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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

**IN AND FOR THE COUNTY OF MARICOPA**

**RON GOULD, in his individual capacity,**

**Case No. CV2024-000815**

**Plaintiff,**

**FIRST AMENDED COMPLAINT**

**v.**

**KRIS MAYES, in her Official Capacity as  
Attorney General of the State of Arizona,**

**(Tier II)**

**Defendant.**

Plaintiff Ron Gould in his individual capacity, alleges as follows:

**PARTIES**

1. Plaintiff Ron Gould (“Plaintiff” or “Gould”) is a Supervisor of the Mohave County Board of Supervisors. Plaintiff Gould is seeking a declaration of the court, based on the Attorney General’s threatened criminal charges against him personally over his support and voting for changing the manner of election counting in his County. The matter involves a justiciable controversy, Plaintiff has standing to raise it, and actual adverse positions are presented that require a declaration to avoid potential criminal charges being filed by this Attorney General. Moreover, the issue is “capable of repetition yet evading review” both because it involves election cycles that occur quickly and then recur after a couple years and because of the short timeframe





1 Elections Department ultimately outlined a series of recommended steps that would need to occur  
2 to “successfully hand count the 2024 Primary and General Elections.”

3 10. On August 1, 2023, at a Mohave County Board of Supervisors meeting, the Board  
4 heard a presentation from the Mohave County Elections Director regarding the practicalities and  
5 difficulties of tabulating the 2024 elections by hand.

6 11. At the same August 1, 2023 meeting, the Mohave County Board of Supervisors  
7 moved for a vote to hand tabulate ballots for the 2024 elections. When a vote was taken on the  
8 motion, Supervisors Gould and Angius voted to proceed with hand tabulation of ballots for the  
9 2024 elections, and the remaining three Supervisors, including Supervisor Lingenfelter, voted  
10 against hand-tabulating the ballots.

11 **Further Developments re Potential Mohave County Hand Count**

12 12. On October 18, 2023, the Arizona Court of Appeals (Division 2), *Arizona All. for*  
13 *Retired Americans, Inc. v. Crosby*, 537 P.3d 818 (Ariz. App. Ct. 2023), affirmed a Superior Court  
14 order holding that conducting an expanded hand count of all ballots, as a way of *auditing* a final  
15 count produced by the vote tabulating machines, was illegal.

16 13. However, neither the appellate court nor the Superior Court in that case addressed  
17 the issue here—whether conducting a full hand count, in the first instance, and without any use of  
18 vote tabulating machines, is legal or illegal under existing law.

19 14. In fact, both the plain meaning of Arizona Revised Statutes Title 16 and the  
20 legislative history behind these elections statutes support the power of a county Board of  
21 Supervisors to elect to tabulate votes using hand counting in the first instance, notwithstanding  
22 the widespread use of electronic tabulating machines, which Title 16 also recognizes.

23 15. Specifically, A.R.S. 16-451 gives the Board of Supervisors the right and power to  
24 decide not only how to fund electronic tabulating machines but also whether to do so in the first  
25 instance. A.R.S. § 16-451 (“The board of supervisors **may** provide for the payment of the cost of  
26 vote tabulating equipment in such manner and by such method as it may deem for the best local  
27 interests and also may for that purpose issue bonds, certificates of indebtedness or other  
28 obligations which shall be a charge on the county or city.”) (emphasis added). Use of the word

1 “may,” rather than “shall,” is in sharp contradistinction to other elections statutes in Title 16 and  
2 demonstrates the legislative intent to reserve to the Board of Supervisors the power to decide  
3 whether to fund, and therefore by implication, whether to use at all, these vote tabulating  
4 machines. *See* A.R.S. § 16-511 (stating that various items “**shall** be furnished by the board of  
5 supervisors . . . at the expense of the county.”); A.R.S. § 16-551(E). This is further confirmed by  
6 the original enactment of A.R.S. § 16-451 in 1979 at the same time as A.R.S. § 16-441 and A.R.S.  
7 § 16-442(B), which statutes, even more explicitly than A.R.S. § 16-451, gave the Board of  
8 Supervisors the right to decide whether to use these machines. *See, e.g.,* prior version of A.R.S. §  
9 16-441 (“This article applies only in counties in which the board of supervisors provides, by  
10 resolution, that it shall apply . . .”). Thus, the only reasonable interpretation of A.R.S. § 16-451  
11 is that it permitted—and still permits—a county board of supervisors to choose whether to fund  
12 (and therefore whether to use) vote tabulating machines because any other interpretation would  
13 mean that the 1979 legislature **required** funding of equipment that the 1979 versions of A.R.S.  
14 §§ 16-441 and 16-442(B) demonstrate was clearly optional. Though the text of A.R.S. §§ 16-441  
15 and 16-442 both changed in 2003 to ensure that counties could not use their discretion to  
16 accidentally violate new federal law under the Help America Vote Act (“HAVA”), the text of  
17 A.R.S. § 16-451 did **not** change. Moreover, though HAVA prohibited use of certain tabulating  
18 devices for federal elections, it did not prohibit hand counting. Therefore, A.R.S. § 16-451 means  
19 the same thing that it did in 1979—that the Boards of Supervisors may choose whether to fund,  
20 and by necessary implication whether to use, electronic tabulating machines.

21 16. Other statutes such as A.R.S. § 16-443, which states that at all elections “votes **may**  
22 be . . . counted by . . . vote tabulating devices”, also have not changed since 1979 and provide  
23 additional support for the proposition that use of vote tabulating devices is optional, not  
24 mandatory, under the statutory scheme. This is further confirmed by the conditional language of  
25 many other statutes that recognize that vote tabulating equipment will **not** be used at all state-level  
26 elections. *See, e.g.,* A.R.S. § 16-445 (“For any state, county, school district, special district, city  
27 or town election, including primary elections, that uses vote tabulating devices . . .”); A.R.S. §  
28

1 16-602(A) (“For any primary, special or general election in which the votes are cast on an  
2 electronic voting machine or tabulator . . . .”); A.R.S. § 16-663; etc.

3 **November 19, 2023 Threatening Letter from Attorney General Mayes**

4 17. On or around November 17, 2023, Supervisor Lingenfelter of the Mohave County  
5 Board of Supervisors placed on the agenda for the November 20, 2023 Board Meeting another  
6 vote regarding choosing to hand tabulate ballots for the 2024 elections.

7 18. Then, on November 19, 2023, obviously aware of the foregoing, Attorney General  
8 Mayes sent the Exhibit “A” letter (the “**Attorney General’s Letter**”) addressed to the Mohave  
9 County Board of Supervisors, and to each Supervisor by name, including Mr. Gould, intending to  
10 chill the vote in favor of hand counting, and/or the agenda item being discussed, and to intimidate  
11 the Supervisors in doing so. In the letter, the Attorney General addressed the then-upcoming  
12 November 20, 2023 vote regarding conducting a hand count of all ballots. The Attorney General  
13 plainly stated that a “yes” vote would direct the Election Department to “violate the law” and that  
14 “the legal consequences would be serious.” *Id.*

15 19. The Attorney General’s Letter asserts that “full hand counts . . . are illegal under  
16 Arizona law” and that the elections statutes instead require using automatic hand-tabulating  
17 equipment rather than hand counts, citing A.R.S. §§ 16-449, 16-468, 16-602, 16-621, and 16-622.  
18 *Id.* The letter further claims that ballots may be counted manually “only if ‘it becomes  
19 impracticable to count all or part of the ballots with tabulating equipment,’” citing A.R.S. § 16-  
20 621. *Id.* The letter also cites the aforementioned October 2023 appellate opinion, regarding the  
21 proposed Cochise County “complete hand-count **audit**,” for the proposition that such an audit  
22 must occur after a “multi-step process.” *Id.* (emphasis added).

23 20. In the letter, the Attorney General concludes that voting to conduct a full hand count  
24 would violate the Supervisors’ oath of office, and promises that if the Supervisors so voted, the  
25 Attorney General’s office would “promptly sue and obtain a court order.” *Id.* The letter then  
26 threatens each Supervisor: “[Y]ou should be aware that an illegally expanded hand count may  
27 result in **various felony and misdemeanor criminal penalties**. We hope you will choose not to  
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1 violate the law and thus that it will not be necessary for us to consider whether criminal  
2 prosecution is warranted for conducting an illegal hand count.” *Id.* (emphasis added).

3 21. To drive home her intimidation and threat, and abuse of her Office, the Attorney  
4 General disingenuously concluded: “My office is committed to upholding the sanctity of  
5 Arizona’s elections and democratic process.” This was followed by a threat that her Office will  
6 “pursue to the fullest extent of the law all possible remedies to ensure the sanctity of Arizona’s  
7 elections.” *Id.* The message was clear, albeit erroneous, from Plaintiff’s perspective. A County  
8 has the power and right to determine its initial method of counting votes and is not required to use  
9 electronic voting machines to do so. There is no controlling Arizona authority to the contrary.

10 **November 20, 2023 Mohave County Board of Supervisors Vote**

11 22. On November 20, 2023, the Mohave County Board of Supervisors heard more than  
12 two hours of public comment on the proposed vote whether to hand-tabulate ballots for the 2024  
13 elections.

14 23. The Attorney General’s Letter was also read publicly at the meeting.

15 24. Throughout the Board Meeting, Supervisors Angius and Gould openly supported  
16 voting for hand-tabulating the 2024 elections. Supervisors Bishop and Johnson openly opposed  
17 it.

18 25. Supervisor Lingenfelter, however, was plainly on the fence.

19 26. His comments at the meeting conveyed his belief that the people should tell the  
20 government how to conduct elections, not vice versa; that the state has delegated the responsibility  
21 for elections to the counties; and that the legal significance of words such as “may” was unclear  
22 in statutes like A.R.S. § 16-443, which states: “ballots or votes **may** be cast, recorded and counted  
23 . . . by . . . vote tabulating devices.” A.R.S. § 16-443 (emphasis added); *see also* A.R.S. § 16-445.  
24 Plaintiff contends that the word “may” is not unclear at all, and clearly denotes a voluntary  
25 decision by the individual County to choose its method for tabulation of the votes. Nothing therein  
26 or thereby would prevent, or should prevent, a vote to hand count ballots as the primary method  
27 of tabulation, if the Supervisors so choose.

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1 27. Also, during the meeting, Supervisor Gould expressed his commitment to restoring  
2 Mohave County voters' faith in elections, even if it resulted in him being prosecuted pursuant to  
3 the Attorney General's Letter. Thus, the Attorney General's purported concerns about his motives  
4 are entirely unfounded, and off base, and were offered up for political reasons, not genuine legal  
5 ones.

6 28. Ultimately, when the vote was taken at the end of the meeting, Supervisors Gould  
7 and Angius immediately voted yes, and supervisors Bishop and Johnson immediately voted no.

8 29. Then, after a very extended pause, Supervisor Lingenfelter announced the deciding  
9 vote of "no," *i.e.*, that the tabulation of 2024 elections would not be completed by hand.

10 **Attorney General Mayes's Second Statement**

11 30. Later that same day, the Attorney General issued the following statement on the  
12 Attorney General's website: "I am greatly relieved and commend the Mohave County Board of  
13 Supervisors for their decision not to authorize a hand count of all ballots for the 2024 election,  
14 upholding Arizona law. As Attorney General, it is my duty to enforce our laws and ensure the  
15 integrity of our elections. The Board's decision to adhere to state-mandated procedures for ballot  
16 counting avoids potential legal complications and reinforces public trust in the integrity of our  
17 elections."

18 31. Notwithstanding the current state of the Mohave Board's vote, it is believed that the  
19 pressure of the Attorney General's threats to the Board members prior to the vote influenced the  
20 voting process and ultimate vote. Regardless, the issue is not finally resolved, and is expected to  
21 come up again in the future, and Supervisor Gould intends to continue raising the issue and voting  
22 in favor of using hand counting; thus the need to resolve this issue of statewide importance as to  
23 whether the Supervisors are properly subjected to criminal prosecution for their vote, and whether  
24 the Attorney General's position on that vote is correct as a matter of law or not.

25 **COUNT ONE**  
26 **DECLARATORY RELIEF**  
27 **(Pursuant to A.R.S. § 12-1831 *et seq.*)**

28 32. Plaintiff incorporates by reference the above allegations.



1 33. Pursuant to Arizona's Uniform Declaratory Judgment Act,  
2 A.R.S. §§ 12-1831 *et seq.*, Plaintiff is entitled to and requests a judicial determination and  
3 declaratory judgment because Plaintiff is a person whose right, status, or other legal relations, and  
4 indeed his very freedom from criminal prosecution, are affected by the various elections statutes  
5 cited by the Attorney General's Letter and by Supervisor Lingenfelter, such as A.R.S. §§ 16-443,  
6 16-445, 16-449, 16-468, 16-602, 16-621, and 16-622, and whether these statutes directly bar a  
7 County from utilizing a hand count of votes as the initial method of tabulation of the vote, which  
8 power and right is supported by many other statutes from Title 16.

9 34. No Arizona court to our knowledge has directly weighed in on this issue before,  
10 finding such a method to be impermissible, or to be the subject of criminal prosecution if voted  
11 on by a supervisor of a Board of Supervisors.

12 35. Plaintiff has already twice voted to hand count ballots and has established that he  
13 will continue to so vote until the vote passes with most of the Board, for so long as he remains a  
14 member of the Board. Plaintiff plans to raise the issue in the future and expects the issue to come  
15 to a vote in the future. Plaintiff recognizes that this, like many election issues, is an issue that is  
16 capable of repetition yet evading review.

17 36. The November 20, 2023 vote may have been, and likely was, affected by the  
18 threatening Attorney General's Letter.

19 37. If a future vote results in an overall "yes" vote with respect to hand-counting all  
20 ballots for the 2024 elections and/or any future election cycle, Plaintiff will very likely be subject  
21 to criminal prosecution by the current Attorney General, which prosecution she has already  
22 threatened and who is currently similarly prosecuting other County Supervisors that apparently  
23 disagree with her interpretation of the election laws.

24 38. Therefore, Supervisor Gould plainly has the right to bring this declaratory judgment  
25 action, and the matter is ripe for adjudication given the adverse positions staked out and important  
26 to be resolved, so that the Plaintiff is not subjected to further threats and harassment by the  
27 Attorney General.

1           39. Plaintiff therefore seeks a declaration from this Court to declare that, pursuant to the  
2 plain language and context of statutes such as A.R.S. §§ 16-441, 16-442, 16-443, 16-444, 16-445,  
3 16-451, 16-468, 16-602,16-621, 16-622, and 16-663, and in the context of Title 16 more broadly,  
4 use of vote tabulating machines in the first instance, rather than hand counting ballots, is not  
5 mandatory, but rather optional.

6           40. Plaintiff further asks this Court to declare that pursuant to A.R.S. §§ 11-202, 11-  
7 251(1), 11-251(3), 11-251(30), 16-441, 16-442, 16-443, 16-444, 16-445, 16-451, 16-468, 16-  
8 602,16-621, 16-622, and 16-663, County Boards of Supervisors generally have the legal authority  
9 to decide as an initial matter whether to use vote tabulating machines versus hand counting to  
10 tabulate ballots, even in situations where use of vote tabulating machines is not impracticable,  
11 without fear of reprisals by the Attorney General bringing criminal prosecutions for voting their  
12 conscience in accordance with the law.

13           41. Plaintiff further asks this Court to declare, pursuant to A.R.S. §§ 11-202, 11-251(1),  
14 11-251(3), 11-251(30), 16-441, 16-442, 16-443, 16-444, 16-445, 16-451, 16-468, 16-602,16-621,  
15 16-622, and 16-663, that the Mohave County Board of Supervisors has the legal authority to  
16 decide whether to hand count ballots as an initial matter, rather than using vote tabulating  
17 machines, even in situations where use of vote tabulating machines is not impracticable, for the  
18 upcoming 2024 election cycle and that its members should not be intimidated or threatened with  
19 criminal prosecution for their votes.

20           42. Plaintiff further asks this Court to decide and declare that *AARA v. Crosby*, 537 P.3d  
21 818 (Ariz. App. Ct. 2023), only applies to conducting a full-count **audit** of an original count that  
22 was conducted primarily by vote tabulating machines, and therefore does not operate to block the  
23 requested relief sought here, *i.e.*, a declaration that a full hand count, without any use of vote  
24 tabulating machines, is a permissible option in the first instance, as the sole means of counting  
25 and tallying the results of the vote.

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**COUNT TWO**  
**DECLARATORY RELIEF – IMMUNITY FROM PROSECUTION**  
**(Pursuant to A.R.S. § 12-1831 *et seq.*)**

43. Plaintiff incorporates by reference the above allegations.

44. Pursuant to Arizona’s Uniform Declaratory Judgment Act, A.R.S. §§ 12-1831 *et seq.*, Plaintiff is entitled to and requests a judicial determination and declaratory judgment because Plaintiff is a person whose rights, status, or other legal relations, and indeed his very freedom from criminal prosecution, are affected by the various aforementioned elections statutes.

45. Plaintiff asks the Court to declare that Plaintiff, as a county legislator, is protected from prosecution merely for voting to conduct tabulation of votes by hand count, pursuant to the legislative immunity protection enshrined in the United States and Arizona Constitutions. U.S. Const. art. I, § 6, cl. 1; Ariz. Const. art. 4, pt. 2, § 7; *Mesnard v. Campagnolo*, 251 Ariz. 244, 248-49, 489 P.3d 1189, 1193-94 (2021) (“Arizona has adopted Restatement of Torts (Second) § 590 (Am. Law Inst. 1977), which is grounded on the federal Speech or Debate Clause and like state constitutional provisions. Restatement § 590 cmt. a. Section 590 provides that federal, state, and **local** legislators are ‘absolutely privileged to publish defamatory matter concerning another in the performance of [their] legislative functions.’”); *id.* (“[L]egislative immunity applies to written reports, offered resolutions, voting...”).

46. In deciding this issue, the Court would need to construe the relevant elections statutes to determine whether such voting by Defendant Gould is properly a “legislative function” of the county board of supervisors.

47. Therefore, the Court is empowered to issue a declaratory judgment on this issue as well, pursuant to A.R.S. §§ 12-1831 and 12-1835. A.R.S. § 12-1835 (“The enumeration in sections 12-1832, 12-1833 and 12-1834 does not limit or restrict the exercise of the general powers conferred in section 12-1831, in any proceeding where declaratory relief is sought...”); *Elkins v. Vana*, 541 P.2d 585, 590 (1975) (applying § 12-1835 to resolve issue only indirectly related to “validity or construction” under § 12-1832).

1 48. No Arizona court to our knowledge has directly weighed in on this issue before.

2 49. Plaintiff has already twice voted to hand count ballots and has established that he  
3 will continue to so vote until the vote passes with most of the Board, for so long as he remains a  
4 member of the Board. Plaintiff plans to raise the issue in the future and expects the issue to come  
5 to a vote in the future. Plaintiff recognizes that this, like many election issues, is an issue that is  
6 capable of repetition yet evading review.

7 50. If a future vote results in an overall “yes” vote with respect to hand-counting all  
8 ballots for the 2024 elections and/or any future election cycle, Plaintiff will very likely be subject  
9 to criminal prosecution by the current Attorney General, which prosecution she has already  
10 threatened and who is currently similarly prosecuting other County Supervisors that apparently  
11 disagree with her interpretation of the election laws.

12 51. Therefore, Supervisor Gould plainly has the right to bring this declaratory judgment  
13 action, and the matter is ripe for adjudication given the adverse positions staked out and important  
14 to be resolved, so that the Plaintiff is not subjected to further threats and harassment by the  
15 Attorney General.

16 52. Plaintiff therefore seeks a declaration from this Court to declare that, pursuant to the  
17 plain language and context of statutes such as A.R.S. §§ 16-441, 16-442, 16-443, 16-444, 16-445,  
18 16-451, 16-468, 16-602, 16-621, 16-622, and 16-663, and in the context of Title 16 more broadly,  
19 Plaintiff may not be prosecuted for voting in advance to conduct a hand count of ballots as the  
20 sole means of tabulation for an election as such a vote would be a legislative function, subject to  
21 Arizona’s legislative immunity protection.

22 **REQUEST FOR RELIEF**

23 WHEREFORE, Plaintiff prays for judgment in his favor and against Defendant as follows:

24 A. Declare that pursuant to the plain language of statutes such as A.R.S. §§ 16-442, 16-  
25 443, 16-445, 16-451, 16-621, and 16-663, and in the context of Title 16 more broadly, use of vote  
26 tabulating machines in the first instance, rather than hand counting ballots, is not mandatory, but  
27 rather optional;

1 B. Declare that pursuant to A.R.S. §§ 11-202, 11-251(1), 11-251(3), 11-251(30), 16-  
2 442, 16-443, 16-445, 16-451, 16-621, and 16-663, and in the context of Title 16 more broadly,  
3 County Boards of Supervisors generally have the legal authority to decide whether to use vote  
4 tabulating machines versus hand counting to tabulate ballots, even in situations where use of vote  
5 tabulating machines is not impracticable;

6 C. Declare that pursuant to A.R.S. §§ 11-202, 11-251(1), 11-251(3), 11-251(30), 16-  
7 442, 16-443, 16-445, 16-451, 16-621, and 16-663, and in the context of Title 16 more broadly,  
8 the Mohave County Board of Supervisors has the legal authority to decide whether to hand count  
9 ballots, rather than using vote tabulating machines, even in situations where use of vote tabulating  
10 machines is not impracticable, for the upcoming 2024 election cycle;

11 D. Declare that *AARA v. Crosby*, 537 P.3d 818 (Ariz. App. Ct. Oct. 18, 2023), only  
12 applies to conducting a full hand count **audit** of an original count primarily by vote tabulating  
13 machines, and therefore does not operate to block the requested relief sought here, *i.e.*, a  
14 declaration that a full hand count, without any use of vote tabulating machines, is a permissible  
15 option in the first instance;

16 E. Declare that, pursuant to the plain language and context of statutes such as A.R.S.  
17 §§ 16-441, 16-442, 16-443, 16-444, 16-445, 16-451, 16-468, 16-602, 16-621, 16-622, and 16-663,  
18 and in the context of Title 16 more broadly, Plaintiff may not be prosecuted for voting in advance  
19 to conduct a hand count of ballots as the sole means of tabulation for an election as such a vote  
20 would be a legislative function, subject to Arizona’s legislative immunity protection; and

21 F. That Plaintiff should not be subjected to threats and intimidation by the Attorney  
22 General for voting to have hand counting be the primary initial method of vote tabulation.

23 G. At this time, Plaintiff does not seek any relief against Defendant other than the above  
24 stated Declaratory Judgments and costs pursuant to A.R.S. §§ 12-341, 12-1840.

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**RESPECTFULLY SUBMITTED** on January 19, 2024.

**WILENCHIK & BARTNESS, P.C.**

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**ELECTRONICALLY** filed on January 19, 2024,  
via AZTurboCourt.com.

/s/ Christine Ferreira



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# EXHIBIT A

RETRIEVED FROM DEMOCRACYDOCKET.COM





KRIS MAYES  
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL  
STATE OF ARIZONA

November 19, 2023

**SENT VIA EMAIL TO**

Mohave County Board of Supervisors  
Chairman Travis Lingenfelter  
Supervisor Hildy Angius  
Supervisor Buster Johnson  
Supervisor Jean Bishop  
Supervisor Ron Gould

Re: Counting ballots manually instead of by automatic tabulating equipment

Dear Supervisors:

I understand that you will be voting tomorrow on whether to direct the Mohave County Elections Department to count the ballots for the 2024 elections by hand, rather than automatic tabulating equipment. Before you take that vote, I want to make sure you know that a “yes” vote would direct your Elections Department to violate the law. As Arizona’s chief law enforcement officer, I have an obligation to warn you that the legal consequences would be serious.

Equally important, I am concerned that this Board has received incorrect legal advice from bad-faith actors who are attempting to sow doubt in Arizona’s elections and ultimately undermine Arizona’s democratic process. Full hand counts are impracticable to perform within the time permitted to certify election results, less accurate than tabulating machines, and more importantly are illegal under Arizona law. The resulting delays, inaccurate results, and illegal procedures from hand counts will then be used to call into doubt valid election results. The Board should not endorse this attack on the democratic process.

**I. Directing the Elections Department to hand count all ballots would violate the law.**

It is well settled in Arizona that counties have only the authority “expressly, or by necessary implication, delegated to them by constitution or by the legislature.” *Vangilder v. Ariz. Dep’t of Revenue*, 252 Ariz. 481, 488 ¶ 24 (2022). Likewise, county officers “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) (citation omitted). The powers of counties and county officers are “strictly construed,” and any doubt “as to the power sought to be exercised must be resolved against” them. *Vangilder*, 252 Ariz. at 492 ¶ 45 (citation omitted).

Arizona law does not allow counties to make a blanket decision to count ballots by hand.



Instead, the relevant statutes repeatedly provide that ballots shall be counted by automatic tabulating equipment. *See, e.g.*, A.R.S. §§ 16-449, 16-468, 16-602, 16-621, 16-622. In particular, section 16-622(A) of the Arizona Revised Statutes provides that “[t]he result printed by the vote tabulating equipment, to which have been added write-in and early votes, shall, when certified by the board of supervisors or other officer in charge, constitute the official canvass of each precinct or election district.” Except when expressly allowed by statute, votes counted by hand do not constitute part of the official canvass. Thus, the proposed measure could end up disenfranchising your constituents.

The officer in charge of elections may direct that ballots “be counted manually” only if “it becomes impracticable to count all or a part of the ballots with tabulating equipment.” A.R.S. § 16-621(C). No evidence supports a general finding that counting ballots with tabulating equipment is impracticable. Rather, as the recent analysis from the Mohave County Elections Department shows, manually counting all ballots would be impracticable in several ways. *See Mohave County, Ballot Hand Tally Analysis*, <https://lfportal.mohavecounty.us/bos/0/doc/2038269/Page1.aspx> (explaining that a full manual count may compromise confidentiality, hurt the timeliness and accuracy of results, and significantly increase costs). Outside of a specific scenario in which counting ballots with tabulating equipment is impracticable, the Legislature has not provided counties with authority to count ballots by hand instead of via tabulating equipment, and counties may not independently choose to do so. *See State v. Stapley*, 227 Ariz. 61, 64–65, ¶ 15 (App. 2011) (“[T]he Board can exercise only those powers specifically granted to it by the legislature.”)

The Elections Procedures Manual similarly makes clear that ballots shall be counted by machine. For example, Chapter 11 provides for a “limited” hand count audit, the purpose of which “is to compare the result of the machine count to the hand count to assure that the machines are working properly and accurately counting votes.” Elections Procedures Manual at 213. The manual goes on to provide a four-stage process for hand counts: (1) precinct hand count; (2) second precinct hand count; (3) expanded precinct hand count; and (4) full precinct hand count. It authorizes a full precinct hand count audit only when certain error thresholds were met in stages 1, 2, and 3.

In 2022, Cochise County engaged in a misguided and illegal effort to do a full hand-count audit of all ballots cast in the 2022 general election. The superior court concluded that this was unlawful. The Court of Appeals agreed. *See Arizona All. for Retired Americans, Inc. v. Crosby*, --- P.3d ---, 2023 WL 6854102 (Ariz. Ct. App. Oct. 18, 2023). “[A] complete hand-count audit is permitted only after a multi-step process that includes conducting the preliminary and expanded audits described in § 16-602(C)-(D). Interpreting § 16-602(B)-(E) to allow a county to begin with a full hand-count audit of all precincts would render the statute's multi-step process superfluous. We will not interpret a statute in a manner that renders a provision superfluous.” *Id.*

A court would reach the same conclusion here. Indeed, the letter from Brian Blehm in your packet does not cite *any* legal authority for his unsupported theory that a county can hand count all ballots. That should tell you all you need to know.

**II. The Board should not direct the Elections Department to violate the law.**

We all took an oath to support “the laws of the State of Arizona” and to “bear true faith and allegiance” to them. A.R.S. § 38-231. To uphold that oath, the Board should not direct the Elections Department to act illegally. If it does, we will promptly sue and obtain a court order. The court may also hold members of the Board who voted for an illegal action liable for misconduct, *see* A.R.S. § 11-223, and subject them to personal liability for any public funds used for this illegal purpose, *see* A.R.S. § 35-212(C).

Those encouraging you to hand count elections results are encouraging you to violate the law. In addition to the above civil remedies, you should be aware that an illegally expanded hand count may result in various felony and misdemeanor criminal penalties. We hope you will choose not to violate the law and thus that it will not be necessary for us to consider whether criminal prosecution is warranted for conducting an illegal hand count.

**III. Conclusion**

I urge you to fulfill your oath by declining to direct the Elections Department to violate the law and by not risking that you violate the law yourselves. My office is committed to upholding the sanctity of Arizona’s elections and democratic process. It will pursue to the fullest extent of the law all possible remedies to ensure the sanctity of Arizona’s elections.

Sincerely,



KRIS MAYES  
*Arizona Attorney General*

cc: Matthew J. Smith, Mohave County Attorney