

SUPREME COURT OF ARIZONA

RON GOULD, IN HIS INDIVIDUAL
CAPACITY

Plaintiff/ Appellant,

v.

KRIS MAYES, IN HER OFFICIAL
CAPACITY AS ATTORNEY GENERAL OF
THE STATE OF ARIZONA

Defendant/ Appellee,

and

ARIZONA ALLIANCE FOR RETIRED
AMERICANS,

Intervenor/ Appellee.

Arizona Supreme Court
No. CV-25-0325-PR

Court of Appeals
Division Two
No. 2 CA-CV 24-0349

Maricopa County
Superior Court
No. CV2024-000815

**APPELLEES' RESPONSE TO PETITION FOR REVIEW AND
APPENDIX**

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INTRODUCTION

Plaintiff, a member of the Mohave County Board of Supervisors, brought this action seeking a judgment declaring that Arizona law allows election officials to count ballots by hand, rather than through electronic tabulation equipment, notwithstanding the various statutes on point. *See, e.g., A.R.S. §§ 16-621(C), -622(A)*. That is a classic request for an advisory opinion—made worse by Plaintiff bringing this case in his *individual* capacity—and the lower courts rightly dismissed the case. Plaintiff offers no good reason to overturn the longstanding precedent supporting the court of appeals’ decision and cites no case finding standing under analogous circumstances. This Court should deny review.

ISSUES PRESENTED FOR REVIEW

1. Does Plaintiff, in his individual capacity, lack standing to bring a claim that belongs to the Mohave County Board of Supervisors, if anyone?
2. Does Plaintiff request an improper advisory opinion by seeking declaratory relief based on a threat of prosecution without challenging the validity of any statute?

3. Has Plaintiff failed to establish that he faces an imminent threat of prosecution?

BACKGROUND*

I. **The Mohave County Board of Supervisors considered and rejected a proposal to hand count all 2024 election ballots.**

In response to unfounded claims about the integrity of Arizona's voting equipment, the Mohave County Board of Supervisors directed the Mohave County Elections Department to determine the feasibility of tabulating all 2024 election ballots by hand.¹

The Elections Department conducted an analysis, which concluded that hand-counting all 2024 ballots would require the Department to “hire hundreds of people,” all of whom would need to work seven days per week, 8 hours per day, for three weeks following Election Day. [D_APP028-041](#). The analysis also estimated that a full hand count would cost the County \$1,108,486—more than the entire annual budget of the Elections

* APP __ citations refer to Plaintiff/Appellant's appendix. Defendants/Appellees' appendix includes selected record items cited by page numbers (D_APP001) and function as clickable links.

¹ Mohave County Board of Supervisors' Regular Meeting, June 5, 2023, available at <https://www2.mohave.gov/VideoMeetingViewer2.aspx?group=1&agenda=370&template=1&calendar=1410> (starting at 3:38:10).

Department. [D_APP035, 038-041](#). The Elections Director presented this information to the Board at an August 1, 2023 meeting, and urged the Board to conclude that hand counting “just isn’t going to work.”²

Deputy County Attorney Ryan Esplin also spoke publicly at the meeting and expressed “serious concerns” about the legality of a hand count.³ Mr. Esplin stated that the Board was required by law to follow the Elections Procedures Manual (EPM), which he worried did not allow for a full hand count, and he noted that failing to comply with the EPM “is a criminal offense.”⁴

At the close of public comment on this issue, the Board voted against hand counting the 2024 election ballots. APP 14 ¶¶ 10-11.

II. The Board considered and rejected the same proposal a second time.

Several weeks later, Mohave County Supervisor Travis Lingenfelter placed the hand count issue on the November 20, 2023, Board Agenda for a second vote. APP 16 ¶ 17. On November 19, 2023, Attorney General Mayes

² Mohave County Board of Supervisors’ Special Meeting, August 1, 2023, available at <https://www2.mohave.gov/VideoMeetingViewer2.aspx?group=1&agenda=401&template=6&calendar=1431> (30:24).

³ *Id.* (39:55-40:10).

⁴ *Id.* (45:05-45:45).

sent a letter to the Board echoing Deputy County Attorney Esplin's advice. APP 26-28.

The letter informed the Board that a full hand count was illegal under Arizona law. *Id.* Consistent with the advice the Board received from its lawyer, the Attorney General advised that "an illegally expanded hand count may result in various felony and misdemeanor criminal penalties." APP 28. The only specific legal action communicated in the letter was that the Attorney General would "promptly sue and obtain a court order" if the Board directed the Elections Department to act illegally. APP 28.

At the November 20, 2023 meeting, Deputy County Attorney Esplin again advised the Board that there was no legal or statutory authority authorizing the County to conduct a full hand count.⁵ He also stated that if the Board were to authorize a hand count, he would recommend that the Mohave County Attorney's Office *not* represent the Board in any subsequent

⁵ Mohave County Board of Supervisors' Regular Meeting, November 20, 2023, available at <https://www2.mohave.gov/VideoMeetingViewer2.aspx?group=1&agenda=398&template=1&calendar=1423> (4:10:45-4:16:02).

litigation given his legal advice to the Board.⁶ At the close of public comment, the Board again voted against authorizing a full hand count.

III. Plaintiff sued and his suit was dismissed.

Shortly after the Board's second vote, Plaintiff, in his individual capacity, sued the Attorney General seeking a declaratory judgment that (1) under Title 16, County Boards of Supervisors have legal authority to hand count election ballots rather than using vote tabulating equipment, and (2) Plaintiff would be protected by legislative immunity in any future prosecution related to his vote to hand count ballots. APP 20, 21, 22 ¶¶ 39-42, 45, 52. The superior court dismissed the First Amended Complaint, holding that "Plaintiff has no present rights or interests under any of the statutes for which he seeks a declaration [n]or has he alleged an actual controversy between the parties which is ripe for review." APP 129. The court of appeals affirmed. APP 4.

REASONS TO DENY REVIEW

The court of appeals' decision was correct, and this case presents no conflict or question of law warranting this Court's review.

⁶ *Id.* (4:16:23-4:18:08).

I. Plaintiff has no *personal* rights or interests in the Board’s election administration authority.

The Declaratory Judgments Act (DJA) permits “[a]ny person ... whose rights, status or other legal relations are affected by a statute” to “have determined any question of construction or validity arising under the ... statute ... and obtain a declaration of rights, status or other legal relations.”

[A.R.S. § 12-1832](#). “Although a declaratory judgment action is remedial and should be liberally construed and administered, a plaintiff must have an actual or real interest in the matter for determination.” *Ariz. Sch. Bds. Ass’n, Inc. v. State*, 252 Ariz. 219, 224 ¶ 16 (2022) (cleaned up).

Plaintiff sued in his individual capacity. His primary assertion is that [A.R.S. § 16-451](#) “gives the Board of Supervisors the right and power to decide not only how to fund electronic tabulating machines but also whether to do so in the first instance.” APP 14-15 ¶ 15. This is fundamentally a claim about the Board’s power, not any individual or private right belonging to Plaintiff.

Plaintiff doesn’t seriously contend otherwise. He asserts, without further elaboration, that he has an injury “as [a] legislator” because “only one more vote was needed” to pass the hand-count measure. Pet. at 13. But Plaintiff did not bring this suit in his official capacity as a “legislator.” And

even if he had, it is well established that individual legislators cannot “assert standing to litigate claims of injury to the legislature as a whole.” *Bennett v. Napolitano*, 206 Ariz. 520, 527 ¶ 29 (2003).

Perhaps because established law is so clear on this point, Plaintiff acknowledges that his theory of standing must be rooted in an alleged threat of prosecution. Pet. at 12-13. Plaintiff doesn’t actually contest the court of appeals’ finding that he lacks standing to seek “a judicial declaration regarding the reach of the Board’s power,” and even if he did, this issue does not justify this Court’s review. APP 8.

II. Plaintiff’s failure to challenge any statute’s validity is fatal to his claim.

Plaintiff claims that “standing exists for persons seeking to construe, without invalidating, criminal laws under which they face a threat of prosecution.” Pet. at 2. It does not. Arizona case law is clear—and federal courts agree—that a request to construe a criminal statute’s application to hypothetical future conduct, without challenging its validity, is a request for an improper advisory opinion. That is what Plaintiff seeks here. He asks the Court to interpret Title 16 so the Board can “embark on a particular

course” in the future, *Polaris Int’l. Metals Corp. v. Ariz. Corp. Comm’n*, 133 Ariz. 500, 506 (1982), but doesn’t challenge any part of Title 16’s validity.

The court of appeals correctly applied this Court’s precedent when it found that because Plaintiff has not challenged the validity of any statute, his claim of imminent prosecution “raises no ‘constitutional underpinnings,’ and declaratory relief in this context would constitute an improper advisory opinion.” APP 9 (quoting *Polaris Int’l. Metals Corp.*, 133 Ariz. at 505-06). Contrary to Plaintiff’s assertions, there is nothing for this Court to “clarify” on the issue. Pet. at 2.

Polaris, which is directly on point, involved a company that was investigated for selling unregistered securities through unregistered salespeople. *Polaris Int’l Metals Corp.*, 133 Ariz. at 502-03. During the investigation, the Legislature amended a portion of Arizona’s securities law, which exempted private offerings of securities from the relevant registration requirements. *Id.* at 502.

Polaris filed a declaratory judgment action seeking, in part, a declaration that its sales fell within the statutory exemption, and thus the company (and its president) could not be criminally prosecuted. *Id.* at 505. To support its claim, *Polaris* cited *Planned Parenthood Center of Tucson, Inc. v.*

Marks, 17 Ariz. App. 308, 313 (1972), which held that violating a criminal statute was not “a prerequisite to testing its validity.” This Court distinguished *Planned Parenthood*, however, emphasizing that, in that case, “[t]he plaintiffs ... sought to determine the constitutionality of several criminal statutes proscribing abortions.” *Polaris Int’l Metals Corp.*, 133 Ariz. at 505. Indeed, “[t]he only question raised by plaintiffs was whether the state could constitutionally prohibit the conduct in question.” *Id.* Thus, the Court held that where a criminal statute’s validity was in question, the DJA “could be used to settle in a civil context an actual controversy over essentially a question of constitutional law.” *Id.* But where the validity of a statute was not in question, the requested relief became an improper advisory opinion “seeking to determine the legality of [] conduct.” *Id.* at 506.

Plaintiff’s arguments are indistinguishable from *Polaris*’s. Like *Polaris*, Plaintiff alleges that he faces an imminent threat of prosecution and seeks a declaration about the legality of future Board action, but does not challenge any statute’s validity. The DJA has never been – and cannot be – used in this way.

Plaintiff tries to distinguish *Polaris* by arguing that *Polaris* was not seeking a declaration about a statute’s “construction,” but rather “whether

the specific securities sales they had engaged in were covered by new statutory exemptions.” Pet. at 9-10. Regardless of whether the word “construction” was used, the *Polaris* plaintiffs were plainly asking the Court to construe the statute in question without challenging its validity. See *Construction, Black’s Law Dictionary* (12th ed. 2024) (“The act or process of interpreting or explaining the meaning of a writing (usu. a constitution, statute, or other legal instrument) ...”). Plaintiff confirms he is seeking the same relief: he admits that the Court’s answer “as to whether a hand count is permitted in general” will “directly affect whether Plaintiff can be prosecuted [under Title 16].” Pet. at 10. In other words, he seeks a judicial determination that his contemplated future conduct will not violate the law. His attempts to distinguish the relief he seeks from that sought in *Polaris* are unavailing.

Other Arizona cases, including those cited by Plaintiff, likewise doom his claim.

In *Brush & Nib Studio, LC v. City of Phoenix*, 247 Ariz. 269 (2019), the plaintiffs alleged that a municipal ordinance violated their free exercise and free speech rights under the Arizona Constitution, and that they faced a threat of prosecution for violating the ordinance by refusing to create a same-

sex wedding invitation. *Id.* at 278, 280 ¶¶ 22, 39. Because the claim was underpinned by a constitutional challenge to the ordinance (and because there was a real threat of prosecution), the plaintiffs' action was justiciable. *Id.* at 281 ¶ 41. Similarly, the plaintiffs in *Planned Parenthood* alleged that the abortion statutes at issue "deprive each [] of the plaintiffs of the rights guaranteed to them by the" federal and state constitutions, and thus declaratory judgment was appropriate to "test the validity of a criminal statute." *Planned Parenthood Ctr. of Tucson, Inc.*, 17 Ariz. App. at 311, 312. Contrary to Plaintiff's claims that "no Arizona decision squarely addresses the issue" (Pet. at 7), it has been settled for over 40 years that when "[t]he validity of [a statute] is not challenged ... appellants seek advice on what is essentially a factual question" and the DJA "cannot be used to make the courts a fountain of advice for the future conduct of our citizens." *Polaris Int'l Metals Corp.*, 133 Ariz. at 505-06.

Federal case law similarly requires a plaintiff seeking declaratory relief under a theory of imminent prosecution to challenge the statute in question's validity. As he did below, Plaintiff cites *Babbitt v. United Farm Workers National Union*, 442 U.S. 289 (1979), to support his claim that this case has "a constitutional underpinning." Pet. at 10. But *Babbitt* is clear—the

“constitutional interest” required is “fear of criminal prosecution under an allegedly unconstitutional statute.” [442 U.S. at 302](#). Moreover, *Babbitt* rejected a challenge to one provision of the statute at issue because the plaintiffs “never contested [its] constitutionality,” making any ruling on that provision “wholly advisory.” *Id.* at 305.

Finally, Plaintiff argues that the Court’s holding in *Polaris* “flies in the face of” the plain language of the DJA. Pet. at 8. He claims he is not required to challenge any statute’s validity because the DJA states that an interested person may have a question of “construction *or* validity” determined. Pet. at 8-9 (emphasis added). In essence, he argues that because the DJA’s text does not require an individual to challenge a statute’s validity, the Court cannot require it either, even if necessary to create a justiciable controversy.

Plaintiff’s argument misconstrues the DJA. The statute authorizes declaratory relief for questions of “construction or validity,” but not every question of statutory construction is justiciable. As *Polaris* made clear, a request to construe a criminal statute’s application to past or future conduct, without challenging the statute’s validity, presents precisely the kind of abstract question the DJA does not authorize. [133 Ariz. at 506](#). The DJA

must be read in harmony with the foundational principle that courts decide only actual cases and controversies.

Indeed, Plaintiff's novel theory would require overruling nearly 100 years of Arizona precedent. The text of A.R.S. § 12-1832—the statutory provision Plaintiff relies on—has remained unchanged since it was enacted in 1927. [1927 Ariz. Sess. Laws, ch. 10, § 2 \(1st Reg. Sess.\)](#). Since then, this Court has recognized that the DJA does not allow a party “to obtain a judgment which is merely advisory or which merely answers a moot or abstract question.” [Kleck v. Wayland, 53 Ariz. 432, 437 \(1939\)](#); *see also* [Crawford v. Favour, 34 Ariz. 13, 18, 22 \(1928\)](#) (dismissing DJA suit that is “not in any sense a real suit or controversy between two parties” but “is in effect a request that this court advise” the Legislature); [Moore v. Bolin, 70 Ariz. 354, 356 \(1950\)](#) (“No proceeding lies under the declaratory judgments act[] to obtain a judgment which is merely advisory or which merely answers a moot or abstract question.”) (citation omitted).

III. Plaintiff cannot demonstrate a threat of imminent prosecution.

The Court should deny review based on Plaintiff's failure to challenge any statute's validity. Nevertheless, Plaintiff has also failed to establish that he faces a genuine threat of imminent prosecution.

The DJA requires parties to have a “real interest in the questions to be resolved” based on “an existing state of facts, not those which may or may not arise in the future.” *Am. Fed’n of State, Cnty. & Mun. Emps., AFL-CIO, Council 97 v. Lewis*, 165 Ariz. 149, 152 (App. 1990) (citations omitted). Attempting to establish a justiciable controversy, Plaintiff alleges he faces a “real threat of prosecution.” Pet. at 10. However, his claimed injury is “too ‘imaginary’ or speculative’ to be ripe.” *Brush & Nib Studio, LC*, 247 Ariz. at 280 ¶39 (quoting *Thomas v. Anchorage Equal Rts. Comm’n*, 220 F.3d 1134, 1139 (9th Cir. 2000)).

In *Thomas*, the Ninth Circuit found that plaintiffs had not adequately demonstrated a genuine threat of imminent prosecution after considering: (1) whether plaintiffs had articulated a concrete plan to violate the law; (2) whether the authorities communicated a specific warning or threat to initiate proceedings; and (3) the history of past prosecution under the challenged statute. 220 F.3d at 1139. Plaintiff has likewise failed to meet all three prongs.

A. Plaintiff’s conduct is entirely speculative.

Plaintiff’s claims are premised on facts which may or may not arise in the future, including that: (1) the hand-count issue will come before the

Board for a third vote; (2) if another vote is taken, the outcome will be different than the last two Board votes; and (3) as a result, the Attorney General will criminally prosecute Plaintiff. The Board has never voted in favor of authorizing a full hand count and, given the financial, practical, and legal obstacles to doing so, it likely never will.

Plaintiff asserts that his claims are ripe because he could be prosecuted for his past, unsuccessful votes. Pet. at 12. But the Attorney General has never contemplated criminally prosecuting Plaintiff (or anyone else) for past, *unsuccessful* votes. As the Attorney General made clear in her letter, only an act by the Board directing “the Elections Department to act illegally” would prompt the Attorney General to “consider whether criminal prosecution is warranted for conducting an illegal hand count.” APP 28. Even Plaintiff’s Complaint only contemplates the potential for prosecution “if a future vote results in an overall ‘yes’ vote with respect to hand-counting.” APP 19, 22 ¶¶ 37, 50.

The court of appeals correctly found that Plaintiff’s “claim does not relate to an existing state of facts, but to a speculative vote the board may or may not take, which is insufficient to establish ‘an actual controversy ripe for adjudication.’” APP 8 (quoting *Bd. of Supervisors of Maricopa Cnty. v.*

Woodall, 120 Ariz. 379, 380 (1978)). Because Plaintiff's alleged future conduct depends on a series of speculative contingencies, he plainly has not articulated a "concrete plan to violate the law." *Thomas*, 220 F.3d at 1139 (cleaned up).

B. There has been no specific threat of prosecution.

Citing *Babbitt*, Plaintiff incorrectly claims "all that is needed to show a 'credible threat of prosecution', is that prosecution is 'remotely possible.'" Pet. at 11 (citation omitted). But the full quote from *Babbitt* simply acknowledges that "[w]hen plaintiffs 'do not claim that they have ever been threatened with prosecution, that a prosecution is likely, or even that a prosecution is remotely possible,' they do not allege a dispute susceptible to resolution by a federal court." *Babbitt*, 442 U.S. at 298-99 (citation omitted). In reality, "neither the mere existence of a proscriptive statute nor a generalized threat of prosecution" suffices, "[r]ather, there must be a 'genuine threat of imminent prosecution.'" *Thomas*, 220 F.3d at 1139 (citation omitted). This is a high bar.

In *Polaris*, for example, the Tucson Police Department and Pima County Attorney's Office investigated the company and its president for years, executed a search warrant and seized all of its business records,

“dragged” shareholders away from their jobs for investigative interviews, and filed a criminal complaint against the company two years prior, which was later dismissed without prejudice. *Polaris Int’l Metals Corp.*, 133 Ariz. at 503. The Court found that although Polaris had “been investigated” it had “not been threatened with certain prosecution.” *Id.* at 505.

Here, the Attorney General’s letter stated that if the Board were to violate the law, such action “may result” in criminal penalties, and the Attorney General’s Office would “consider whether criminal prosecution is warranted.” APP 28. As the court of appeals correctly found, this “does not constitute ‘a specific threat of prosecution.’” APP 8. Rather, the letter echoed advice the Board received from the Mohave County Attorney’s Office that failing to comply with the EPM “is a criminal offense.” See A.R.S. § 16-452(C).

C. There is no history of past prosecution.

Plaintiff is correct that the Attorney General’s Office indicted two members of the Cochise County Board of Supervisors for Conspiracy and Interference with an Election Officer for delaying transmission of the 2022 canvass of votes to the Secretary of State’s Office. Pet. at 11. However, that case was the result of actual illegal Board action (not just an individual vote),

and other than constituting a violation of Title 16, bears little resemblance to the hypothetical facts here.

Because Plaintiff has not established a genuine threat of imminent prosecution, his claims are not ripe and he does not have standing. See *Brush & Nib Studio, LC*, 247 Ariz. at 280 ¶ 35 (recognizing that “in many cases, ripeness coincides squarely with standing’s injury in fact prong”) (quoting *Thomas*, 220 F.3d at 1138).

CONCLUSION

This Court should deny review.

RESPECTFULLY SUBMITTED this 5th day of February, 2026.

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EXHIBIT B

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MOHAVE COUNTY REQUEST FOR BOARD ACTION FORM

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FROM: Allen Tempert
CONTACT/EXT: x4096
DATE: July 20, 2023
BOS MEETING DATE: August 1, 2023

- CONSENT [x]
- RESOLUTION []
- OTHER []
- INFORMATION ONLY []

SUMMARIZE THE ISSUE & DESIRED ACTION CLEARLY/ATTACH BACKUP MATERIAL:

On June 5, 2023, the Board of Supervisors directed staff to review and develop a plan for tabulating the 2024 elections by hand. Between June 22, 2023, and June 26, 2023, the Mohave County Elections Department carried out a study to test the feasibility and best practices of carrying out a full-hand tabulation of the 2024 elections.

The Mohave County Elections Department has developed a plan for tabulating the 2024 elections by hand, which plan is attached.

RECOMMENDED MOTION:

Discussion and possible action RE: Review the proposed plan for hand tabulating the ballots for the 2024 elections, and adopt, modify, or reject the proposed plan.

ATTACHMENT(S):

- Ballot Hand Tally Executive Summary
- Ballot Hand Tally Analysis

Reviewed and Approved By: [Signatures]
County Attorney [] Human Resources [] Finance [] County Manager []

Board Action Taken:
Approved as Requested [] No Action Taken [x] Disapproved []
Continued to [] Approved with the following changes: []

Acknowledged receipt and referred to: _____

Filing Information and Retrieval

Filed Bid _____ Filed Agreement _____ Elections
BOS Resolution _____ Filed Yearly Correspondence _____
Filed Petition _____ Filed Dedication _____
Filed Land Sold _____ Filed Land Acquired _____
Filed Franchise _____ ID Resolution _____
Filed Improvement District _____ Filed Other _____

Date Routed:
Additional Information:

XC:

CS Recno



2024
BALLOT HAND TALLY
EXECUTIVE SUMMARY

On June 5, 2023, the Mohave County Board of Supervisors directed the Mohave County Elections Department to form a plan to hand count the 2024 Elections and return the plan to the Board of Supervisors for approval.

From June 22, 2023 thru June 26, 2023, a group of seven (7) part-time elections staff conducted a hand tally study of 850 ballots used for the 2022 General Election Logic and Accuracy test. The time to count the 850 ballots was three (3) days, at eight (8) hours per day. The process for the hand tally included:

- Seven (7) experienced part-time election staff members who tallied the ballot sample group.
- Four (4) experienced full-time election staff members who monitored the process, time to tally, and errors during the tallying process.

CONFIDENTIALITY, TIMELINESS, ACCURACY, AND COST MUST BE CONSIDERED FOR THIS PROCESS.

Confidentiality of the Tally Prior to Election Day

A.R.S. §16-551(C) states in part: “Partial or complete tallies of the early election board shall not be released or divulged before all precincts have been reported or one hour after the closing of the polls on election day, whichever occurs first. Any person who unlawfully releases information regarding vote tallies or who possesses a tally sheet or summary without authorization from the recorder or officer in charge of elections is guilty of a class 6 felony.”

Timeliness of Results

In 2024, Mohave County will administer the Presidential Preference Election (PPE), the Primary Election, and the General Election.

- Primary Election: All ballots shall be counted, the results certified (canvassed), and delivered to the Arizona Secretary of State’s Office within fourteen (14) days after the Primary Election. [A.R.S. §16-645(B)].
- Presidential Preference Election: “... the Presidential Preference Election shall be conducted and canvassed in the same manner” as the Primary Election. [A.R.S. §16-241(C)].
- General Election: “The governing body holding an election shall meet and canvass the election not less than six days nor more than twenty days following the election.” [16-642(A)].

Accuracy of Results

The test deck of 850 ballots had approximately 36 races per ballot, for approximately 30,600 races. There were 46 race errors that occurred during the tallying process. In an election, to rectify any errors election workers would have to retally the votes for each of the races. The time to re-tally races was not included in the tally study time.

Estimated Cost of the Hand Tally Process

Costs associated with hand tallying ballots include a venue large enough to accommodate the hand tally boards, network infrastructure suitable for live streaming tallying activities and recording the event, compensation for part-time and additional full-time elections staff, and security guards that will be present during the hand tallying process.



**2024
MOHAVE COUNTY
BALLOT HAND TALLY ANALYSIS**

On June 5, 2023, the Mohave County Board of Supervisors (Board) directed the Mohave County Elections Department to form a plan to hand count the 2024 Elections and return the plan to the Board of Supervisors for approval.

To fulfill the Board's directive, the Elections Department conducted a hand tally study. The Department conducted the study from June 22-26, 2023. The study consisted of the 850 ballot test deck used in the 2022 General Election Logic and Accuracy Tests, seven (7) part-time elections staff, and four (4) full-time elections staff members. This portion of the study took three (3) workdays to complete. Hand tally board members and staff monitoring the process worked 8 hours per day to complete the tallying of all the ballots. The process was generally as follows:

- The seven (7) member hand count board consist of one person calling (caller) out the race and candidates' names; two people watching (watchers) making sure the "caller" calls out the information correctly; two people marking (markers) the race on their separate tally sheets; and two "watchers" making sure each "marker" marks the race correctly. This board is made up of an equal number of people from the two major parties and/or parties not designated.
- Staff selected the 2022 General Election Logic and Accuracy test deck as the sample study because staff was already familiar with the deck, and the deck had already been tested and shown to be completely accurate. For the 2022 election both the Secretary of State staff and the Election Department staff had certified the vote tallies for each candidate, for each race, and for each voting precinct as true and correct in both the pre-election and post-election Logic and Accuracy public tests.
- The Department selected seven (7) experienced part-time election staff members to hand tally the ballot sample group.
- Experienced full-time election staff members monitored the hand tallying process. Time to tally ballots and errors that occurred during the tallying process were both documented.
- Prior to hand tallying all the ballots they were sorted by precinct, which is required for the election canvass. [A.R.S. §16-643]. Verifying the ballots were sorted correctly is required before tallying begins.
- Staff created tally sheets specific to each precinct to account for special district races, such as school districts, water districts, fire districts, etc. This was necessary to simplify the tally process and to reduce errors by the persons tallying ballots.

Throughout this study: tally means count, a tallier refers to the workers tallying (counting) ballots, and a tally board is a seven-person group tallying ballots.

Four major factors were considered in this study: (1) confidentiality of the tally prior to Election Day, (2) timeliness of results, (3) accuracy of results, and (4) the estimated cost of the hand tally process.

CONFIDENTIALITY OF THE TALLY PRIOR TO ELECTION DAY

A.R.S. §16-551(C) states in part: "Partial or complete tallies of the early election board shall not be released or divulged before all precincts have been reported or one hour after the closing of the polls on election day, whichever occurs first. Any person who unlawfully releases information regarding vote tallies or who possesses a tally sheet or summary without authorization from the recorder or officer in charge of elections is guilty of a class 6 felony."

To assure confidentiality of the vote tally, staff recommends ballot tallying start after Election Day. Initial election results are not allowed to be released prior to 8:00 PM election night. For the General Election, all ballots will have to be tallied within three (3) weeks. For the Primary and Presidential Preference elections, the ballots will have to be tallied within two (2) weeks after the election.

For the General Election, in order to timely complete the elections, staff estimates the County must hire hundreds of people to tally the ballots. Staff anticipates many workers will not continue to work seven (7) days a week, eight (8) hours a day, for possibly three (3) weeks following Election Day. Many more people will have to be hired and trained to fill vacant positions, due to people not committing to the entire time, attrition, and other unforeseen circumstances.

Staff is concerned about the leakage of confidential ballot tallies and ballot information leading up to the election. For prior elections in which Election Department staff used machines for the tabulation of ballots, only two staff members, the Elections Director and the Deputy Director, were aware of the vote tallies, vote trends, and vote results leading up to the unofficial vote declarations. When a hand count is used to count votes, the number of people who know the vote tallies and vote trends grows exponentially because many more people are involved in the vote calculation. These workers will be counting the races, and they will learn, firsthand, who is winning and who is not. They will have knowledge leading up to the date the information can be released. This information can easily be leaked to the public, prior to 8:00 PM election night.

Given that many more people will have knowledge of the vote counts prior to the date that such information may be announced to the public, staff recommends shortening the timeframe for counting the ballots so there is less of an opportunity for these workers to give in to the temptation of divulging vote tallies. Staff recommends delaying the hand counting of ballots until after election day.

TIMELINESS OF RESULTS

In 2024 Mohave County will administer three statewide elections: the Presidential Preference Election (PPE) (March 19, 2024), the Primary Election (August 6, 2024), and the General Election (November 5, 2024).

All ballots shall be counted, the results certified (canvassed), and delivered to the Arizona Secretary of State's Office within fourteen (14) days after the Primary Election. [A.R.S. §16-645(B)]. "... the Presidential Preference Election shall be conducted and canvassed in the same manner" as the Primary Election. [A.R.S. §16-241(C)]. The General Election shall be canvassed not more than twenty (20) days following the election. [A.R.S. § 16-642(A)].

Early voting begins 27 days prior to the election. Approximately one week after the start of early voting a sufficient number of ballots are received by the Elections Department from the Recorder to start processing for the count. The current process entails a group of election part-time staff members, referred to as the Early Ballot Board, accounting for, opening, and preparing ballots to be counted on the tabulation equipment. This process runs daily once ballots are received. The Early Ballot Board will account for, open, and prepare ballots whether it is a machine count or a hand tally.

If the Board determines that confidentiality of the vote tallies can be preserved while tallying ballots, the above canvass requirements will allow the County to hand tally ballots for 20 days prior to the Primary and PPE elections plus 13 days after the election for a total of 33 days. ~~if~~ the Board agrees with staff's recommendation to delay the counting of ballots until after Election Day, there will only be 13 days after the election to complete the tally, leaving one day for the Board to canvass the results.

If the Board determines that confidentiality of the vote tallies can be preserved while tallying ballots, the above canvass requirements will allow the County to hand tally ballots for 20 days prior to the General election plus 19 days after the election for a total of 39 days. If the Board agrees with staff's recommendation to delay tallying the ballots until after Election Day, there will only be 19 days after the election to complete the tally, leaving one day for the Board to canvass the results.

The timelines above include tallying of ballots on weekends and holidays.

The study, performed by experienced staff, determined that it took up to three (3) minutes to hand tally a marked ballot from the 2022 General Election. This election, which is typical of a General Election, included an average of 35 races per ballot style. During the tally process all races need to be acknowledged, whether a vote was cast for one or more candidates in each race. There were 105,000 ballots cast in the 2020 General Election. It will take one group of seven (7) people 315,000 minutes, which equates to 5,250 work hours, 657 eight-hour days, to tally 105,000 ballots.

Staff anticipates more ballots for the 2024 General Election due to population growth.

The above calculation does not consider the time necessary for the tally boards to reconcile errors made during the counting of ballots. These errors must be resolved by recounting the same ballots for any race or races where the error(s) occurred.

Write-in candidates were not acknowledged in the above calculation. Recording of votes for write-in candidates is required to be a part of the canvass for local, state, and federal level offices. The 2020 General Election had 15,335 write-in votes. All write-in votes need to be acknowledged, regardless of

whether a qualified write-in candidate existed for the race or not. Only official write-in candidates are tallied.

Each of the 105,000 or more ballots that will be cast for the 2024 General Election will have to be reviewed a second time to capture and record the write-in information. It will take an average of 30 seconds per ballot to acknowledge write-in votes and tally official write-in candidates. This process could not be done at the same time as tallying votes for candidates whose names are officially printed on the ballot due to the high probability of errors that will occur. The tallying of write-in votes will take weeks to accomplish and require many people to be hired for write-in tally boards in addition to the hundreds of people needed to tally ballots.

For the General Election eighteen (18) additional people will have to be hired as a Write-in Board. Three (3) people are required for each board. For 105,000 ballots it will take 875 hours for one write-in board to complete. Write-in tallying would start right after Election Day.

[Approximately \$14 per hour times 18 people times 19 days times 8 hours per day per person. Total Cost: \$38,304.]

For the Primary Election twelve (12) additional people will have to be hired as a Write-in Board. Three people are required for each board. For 50,000 ballots it will take approximately 450 hours for one write-in board to complete. Write-in tallying would start right after Election Day.

[Approximately \$14 per hour times 12 people times 13 days times 8 hours per day per person. Total Cost: \$17,472.]

ACCURACY OF RESULTS

For the study, experienced election board workers hand tallied 850 ballots, consisting of approximately 30,600 races, over a 3-day period. The workers made forty-six (46) errors on races, meaning each of these forty-six (46) races would have to be retallied to get the correct vote total per candidate. While preparing the original 2022 General Election ballot test deck, consisting of 850 ballots, it took a substantial amount of time to correct errors. Knowing this, the time to retally races with errors was not part of the ballot tally time study.

Some of the observed errors included:

- Caller called the wrong candidate and both watchers failed to notice the incorrect call;
- Tally markers tried to work out inconsistencies while tallying;
- Tally markers marked a vote for an incorrect candidate and the watchers failed to notice the error;
- Caller calling too fast resulted in double marking a candidate or missed marking a candidate;
- Caller missed calling a vote for a candidate and both watchers failed to notice the omission;
- Watchers not watching the process due to boredom or fatigue;

- Illegible tally marking caused incorrect tally totaling;
- Enunciation of names caused incorrect candidate tally; and
- Using incorrect precinct tally sheets to tally ballots resulted in incorrect precinct level results.

In addition to all the processes above, the process of accumulating election results daily at a precinct level, for each race and each candidate, must be reported to the Secretary of State's Office in a format that is readable for their reporting system. To accomplish this, results must be accumulated by Election staff daily and verified prior to submission to the Secretary of State's Office. The accumulated results will have to be hand entered into the Election Management System. This process is prone to data entry error leading to possible incorrect results being reported to the Secretary of State's Office. Transmitting correct election results to the Secretary of State's Office is vital and must be performed by the Elections Director and his full-time staff. The security of the data being hand entered into the Election Management System and transmitted to the Secretary of State's office cannot be compromised by anyone else performing this function.

ESTIMATED COST OF THE HAND TALLY PROCESS

To determine the additional costs of hand tallying ballots versus using the current machine count process requires considering the costs of equipping a venue large enough to accommodate the staffing, equipment, and statutorily mandated technology, such as live streaming the process to the public. The cost of securing adequate staff to perform the hand tally is the greatest expense.

Venue

The Fairgrounds is the only suitable location in Kingman that is large enough to accommodate the number of people needed to perform the hand tally and provide enough spacing between groups to allow them to work in an environment free from distractions. All tallying must be done at one central location to control the validity of the process. Ballots will have to be transported between the Elections Department and the Fairgrounds multiple times per day. Vehicles will have to be acquired from Motor Pool, and security guards will have to be hired to transport the ballots throughout the day. Political party members should be available to accompany the transportation of ballots each time they are moved between the Elections Department and the Fairgrounds to ensure the chain of custody requirements are being met. A sworn, deputized member of the Elections Department must accompany the transportation of ballots.

Live video streaming will be necessary throughout one or more of the Fairgrounds building(s), requiring considerable computer network infrastructure improvements. The cost to perform these improvements is unknown at this point.

It will be necessary to purchase and install cameras throughout the Fairground's building(s) so that each group of ballots being tallied can be streamed to the public and recorded. A minimum of 40 cameras with adequate storage are required. An unofficial estimate to purchase and install a camera system that will meet these needs could cost between \$90,000 to \$100,000. An official cost estimate to meet these needs will take place near the end of July.

Elections Department Staff Members, Tally Board Members, and Security Guards

Elections Department Staff Members:

A new full-time Elections staff position will have to be created to recruit, hire, schedule background checks, train talliers, create tally sheets specific for each election for each precinct, process payment and timesheets for tally boards, and complete all necessary employment paperwork to keep hand tally boards full of qualified people from each of the major political parties as well as people registered as no party preference throughout the process. For a person to qualify as a tally board member, they will have to pass a background check, complete Mohave County's New Employee Orientation, and be registered to vote in Arizona. Estimated annual salary including benefits for this position will be approximately \$75,000.

Staff calculates that a minimum of 245 people will be required as hand tally members for the 2024 General Election. This will be the number of people needed if every person recruited participated in the process every day. This will not be the case. Therefore, it is estimated that at least twice the number of people needed will have to be recruited, hired, and trained to do the hand tallies. Training the core people as well as alternates will be a time consuming and expensive venture. Training will have to occur on a regular basis because new people will be coming in and out of the groups. The time to train the talliers on each person's first day will delay the counting process.

This training will entail, amongst other things, how to determine **voter's intent**. Voter's intent means to determine what the voter intended to select when they make an unclear, imperfect, or unorthodox mark on the ballot. Three people from each group will have to determine the voter's intent. This is not unlike the current process when ballots are tabulated on voting tabulation equipment and these same discrepancies occur. Currently, groups of three trained election staff members determine voter intent. They acquire expertise because the same three people work together in a group every day to determine the voter intent on every ballot out-stacked by the tabulation machine. Tabulation machines out-stack ballots when an inconsistency of a voter's mark is recognized. The out-stacking requires trained election staff members to review each of the out-stacked ballots and adjudicate voter's intent. The consistency will be very different when approximately one hundred people are interpreting voter intent during a hand count. See Exhibit A, Adjudication / Duplication – Voter Intent Examples.

Two (2) additional Early Board part-time staff will be required to sort ballots by precinct for all three (3) elections and, additionally, by party for the Primary and PPE, during the ballot tally process.

[Approximately \$14 per hour times 2 people times 75 days (20 days prior to all 3 elections and 5 days for late early ballots for all 3 elections) times 8 hours per day per person. Total Cost: \$16,800.]

Six (6) additional part-time staff members will be required to supervise the tally process as well as accumulate daily tallies. The accumulated tallies will have to be validated for accuracy before being sent to full-time election staff to prepare and transmit to the Secretary of State's Office.

[Approximately \$14 per hour times 6 people times 45 days (13 days after both the Primary and PPE and 19 days after the General) times 8 hours per day per person. Total Cost: \$30,240.]

Tally Board Members:

Staff does not foresee that a substantial and equal number of people from the major political parties will volunteer to count the ballots. It is unlikely to find the large number of people who have the time and dedication to voluntarily commit to the substantial time needed to complete this process. In fact, it will be challenging to find the total number of people who are willing to be compensated for the hand tallying. Given that money would be a motivating factor to find people willing to perform this work, staff recommends compensating the tally board members.

To assure accuracy and consistency of the tally process the same core group of people will have to commit the time necessary from start to finish. Using people who can only commit part-time will slow down the tallying process and will result in greater tallying errors. In addition, volunteers/workers will have to be of equal numbers from each of the major political parties in Mohave County.

One option is hiring hundreds of people through a temporary agency, at over \$20.00 per hour, assuming the temporary staffing services would be able to fill the county's needs.

A second option is to coordinate with Mohave County Human Resources Department to fill positions for a short time each election year. All people hired will have to be hired as temporary employees of the County. This group of people will have to meet all requirements for the position and must be able to pass background checks costing the County \$50.00 per person. The Human Resource Department will have to dedicate a staff member to help fill these positions. Recruiting for these positions will be required throughout 2024. Some people hired for one election may not return for other elections, requiring a continuous hiring process to keep positions filled.

It takes current Mohave County Elections staff the entire year before an election to recruit up to 400 people to work at the voting polls for only one day. There is a large turnover, approximately one-third, between General Election years requiring the department to continuously recruit new poll workers. Even with these efforts, it is common for a poll site to be understaffed. Although it is helpful for political parties to assist in recruiting poll workers a very small percentage of poll worker positions are filled in this manner. It takes all the efforts of a full-time Elections staff member, with the help of part time election staff members, to recruit the poll workers needed for a General Election cycle. Therefore, current full-time staff members are unable to recruit and hire hand tally board members.

Once identified and hired, Mohave County Elections Department must train these new tally workers. The training must take place prior to the elections and will be an added employee cost. The new tally workers must commit the time (and travel) to attend and participate in the training.

Security Guards:

A minimum of two (2) security guards are needed to be present at the Fairgrounds at all times while hand tallying is taking place. An additional security guard will be needed to transport ballots back and forth between the Fairgrounds and the Elections Department.

[Approximately \$26 per hour times 3 guards times 45 days (13 days after both the Primary and PPE and 19 days after the General) times 8 hours per day per guard. Total Cost: \$28,080.]

Transportation will be needed to transport personnel and ballots to and from the Fairgrounds. Approximately \$1,500.

Hand Tally Board Salary Cost for General Election

Starting the tally the day after the election:

Estimate for one 7-person tally board to tally 105,000 ballots

105,000 ballots times 3 minutes per ballot = 315,000 minutes

315,000 minutes divided by 60 min per hour = 5250 hours

5250 hours divided by 8 hours per day = 657 days

Estimate of number of groups and number of people required to tally ballots before the General Election canvass deadline, and salary calculation:

657 days divided by 19 days allowed for tallying = 35 groups

35 groups times 7 people per group = 245 people

245 people times \$14 per hour times 8 hours per day times 19 days = \$521,360

Hand Tally Board Salary Cost for Primary Election

Starting the tally the day after the election:

Estimate for one 7-person tally board to tally 50,000 ballots (estimate of 2024 ballots to be cast)

50,000 ballots times 3 minutes per ballot = 150,000 minutes

150,000 minutes divided by 60 min per hour = 2,500 hours

2,500 hours divided by 8 hours per day = 313 days

Estimate of number of groups and number of people required to tally ballots before the Primary Election canvass deadline, and salary calculation:

313 days divided by 13 days allowed for tallying = 25 groups

25 groups times 7 people per group = 175 people

175 people times \$14 per hour times 8 hours per day times 13 days = \$254,800

Whether talliers begin counting ballots as soon as they are received from the Recorder, approximately one week after Early voting begins, or whether tallying begins the day after the election, staff estimates that ballot tallier cost will be approximately the same amount. Total per person hours will be the same.

Hand Tally Board for Presidential Preference Election

If both the Republican and Democratic parties participate in the 2024 Presidential Preference Election, staff estimates that there would be approximately 40,000 ballots cast. The cost to tally these ballots would be much less than the cost to tally the ballots for either the Primary or General Election. The cost is lower because only one race per party is tallied versus the 30 or more races that will be tallied for the Primary Election and General Election. There is no comparison of the processes needed to tally the Presidential Preference Election versus the Primary and General Election. Therefore, we will not submit a cost estimate for hand tally board members for the Presidential Preference Election.

Automatic Recounts

Recent legislative changes prior to the 2022 General election cycle have made it much more likely that recounts of races will occur. [A.R.S. §16-661].

If a recount is ordered by the court every ballot will have to be retallied for all races so ordered by the court.

For the General Election recount, thirty-five (35) people will be hired as recount hand talliers. Seven (7) people are required for each tally board. To retally 105,000 ballots it will take 210 hours at 500 ballots per hour for one group to complete the recount within five days.

[Approximately \$14 per hour times 35 people times 5 days times 8 hours per day per person. Total Cost: \$19,600.]

For the Primary Election recount, twenty-one (21) people will be hired as recount hand talliers. Seven (7) people are required for each tally board. To retally 50,000 ballots it will take 100 hours at 500 ballots per hour for one group to complete the recount within five days.

[Approximately \$14 per hour times 21 people times 5 days times 8 hours per day per person. Total Cost: \$11,760.]

The current Elections staff, consisting of four (4) people, using the ballot tabulators could recount all ballots for the General Election in four days incurring de minimis expense to the County.

Estimate of Additional Cost for all Three Elections

Fairgrounds Camera/Security System Installation Cost	\$100,000
New Full-time Elections Staff Member	\$75,000
Three Security Guards	\$28,080

Six Part-time Elections Staff Members at Tally Site	\$30,240
Two Additional Early Board Part-time Elections Staff Members	\$16,800
Hand Tally Board Members General Election	\$521,360
Hand Tally Board Members Primary Election	\$254,800
Board Members Presidential Preference Election	Not calculated
Background Checks - Approximately \$50 per check (500)	\$25,000
Write-In Boards General Election (3 persons per boards [\$16-531])	\$38,304
Write-In Boards Primary Election (3 persons per boards [\$16-531])	\$17,402
Transportation for ballots and personnel	\$1,500
Total Additional Estimated Cost to Hand Tally Three 2024 Elections	\$1,108,486

Estimate of Recount Cost if Required

Recount General Election	\$19,600
Recount Primary Election	\$11,760

These are the costs that are identified at this time. Other costs may be identified as the process proceeds.

CONCLUSION:

To successfully hand count the 2024 Primary and General Elections, the following additional steps must take place:

1. Hire new full and part-time staff necessary to recruit, observe, and train tally workers;
2. Recruit and hire a minimum of 245 tally workers to count ballots;
3. Recruit and hire a minimum of 30 people for Write-in board members for the Primary and General Elections;
4. Recruit and hire a minimum of 56 people for Recount board members for Primary and General Elections.
5. Prepare and secure the Mohave County Fairgrounds for the counting of ballots;
6. Secure the vehicles necessary to transport ballots between the Fairgrounds and the Elections Department;
7. Acquire a minimum of three security guards to ensure the security of the election;
8. Train tally workers prior to each election;
9. Procure video equipment to be used during the counting of ballots; and
10. Allocate approximately \$1,108,486, plus recount cost \$31,360 as outlined above to conduct the hand counts.

ADJUDICATION / DUPLICATION - VOTER INTENT EXAMPLES					= Vote Given
EXAMPLE 1 ● CANDIDATE 1 ○ CANDIDATE 2 ○ _____	EXAMPLE 2 ○ CANDIDATE 1 ● CANDIDATE 2 ○ _____	EXAMPLE 3 ● CANDIDATE 1 ● CANDIDATE 2 ○ _____	EXAMPLE 4 ○ CANDIDATE 1 ○ CANDIDATE 2 ○ _____	EXAMPLE 5 ● CANDIDATE 1 ● CANDIDATE 2 ○ _____	
EXAMPLE 6 ● CANDIDATE 1 ● CANDIDATE 2 ○ _____	EXAMPLE 7 ● CANDIDATE 1 ✘ CANDIDATE 2 ○ _____	EXAMPLE 8 ● CANDIDATE 1 ● CANDIDATE 2 ○ <i>Voter's Initials</i>	EXAMPLE 9 ● CANDIDATE 1 ● CANDIDATE 2 ● Eligible Write-In	EXAMPLE 10 ● XXXX ● CANDIDATE 2 ○ _____	
EXAMPLE 11 ● <i>This one</i> ● CANDIDATE 1 ● CANDIDATE 2 ○ _____	EXAMPLE 12 ● CANDIDATE 1 ● <i>Mistake</i> ○ CANDIDATE 2 ○ _____	EXAMPLE 13 ● CANDIDATE 1 ✘ CANDIDATE 2 ○ _____	EXAMPLE 14 ○ CANDIDATE 1 ○ CANDIDATE 2 ○ _____	EXAMPLE 15 ● <i>Wavy</i> ● CANDIDATE 1 ● CANDIDATE 2 ○ _____	
EXAMPLE 16 ● CANDIDATE 1 ● CANDIDATE 2 ○ _____	EXAMPLE 17 ○ CANDIDATE 1 ● CANDIDATE 2 ○ _____	EXAMPLE 18 ○ CAND 1 (REP) ○ CAND 2 (DEM) ○ _____	EXAMPLE 19 ○ CAND 1 (REP) ○ CAND 2 (DEM) ○ _____	EXAMPLE 20 ● CANDIDATE 1 ○ CANDIDATE 2 ● Candidate 1 - Write-In	

ADJUDICATION / DUPLICATION - VOTER INTENT EXAMPLES				
CANNOT DETERMINE ● CANDIDATE 1 ● CANDIDATE 2 ○ _____	CANNOT DETERMINE ● CANDIDATE 1 ○ CANDIDATE 2 ● Eligible Write-In	CANNOT DETERMINE ○ CANDIDATE 1 ○ CANDIDATE 2 ○ _____	CANNOT DETERMINE ✓ CANDIDATE 1 ○ CANDIDATE 2 ✘ Eligible Write-In	CANNOT DETERMINE ● CANDIDATE 1 ✘ CANDIDATE 2 ○ _____
CANNOT DETERMINE ○ CANDIDATE 1 ○ CANDIDATE 2 ● Ineligible Write-In	CANNOT DETERMINE ● CANDIDATE 1 ○ CANDIDATE 2 ● Ineligible Write-In	CANNOT DETERMINE ○ CANDIDATE 1 ○ CANDIDATE 2 ● Misspelled eligible Write-in	CANNOT DETERMINE ● CANDIDATE 1 ○ CANDIDATE 2 ● Misspelled eligible Write-in	CANNOT DETERMINE VOTER MARKED AN "X" OVER ENTIRE BALLOT INK MAY HAVE HIT A TARGET... ADJ/DUP ZERO VOTES

Exhibit A

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SUPREME COURT OF ARIZONA

RON GOULD, IN HIS INDIVIDUAL
CAPACITY

Plaintiff/ Appellant,

v.

KRIS MAYES, IN HER OFFICIAL
CAPACITY AS ATTORNEY GENERAL OF
THE STATE OF ARIZONA

Defendant/ Appellee,

and

ARIZONA ALLIANCE FOR RETIRED
AMERICANS,

Intervenor/ Appellee.

Arizona Supreme Court
No. CV-25-0325-PR

Court of Appeals
Division Two
No. 2 CA-CV 24-0349

Maricopa County
Superior Court
No. CV2024-000815

**CERTIFICATE OF
COMPLIANCE**

CERTIFICATE OF COMPLIANCE

1. This certificate of compliance concerns:
 - A brief, and is submitted under Rule 14(a)(5).
 - An accelerated brief, and is submitted under Rule 29(a).
 - A motion for reconsideration, or a response to a motion for reconsideration, and is submitted under Rule 22(e).
 - A petition or cross-petition for review, a response to a petition or cross-petition, or a combined response and cross-petition, and is submitted under Rule 23(h).
 - An amicus curiae brief, and is submitted under Rule 16(b)(4).
2. The undersigned certifies that the response to the petition for review to which this Certificate is attached uses type of at least 14 points, is double-spaced, and contains 3,467 words.
3. The document to which this Certificate is attached does not , or does exceed the word limit that is set by Rule 14, Rule 22, Rule 23, or Rule 29, as applicable.

RESPECTFULLY SUBMITTED this 5th day of February, 2026.

KRISTIN K. MAYES, ARIZONA
ATTORNEY GENERAL

By /s/ Emma H. Mark

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SUPREME COURT OF ARIZONA

RON GOULD, IN HIS INDIVIDUAL
CAPACITY

Plaintiff/ Appellant,

v.

KRIS MAYES, IN HER OFFICIAL
CAPACITY AS ATTORNEY GENERAL OF
THE STATE OF ARIZONA

Defendant/ Appellee,

and

ARIZONA ALLIANCE FOR RETIRED
AMERICANS,

Intervenor/ Appellee.

Arizona Supreme Court
No. CV-25-0325-PR

Court of Appeals
Division Two
No. 2 CA-CV 24-0349

Maricopa County
Superior Court
No. CV2024-000815

**CERTIFICATE OF
SERVICE**

CERTIFICATE OF SERVICE

I hereby certify that on February 5, 2026, Defendants/Appellees' Response to Petition for Review and Appendix and this Certificate of Service were electronically filed with the Clerk's Office, and pursuant to ARCAP 4(f), a copy was e-served via AZTurboCourt to:

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