays out process and procedure details for Arizona elections. A new edition issues not later than December 31 of each odd-numbered year immediately preceding the general election. A.R.S. § 16-452(B). Each new edition must be formally approved by both the Governor and the Attorney General. *Id.* The current edition, issued at the end of 2019, received the endorsement of both Governor Ducey and Attorney General Brnovich.

Under the authority of section 16-602(B), the Election Procedures Manual gives detailed instructions to the county officials who conduct hand count audits. Election Procedures Manual at 213-234. The rule on sampling polling places for voting center election audits is straightforward and simple. “Each vote center shall be considered to be a precinct/polling location during the selection process and the officer in charge of elections must conduct a hand count of regular ballots from at least 2% of the vote centers, or two vote centers, whichever is greater.” Election Procedures Manual at 216. Consistent with that directive, Maricopa County’s 2020 general election hand count audit focused on a random sample of the voting centers that served as polling places.

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The plaintiff here claimed that the Maricopa County hand count did not comply with section 16-602, because the statute refers to selection of “precincts” for audit and says nothing about voting centers. The plaintiff asked the Court to order Maricopa County election officials to identify all of the ballots cast at the voting centers by residents of randomly sampled precincts, and to hand count those ballots to see whether the count matched the electronic vote count.

RELEVANT FACTS AND PROCEDURAL HISTORY

The decision to conduct the 2020 election at voting centers instead of precinct polling places was made by the Maricopa County Board of Supervisors on September 16, 2020. *See* Maricopa County Elections Department, *Election Day & Emergency Voting Plan – November General Election* (September 16, 2020), (“Election Plan”), available at <https://recorder.maricopa.gov/pdf/Final%20November%202020%20General%20Election%20Day%20and%20Emergency%20Voting%20Plan%209-16-20.pdf> (last visited Nov. 25, 2020). The Board’s decision effectively determined that the hand count audit likewise would focus on voting centers, since that is what the Elections Procedures Manual requires. There is no record, however, that the Republican Party expressed any objection, before the Board of Supervisors or to the officials who carried out the election plan. No one sought judicial intervention to clarify the alleged mismatch between the manual and the statute.

“The start of the hand count can be defined as the official training of the Hand Count Board members, selection of the precincts and races, coordinating the hand count with the party leaders, or any other activity that furthers the progress of the hand count for that election.” Election Procedures Manual at 225. By that definition, the 2020 general election hand count arguably started in Maricopa County two weeks before the election, when the county officer in charge of elections told the county political party chairs how many of their respective members would be needed to serve on the “Hand Count Boards,” and moved forward a week later, when the county chairs designate Hand Count Board members and alternates. *See* Elections Procedures Manual at 213. Again there is no record of any objection from the Republican Party when these steps were taken. No one asked for a judicial declaration that the county election officials were planning to recount the wrong ballots.

The official audit report says that the Maricopa County hand count began on the day after the general election, November 4. Maricopa County, Arizona General Election – November 3, 2020 Hand Count/Audit Report (“Audit Report”), available at <https://azsos.gov/election/2020-general-election-hand-count-results> (last visited December 9, 2020). That evening, the Maricopa County chairs of the Arizona Republican, Democrat and Libertarian parties took turns choosing “the polling places (vote centers) to be audited.” *Id.* On November 7, the volunteers appointed by the parties began counting the ballots cast at the selected voting centers. *Id.* They completed the task mid-day on November 9. *Id.* In all they hand-counted 2917 ballots from four voting centers,

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and another 5000 randomly sampled Maricopa County early (mail-in) ballots. *Id.* Nothing in the official report suggests that the Republican Party expressed disagreement, at any point in the process. *Id.*

As far as the court record shows, the complaint in this case stated the Arizona Republican Party's objection to the 2020 general election hand count audit for the first time. Filed on November 12, the complaint was framed as though the hand count had not yet begun when the complaint was filed. "Verified Complaint" at 1 ("Because the 'sampling' is expected to begin soon, Plaintiff seeks expedited relief.") The complaint requested a declaratory judgment that the law requires sampling of precincts rather than voting centers for the hand count audit, and a writ of mandamus directing Maricopa County officials to conduct the hand count audit accordingly.

Responding to the complaint in a motion to dismiss, on November 16, the defendants advised the Court that by September 12 the hand count audit had already been completed, reported and posted on the secretary of state's website.⁴ *The report showed that the hand count matched the machine count exactly. See Audit Report* ("No discrepancies were found by the Hand Count Audit Boards.") The plaintiff reacted by applying for an injunction to bar the Board of Supervisors from certifying the election results. The plaintiff continued to assert, even in the face of the audit showing a flawless vote tabulation, that a second hand count of a different sample of ballots was necessary to avoid "lingering questions" and a "cloud" over the "legitimacy" of the election." Application for Preliminary Injunction at 3.

THE REASONS THE PLAINTIFF'S CASE WAS DISMISSED

The plaintiff's claim for mandamus relief failed because the duty of County election officials was to comply with the Election Procedures Manual, and they did so. The declaratory judgment claim failed because its extreme tardiness prejudiced both the defendant county officials and the public interest. Both those claims, and the mid-case request for an injunction, were prohibited post-election challenges to election procedures. These issues are addressed in turn. The question whether the Elections Procedures Manual correctly applies section 16-602(B) is not addressed, because the plaintiff did not make the showing necessary to justify that inquiry.

⁴ What exactly the Arizona Republican Party and its attorney knew or had reason to know about the status of hand count audit, at the time of filing the complaint, will be an issue on the application for attorneys' fees. The Republican Party appears to have had constructive knowledge, at least, of facts that contradicted the allegations in the complaint. The attorney (who also verified the complaint) said he "did not receive a copy" of the audit report until after the suit had been filed, Plaintiff's Response to Defendant/Intervenors' Motion to Dismiss at 3, n.1, but what he knew about the audit when he filed the complaint is unclear.

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Mandamus Did Not Apply Because the Election Officials Followed the Law

The plaintiff presented its case primarily as a claim for mandamus relief. A writ of mandamus is an extraordinary remedy issued by a court against a public officer to compel the officer to perform an act required by law. *Sears v. Hull*, 192 Ariz. 65, 961 P.2d 1013, para. 11 (1998); *Adams v. Bolin*, 77 Ariz. 316, 322-323, 271 P.2d 472 (1954). If the officer is not specifically required to perform the duty or has any discretion as to what shall be done, the court may not issue the writ. *Adams v. Bolin*, 77 Ariz. 316 at 323.

Maricopa County officials had no discretion, under Arizona law, to hand count precincts instead of voting centers for the hand count audit. A county official's authority is limited to those powers expressly or impliedly delegated to him or her by state law. *Arizona Public Integrity Alliance v. Fontes*, 475 P.3d 303 ¶14 (2020). The Elections Procedures Manual directs county election officials to treat the voting centers as "precincts" for purposes of the hand count audit. Election Procedures Manual at 216. The manual has the force of law, meaning that county election officials must do as it says. *Arizona Public Integrity Alliance v. Fontes*, 475 P.3d 303 ¶16 (2020). Maricopa County officials therefore could not lawfully have performed the hand count audit the way the plaintiffs wanted it done. If they had done so, they would have exposed themselves to criminal punishment. See A.R.S. § 16-452(C) (a person who violates a rule in the Election Procedures Manual is guilty of a class 2 misdemeanor).

Since Maricopa County election officials had no power to vary from the Election Procedures Manual rules for the hand count audit, this Court likewise has no authority to issue a writ of mandamus to compel them to do so. "It is the duty of the court so far to adhere to the substantial requirements of the law in regard to elections as to preserve them from abuses subversive of the right of electors." *Hunt v. Campbell*, 19 Ariz. 254, 269, 169 P. 596, 602 (1917). A judge cannot change election rules whenever someone has "questions" or "concerns" about the results. A writ of mandamus lies only if election officials fail to follow the rules established by the law – here, the Election Procedures Manual. When Maricopa County officials conducted the hand count audit, they followed the Elections Procedures Manual to the letter. As a result, there was and is no basis for mandamus relief.

The Request for Declaratory Relief Was Way Too Late

There are legally appropriate ways to test the validity of the Elections Procedures Manual in court. The political party has the right to sue for a judicial determination of whether the Elections Procedures Manual follows the law. The Arizona Republican Party nominally did that here, by asking the court to "declare that the hand count sampling be of "precincts . . . and not of "vote centers." Verified Complaint at 5. But the law sets out basic rules, for that kind of lawsuit,

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that were not followed here. The suit was brought against the wrong party, and far too late, for the requested relief.

Arizona's Uniform Declaratory Judgments Act, A.R.S. §§ 12-1831 through 12-1846, is an “instrument of preventive justice” that allows a court to determine a person's rights, status or other legal relations. *Canyon del Rio Investors, L.L.C. v. City of Flagstaff*, 227 Ariz. 336, 258 P.3d 154 ¶ 18 (App. 2011). When a justiciable controversy exists, the Act allows adjudication of rights before the occurrence of a breach or injury necessary to sustain a coercive action for damages or injunctive relief. *Id.* A justiciable controversy arises when the party seeking the declaration has a real, present interest in the issue and the party being sued has a real, present interest in opposing the declaration being sought. *Moore v. Bolin*, 70 Ariz. 354, 358, 220 P.2d 850, 852-853 (1950).

A party seeking a declaratory judgment must file suit against the appropriate party. On a claim like this one, where the plaintiff says that government officials have misinterpreted the law, the proper defendant is the government agency or official responsible for the interpretation. The official responsible for the Elections Procedures Manual, including the hand count audit rules, is the secretary of state. A.R.S. § 16-452. The secretary of state therefore should have been named as the defendant in this case for purposes of the declaratory judgment claim.

The plaintiff chose to sue Maricopa County election officials instead of the secretary of state. County officials have no power to rewrite the Elections Procedures Manual. As a result, the plaintiff's request for a declaratory judgment against them was futile. Fortunately for the plaintiff, the secretary of state chose to intervene. But for that decision, the declaratory judgment claim would have been dismissed out of hand.

A party seeking a declaratory judgment also must file suit at the appropriate time. Declaratory relief cannot be sought until a justiciable controversy has arisen. *Arizona State Board of Directors for Junior Colleges v. Phoenix Union High School District*, 102 Ariz. 69, 73, 424 P.2d 819, 823 (1967). On the other hand, the party seeking relief must not unduly delay. A legal doctrine called *laches* discourages dilatory conduct by litigants. *Lubin v. Thomas*, 213 Ariz. 496, 144 P.3d 510 ¶ 10 (2006). Laches requires dismissal of a case when unreasonable delay in bringing the claim prejudices the opposing party or the administration of justice. *Id.*

This case is a textbook example of unreasonable delay that calls for the application of laches. The plaintiff could have gone forward with the case months ago. Instead it waited until after the election, after the statutory deadline for commencing the hand count audit, and (as it turned out) *after the completion of the audit*. The delay prejudiced both the defendants and the public. That defect, unlike the failure to sue the proper party, could not have been fixed.

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The plaintiff itself admitted that its claim could have been filed long ago. In one of its filings, the plaintiff said, “until this election cycle, there was simply no real case or controversy to decide in Maricopa County . . . because the county used the ‘precinct’ model” instead of the voting center model. Plaintiff’s Response to Defendant/Intervenors’ Motion to Dismiss at 3. The necessary implication is that a justiciable controversy arose when the Board of Supervisors first approved the use of voting centers for 2020 election cycle. Since the first elections in 2020 were the presidential preference primaries on March 17, the decision to use voting centers for those elections happened in January, or February at the latest. The plaintiff could have filed the case then, or at any time in the eight or nine months since.

Even if the focus is narrowed to the general election, the plaintiff delayed unreasonably. The Board of Supervisors passed the resolution authorizing the use of voting centers for the general election on September 16. The plaintiff unquestionably could have brought the action then. Instead the plaintiff waited another eight weeks to file the complaint, until the election was over and the statutory post-election deadline for commencing the hand count audit had passed.

The plaintiff asserted that its eleventh-hour filing decision primarily stemmed from worries about election integrity. “[P]erhaps most importantly (and obviously) of all concern about potential widespread voter fraud has taken on a special significance in this general election, warranting a thorough focus on these [election] laws and compelling Plaintiff to take action.” Plaintiff’s Response to Defendant/Intervenors’ Motion to Dismiss at 2. Setting aside for the moment the illogic of an attempt to disprove a theory for which no evidence exists, the plaintiff’s defense of the case’s timing failed on its own terms. The filing delay created a situation in which an order requiring another audit with different rules would only have amplified public distrust.

The Arizona Supreme Court very recently highlighted the prejudice caused by belated lawsuits directed at election rules. The issue arose when the Maricopa County Recorder proposed sending out mail-in ballots with instructions different than those specified in the Elections Procedures Manual. *Arizona Public Integrity Alliance v. Fontes*, 475 P.3d 303 (2020). Disallowing the Recorder’s proposal, our Supreme Court warned: “When public officials, in the middle of an election, change the law based on their own perceptions of what they *think* it should be, they undermine public confidence in our democratic system and destroy the integrity of the electoral process.” 475 P.3d 303 ¶ 4 (emphasis in original).

The Supreme Court’s admonition to public officials who would change the rules “in the middle of the election,” applies squarely to this case. It applies to the Maricopa County officials administering the election. It applies to the Arizona Republican Party as an official participant in the election. Most importantly, it applies to this Court, when a participant in the election asks the court to change an election process that is already underway or, worse, to order election officials to do it over using different rules. Either way, the only possible answer is “no.”

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The plaintiff also failed to acknowledge the prejudice that its delay caused Maricopa County. The plaintiff argued that there was still time to conduct another audit before the deadline for the canvass. Assuming (generously) that the plaintiff was right about that, the argument ignored the cost to the county of repeating the hand count audit. A second audit would have cost tax dollars and disrupted the orderly administration of the election. The fact that the second audit would have been conducted under tight deadlines, with election resources at a premium, would have multiplied those costs. For that reason also, the plaintiff's declaratory relief claim was not well taken.

A Post-Election Judicial Inquiry into Election Procedures Was Not Justified

It is telling that the plaintiff lost interest in the declaratory judgment claim, and pivoted instead to the request for an injunction to stop the certification of the election and the canvass of the results, as soon as the defendants made clear that the hand count audit has been completed. The plaintiff could have pursued the declaratory judgment claim to determine how to audit future voting center elections. That it did not do so demonstrates that its real interest was not the audit procedure as such. The real issue, evidently, was the outcome of the 2020 election.

Arizona law categorically prohibits this kind of post-election lawsuit. Actions concerning alleged procedural violations of the electoral process must be brought prior to the actual election. *Sherman v. City of Tempe*, 202 Ariz. 339, 342, 45 P.3d 336 (2002). “[T]he procedures leading up to an election cannot be questioned after the people have voted, but instead the procedures *must* be challenged before the election is held.” *Tilson v. Mofford*, 153 Ariz. 468, 470, 737 P.2d 1367 (1987) (emphasis in original). “If parties allow an election to proceed in violation of the law which prescribes the manner in which it shall be held, they may not, after the people have voted, then question the procedure.” *Kerby v. Griffin*, 48 Ariz. 434, 444, 62 P.2d 1131 (1936). Our state Supreme Court long ago explained why this rule exists, in terms that remain relevant today.

The temptation to actual fraud and corruption on the part of the candidates and their political supporters is never so great as when it is known precisely how many votes it will take to change the result; and men who are willing to sell their votes before election will quite as readily sell their testimony afterwards, especially as the means of detecting perjury and falsehood are not always at hand until after the wrong sought to be accomplished by it has become successful and the honest will of the people has been thwarted.

Hunt v. Campbell, 19 Ariz. 254, 277, 169 P. 596, 605 (1917), quoting *Oakes v. Finlay*, 5 Ariz. 390, 53 P. 173 (1898).

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Because the public interest in protecting “the honest will of the people” is paramount, an allegation that election officials did not “follow the law” is not sufficient to sustain a post-election claim. Noncompliance with a procedural rule that could have been enforced by mandamus prior to the election justifies rejecting the vote afterward only if there has been “actual fraud” or a demonstrable effect on the election’s outcome. *Id.* at 267-268, 169 P. at 601-602. The “cardinal rule,” after the election, is this:

[G]eneral statutes directing the mode of proceeding by election officers are deemed advisory, so that strict compliance with their provisions is not indispensable to the validity of the proceedings themselves, and that honest mistakes or mere omissions on the part of the election officers, or irregularities in directory matters, even though gross, if not fraudulent, will not void an election, unless they affect the result, or at least render it uncertain.

Findley v. Sorenson, 35 Ariz. 265, 269, 276 P. 843, 844 (1929).

From these substantive principles, procedural rules follow. One is that election results are presumed to be valid and free of fraud. *Hunt v. Campbell*, 19 Ariz. at 268, 169 P. at 602. The presumption against fraud is especially strong when the election contest “arises from the acts of public officers, acting under the sanction of their official oaths.” *Id.* at 271, 169 P. at 603 (citation and internal punctuation omitted). “The presumption is in favor of the good faith and honesty of the members of the election board. Regarding their official conduct, like all public officials, courts never presume fraud against them to impeach their official acts.” *Id.* at 268, 169 P. at 602. The election challenger bears the burden of proving the existence of fraud or impropriety. *See id.* at 264, 169 P. at 600.

Moreover, proof “of the most clear and conclusive character” is necessary to justify judicial intervention that might jeopardize “the certainty and accuracy of an election.” *Id.* at 270-271, 169 P. at 603. (citation and internal punctuation omitted). Fraud or impropriety “ought never to be inferred from slight irregularities, unconnected with incriminating circumstances; nor should it be held as established by mere suspicions, often having no higher origin than partisan bias and political prejudices.” *Id.* at 264, 169 P. at 600. “[N]othing but the most credible, positive, and unequivocal evidence should be permitted to destroy the credit of official returns. It is not sufficient to cast suspicion upon them; they must be proved fraudulent before they are rejected.” *Id.* at 271, 169 P. at 603. “To destroy the credit of the official returns there must be positive and unequivocal evidence of the fraud, and if the circumstances of a case can be explained upon the hypothesis of good faith, that explanation will prevail. *Id.* at 276, 169 P. at 605.

These longstanding rules have stood the test of time. They remain vital today, guarding the electoral process against the gamesmanship of those who might otherwise hedge against a loss at

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the polls by holding legal issues in reserve or use the law as a tool to thwart the will of the voters. An example of their recent application, in a case analogous to this one, is *Williams v. Fink*, 2019 WL 3297254 (Ariz. App. July 22, 2019). Williams, a candidate for Santa Cruz County Superior Court judge, challenged the result of the election because opposing candidate Fink's name had been listed first on most of the ballots.

The Court of Appeals affirmed the trial court's order dismissing Williams's claim without a hearing. The court held that "Williams's challenge to how the ballots were printed should have – and could have – been brought before the election. Because he failed to address the county's method of alternating the candidates' names on the ballots prior to the election, he cannot, after the election, question the county's procedure." *Id.*, ¶ 14. Alternatively the court held, citing *Findley v. Sorenson*, that Williams had failed to state a claim because he had not plausibly alleged that the purported misconduct of election officials might have affected the outcome of the election. *Id.*, ¶¶ 15-20.

The same rules applied here, in the same way as in *Williams*. The alleged procedural violation of the election laws (here, the sampling of ballots for the hand count audit by voting center rather than by precinct) resulted directly from pre-election decisions that were known, or should have been known, to the party claiming to be aggrieved. The implementation of the questioned procedure began before the election (in *Williams*, when the ballots were printed; here, when the political party officials chose the Hand Count Board members) though the alleged harm occurred later (in *Williams*, during the election itself; here, immediately after the election when the polling places were sampled for audit). The time for testing whether the procedure comported with the law, here as in *Williams*, was likewise before the election.

Similarly, here as in *Williams*, the plaintiff failed to state a viable post-election claim. The plaintiff here demanded a hand count audit "in strict accordance" with the statute, Verified Complaint at 1, at a time when an alleged failure strictly to comply did not give rise to a cause of action. The plaintiff offered only suspicion of wrongdoing, in a situation that required it to plead specific, facially credible facts backed by "the most credible, positive, and unequivocal evidence" of fraud or malfeasance. The plaintiff here did not even allege facts that cast doubt on the reliability of the hand count audit, let alone the outcome of the election or the honesty of the officials who administered it. The law therefore required immediate dismissal of the case.

The Proposed Amendment Adding a Claim for Injunctive Relief Was Futile

When this case was dismissed, Plaintiff's Motion for Leave to File an Amended Complaint was pending. The plaintiff asked in the motion for permission to add an application for preliminary injunction to the application for a writ of mandamus and the declaratory judgment claim. The plaintiff sought to enjoin the defendants from certifying the countywide voting results and issuing

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the official canvass “until there has been a judgment or other dispositive ruling in this matter, and the terms of such ruling or judgment, if any, have been complied with.” Application for Preliminary Injunction at 1.

A party seeking a preliminary injunction traditionally must establish four criteria: (1) a strong likelihood of success on the merits, (2) the possibility of irreparable injury if the requested relief is not granted, (3) a balance of hardships favoring that party, and (4) public policy favoring a grant of the injunction. *Arizona Association of Providers for Persons with Disabilities v. State of Arizona*, 223 Ariz. 6, 219 P.3d 216 ¶ 12 (App. 2009). As with any request to amend the complaint, however, a request to add a claim for an injunction may be denied if the amendment would be futile. *First Citizens Bank & Trust Company v. Morari*, 242 Ariz. 562, 399 P.3d 109 ¶ 12 (App. 2017).

The plaintiff’s application for a preliminary injunction was futile here. The underlying election challenge had no chance of success, for all of the reasons stated above. The plaintiff could not show irreparable injury from the certification of the election results, or a favorable balance of hardships, because the plaintiff could not explain how, exactly, it would benefit from a do-over of the hand count audit. At the November 18 oral argument, counsel said, “It’s about making sure there’s no error, making sure there’s no fraud.” But that explanation ran headfirst into the public policy that prohibits judicial intervention into an election based on mere suspicion that something went wrong. As a matter of policy, the public’s interest in “the certainty and accuracy of an election” far outweighed what the Arizona Republican Party described as “the importance . . . of doing everything with respect to this election ‘by the book.’” Application for Preliminary Injunction at 3. In short, all four criteria weighed *against* the request for injunctive relief.

For all these reasons,

IT IS ORDERED affirming the order of dismissal filed November 19, 2020.

EXHIBIT D

ARIZONA SUPERIOR COURT, PIMA COUNTY
FOR THE COUNTY OF COCHISE

HON. CASEY F MCGINLEY

CASE NO. CV202200518

DATE: November 07, 2022

ARIZONA ALLIANCE FOR RETIRED AMERICANS,
INC., ET AL.
Plaintiffs

VS.

TOM CROSBY, ET AL.
Defendants

RULING

IN CHAMBERS

Pending before the Court is Plaintiffs' Petition for Writ of Mandamus, or in the Alternative, Motion for Preliminary Injunction, filed October 31, 2022. The Court held an all-day evidentiary hearing on November 4, 2022, and took the matter under advisement. The Court has considered the briefs supplied by counsel, including an amicus curiae brief submitted by the Arizona Secretary of State. It has also considered the testimony of the witnesses, the arguments of the parties, and the relevant law. Finding that the Plaintiffs are entitled to the relief they seek, the Court issues the writ and preliminary injunction as outlined below.

FACTS AND HISTORY OF THE CASE

On November 8, 2022, registered voters across the country will participate in the General Election. However, in Arizona, the General Election began on October 12, 2022, when county Recorders sent out early ballots to those who had requested them and made voting centers available for registered voters to vote early in person.

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Judicial Administrative Assistant

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A registered Arizona voter generally can cast their ballot in one of three ways. First, they can vote in person on Election Day at their assigned precinct or voting center (hereafter referred to as precinct ballots). Second, they may request an early ballot to fill out and return to election officials either by United States Mail or by utilizing a ballot drop box. Finally, during the early voting period, a registered voter can obtain an early ballot at specific locations, fill it out on site, and cast their vote as an early ballot.

Arizona uses certified electronic machines to count and report the results of its elections. To ensure that the electronic vote tally is accurate, statutes and the Election Procedures Manual promulgated by the Arizona Secretary of State require that elections officials audit a small percentage of ballots by hand. This process involves hand counting the results of a limited number of races and comparing that hand count to the electronically calculated results. If the hand count produces results within a designated margin of the electronic results, the audit ends, and the electronic tally becomes official. If the audit produces results which are greater than that margin, the process is repeated and expanded to ensure the accuracy of the election results is properly established.

On October 24, 2022, by a 2-1 vote the Cochise County Board of Supervisors, asserting that it was “widely known that many voters lacked confidence in the voting system” and finding that “[a] 100% County wide audit of the 2022 General Election [would] enhance voter confidence,” adopted a resolution requiring the County Recorder or other officer in charge of elections “to perform a hand count audit of all County precincts for the 2022 General Election...”

Plaintiff Arizona Alliance for Retired Americans, Inc., is a 504(c)(4) nonprofit organization which represents retired people from every county in Arizona on a variety of issues. Their membership includes 1,200 to 1,300 residents of Cochise County. They also provide support and education to retired individuals on topics pertaining to voting and elections. Plaintiff Stephani Stephenson is a Cochise County resident who cast an early ballot for the 2022 election. Her ballot has been accepted, validated, and is ready for tabulation. On October 31, 2022, Plaintiffs collectively filed a special action with the Cochise County Superior Court seeking a declaratory judgment and injunctive relief to prevent the full hand count audit. Additionally, they filed a

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Petition seeking either a writ of mandamus or a preliminary injunction to prevent the proposed full hand count audit of the election.

Defendant David Stevens (Defendant Stevens) is the duly elected County Recorder for Cochise County. His office is responsible for, among other statutory requirements, registering voters, providing early ballots, and ensuring that early ballots are properly provided to the County Elections Director for tabulation. He has never supervised an audit or hand count of an election. Defendant Lisa Marra (Defendant Marra) is the appointed Elections Director for Cochise County. She has served as the officer in charge of elections for various primary and general elections in Cochise County, most recently this year's primary election and the 2020 general election. She has already started the process of tabulating early ballots and sequestering ballots for the statutorily required audit. Defendants Tom Crosby, Ann English, and Peggy Judd (Defendant Board of Supervisors) are the duly elected members of the Cochise County Board of Supervisors, which voted to adopt the full hand count audit procedure challenged by Plaintiffs. Defendant Marra agrees that Plaintiffs are entitled to the relief they seek. The remaining Defendants contend that Plaintiffs lack standing to assert their claims or that Defendant Board of Supervisors' action was lawful. Defendants Stevens and the Board of Supervisors allege that Plaintiffs lack standing to raise the challenges pursued here.

LEGAL STANDARDS

A party seeking a preliminary injunction must show (1) a strong likelihood of success on the merits, (2) the possibility of irreparable harm if the relief is not granted, (3) the balance of hardships favors the party seeking injunctive relief, and (4) public policy favors granting the injunctive relief. *Fann v. State*, 251 Ariz. 425, 432, 493 P.3d 246, 253 (2021), citing *Smith v. Ariz. Citizens Clean Elections Comm'n*, 212 Ariz. 407, 410 ¶ 10, 132 P.3d 1187, 1190 (2006). This is a sliding scale, not a strict balancing of factors. *Id.* "The greater and less reparable the harm, the less the showing of a strong likelihood of success on the merits need be. Conversely, if the likelihood of success on the merits is weak, the showing of irreparable harm must be stronger." *Id.*

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“A writ of mandamus may be issued by the supreme or superior court to any person...on the verified complaint of the party beneficially interested, to compel, when there is not a plain, adequate and speedy remedy at law, performance of an act which the law specially imposes as a duty resulting from an office....” A.R.S. § 12-2021. A plaintiff who establishes that a public official has acted unlawfully and exceeded their constitutional and statutory authority need not satisfy the standard for injunctive relief. *Arizona Public Integrity Alliance v. Fontes*, 250 Ariz. at 64, 475 P.3d at 307, citing *Burton v. Celentano*, 134 Ariz. 594, 596, 658 P.2d 247, 249 (App. 1982) (“[W]hen the acts sought to be enjoined have been declared unlawful or clearly are against the public interest, plaintiff need show neither irreparable injury nor a balance of hardship in his favor.”)

ANALYSIS

1. Standing

The law usually requires a specific injury before a plaintiff has standing to a claim. See *Sears v. Hull*, 192 Ariz. 65, 69, 961 P.2d 1013, 1017 (1998) (“To gain standing ... a plaintiff must allege a distinct and palpable injury.”) However, a more relaxed standard for standing exists in mandamus actions such as this one. The statute governing writs of mandamus allows a “party beneficially interested” in an action to compel a public official to perform an act imposed by law. See A.R.S. 12-2021; See also *Stagecoach Trails MHC, L.L.C. v. City of Benson*, 231 Ariz. 366, 370, 295 P.3d 943, 947 (2013) (“An action is in the nature of mandamus if it seeks to compel a public official to perform a non-discretionary duty imposed by law.”).

The phrase “party beneficially interested” is “applied liberally to promote the ends of justice.” *Barry v. Phx. Union High School*, 67 Ariz. 384, 387, 197 P.2d 533 (1948). “Thus, the ‘mandamus statute [§ 12-2021] reflects the Legislature's desire to broadly afford standing to members of the public to bring lawsuits to compel officials to perform their public duties.” *Arizona Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 62, 475 P.3d 303, 307 (2020), citing *Ariz. Dep't of Water Resources v. McClennen*, 238 Ariz. 371, 377, 360 P.3d 1023, 1029 (2015).

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Plaintiffs are a registered voter in Cochise County who submitted an early ballot prior to the Board of Supervisors' Action, and an organization which represents other registered voters in Cochise County who are affected by said action. They seek to compel Defendants Marra and Stevens to perform her non-discretionary duty to conduct hand count and audit procedures which comply with A.R.S. §16-602 and the Elections Procedures Manual. In seeking to compel these public officials to perform their public duties, Plaintiffs have shown a sufficient beneficial interest to establish standing.

2. Legality of the Board's Action

The question before the Court is whether A.R.S. §16-602(B) or (F), as supplemented by the EPM, permit an election official to conduct a hand count or manual audit starting with and consisting solely of 100% of the ballots cast in an election, rather than by using the increments of ballots established by statute. The Court finds that they do not.

Laws pertaining to the tabulation of votes cast in an election are generally found in A.R.S. §16-602, et. Seq., However, the Arizona Legislature has also delegated to the Secretary of State certain rule-making authority regarding elections. Among others, this authority includes the ability to "prescribe rules to achieve and maintain the maximum degree of correctness, impartiality, uniformity and efficiency on the procedures for early voting and voting..." A.R.S. §16-452(A). Any rules promulgated by the Secretary of State are to be "prescribed in an official instructions and procedures manual" an updated version of which is to be issued before the last day of every odd-numbered year. A.R.S. §16-452(B). Before it can be issued, however, the manual (commonly referred to as an Elections Procedure Manual, or "EPM,") must be approved by both the Governor and Attorney General. "Once adopted, the EPM has the force of law; any violation of an EPM rule is punishable as a class two misdemeanor." *Arizona Public Integrity Alliance v. Fontes*, 250 Ariz. 58, 62, 475 P.3d 303, 307 (2020); *see also* A.R.S. §16-452(C). However, "an EPM regulation that contradicts statutory requirements does not have the force of the law." *Leibsohn v. Hobbs*, 76 Ariz. Cases Digest 16, 517 P.3d 45, (2022), citing *Leach v. Hobbs*, 250 Ariz. 572, 576, 483 P.3d 194, 198 (2021).

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Judicial Administrative Assistant

When interpreting a statute, a Court should find and give effect to legislative intent. *Ariz. Chapter of the Associated Gen. Contractors of Am. v. City of Phoenix*, 247 Ariz. 45, 47, 445 P.3d 2,4 (2019). “The best indicator of that intent is the statute’s plain language ... and when that language is unambiguous, we apply it without resorting to secondary statutory interpretation principles.” *SolarCity Corp. v. Ariz. Dep’t of Revenue*, 243 Ariz. 477, 480, 413 P.3d 678, 681 (2018). If a statute has only one reasonable meaning when considered in context, the Court applies that meaning without further analysis. *Leibsohn v. Hobbs*, 517 P.3d 45, 48 (Ariz. 2022), citing *Leach v. Reagan*, 245 Ariz. 430, 438, 430 P.3d 1241, 1249 (2018); see also *Glazer v. State*, 244 Ariz. 612, 614, 423 P.3d 993, 995 (2018). If the statute has more than one reasonable meaning, the Court should then apply secondary interpretive principles, including considering the statute’s subject matter and purpose, to identify legislative intent. “A cardinal principle of statutory interpretation is to give meaning, if possible, to every word and provision so that no word or provision is rendered superfluous.” *Nicaise v. Sundaram*, 245 Ariz. 566, 568, ¶ 11, 432 P.3d 925, 927 (2019).

“The law-making powers of the county ... are entirely derivative. The Board of Supervisors can exercise only those powers specifically ceded to it by the legislature.” *Hart v. Bayless Investment & Trading Co.*, 86 Ariz. 379, 384, 346 P.2d 1101, 1105 (1959). A county board of supervisors has only those powers “expressly conferred by statute, or [as] necessarily implied therefrom.” *State ex rel. Pickrell v. Downey*, 102 Ariz. 360, 363, 430 P.2d 122, 125 (1967). County supervisors “may exercise no powers except those specifically granted by statute and in the manner fixed by statute.” *Mohave County v. Mohave-Kingman Estates, Inc.*, 120 Ariz. 417, 420, 586 P.2d 978, 981 (1978) (citation omitted). Actions taken by a board of supervisors by methods unrecognized by statute are “without jurisdiction and wholly void.” *Id.*

State law requires election officials to conduct hand counts of electronically tabulated ballots to ensure the accuracy the results received. Such hand counts are governed by A.R.S. §16-602, as well as an Elections Procedures Manual. See A.R.S. §16-602(B). (“The hand count shall be conducted as prescribed by this section and in accordance with hand count procedures established by the secretary of state in the official instructions and procedures manual adopted pursuant to § 16-452....”). Precinct ballots are subjected to a hand count outlined in A.R.S. §16-

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602(B), whereas early ballots are grouped separately and subjected to a manual audit pursuant to A.R.S. §16-602(F). A simplified overview of those processes is important to describe here.

In conducting a hand count of precinct ballots, election officials randomly select 2% of the county's precincts, or two precincts total, whichever is greater, to begin the count. A.R.S. §16-602(B)(1). Officials then randomly select contested races meeting certain criteria in order to compare the hand counts against the electronically tabulated counts for those races on those ballots. A.R.S. §16-602(B)(2). If the hand count for any race is within an expected margin of the electronic tabulation for that same race, the electronic tabulation becomes the official count for that race in that jurisdiction. A.R.S. §16-602(C). If the difference is equal to or greater than the designated margin, a second hand count of the same ballots is required. *Id.* If that second count again meets or exceeds the designated margin, the number of ballots subjected to the hand count is doubled, with the additional precincts again chosen at random, and the process is repeated. *Id.* After this expanded hand count, if any race is still not within the designated margin, the hand count is once again expanded to consist of the entire jurisdiction of the county. A.R.S. §16-602(D).

The audit of early ballots proceeds differently. First, officials randomly select and sequester one or more batches of ballots that have already been tabulated. A.R.S. §16-602(F). Then, officials randomly select from those sequestered ballots "a number equal to one percent of the total number of early ballots cast, or five thousand ballots whichever is less" upon which to conduct the audit. *Id.* Officials count votes for the same races that were reviewed in the hand count of precinct ballots, and compare the votes counted in the audit to the unofficial electronic tally for the same ballots. *Id.* If the manual audit for any race is within the designated margin, then the electronic tabulation becomes the official count for that race. If the manual audit is greater than or equal to the designated margin, an additional 1% or 5,000 ballots, whichever is less, are added to the audit. *Id.* The process is repeated until the audit results in a ballot count within the designated margin. *Id.* "If at any point in the manual audit of early ballots the difference between any manual count of early ballots is less than the designated margin when compared to the electronic tabulation of those ballots, the electronic tabulation shall be included in the canvass and no further manual audit of the early ballots shall be conducted." *Id.*

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As permitted by the Legislature, the Secretary of State drafted an Elections Procedures Manual in 2019 which was approved by both the Governor and the Attorney General. A 2021 Manual was drafted, but never received approval. Accordingly, the 2019 EPM applies to the 2022 General Election. As far as the parameters of a hand count of precinct or vote center ballots is concerned, the 2019 EPM generally tracks A.R.S. §16-602(B). However, as it pertains to the manual audit of early ballots, the EPM adds additional direction. The EPM states that the officer in charge of the elections must “conduct a hand count of 1% of the total number of early ballots cast, or 5,000 ballots, whichever is less. *Counties may elect to audit a higher number of ballots at their discretion.*” EPM §IIIB, page 216 (citation omitted, emphasis added). The Board of Supervisors and Recorder Stevens rely on this last sentence to support their contention that a full hand count of all ballots cast is lawful. In support of their position, these Defendants provided the Court an informal opinion rendered by a Deputy Solicitor General from the Attorney General’s Office, which opined that the sentence at issue permitted a full hand count audit of all ballots cast in an election.

The precinct ballot hand count statute commands that “[a]t least two percent of the precincts in that county, or two precincts, whichever is greater, shall be selected at random from a pool consisting of every precinct in the county...” (for the purpose of a hand count.) A.R.S. §16-602(B)(1). A plain reading of this language permits elections officials to lawfully choose to hand count a higher number of ballots simply by selecting a higher percentage of the precincts in that county.

However, in addition to the number requirement, there is a requirement that the ballots be *randomly* selected for a hand count. By common definition, a selection of precincts is not random if all precincts are chosen. In this regard, any directive to begin a hand count under A.R.S. §16-602(B) by counting votes cast exceeds the authority granted by statute.

Additionally, the statute establishes a mechanism under which small portions of precinct ballots are hand counted and compared to the electronic tabulation, expanding that hand count if necessary, and culminating in a jurisdiction wide hand count if required. *See* A.R.S. §16-602(C) through (D). This entire process would be rendered superfluous if the Court were to construe A.R.S. §16-602(B) to permit officials to initially select 100% of the precinct ballots as its starting

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point.¹ The Court cannot interpret any statute in any manner which renders a portion of that statute superfluous. *See Nicaise, supra*. Because the statute does not permit elections officials to begin the precinct hand count by counting all ballots cast, the Board's requirement that elections officials do so here is unlawful.

The early ballot manual audit statute utilizes a different procedure to determine what ballots will be audited. The law first requires the sequestration of batches of early ballots, and then requires the random selection from those sequestered batches "a number equal to one percent of the total number of early ballots or five thousand ballots, whichever is less." A.R.S. §16-602(F) (emphasis added). Thus, instead of establishing a minimum number of ballots which can be initially reviewed (as is the case with §16-602(B)) §16-604(F)'s plain language establishes that the maximum number of early ballots which can be initially audited in an election is 5,000.² Because the Board's directive would require the initial audit of approximately 30,000 early ballots, it is not permitted by the plain language of §16-602(F).

The 2019 EPM declaration that "[c]ounties may elect to audit a higher number of ballots at their discretion" is not found anywhere in A.R.S. §16-602, and has no basis or authority in any other statute. It is unclear why this provision was included in the EPM. Inasmuch as EPM permits a county to begin a hand count audit of early ballots by auditing 100% ballots cast, it runs afoul of A.R.S. §16-602(F) and its requirement that the initial hand count audit not exceed a review of 5,000 ballots. Because "an EPM regulation that contradicts statutory requirements does not have the force of the law," *Leibsohn, supra*, clause at issue cannot be relied upon to conduct a full hand count audit as proposed by the Board of Supervisors.

The language of the Board's Action of October 24, 2022, read in conjunction with the description provided, demonstrates that the proposed hand count cannot be lawfully conducted

¹ County Recorder Stevens testified at the Evidentiary Hearing that performing a full hand count of all precinct votes and all early votes would necessarily mean that certain processes required by statutes or the EPM would no longer be needed. The fact that the Board's directive necessarily eliminates established statutory procedures casts further doubt on its lawfulness.

² For purposes of illustration, consider two hypothetical counties. In County A, 40,000 early ballots are cast. One percent of 40,000 is 400, and because 400 is less than 5,000, County A can only initially audit 400 ballots under §16-602(F). In County B, 800,000 early ballots are cast. One percent of 800,000 is 8,000. Since that number exceeds 5,000, only 5,000 early ballots could be initially selected for audit under the statute.

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as written. The Action directs the Recorder or other officer in charge of elections to perform a hand count audit of all votes cast “[p]ursuant to ARS 16-602 B...” The Action thus requires the Recorder (or other officer) to audit all ballots in the manner prescribed for precinct ballots despite the statutory requirement that early ballots be audited by a separate procedure outlined in A.R.S. §16-602(F). The Board’s Action therefore requires election officials to audit ballots in a manner not permitted by law. Even if the Board’s Action is interpreted to require all ballots to be counted pursuant to their proper statute, the requirement that the officer in charge of the election conduct a full hand count of all ballots cast is otherwise unlawful.

CONCLUSION

Because Plaintiffs have established that the Board of Supervisors has acted unlawfully by ordering a full hand count, they need not satisfy the standard for injunctive relief here. *Arizona Public Integrity Alliance v. Fontes, supra*. Regardless, Plaintiffs have nonetheless satisfied the standard for injunctive relief in this case. Because the Board of Supervisors had no authority to order a full hand count audit of the electronic tabulation of votes cast in the general election, Plaintiffs are very likely to succeed on the merits of their special action. Additionally, because the proposed audit does not comply with clearly stated Arizona law, public policy and the public interest are served by enjoining the unlawful action. Plaintiffs have additionally established they are beneficially interested in compelling the Recorder or Elections Director to perform their non-discretionary legal duty of conducting an audit of votes only as permitted by statute, thus establishing their claim for mandamus under A.R.S § 12-2021.

Defendants urge the Court to consider that permitting a full hand count audit would help ameliorate fears that the electronic count was incorrect, and that it ensures that every vote is counted and counted correctly. However, there is no evidence before this Court that electronic tabulation is inaccurate in the first instance, or more importantly, that the audit system established by law is insufficient to detect any inaccuracy it may possess.

The Court understands and recognizes that many citizens believe that a full hand count is the only appropriate methodology to accurately count the people’s vote. However, the question of what methodology of vote counting is most appropriate, or most supported by the public, is not

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the question that is currently before this Court. The decision as to how to conduct and tabulate elections is appropriately in the domain of the State Legislature, supplemented by the delegated rule making authority of the Secretary of State. The Legislature has spoken clearly, and elected officials are required to follow its direction. As the Arizona Supreme Court has succinctly stated:

Election laws play an important role in protecting the integrity of the electoral process. Thus, public officials should, by their words and actions, seek to preserve and protect those laws. But when public officials, in the middle of an election, change the law based on their own perceptions of what they think it *should* be, they undermine public confidence in our democratic system and destroy the integrity of the electoral process.

Arizona Pub. Integrity All. v. Fontes, 250 Ariz. at 61, 475 P.3d 306 (emphasis in original). In order to ensure public confidence in our democratic system and uphold the integrity of the duly enacted electoral process, this Court must grant Plaintiffs' requests for preliminary injunction and writ of mandamus.

Based on the foregoing,

IT IS ORDERED that the Petition for Writ of Mandamus or in the Alternative Motion for Preliminary Injunction is **GRANTED**.

IT IS FURTHER ORDERED directing the Cochise County Recorder, Cochise County Director of Elections, or any other officer in charge elections for Cochise County shall conduct any hand count of precinct ballots or hand count audit of early ballots strictly in accordance with A.R.S. 16-602, as described in this Ruling. Such audit or hand count shall not constitute a review of all ballots cast unless such methodology is required based on the results of the ongoing hand count or audit.

IT IS FURTHER ORDERED enjoining the Cochise County Board of Supervisors' Action requiring a full hand count audit of all votes cast in Cochise County in the 2022 General Election.



HON. CASEY F MCGINLEY

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L. Kimes

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EXHIBIT E



COCHISE COUNTY ATTORNEY'S OFFICE

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Brian M. McIntyre
COCHISE COUNTY ATTORNEY

November 10, 2022

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PIERCE COLEMAN

Christine Estes-Werther christine@piercecoleman.com

Attorney for Elections Director Marra

RE: CV202200518 and Election Interference

Dear Counsel,

This office has become aware of the potential that certain actors may attempt to go forward with an “expanded hand count”, despite the decision rendered Monday by Judge McGinley. While a notice of appeal has been filed, there is currently no stay in place. Based upon the legal analysis in that order and the timelines relevant to an election, it is unlikely that any stay would be granted.

I write out of concern as the public prosecutor of Cochise County of the potential criminal acts that would be inherent in proceeding with the “expanded hand count”. The following is not intended to be an exhaustive list of all potential charges:

16-1004. Interference with or corruption of election officer; interference with voting equipment; violation; classification

A. A person who at any election knowingly interferes in any manner with an officer of such election in the discharge of the officer's duty, or who induces an officer of an election or officer whose duty it is to ascertain, announce or declare the result of such election, to violate or refuse to comply with the officer's duty or any law regulating the election, is guilty of a class 5 felony.

16-1016. Illegal voting; pollution of ballot box; removal or destruction of ballot box, poll lists or ballots; violation; classification

A person is guilty of a class 5 felony who:

9. Knowingly and unlawfully carries away, conceals or removes a poll list, ballot or ballot box from the polling place, or from possession of the person authorized by law to have custody thereof.

11. Knowingly detains, alters, mutilates or destroys ballots or election returns.

16-1010. Refusal by election officer to perform duty; violation of election law; classification

A person charged with performance of any duty under any law relating to elections who knowingly refuses to perform such duty, or who, in his official capacity, knowingly acts in violation of any provision of such law, is guilty of a class 6 felony unless a different punishment for such act or omission is prescribed by law.

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13-2810. Interfering with judicial proceedings; classification

A. A person commits interfering with judicial proceedings if such person knowingly:

2. Disobeys or resists the lawful order, process or other mandate of a court; or

B. Interfering with judicial proceedings is a class 1 misdemeanor.

13-1003. Conspiracy; classification

A. A person commits conspiracy if, with the intent to promote or aid the commission of an offense, such person agrees with one or more persons that at least one of them or another person will engage in conduct constituting the offense and one of the parties commits an overt act in furtherance of the offense, except that an overt act shall not be required if the object of the conspiracy was to commit any felony upon the person of another, or to commit an offense under section 13-1508 or 13-1704.

I have alerted the appropriate authorities to the potential violations based upon the statements of two elected officials connected to this. It is my sincere hope that no action will be required of them and that the rule of law will prevail.

Thank you for your time.

Sincerely yours,



BRIAN M. MCINTYRE
Cochise County Attorney

Cc: Cochise County Sheriff's Department

EXHIBIT F



KATIE HOBBS
SECRETARY OF STATE

November 21, 2022

Via Email

Cochise County Board of Supervisors
Tom Crosby, tcrosby@cochise.az.gov
Ann English, aenglish@cochise.az.gov
Peggy Judd, pjudd@cochise.az.gov

Re: 2022 General Election Canvass

Dear Cochise County Board of Supervisors,

The Board of Supervisors has a non-discretionary duty under Arizona law to canvass the County's 2022 General Election and transmit the canvass to the Secretary of State by November 28, 2022. If you fail to do so, the Secretary will use all available legal remedies to compel compliance with Arizona law and protect Cochise County voters' right to have their votes counted.

At your public meeting on November 18, 2022, you voted to delay certification of the County's 2022 General Election canvass and requested more information about false claims concerning the County's election equipment. These claims are derived from baseless conspiracies about Arizona's equipment certification process. Cochise County's election equipment was properly certified and remains in compliance with state and federal requirements. Cochise County uses Election Systems & Software (ES&S) Voting System (EVS) version 6.0.4.0 (ESSEVS6040), which was certified by the U.S. Election Assistance Commission (EAC) on May 3, 2019. SLI Compliance, the federal lab that conducted the testing for ESSEVS6040, was an accredited lab at all times during the testing process. Additionally, pursuant to Arizona's certification requirements, the ESSEVS6040 was reviewed and tested by the state's Equipment Certification Advisory Committee then certified by the state on November 5, 2019. Please see the attachments that support these facts.

We also requested that the EAC, the federal agency that accredits the voting system testing laboratories, provide confirmation specifically in response to the concerns raised at the Board's meeting. The EAC unequivocally confirmed in the attached letter that SLI Compliance, the lab that tested the election equipment that Cochise uses, was properly accredited throughout the certification process.

A.R.S. § 16-642 requires each county board of supervisors to meet and canvass the election no later than 20 days after the election. For the November 8, 2022 General Election, boards of supervisors therefore must canvass no later than November 28. The board of supervisors then must transmit the certified canvass to the Secretary, who is required to conduct the statewide canvass on December 5, 2022. A.R.S. § 16-648(A). These strict statutory deadlines make clear that the duty to canvass is not discretionary. In fact, the 2019 Elections Procedures Manual (“EPM”) explicitly provides that the Board “has a non-discretionary duty to canvass the returns as provided by the County Recorder or other officer in charge of elections and has no authority to change vote totals or reject the election results.” 2019 EPM at 240. Because the Board has no authority to change or reject the results, the canvass is a purely ministerial act.

Bad faith attempts to derail Arizona’s democracy will not go unaddressed. If the Board refuses to certify the canvass by November 28, the Secretary will take all available legal action, including filing a special action to compel the Board’s compliance.¹ If the Board still has not certified by the state canvass deadline, the state canvass will proceed regardless, as is required under Arizona’s law, and your refusal to certify will only serve to disenfranchise Cochise County voters. Please let me know if you need any additional information prior to your November 28 meeting to certify Cochise’s election results.

Sincerely,



Kori Lorick
State Elections Director
Arizona Secretary of State Katie Hobbs
klorick@azsos.gov

cc

Tim Mattix, Clerk of the Board
tmattix@cochise.az.gov

Christine Roberts, Chief Civil County Attorney
croberts@cochise.az.gov

Richard Karwaczka, County Administrator
rkarwaczka@cochise.az.gov

Sharon Gilman, Deputy County Administrator,

¹ An official canvass may only be postponed past the statutory deadline if returns from a polling place are missing. A.R.S. § 16-642(C). Because this is not the case for Cochise County’s 2022 results, the Board must comply with the 20-day deadline specified in A.R.S. § 16-642(A).

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Lisa Marra, Elections Director
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dstevens@cochise.az.gov

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U.S. ELECTION ASSISTANCE COMMISSION
633 3rd St. NW, Suite 200
Washington, DC 20001

November 21, 2022

Arizona Secretary of State
1700 W Washington St Fl 7
Phoenix AZ 85007

Dear Secretary Hobbs,

The Election Systems & Software (ES&S) Voting System (EVS) version 6.0.4.0 (ESSEVS6040) was certified by the U.S. Election Assistance Commission (EAC) on May 3, 2019.¹ Details and documentation regarding the testing and certification of ESSEVS6040 are publicly available on the EAC's website at <https://www.eac.gov/voting-equipment/evs-6040>.

ES&S's application for certification of EVS 6.0.4.0 was approved for testing on October 15, 2018. In accordance with the EAC's Testing and Certification Manual,² the October 15, 2018, Application Approval Letter³ designated SLI Compliance, an EAC-accredited voting system testing laboratory (VSTL), as the lead VSTL for this testing engagement.

During the testing of the ESSEVS6040, from application approval on October 15, 2018, to certification on May 3, 2019, SLI Laboratory complied with the EAC's Voting System Testing Laboratory Manual⁴ and maintained its accreditation, as shown by the dates on its Certificate of Accreditation.⁵

For additional information on the EAC Testing and Certification Program, please see the [How a Voting System Becomes Certified: Overview of the EAC Certification Process](#) document located in the EAC FOIA Reading Room. The [Declaration of Mark A. Robbins](#) document located in the EAC FOIA Reading Room also discusses in greater detail the EAC Testing and Certification Program.

Sincerely,

Mark A. Robbins, Interim Executive Director
U.S. Election Assistance Commission

¹ https://www.eac.gov/sites/default/files/voting_system/files/EVS6040_Cert_Scope%28FINAL%29.pdf

² https://www.eac.gov/sites/default/files/eac_assets/1/28/Cert%20Manual%207%208%2015%20FINAL.pdf

³ https://www.eac.gov/sites/default/files/voting_system/files/Application.Approval.Letter3.pdf

⁴ https://www.eac.gov/sites/default/files/eac_assets/1/28/VSTLManual%207%208%2015%20FINAL.pdf

⁵ https://www.eac.gov/sites/default/files/voting_system_test_lab/files/SLI_Compliance_Certificate_of_Accreditation_011018.pdf



United States Election Assistance Commission

Certificate of Accreditation

**SLI Compliance,
Division of Gaming Laboratories International, LLC
Wheat Ridge, Colorado**

is recognized by the U.S. Election Assistance Commission for the testing of voting systems to the 2002 Voting Systems Standards, the Voluntary Voting Systems Guidelines versions 1.0 and 1.1 under the criteria set forth in the EAC Voting System Testing and Certification Program and Laboratory Accreditation Program. SLI Compliance is also recognized as having successfully completed assessments by the National Voluntary Laboratory Accreditation Program for conformance to the requirements of ISO/IEC 17025 and the criteria set forth in NIST Handbooks 150 and 150-22.

Effective Through

January 10, 2021

A handwritten signature in blue ink, appearing to read "B. Newby", is positioned above the signature line.

Date: 1/10/18

Brian Newby,
Executive Director, U.S. Election Assistance Commission

EAC Lab Code: **0701**



United States Election Assistance Commission

Certificate of Conformance

ES&S EVS 6.0.4.0



The voting system identified on this certificate has been evaluated at an accredited voting system testing laboratory for conformance to the *Voluntary Voting System Guidelines Version 1.0 (VVSG 1.0)*. Components evaluated for this certification are detailed in the attached Scope of Certification document. This certificate applies only to the specific version and release of the product in its evaluated configuration. The evaluation has been verified by the EAC in accordance with the provisions of the *EAC Voting System Testing and Certification Program Manual* and the conclusions of the testing laboratory in the test report are consistent with the evidence adduced. This certificate is not an endorsement of the product by any agency of the U.S. Government and no warranty of the product is either expressed or implied.

Product Name: EVS

Model or Version: 6.0.4.0

Name of VSTL: SLI Compliance

EAC Certification Number: ESSEVS6040

Date Issued: May 3, 2019

Executive Director

Scope of Certification Attached

Manufacturer: Election Systems & Software
System Name: EVS 6.0.4.0
Certificate: ESSEVS6040

Laboratory: SLI Compliance
Standard: VVSG 1.0 (2005)
Date: May 3, 2019



Scope of Certification

This document describes the scope of the validation and certification of the system defined above. Any use, configuration changes, revision changes, additions or subtractions from the described system are not included in this evaluation.

Significance of EAC Certification

An EAC certification is an official recognition that a voting system (in a specific configuration or configurations) has been tested to and has met an identified set of Federal voting system standards. An EAC certification is **not**:

- An endorsement of a Manufacturer, voting system, or any of the system's components.
- A Federal warranty of the voting system or any of its components.
- A determination that a voting system, when fielded, will be operated in a manner that meets all HAVA requirements.
- A substitute for State or local certification and testing.
- A determination that the system is ready for use in an election.
- A determination that any particular component of a certified system is itself certified for use outside the certified configuration.

Representation of EAC Certification

Manufacturers may not represent or imply that a voting system is certified unless it has received a Certificate of Conformance for that system. Statements regarding EAC certification in brochures, on Web sites, on displays, and in advertising/sales literature must be made solely in reference to specific systems. Any action by a Manufacturer to suggest EAC endorsement of its product or organization is strictly prohibited and may result in a Manufacturer's suspension or other action pursuant to Federal civil and criminal law.

System Overview

The ES&S EVS 6.0.4.0 voting system is a modification of the ES&S EVS 6.0.2.0 voting system, certified on October 4, 2018, which contains changes in hardware, software, as well as an upgrade in the election management system's COTS operating system. The ES&S EVS 6.0.4.0 voting system is composed of software applications, central count location devices and polling place devices with accompanying firmware, and COTS hardware and software.

Electionware®

Electionware election management software is an end-to-end election management software application that provides election definition creation, ballot formation, equipment

configuration, result consolidation, adjudication and report creation. Electionware is composed of five software groups: Define, Design, Deliver, Results and Manage.

ExpressVote XL™

ExpressVote XL is a hybrid paper-based polling place voting device that provides a full-face touchscreen vote capture that incorporates the printing of the voter's selections as a cast vote record, and tabulation scanning into a single unit.

ExpressTouch®

ExpressTouch Electronic Universal Voting System (ExpressTouch) is a DRE voting system which supports electronic vote capture for all individuals at the polling place.

ExpressVote® Hardware 1.0

ExpressVote Universal Voting System Hardware 1.0 (ExpressVote HW1.0) is a hybrid paper-based polling place voting device that provides touch screen vote capture that incorporates the printing of the voter's selections as a cast vote record, to be scanned for tabulation in any one of the ES&S precinct or central scanners.

ExpressVote® Hardware 2.1

ExpressVote Universal Voting System Hardware 2.1 (ExpressVote HW2.1) is a hybrid paper-based polling place voting device that provides touch screen vote capture that incorporates the printing of the voter's selections as a cast vote record, and tabulation scanning into a single unit. ExpressVote HW2.1 is capable of operating in either marker or tabulator mode, depending on the configurable mode that is selected in Electionware.

There are two separate versions of the ExpressVote hardware version 2.1: 2.1.0.0 and version 2.1.2.0 (6.4 & 6.8). Please note that all future references to ExpressVote HW 2.1 as used throughout the document refers to both hardware versions.

DS200®

DS200 is a polling place paper-based voting system, specifically a digital scanner and tabulator that simultaneously scans the front and back of a paper ballot and/or vote summary card in any of four orientations for conversion of voter selection marks to electronic Cast Vote Records (CVR).

DS450®

DS450 is a central scanner and tabulator that simultaneously scans the front and back of a paper ballot and/or vote summary card in any of four orientations for conversion of voter selection marks to electronic Cast Vote Records (CVR).

DS850®

DS850 is a central scanner and tabulator that simultaneously scans the front and back of a paper ballot and/or vote summary card in any of four orientations for conversion of voter selection marks to electronic Cast Vote Records (CVR).

Event Log Service (ELS)

ELS monitors and logs users' interactions with the Election Management System. Events that happen when a connection to the database is not available are logged to the Windows Operating System log through the ELS.

Removable Media Service (RMS)

RMS is a utility that runs in the background of the Windows operating system. RMS reads specific information from any attached USB devices so that ES&S applications such as Electionware can use that information for media validation purposes.

Configurations

Within the scope of the ES&S EVS 6.0.4.0 voting system, three unique configurations are supported, in order to accommodate limitations of components with the ES&S EVS 6.0.4.0 voting system.

Configuration A

ES&S EVS 6.0.4.0: Test Configuration A is comprised of the entire suite of voting system products.

- Electionware
- ExpressVote Marker (HW 1.0)
- ExpressVote Marker/Tabulator (HW 2.1)
- ExpressVote XL
- ExpressTouch
- DS200
- DS450
- DS850

Configuration B

- Electionware
- ExpressVote Marker (HW 1.0)
- ExpressVote Marker/Tabulator (HW 2.1)
- DS200
- DS450
- DS850

Configuration C

- Electionware
- ExpressVote XL

Mark Definition

ES&S' declared level mark recognition for the DS200, DS450 and DS850 is a mark across the oval that is 0.02" long x 0.03" wide at any direction.

Tested Marking Devices

Bic Grip Roller Pen

Language Capability

EVS 6.0.4.0 supports English, Spanish, Chinese (Cantonese), Korean, Japanese, Hindi, Bengali, Vietnamese, Tagalog, Creole, Russian, and French. Configuration C also supports Punjabi and Gujarati.

Proprietary Components Included

This section provides information describing the components and revision level of the primary components included in this Certification.

System Component	Software or Firmware Version	Hardware Version	Model	Comments
Electionware	5.0.4.0			
ES&S Event Log Service	1.6.0.0			
Removable Media Service	1.5.1.0			
ExpressVote HW 1.0	1.5.2.0	1.0		Paper-based vote capture and selection device
ExpressVote Previewer (1.0)	1.5.2.0			
ExpressVote HW 2.1	2.4.5.0	2.1.0.0 2.1.2.0		Hybrid paper-based vote capture and selection device and precinct count tabulator
ExpressVote Previewer (2.1)	2.4.5.0			
DS200	2.17.4.0	1.2.1, 1.2.3, 1.3, 1.3.11		Precinct Count Tabulator
DS450	3.1.1.0	1.0		Central Count Scanner and Tabulator
DS850	3.1.1.0	1.0		Central Count Scanner and Tabulator
ExpressVote XL	1.0.3.0	1.0		Hybrid full-faced paper-based vote capture and selection device and precinct count tabulator
ExpressTouch	1.0.3.0	1.0		DRE
Delkin USB Flash Drive		USB Flash Drive	Bitlocker 32.2MB	BitLocker USB Flash Drive
ExpressVote Rolling Kiosk		1.0	98-00049	Portable Voting Booth
Voting Booth		N/A	98-00051	Stationary Voting Booth
Quad Express Cart		N/A	41404	Portable Voting Booth
MXB ExpressVote Voting Booth		N/A	95000	Sitting and Standing Voting Booth

System Component	Software or Firmware Version	Hardware Version	Model	Comments
ExpressVote Single Table		N/A	87033	Voting Table for One Unit
ExpressVote Double Table		N/A	87032	Voting Table for Two Units
ADA Table		N/A	87031	Voting Table for One Unit
DS200 Ballot Box		1.0, 1.1	98-00009	Collapsible Ballot Box
DS200 Ballot Box		1.2, 1.3, 1.4, 1.5	57521	Plastic ballot box
DS200 Tote Bin		1.0	00074	Tote Bin Ballot Box
DS450 Cart		N/A	3002	
DS850 Cart		N/A	6823	
Universal Voting Console		1.0	98-00077	Detachable ADA support peripheral
Tabletop Easel		N/A	14040	
ExpressTouch Voting Booth		N/A	98-00081	Stationary Voting Booth
SecureSetup	2.1.0.3			Proprietary Hardening Script

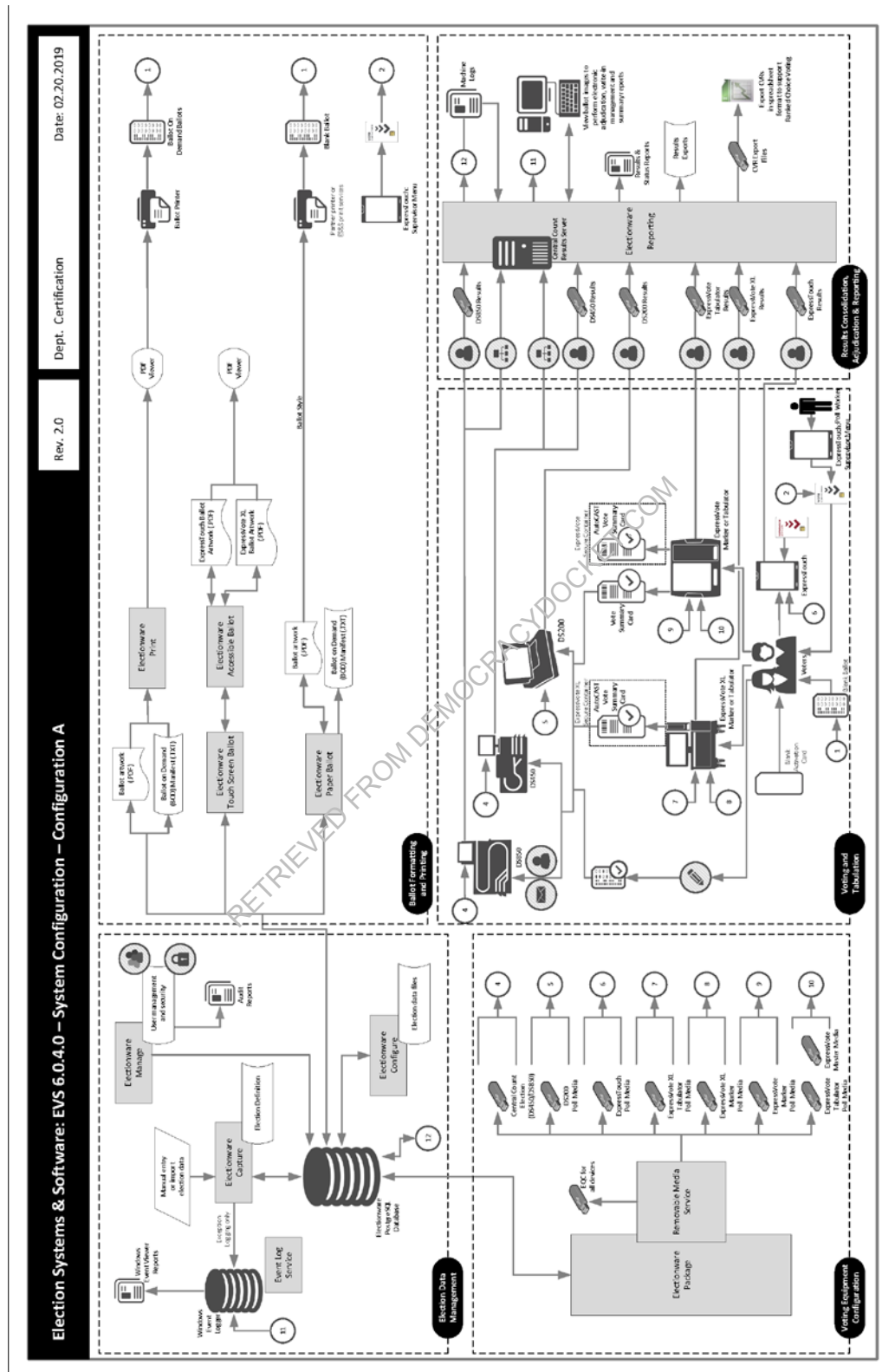
COTS Software

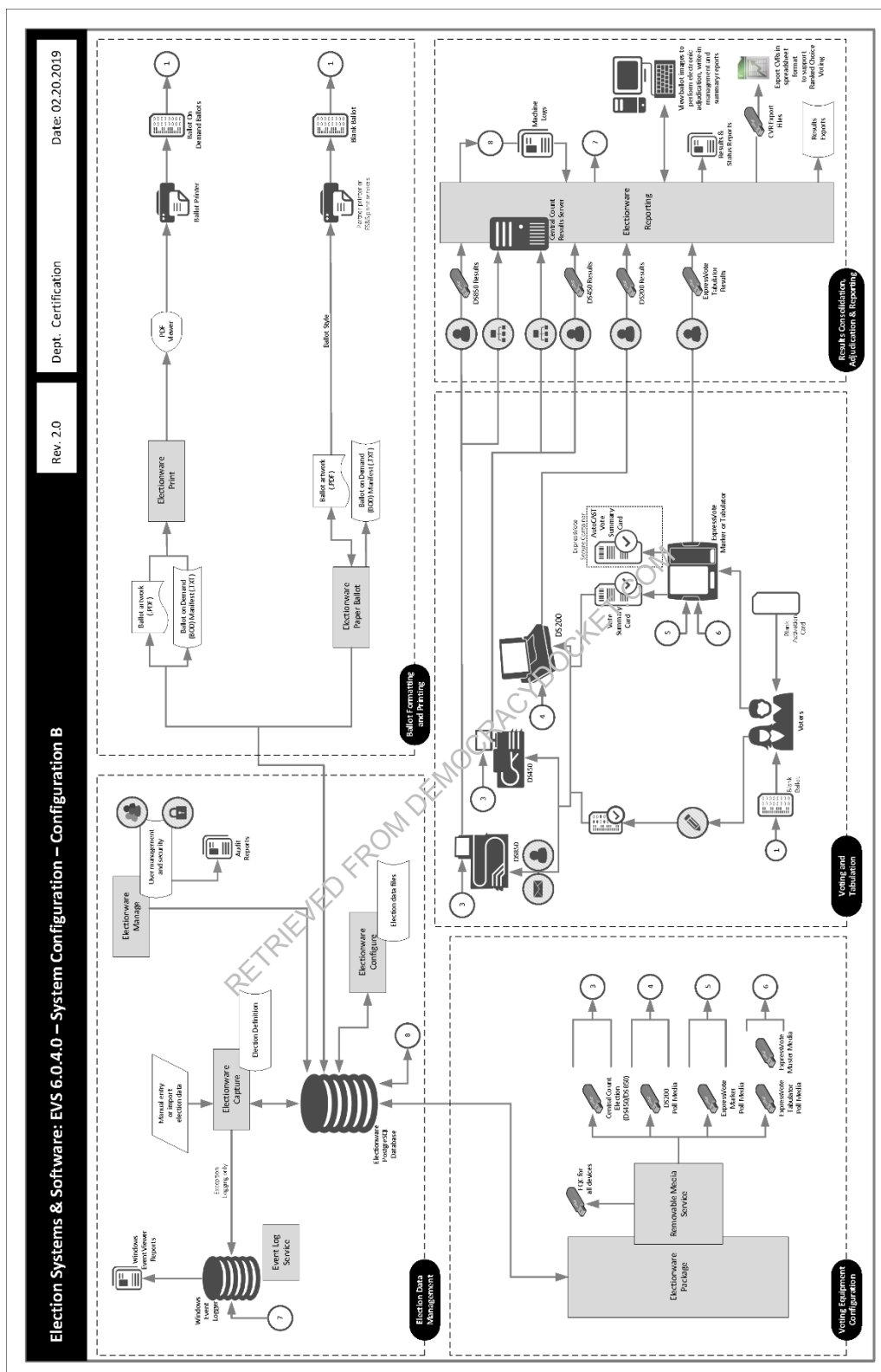
Manufacturer	Application	Version
Microsoft Corporation	Server 2008	R2 w/ SP1 (64-bit)
Microsoft Corporation	Windows 7 Professional	SP1 (64-bit)
Microsoft Corporation	Windows 7 Enterprise	SP1 (64-bit)
Microsoft Corporation	WSUS Microsoft Windows Offline Update Utility	11.5
Symantec	Endpoint Protection	14.2.0_MP1 (64-bit)
Symantec	Symantec Endpoint Protection Intelligent Updater (File-Based Protection)	20190122-001-core15sds5i64.exe
Symantec	Symantec Endpoint Protection Intelligent Updater (Network-Based Protection)	20190121-062-IPS_IU_SEP_14RU1.exe
Symantec	Symantec Endpoint Protection Intelligent Updater (Behavior-Based Protection)	20190115-001-SONAR_IU_SEP.exe
Gigabyte	WindowsImageTool	B17.1116.01
Cerberus	CerberusFTP Server – Enterprise	10.0.5 (64-bit)
Adobe	Acrobat	XI
Microsoft Corporation	Visual C++ Redistributable	en_visual_cpp_2015_redistributable_x86_8487157.exe (32-bit)
RSA Security	RSA BSAFE Crypto-C ME for Windows 32-bit	4.1
OpenSSL	OpenSSL	2.0.12
OpenSSL	OpenSSL	2.0.16
OpenSSL	OpenSSL	1.02d
OpenSSL	OpenSSL	1.02h
OpenSSL	OpenSSL	1.02k

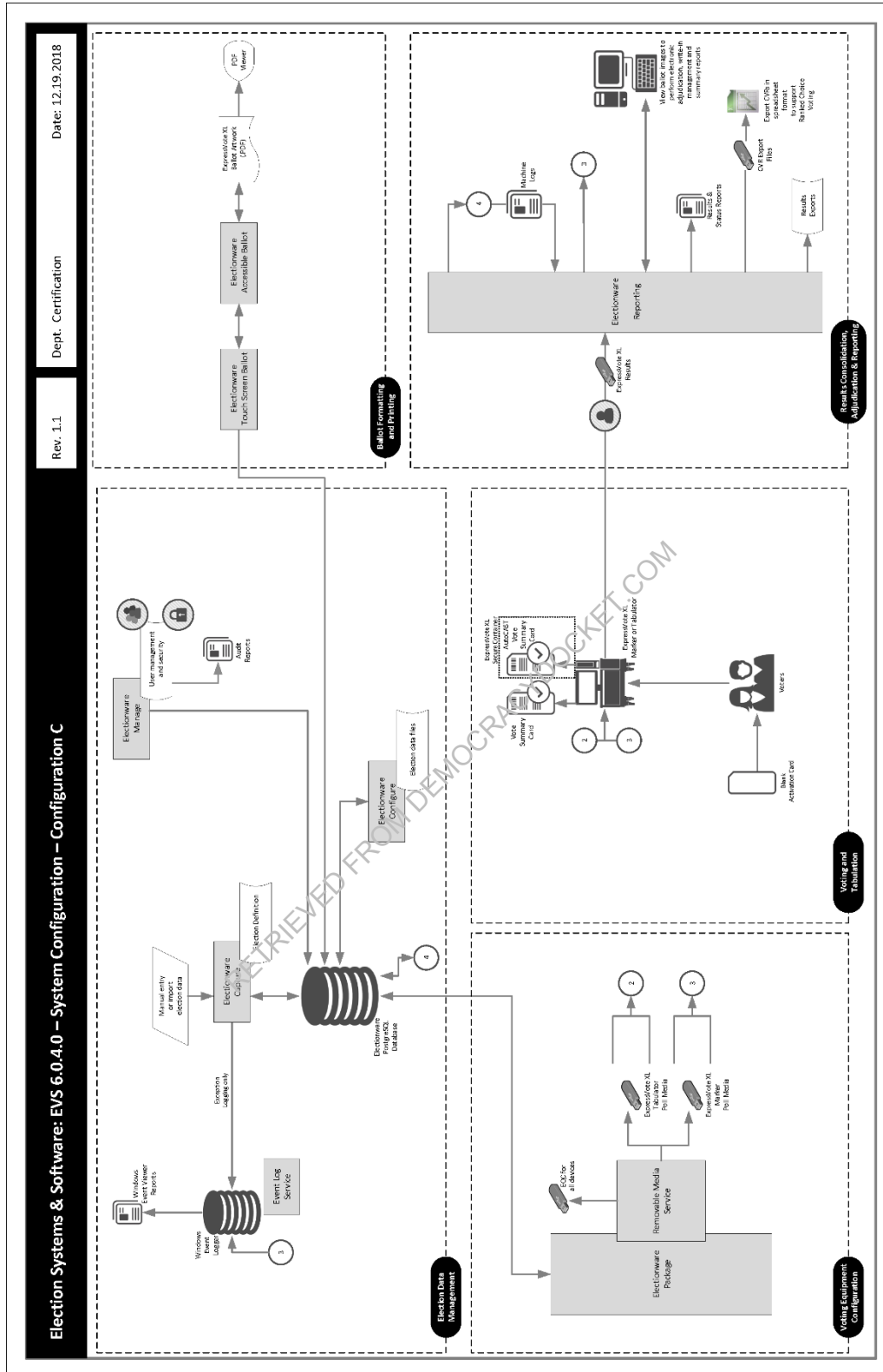
COTS Hardware

Manufacturer	Hardware	Model/Version
Dell	EMS Server	PowerEdge T420, T630
Dell	EMS Client or Standalone Workstation	Latitude 5580, E6430 OptiPlex 5040, 5050, 7020
Dell	Trusted Platform Module (TPM) Chip version 1.2	R9X21
Innodisk	USB EDC H2SE (1GB) for ExpressVote 1.0	DEEUH1-01GI72AC1SB
Innodisk	USB EDC H2SE (16GB) for ExpressVote 2.1	DEEUH1-16GI72AC1SB
Delkin	USB Flash Drive (512MB, 1GB, 2GB, 4GB, 8GB)	N/A
Delkin	Validation USB Flash Drive (16 GB)	N/A
Delkin	USB Embedded 2.0 Module Flash Drive	MY16TNK7A-RA042-D/ 16 GB
Delkin	Compact Flash Memory Card (1GB)	CE0GTFHHK-FD038-D
Delkin	Compact Flash Memory Card Reader/Writer	6381
Delkin	CFAST Card (2GB, 4GB)	N/A
Lexar	CFAST Card Reader/Writer	LRWCR1TBNA
CardLogix	Smart Card	CLXSU128kC7/ AED C7
SCM Microsystems	Smart Card Writer	SCR3310
Avid	Headphones	86002
Zebra Technologies	QR code scanner (Integrated)	DS457-SR20009, DS457-SR20004ZZWW
Symbol	QR Code scanner (External)	DS9208
Dell	DS450 Report Printer	S2810dn
OKI	DS450 and DS850 Report Printer	B431dn, B431d, B432DN
OKI	DS450 and DS850 Audit Printer	Microline 420
APC	DS450 UPS	Back-UPS Pro 1500, Smart-UPS 1500
APC	DS850 UPS	Back-UPS RS 1500, Pro 1500
Tripp Lite	DS450 and DS850 Surge Protector	Spike Cube
Seiko Instruments	Thermal Printer	LTPD-347B
NCR/Nashua	Paper Roll	2320
Fujitsu	Thermal Printer	FTP-62GDSL001, FTP-63GMCL153

Configuration A







System Limitations

This table depicts the limits the system has been tested and certified to meet.

System Characteristic	Boundary or Limitation	Limiting Component
Max. precincts allowed in an election	9,900	Electionware
Max. ballot styles in an election	15,000	Electionware
Max. candidates allowed per election	10,000	Electionware
Max. contests allowed in an election	10,000	Electionware
Max. number of parties allowed	General election: 75 Primary election: 30	Electionware
Max. District Types/Groups	25	Electionware
Max. districts of a given type	250	
Max. Contests allowed per ballot style	500	
Max. Reporting Groups in an election	14	Electionware
Max. candidates allowed per contest	230	Electionware
Max. "Vote For" per contest	230	Electionware
Max. ballots per batch	1,500	DS45/DS850

Component Limitations:

Electionware

1. Electionware software field limits were calculated based on an average character width for ballot and report elements. Some uses and conditions, such as magnified ballot views or combining elements on printed media or ballot displays, may result in field limits (and associated warnings) lower than those listed. Check printed media and displays before finalizing the election.
2. The Electionware Export Ballot Images function is limited to 250 districts per export.
3. Electionware supports the language special characters listed in the System Overview, Attachment 1. Language special characters other than those listed may not appear properly when viewed on equipment displays or reports.
4. The Straight Party feature must not be used in conjunction with the Single or Multiple Target Cross Endorsement features.

5. The 'MasterFile.txt' and the 'Votes File.txt' do not support results for elections that contain multiple sheets or multiple ExpressVote cards per voter. These files can be produced using the Electionware > Reporting > Tools > Export Results menu option. This menu option is available when the Rules Profile is set to "Illinois".

Paper Ballot Limitations

1. The paper ballot code channel, which is the series of black boxes that appear between the timing track and ballot contents, limits the number of available ballot variations depending on how a jurisdiction uses this code to differentiate ballots. The code can be used to differentiate ballots using three different fields defined as: Sequence (available codes 1-16,300), Type (available codes 1-30) or Split (available codes 1-18).
2. If Sequence is used as a ballot style ID, it must be unique election-wide and the Split code will always be 1. In this case the practical style limit would be 16,300.
3. The ExpressVote activation card has a limited ballot ID based on the three different fields defined as: Sequence (available codes 1-16,300), Type (available codes 1-30) or Split (available codes 1-18).
4. Grid Portrait and Grid Landscape ballot types are New York specific and not for general use.

ExpressVote

1. ExpressVote capacities exceed all documented limitations for the ES&S election management, vote tabulation and reporting system. For this reason, Election Management System and ballot tabulator limitations define the boundaries and capabilities of the ExpressVote system as the maximum capacities of the ES&S ExpressVote are never approached during testing.

ExpressVote XL

1. ExpressVote XL capacities exceed all documented limitations for the ES&S election management, vote tabulation and reporting system. For this reason, Election Management System and ballot tabulator limitations define the boundaries and capabilities of the ExpressVote XL system as the maximum capacities of the ES&S ExpressVote XL are never approached during testing.
2. ExpressVote XL does not offer open primary support based on the ES&S definition of Open Primary, which is the ability to select a party and vote based on that party.
3. ExpressVote XL does not support Massachusetts Group Vote.
4. ExpressVote XL does not support Universal Primary Contest.
5. ExpressVote XL does not support Multiple Target Cross Endorsement.
6. ExpressVote XL does not support Reviewer or Judges Initials boxes.
7. ExpressVote XL does not support multi-card ballots.
8. In a General election, one ExpressVote XL screen can hold 32 party columns if set up as columns or 16 party rows if set up as rows.
9. ExpressVote XL does not support Team Write-In.

ExpressTouch

1. ExpressTouch capacities exceed all documented limitations for the ES&S election management, vote tabulation and reporting system. For this reason, Election Management System limitations define the boundaries and capabilities of the ExpressTouch system as the maximum capacities of the ES&S ExpressTouch are never approached during testing.

2. ExpressTouch does not offer open primary support, which is the ability to select a party and vote based on that party.
3. ExpressTouch does not support Massachusetts Group Vote.
4. ExpressTouch does not support Universal Primary Contest.
5. ExpressTouch does not support Multiple Target Cross Endorsement.
6. ExpressTouch does not support Team Write-In.

DS200

1. The ES&S DS200 configured for an early vote station does not support precinct level results reporting. An election summary report of tabulated vote totals is supported.
2. The DS200 storage limitation for write-in ballot images is 3,600 images. Each ballot image includes a single ballot face, or one side of one page.
3. Write-in image review requires a minimum 1GB of onboard RAM.
4. To successfully use the Write-In Report, ballots must span at least three vertical columns. If the column is greater than 1/3 of the ballot width (two columns or less), the write-in image will be too wide to print on the tabulator report tape.

Functionality

VVSG 1.0 Supported Functionality Declaration

Feature/Characteristic	Yes/No	Comment
Voter Verified Paper Audit Trails		
VVPAT	No	
Accessibility		
Forward Approach	Yes	
Parallel (Side) Approach	Yes	
Closed Primary		
Primary: Closed	Yes	
Open Primary		
Primary: Open Standard (provide definition of how supported)	Yes	Configuration B only
Primary: Open Blanket (provide definition of how supported)	No	
Partisan & Non-Partisan:		
Partisan & Non-Partisan: Vote for 1 of N race	Yes	
Partisan & Non-Partisan: Multi-member ("vote for N of M") board races	Yes	
Partisan & Non-Partisan: "vote for 1" race with a single candidate and write-in voting	Yes	
Partisan & Non-Partisan "vote for 1" race with no declared candidates and write-in voting	Yes	
Write-In Voting:		
Write-in Voting: System default is a voting position identified for write-ins.	Yes	
Write-in Voting: Without selecting a write in position.	Yes	
Write-in: With No Declared Candidates	Yes	
Write-in: Identification of write-ins for resolution at central count	Yes	
Primary Presidential Delegation Nominations & Slates:		
Primary Presidential Delegation Nominations: Displayed delegate slates for each presidential party	No	

Feature/Characteristic	Yes/No	Comment
Slate & Group Voting: one selection votes the slate.	No	
Ballot Rotation:		
Rotation of Names within an Office; define all supported rotation methods for location on the ballot and vote tabulation/reporting	Yes	
Straight Party Voting:		
Straight Party: A single selection for partisan races in a general election	Yes	
Straight Party: Vote for each candidate individually	Yes	
Straight Party: Modify straight party selections with crossover votes	Yes	
Straight Party: A race without a candidate for one party	Yes	
Straight Party: N of M race (where "N">1)	Yes	
Straight Party: Excludes a partisan contest from the straight party selection	Yes	
Cross-Party Endorsement:		
Cross party endorsements, multiple parties endorse one candidate.	Yes	
Split Precincts:		
Split Precincts: Multiple ballot styles	Yes	
Split Precincts: P & M system support splits with correct contests and ballot identification of each split	Yes	
Split Precincts: DRE matches voter to all applicable races.	Yes	
Split Precincts: Reporting of voter counts (# of voters) to the precinct split level; Reporting of vote totals is to the precinct level	Yes	It is possible to list the number of voters.
Vote N of M:		
Vote for N of M: Counts each selected candidate, if the maximum is not exceeded.	Yes	
Vote for N of M: Invalidates all candidates in an overvote (paper)	Yes	
Recall Issues, with options:		
Recall Issues with Options: Simple Yes/No with separate race/election. (Vote Yes or No Question)	No	
Recall Issues with Options: Retain is the first option, Replacement candidate for the second or more options (Vote 1 of M)	No	
Recall Issues with Options: Two contests with access to a second contest conditional upon a specific vote in contest one. (Must vote Yes to vote in 2 nd contest.)	No	
Recall Issues with Options: Two contests with access to a second contest conditional upon any vote in contest one. (Must vote Yes to vote in 2 nd contest.)	No	
Cumulative Voting		
Cumulative Voting: Voters are permitted to cast, as many votes as there are seats to be filled for one or more candidates. Voters are not limited to giving only one vote to a candidate. Instead, they can put multiple votes on one or more candidate.	No	
Ranked Order Voting		
Ranked Order Voting: Voters can write in a ranked vote.	No	
Ranked Order Voting: A ballot stops being counting when all ranked choices have been eliminated	No	

Feature/Characteristic	Yes/No	Comment
Ranked Order Voting: A ballot with a skipped rank counts the vote for the next rank.	No	
Ranked Order Voting: Voters rank candidates in a contest in order of choice. A candidate receiving a majority of the first choice votes wins. If no candidate receives a majority of first choice votes, the last place candidate is deleted, each ballot cast for the deleted candidate counts for the second choice candidate listed on the ballot. The process of eliminating the last place candidate and recounting the ballots continues until one candidate receives a majority of the vote	No	
Ranked Order Voting: A ballot with two choices ranked the same, stops being counted at the point of two similarly ranked choices.	No	
Ranked Order Voting: The total number of votes for two or more candidates with the least votes is less than the votes of the candidate with the next highest number of votes, the candidates with the least votes are eliminated simultaneously and their votes transferred to the next-ranked continuing candidate.	No	
Provisional or Challenged Ballots		
Provisional/Challenged Ballots: A voted provisional ballots is identified but not included in the tabulation but can be added in the central count	Yes	
Provisional/Challenged Ballots: A voted provisional ballots is included in the tabulation, but is identified and can be subtracted in the central count	Yes	
Provisional/Challenged Ballots: Provisional ballots maintain the secrecy of the ballot.	Yes	
Overvotes (must support for specific type of voting system)		
Overvotes: P & M: Overvote invalidates the vote. Define how overvotes are counted.	Yes	
Overvotes: DRE: Prevented from or requires correction of overvoting.	Yes	
Overvotes: If a system does not prevent overvotes, it must count them. Define how overvotes are counted.	Yes	
Overvotes: DRE systems that provide a method to data enter absentee votes must account for overvotes.	Yes	
Undervotes		
Undervotes: System counts undervotes cast for accounting purposes	Yes	
Blank Ballots		
Totally Blank Ballots: Any blank ballot alert is tested.	Yes	
Totally Blank Ballots: If blank ballots are not immediately processed, there must be a provision to recognize and accept them	Yes	
Totally Blank Ballots: If operators can access a blank ballot, there must be a provision for resolution.	Yes	
Networking		
Wide Area Network – Use of Modems	No	
Wide Area Network – Use of Wireless	No	
Local Area Network – Use of TCP/IP	No	
Local Area Network – Use of Infrared	No	

Feature/Characteristic	Yes/No	Comment
Local Area Network – Use of Wireless	No	
FIPS 140-2 validated cryptographic module	Yes	
Used as (if applicable):		
Precinct counting device	Yes	DS200, ExpressTouch, ExpressVote HW2.1, ExpressVote XL
Central counting device	Yes	DS450 and/or DS850

Baseline Certification Engineering Change Order's (ECO)

This table depicts the ECO's certified with the voting system:

Change ID	Date	Component	Description	Inclusion
ECO 938	12/14/18	DS200	Texture Free Surface for Security Seals	DeMinimis Optional
ECO 982	2/20/19	ExpressVote XL	Add Cord Wrap Hooks, Filler for Card Bin and Shipping Bracket	DeMinimis Optional
ECO 988	4/29/19	ExpressVote	Add End of Life Zebra Scanner	DeMinimis Optional
ECO 989	4/29/19	ExpressVote	Adds Updated USB Thumb Drive Cover	DeMinimis Optional
ECO 991	4/29/19	DS200	Add Hardware Rev 1.3.11	Non-DeMinimis Optional
ECO 993	4/29/19	DS450	Adds Oki 432 Report Printer and APC Smart-UPS 1500	Non-DeMinimis Optional
ECO 1000	2/13/19	DS200 Collapsible Ballot Box	Adds Hardware Rev 1.1	De Minimis Optional
ECO 1004	12/14/18	DS450	Add Oki 432 Report Printer Due to End of Life	De Minimis Optional
ECO 1005	12/14/18	DS850	Add Oki 432 Report Printer Due to End of Life	De Minimis Optional
ECO 1016	2/13/19	ExpressVote Voting Booth	Added Enhanced Doors	De Minimis Optional
ECO 2160	4/29/19	ExpressVote	Lengthen Detachable Key Pad Cord	De Minimis Optional



KATIE HOBBS
SECRETARY OF STATE
State of Arizona

November 5, 2019

Susan Parmer
State Certification Manager
Election Systems & Software
11208 John Galt Blvd
Omaha, NE 68137

Dear Ms. Parmer,

Elections Systems & Software (ES&S) has requested certification of the EVS 6.0.4.0 Voting Systems. The EVS 6.0.4.0 Voting System consists of the following components:

Component Name	Software/Firmware Version	Hardware Version
Electionware	5.0.4.0	-
DS200	2.17.4.0	HW 1.2 & 1.3
DS450	3.1.1.0	HW 1.0
DS850	3.1.1.0	HW 1.0
ExpressVote	1.5.2.0	HW 1.0
ExpressVote	2.4.5.0	HW 2.1

The Secretary of State's Equipment Certification Advisory Committee, appointed by me pursuant to A.R.S. § 16-442, met in a public meeting held October 29, 2019, to discuss your application and make a final recommendation on certification. The Committee forwarded their findings and recommendation for conditional certification.

I concur with the Committee report and hereby approve and grant conditional certification of the EVS 6.0.4.0 Voting Systems for use in Arizona's state, county, city, and town elections with the following conditions:

- 1) the ExpressVote units will not be programmed and/or used as a tabulation unit;
- 2) conditional certification of the electronic adjudication feature contingent on the process being authorized in the next Elections Procedures Manual and conducted in compliance with the procedures defined therein; and
- 3) the EAC issues approval of the Software Engineering Change Order to address the missing Spanish translation on the ExpressVote ballot by January 2, 2021. In the event the EAC denies approval for the Change Order or EAC approval for the Change Order is not issued by January 2, 2021, the EVS 6.0.4.0 voting system may be subject to decertification.

1700 West Washington Street, Floor 7
Phoenix, Arizona 85007-2808
Telephone (602) 542-4285 Fax (602) 542-1575
www.azsos.gov

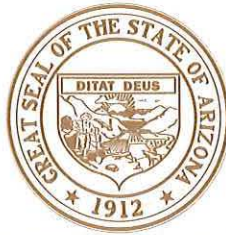
As a reminder, before the voting system may be used in a state election, the application source code must be placed in escrow with the State of Arizona as the recipient of escrow. Should questions arise regarding this certification, please contact Janine Petty, Deputy State Election Director at 602-542-6209.

Sincerely,

A handwritten signature in black ink, appearing to read 'Katie Hobbs', followed by a long horizontal line extending to the right.

Katie Hobbs
Secretary of State

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KATIE HOBBS
SECRETARY OF STATE
State of Arizona

February 24, 2020

Susan Parmer
State Certification Manager
Election Systems & Software
11208 John Galt Blvd
Omaha, NE 68137

Dear Ms. Parmer,

Elections Systems & Software (ES&S) has requested certification of Engineering Change Order # 1045 (ECO) for software components of the ExpressVote HW 1.0 & 2.1 as it relates to the EVS 6.0.4.0 voting system release previously conditionally certified for use in Arizona elections.

The Secretary of State Equipment Certification Advisory Committee, appointed by me pursuant to A.R.S. § 16-442, met in a public meeting held January 28, 2020 to review your application and supporting documentation. The Committee forwarded their findings and recommendation for certification.

I concur with the Committee report and hereby approve and grant certification of ECO # 1045 which includes:

ECO #	Component	Hardware Version	Software/Firmware Version
1045	ExpressVote	HW 1.0	1.5.2.1
	ExpressVote	HW 2.1	2.4.5.1

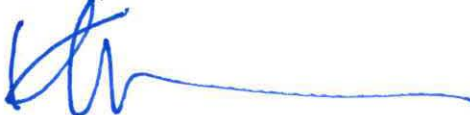
In addition, I believe ES&S has demonstrated that ECO # 1045 has fully addressed the missing Spanish translation issue previously identified on the ExpressVote units which needed to be resolved prior to January 2, 2021 or the system may be subject to decertification. Therefore, I grant certification of EVS 6.0.4.0 Voting System for use in Arizona's state, county, city, and town elections with the following conditions:

- 1) The ExpressVote units will not be programmed and/or used as a tabulation unit;
- 2) Certification of the electronic adjudication feature contingent on the process being conducted in accordance with A.R.S. § 16-621(B) and the Elections Procedures Manual.

1700 West Washington Street, Floor 7
Phoenix, Arizona 85007-2808
Telephone (602) 542-4285 Fax (602) 542-1575
www.azsos.gov

As a reminder, before the voting system may be used in a state election, the application source code must be placed in escrow with the State of Arizona as the recipient of escrow. Should questions arise regarding this certification, please contact Janine Petty, Deputy State Election Director at 602-542-6209.

Sincerely,

A handwritten signature in blue ink, appearing to be 'KH' followed by a long horizontal line.

Katie Hobbs
Secretary of State

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