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17 **SUPERIOR COURT OF ARIZONA**  
18 **MARICOPA COUNTY**

19 RON GOULD, in his individual capacity,

20 Plaintiff,

21 v.

22 KRIS MAYES, in her Official Capacity  
23 as Attorney General of the State of  
24 Arizona,

25 Defendant.

No. CV2024-000815

**MOTION TO DISMISS FIRST  
AMENDED COMPLAINT**

(Assigned to the Hon. Brad  
Astrowsky)

**Oral Argument Requested**

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## INTRODUCTION

In a November 2023 letter, the Arizona Attorney General advised the Mohave County Board of Supervisors (the “Board”) that conducting a full hand count of ballots cast in the 2024 election is illegal under Arizona law—ballots must be counted using electronic tabulating equipment. [See First Amended Complaint (“FAC”), Ex. A]. Over two dissenting votes, including one from Plaintiff, Mohave County Supervisor Ron Gould, the Board subsequently rejected a full-hand-count proposal.

Now, Plaintiff—suing in his individual capacity—seeks a determination from this Court that the Attorney General’s legal opinion is wrong. In doing so, Plaintiff asks this Court for an advisory opinion on a subject where he has emphatically stated that the judgment he seeks will not impact his own actions, even if the matter again were to come in front of the Board (a purely hypothetical possibility for now). [See FAC ¶¶ 22–29, 35 (stating that Plaintiff has already voted twice in favor of hand counting ballots and would continue to do so regardless of the outcome of this case)].

Arizona’s Declaratory Judgment Act (“DJA”) does not permit a party to obtain an advisory opinion, particularly when neither Plaintiff’s rights nor his behavior will be affected by anything this Court says. Put differently, Arizona law requires a present controversy between the parties, not just a difference of opinion about what the law permits or requires.

Here, Plaintiff has no present rights or interests under any of the statutes for which he seeks a declaration. Nor has he alleged an actual controversy between the parties which is ripe for review. Moreover, even if Plaintiff could show a cognizable legal interest and justiciable controversy (which he cannot), his claims fail as a matter of law.

Accordingly, the Arizona Attorney General respectfully asks the Court to dismiss the First Amended Complaint (“FAC”) under Rule of Civil Procedure 12(b)(6).

## BACKGROUND

### I. The First Board Meeting (August 1, 2023)

In response to a letter and presentation from State Senator Sonny Borelli advocating for a full hand count of ballots in the next election, the Board directed the

1 Mohave County Elections Department to determine the feasibility of tabulating all 2024  
2 election ballots by hand.<sup>1</sup> [Ex. A, June 5, 2023 Meeting Materials]. As a result, the  
3 County Elections Department drafted an 11-page analysis [Ex. B, August 1, 2023 Meeting  
4 Materials], which was presented to the Board at a Special Meeting, called on August 1,  
5 2023. The analysis concluded that counting all 2024 ballots by hand would require the  
6 Elections Department to “hire hundreds of people,” all of whom would need to work  
7 seven days a week, 8 hours per day, for three weeks following Election Day. [Ex. B at 4,  
8 8–10]. The analysis also estimated that it would cost the County \$1,108,486 to hand  
9 count the 2024 election ballots—a figure larger than the entire annual budget of the  
10 Mohave County Elections Department. [Ex. B at 11–12].

11 The Mohave County Elections Director, Allen Tempert, spoke at the meeting to  
12 discuss the Elections Department’s findings and voice deep concerns about a hand count.  
13 During his presentation, Mr. Tempert stated that he “cannot guarantee confidentiality” of  
14 ballots if the Elections Department were required to hand count ballots.<sup>2</sup> He also voiced  
15 concerns that his department would not be able to timely tabulate the election results, and  
16 that the results of a hand count would not be as accurate as electronic tabulation.<sup>3</sup> Based  
17 on the information presented, Mr. Tempert urged the Board to conclude that hand  
18 counting “just isn’t going to work.”<sup>4</sup>

19 Deputy County Attorney Ryan Esplin also spoke publicly at the meeting and told  
20 the Board that he “could say with 100% definitive certainty” that doing the count  
21 electronically as the County has been doing is “100% legal.”<sup>5</sup> He also expressed “serious  
22 concerns” about the legality of a hand count.<sup>6</sup> In response to a question from Plaintiff,

23  
24 <sup>1</sup><https://www.mohave.gov/VideoMeetingViewer2.aspx?group=1&agenda=370&template=1&calendar=1410> (starting at 3:38:10)

25 <sup>2</sup><https://www.mohave.gov/VideoMeetingViewer2.aspx?group=1&agenda=401&template=6&calendar=1431> (9:55–10:02)

26 <sup>3</sup> *Id.* (10:05–13:45)

27 <sup>4</sup> *Id.* (30:24)

28 <sup>5</sup> *Id.* (36:54–37:11)

<sup>6</sup> *Id.* (39:55–40:10)

1 Mr. Esplin stated that the Board was required by law to follow the Elections Procedures  
2 Manual (“EPM”), which he worried did not allow for a hand count of all ballots, and  
3 noted that a failure to comply with the EPM “is a criminal offense.”<sup>7</sup>

4 At the close of public comment on this issue, the Board voted against hand  
5 counting the 2024 election ballots.<sup>8</sup> [FAC ¶¶ 10–11].

## 6 **II. Advisory Letter from Attorney General Mayes**

7 On November 17, 2023, Mohave County Supervisor Travis Lingenfelter placed  
8 the hand count issue on the November 20, 2023 Board agenda for another vote. [FAC ¶  
9 17]. On November 19, 2023, Attorney General Mayes wrote a letter to the Board. [FAC,  
10 Ex. A]. The letter informed the Board that a full hand count was illegal under Arizona  
11 law. The letter further warned that if the Board directed the Elections Department to act  
12 illegally, the Attorney General, as Arizona’s chief law enforcement officer, would  
13 “promptly sue and obtain a court order.” [FAC, Ex. A at 1, 3]. Finally, the Attorney  
14 General advised that “an illegally expanded hand count may result in various felony and  
15 misdemeanor criminal penalties.” [FAC, Ex. A at 3].

## 16 **III. The Second Board Meeting (November 20, 2023)**

17 On November 20, 2023, the Board again heard discussion and public comment on  
18 the issue. [FAC ¶¶ 22, 28–29]. The Board read into the record the letter from Attorney  
19 General Mayes and heard from members of the public for over one hour.<sup>9</sup> During the  
20 meeting, Deputy County Attorney Esplin again advised the Board that there was no legal  
21 or statutory authority authorizing the County to conduct a full hand count.<sup>10</sup> Mr. Esplin  
22 further stated that if the Board were to vote to authorize a hand count, he would  
23 recommend that the Mohave County Attorney’s Office *not* represent the Board in any  
24 subsequent litigation given Mr. Esplin’s legal advice on this issue.<sup>11</sup> Separately, Mr.

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25 <sup>7</sup> *Id.* (45:05–45:45)

26 <sup>8</sup> *Id.* (1:58:20–1:58:30)

27 <sup>9</sup> <https://www.mohave.gov/VideoMeetingViewer2.aspx?group=1&agenda=398&template=1&calendar=1423> (2:32:05–3:59:47)

28 <sup>10</sup> *Id.* (4:10:45–4:16:02)

<sup>11</sup> *Id.* (4:16:23–4:18:08)

1 Tempert again emphasized his practical and financial concerns.<sup>12</sup> At the close of these  
2 comments, the Board again voted against authorizing a full hand count. [FAC ¶¶ 28–29].

#### 3 **IV. The present lawsuit**

4 Plaintiff has now filed the instant action in his individual capacity. The Board has  
5 not taken any action which would authorize the hand count Plaintiff supports (or this  
6 lawsuit). And Plaintiff has avowed that even if the matter were to come to the Board for  
7 a third vote, his vote would be unaffected by the outcome of this case. Nevertheless,  
8 Plaintiff (in his individual capacity) asks this Court to declare that (1) the Board has the  
9 legal authority to authorize a full hand count, and (2) Plaintiff is immune from criminal  
10 prosecution for voting to authorize a hand count in any future (hypothetical) vote. [FAC  
11 ¶¶ 39–52].

#### 12 **LEGAL STANDARD**

13 On a Rule 12(b)(6) motion, the Court takes the well-pleaded allegations as true.  
14 *Cao v. PFP Dorsey Invs., LLC*, 516 F.3d 1, 4 ¶ 12 (App. 2022). However, “mere  
15 conclusory statements are insufficient to state a claim upon which relief can be granted.”  
16 *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419 ¶ 7 (2008). And courts “do not accept  
17 as true allegations consisting of conclusions of law” or “legal conclusions alleged as  
18 facts.” *Swift Transp. Co. v. Ariz. Dep’t of Revenue*, 249 Ariz. 382, 385 ¶ 14 (App. 2020)  
(citation omitted).

19 Without converting the motion to one for summary judgment, the Court can  
20 consider “matters that, although not appended to the complaint, are central to the  
21 complaint,” *Strategic Dev. & Constr., Inc. v. 7th & Roosevelt Partners, LLC*, 224 Ariz.  
22 60, 64 ¶ 14 (App. 2010), as well as documents the complaint “incorporate[s] by  
23 reference,” *Diaz v. BBVA USA*, 252 Ariz. 436, 438 ¶ 2 (App. 2022), and “public records  
24 concerning matters referenced in the complaint,” *AUDIT-USA v. Maricopa Cnty.*, 254  
25 Ariz. 536, 538 ¶ 6 (App. 2023), *review denied* (Aug. 4, 2023).

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<sup>12</sup> *Id.* (4:28:25–4:35:45)

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## ARGUMENT

**I. Plaintiff does not have standing to bring a claim under the Declaratory Judgment Act.**

The DJA permits “[a]ny person . . . whose rights, status or other legal relations are affected by a statute” to “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). Because Plaintiff cannot demonstrate a legally cognizable interest to be adjudicated, or even a conceivable, palpable injury, he does not have standing to bring a claim under the DJA.

**a. Plaintiff has no rights or interests under any of the statutes for which he seeks a declaration.**

Plaintiff filed the present lawsuit in his individual capacity, but has failed to identify any “rights, status or other legal relations” belonging to *him* that are affected by any of the relevant statutes. Plaintiff cites several statutory provisions relating to the general powers of a board of supervisors with respect to election administration. [FAC ¶¶ 40–41, citing A.R.S. §§ 11-202 (defining a county as a corporate body); -251(1)–(3), (30) (prescribing powers related to election administration to the board of supervisors); 16-445 (providing for the means by which a board of supervisors may pay for the cost of vote tabulating equipment); -451 (requiring board of supervisors to furnish election supplies to county precincts); -621 (prescribing the procedures for ballot tabulation at vote counting centers and assigning certain duties to the “board of supervisors or other officer in charge of elections”); -622 (“The result printed by the vote tabulating equipment . . . when certified by the board of supervisors or other officer in charge, shall constitute the official canvass of each precinct or election district.”)]. However, he identifies no rights under these statutes that belong to him in his individual capacity. As a private individual, Plaintiff’s rights are no different than those of any other citizen. The Court could not allow one of Plaintiff’s constituents, as a citizen of Mohave County, to bring a

1 declaratory action to determine the scope of the Board’s election administration authority.  
2 That citizen would not have standing—they would have no legal rights or status with  
3 respect to the election laws at issue. Plaintiff, in his individual capacity, has no more  
4 expansive rights or interests than any other citizen of Mohave County.

5 Moreover, even if Plaintiff had brought his claims for declaratory relief in his  
6 official capacity as an individual supervisor, he has no authority to request a declaratory  
7 judgment as to any rights or interests belonging to the Board as a whole under the election  
8 statutes. “Individual supervisors do not have the power to ‘direct or control the  
9 prosecution and defense of actions to which the county is a party.’” *In re Falcon ex rel.*  
10 *Sandoval v. Maricopa Cnty.*, 213 Ariz. 525, 528 (2006) (quoting A.R.S. § 11-251(14))  
11 (cleaned up). “Although the individual members of the board are officers of the county,  
12 . . . the board cannot exercise its executive power except through *collective action of the*  
13 *majority of the board* . . . during a public meeting.” *Id.* ¶ 20 (emphasis added), citing  
14 A.R.S. §§ 38-431(3), (6); -431.01(A).

15 Here, the declaration Plaintiff asks of this Court concerns the ability of the *County*  
16 (acting through the Board) to conduct a full hand count of all ballots cast in an election.  
17 Indeed, in his own words, “Plaintiff [ ] asks this Court to declare . . . that the Mohave  
18 County Board of Supervisors has the legal authority to decide whether to hand count  
19 ballots as an initial matter.” [FAC ¶ 41; *see also id.* ¶ 33 (asking the court to declare  
20 whether the election statutes “bar a County from utilizing a hand count of votes as the  
21 initial method of tabulation of the vote”), ¶ 39 (asking the court to declare that the “use  
22 of vote tabulating machines in the first instance, rather than hand counting ballots, is not  
23 mandatory, but rather optional”)]. Supervisor Gould cannot seek relief that can only be  
24 sought through collective action of the Board, if it can be sought at all.

25 The remaining statutes Plaintiff cites pertain to ballot tabulating machines  
26 generally, and duties belonging to the Secretary of State. [FAC ¶¶ 40–41, citing A.R.S.  
27 §§ 16-441, -442, -443, -444, -468, -602, and -663]. Not a single one of the statutes  
28 Plaintiff cites involves any rights or legal interests belonging to him, either as an  
individual or as a Board member. Plaintiff does not claim that he has been denied the

1 ability to vote on any board action, only that his ability to “vot[e] according to his  
2 conscience” has been chilled by the Attorney General’s advice that the Board risks legal  
3 penalties if it—*acting as a Board*—violates the law.<sup>13</sup> [FAC ¶¶ 6, 18]. This is not a threat  
4 of injury to any legal right that Plaintiff possesses and he has cited no authority to the  
5 contrary. *Cf. Bennett v. Napolitano*, 206 Ariz. 520, 526 ¶ 26 (2003) (holding individual  
6 legislators who voted against an act that passed in the legislature lacked standing to  
7 challenge the act because “no legislator’s vote was nullified by interference”) (citing  
8 *Raines v. Byrd*, 521 U.S. 811, 821 (1997) (finding individual legislators lacked standing  
9 because they had not claimed they were “deprived of something to which they *personally*  
10 are entitled—such as their seats as Members of Congress” and that their “claim of  
11 standing is based on a loss of political power, not loss of any private right, which would  
12 make the injury more concrete”)).

13 At bottom, Plaintiff seeks an advisory opinion from this Court as to whether the  
14 Attorney General’s legal conclusions regarding the Board’s authority to direct county  
15 elections officials to conduct a hand count are “correct as a matter of law.” [FAC ¶ 31].  
16 But he has no legal claim under the DJA to a “correct” legal opinion, whether that opinion  
17 is offered by the Attorney General, County Attorney (who here provided similar advice),  
18 or otherwise. *See Riley v. Cochise Cnty.*, 10 Ariz. App. 55, 60 (1969) (finding suit by  
19 Cochise County Board of Supervisors against County Attorney for his objection to Board  
20 action to be “nothing more [ ] than a mere difference of opinion between public officers”  
21 and could not form the basis for declaratory judgment action). Nor can Plaintiff show  
22 that he has a right to a particular result on any matter that comes before the Board for a  
23 vote. Just as Plaintiff may consider legal advice and ultimately vote as he wishes, so may  
24 his fellow supervisors.

25 **b. Plaintiff does not face an imminent threat of criminal prosecution.**

26 In an attempt to conjure some injury that might entitle him to standing under the  
27 DJA, Plaintiff cites a vacated portion of the court of appeals’ opinion in *Brush & Nib*

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28 <sup>13</sup> At the same time, Plaintiff insists that he will “continue raising the issue and voting in  
favor of using hand counting.” [FAC ¶¶ 31, 35].



1 *Studio, LC v. City of Phoenix (Brush I)*, for the proposition that the Attorney General’s  
2 “threat of bringing criminal charges against [him] individually for exercising his right as  
3 a Supervisor of the Mohave County Board of Supervisors to vote” has placed him in  
4 “harm’s way.” [FAC ¶ 2, citing 244 Ariz. 59, 68 ¶ 15 (App. 2018), *opinion vacated in*  
5 *part*, 247 Ariz. 269, 305 ¶ 167 (2019) (“We therefore vacate the court of appeals’ opinion  
6 except for paragraphs 33 through 45 and 51 through 53.”)]. But Plaintiff fundamentally  
7 misunderstands the DJA’s requirements when declaratory relief is sought to resolve a  
8 threat of imminent prosecution. The DJA can properly be used to test the validity of a  
9 statute in this way where: 1) a statute clearly and immediately affects a plaintiff’s legal  
10 rights; 2) the plaintiff challenges the validity of the statute; and 3) if the plaintiff asserts  
11 what they believe to be their legal rights, they will violate the statute and be faced with  
12 prosecution. *Planned Parenthood Ctr. of Tucson, Inc. v. Marks*, 17 Ariz. App. 308, 312  
13 (1972) (holding declaratory relief was appropriate where plaintiffs challenged  
14 constitutionality of abortion statute, there was no question that if plaintiffs asserted their  
15 constitutional rights they would violate statute, and county attorney confirmed plaintiffs  
16 would be faced with prosecution). Plaintiff has failed to meet these requirements.

17 First, Plaintiff has not challenged the validity of any statute.<sup>14</sup> In *Polaris Int’l*  
18 *Metals Corp. v. Arizona Corp. Comm’n*, 133 Ariz. 500, 505 (1982), the Supreme Court  
19 emphasized the importance of this requirement. There, Polaris asked for a declaration  
20 that the sale of certain stock fell within a statutory exemption to selling unregistered  
21 securities. *Id.* The Court noted that unlike the plaintiffs in *Planned Parenthood*, who  
22 challenged the constitutionality of the criminal statutes in question, Polaris did not  
23 challenge the validity of the statute at issue. *Id.* The case had no “constitutional  
24 underpinnings.” *Id.* Rather, Polaris sought advice on what was “essentially a factual  
25 question,” (*i.e.*, would the company’s conduct violate the law). *Id.* at 506. And while the  
26 Court “commend[ed] appellants for seeking to determine the legality of their conduct,”

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27 <sup>14</sup> As already discussed in Arg. § I.A., Plaintiff also has no legal rights or interests under  
28 any of the statutes for which he seeks a declaration.

1 ultimately, the DJA “cannot be used to make the courts a fountain of advice for the future  
2 conduct of our citizens.”<sup>15</sup> *Id.*

3 *Polaris* is exactly on point here, as Plaintiff has not challenged the constitutionality  
4 of any of the laws that might subject him to prosecution. Like the plaintiffs in *Polaris*,  
5 Plaintiff here is not entitled to use the DJA to obtain an advisory opinion about what  
6 would or would not constitute a violation of those laws.

7 Moreover, Plaintiff misrepresents the Attorney General’s letter. *See e.g., Ott v.*  
8 *Home Sav. & Loan Ass’n*, 265 F.2d 643, 646 n.1 (9th Cir. 1958) (“[W]here the allegations  
9 of a pleading are inconsistent with the terms of a written contract attached as an exhibit,  
10 the terms of the latter, fairly construed, must prevail over the averments differing  
11 therefrom.” (citation omitted)). The Attorney General did not make any threats against  
12 Plaintiff “personally” for voting as a member of the Board. [FAC ¶ 1]. Rather, upon  
13 learning that the Board had received erroneous outside legal advice, she warned all  
14 members of the Board generally that *passing* a resolution ordering the county elections  
15 department to conduct a full hand count of votes in the next election would violate the  
16 law. [FAC, Ex. A at 1]. The Attorney General further warned the Board that she would  
17 act pursuant to her statutory authority to enforce the election laws and that, pursuant to  
18 relevant statutes, a “court may also hold members of the Board who voted for an illegal  
19 action liable for misconduct . . . and subject them to personal liability for any public funds  
20 used for this illegal purpose.” [FAC, Ex. A at 3]. Nowhere in her letter does the Attorney  
21 General state that she will prosecute Plaintiff simply for voting in favor of a hand count  
22 regardless of whether the motion ultimately passes.

23 The Attorney General’s letter also stated that if the Board were to violate the law,  
24 such action “may result” in criminal penalties, and the Attorney General’s Office would  
25 “consider whether criminal prosecution is warranted.” [FAC, Ex. A at 3]. Far from a  
26 specific threat of prosecution—and similar to the advice the Board received from its own

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27 <sup>15</sup> Plaintiff’s motives here seem to be less commendable. He has indicated that he will  
28 vote the same way regardless and that the primary purpose of this suit is to affect future  
votes of his colleagues. [FAC ¶¶ 31, 35].

1 attorney that a failure to comply with the EPM “is a criminal offense”—the Attorney  
2 General was simply notifying the Board of the potential existence of civil and criminal  
3 liability if it (acting as a Board) chose to violate the law. These advisory statements to  
4 the Board are far from sufficient to demonstrate the imminent threat of prosecution  
5 necessary to establish standing under the DJA. *Cf. Planned Parenthood*, 17 Ariz. App.  
6 at 312 (plaintiffs faced prosecution where county attorney provided testimony during  
7 deposition and at hearing that they would enforce specific criminal statutes at issue).

8 Finally, Plaintiff further underscores the advisory nature of his request by asking  
9 the Court to weigh in on whether he is entitled to “legislative immunity” *if* a criminal  
10 prosecution arises in the future. [FAC ¶¶ 45–52]. From the string of citations [FAC ¶  
11 45], it is difficult to discern the precise basis for this argument. *See Mesnard v.*  
12 *Campagnolo in & for Cnty. of Maricopa*, 251 Ariz. 244, 248 ¶ 12 (2021) (describing the  
13 doctrine of absolute legislative immunity embodied in Ariz. Const. art. 4, pt. 2, § 7 as  
14 preventing “legislators, their aides, and their contractors from being criminally prosecuted  
15 or held civilly liable for their legislative activities”). Plaintiff does not necessarily have  
16 legislative immunity for violating Arizona’s election laws. But regardless of the precise  
17 basis for the claim, Plaintiff is essentially asking to pre-litigate an affirmative defense in  
18 a hypothetical future prosecution. This is wildly premature.

19 **II. The Court cannot grant declaratory relief because there is no  
20 controversy between the parties ripe for adjudication.**

21 The DJA requires that there “be adverse claims asserted by the plaintiff upon  
22 present existing facts, which have ripened for judicial determination.” *Am. Fed'n of State,*  
23 *Cnty. & Mun. Emps., AFL-CIO, Council 97 v. Lewis*, 165 Ariz. 149, 152 (App. 1990).  
24 The parties must have a “real interest in the questions to be resolved” based on “an  
25 existing state of facts, not those which may or may not arise in the future.” *Id.* (internal  
26 citations omitted). Plaintiff’s claims are not based on any existing justiciable controversy  
27 between the parties and are purely speculative—they are not ripe for adjudication.  
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1                   **a. Plaintiff has failed to establish a justiciable controversy between the**  
2                   **parties.**

3                   Even if Plaintiff could establish that he has “rights, status or other legal relations”  
4 under the statutes at issue, he has failed to state any facts showing that the Attorney  
5 General has denied him any such right, or even that she could. Simply stating that a  
6 justiciable controversy exists [FAC ¶ 1] does not make it so. This is a legal conclusion,  
7 not a well-pleaded fact entitled to deference under Rule 12(b)(6). To establish a  
8 justiciable controversy under the DJA, a plaintiff must “name as a defendant an entity or  
9 official that has the ability to control the implementation” of the law to be declared. *Yes*  
10 *on Prop. 200 v. Napolitano*, 215 Ariz. 458, 470 ¶ 36 (App. 2007). If the plaintiff fails to  
11 do so, the court has no defendant available that it can order to fix the alleged injury. *See*  
12 *id.* at 468 ¶ 29 (“A controversy is not justiciable [under the DJA] when a defendant has  
13 no power to deny the plaintiff’s asserted interests.”).

14                   The Attorney General only has power to *enforce* the election statutes. The  
15 authority to *implement* the election statutes is bestowed on county boards of supervisors  
16 and various other election officials. *See* A.R.S. Title 16. It is only if one of these  
17 implementing authorities exceeds the bounds of its statutory authority and violates the  
18 law that the Attorney General’s enforcement authority is triggered. *See* A.R.S. § 16-1021  
19 (stating Attorney General may “enforce the provisions of [Title 16] through civil and  
20 criminal actions”). The Attorney General has no power to “fix” the injury Plaintiff alleges  
21 (*i.e.*, the Board’s ability (or lack thereof) to implement certain election procedures in the  
22 future). *See Yes on Prop 200*, 215 Ariz. at 467, ¶ 24 (“[T]he Attorney General is not the  
23 proper person to decide the course of action which should be pursued by another public  
24 officer.”) (cleaned up). Thus, the parties do not have a real interest in the questions to be  
25 resolved.

26                   The question of whether the Attorney General’s letter was “correct as a matter of  
27 law” is not a justiciable controversy. [FAC ¶¶ 31, 38–42]. Like Deputy County Attorney  
28 Esplin, the Attorney General was simply providing her legal opinion. And the law is clear

1 that courts are not in the business of overruling the legal advice of the Attorney General,  
2 even when it influences the decisions of public officials. *See Yes on Prop 200*, 215 Ariz.  
3 at 464–67 ¶¶ 11–25 (rejecting a mandamus action challenging opinion issued by the  
4 Attorney General and stating that if such actions were allowed, “courts would effectively  
5 become direct legal advisors to the government,” which “would be an inappropriate  
6 usurpation by the courts of responsibility assigned to the Attorney General and . . . a  
7 violation of the separation of powers”).

8 **b. Plaintiff’s claims are entirely speculative and not ripe for review.**

9 Plaintiff’s claim is premised entirely on facts which may or may not arise in the  
10 future, including: 1) the hand-count issue will come before the Board for a third vote; 2)  
11 if another vote is taken, the outcome will be different than the last two Board votes; and  
12 3) as a result, the Attorney General will criminally prosecute Plaintiff.<sup>16</sup> Because this  
13 Court is prohibited from rendering “premature judgment or opinion on a situation that  
14 may never occur,” Plaintiff is not entitled to relief. *Winkle v. City of Tucson*, 190 Ariz.  
15 413, 415 (1997); *Hunt v. Richardson*, 216 Ariz. 114, 125, ¶ 38 (App. 2007) (“[F]uture  
16 rights” cannot be determined in declaratory relief action “in anticipation of an event that  
17 may never happen.”).

18 This concept is well illustrated in *Moore v. Bolin*, 70 Ariz. 354 (1950). There, a  
19 potential gubernatorial candidate sued the Secretary of State seeking declaratory relief  
20 regarding a law requiring him to resign from state office before running for governor.  
21 Although the Secretary of State advised the plaintiff that he would not place the plaintiff’s  
22 name on the ballot until he complied with the law, the Court found the complaint “merely  
23 show[s] an intent to do certain things in the future all of which are dependent upon future  
24 events and contingencies within control of the appellant.” *Id.* at 358. Therefore, there  
25 was no “present existing controversy which permits the court to adjudicate any present  
26 rights.” *Id.* Similarly, here, Plaintiff’s intent to “raise the issue in the future” and continue  
27 to vote in favor of a hand count “for so long as he remains a member of the board” [FAC

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28 <sup>16</sup> As discussed in Arg. § I.b., Plaintiff cannot establish that he faces an imminent threat  
of prosecution.

1 ¶ 35] are future events and contingencies within his control. They demonstrate an intent  
2 to do certain things in the future which may or may not result in the Board voting to  
3 conduct a full hand count in a future election, but do not present an existing justiciable  
4 controversy pertaining to present rights.

5 Plaintiff implicitly acknowledged this matter is not properly before the Court by  
6 asserting, without further elaboration, that it “is capable of repetition yet evading review.”  
7 [FAC ¶¶ 35, 49]. This exception to the mootness (not ripeness) doctrine is typically  
8 available when “because of time constraints, an issue that is capable of recurring cannot  
9 be decided by the appellate court.” *Cardoso v. Soldo*, 230 Ariz. 614, 617 ¶ 17 (App.  
10 2012). In other words, the matter was ripe at one point, but because of time constraints  
11 occurring prior to an appellate decision, the matter becomes moot. The issues raised in  
12 the FAC have never been ripe—they are purely speculative, thus this exception to  
13 mootness is not implicated here (in superior court). Likewise, the issues Plaintiff raises  
14 in the FAC have not “evaded review”; they simply have never been ripe for adjudication.  
15 The Board has never voted in favor of authorizing a hand count and there is a reasonable  
16 likelihood that it never will. *Cf. Ariz. All. for Retired Ams., Inc. v. Crosby (“AARA”)*,  
17 537 P.3d 818, 821 ¶ 5 (App. 2023) (applying exception to mootness where Cochise  
18 County Board of Supervisors adopted a resolution requiring a full hand-count audit of  
19 ballots, which trial court enjoined, but election had concluded by the time of appeal).

20 The Declaratory Judgment Act “speaks in the present tense” and requires Plaintiff  
21 to have “rights presently affected” that are “in sufficiently direct relationship with the  
22 allegedly offending statute to present this Court with an existing controversy capable of  
23 judicial resolution.” *Town of Wickenburg v. State*, 115 Ariz. 465, 468 (App. 1977); *id.* at  
24 467 (finding Town Council’s challenge to state law requiring Council to enact financial  
25 disclosure ordinance “entirely too speculative and abstract to be ripe for judicial  
26 determination” when Council had yet to adopt ordinance consistent with the offending  
27 law). Plaintiff has asked the Court to render legal advice on the scope of the Board’s  
28 authority to pass an ordinance—the specific contours of which are entirely unknown—  
authorizing a hand count. [FAC ¶¶ 39–42]. But the courts are simply “not the appropriate

1 forum” for “seeking to determine the legality of [ ] conduct before [ ] embark[ing] on a  
2 particular course.” *Polaris Int’l Metals Corp.*, 133 Ariz. at 506. The relief Plaintiff seeks  
3 is the epitome of an advisory opinion, which is “anticipative of troubles which do not  
4 exist; may never exist; and the precise form of which, should they ever arise, we cannot  
5 predict.” *Velasco v. Mallory*, 5 Ariz. App. 406, 410–11 (1967).

6 **III. Even if Plaintiff could establish standing and a justiciable controversy,  
7 his claims fail as a matter of law.**

8 Plaintiff seeks an order from this Court declaring that Arizona’s elections statutes  
9 permit a county board of supervisors to authorize counting ballots by hand instead of  
10 using electronic tabulating machines. [FAC ¶¶ 39–41]. The statutes, however, say no  
11 such thing. Just last year, the Court of Appeals rejected a similar claim in the context of  
12 hand count audits. *See AARA*, 537 P.3d at 824. And nothing in *AARA* indicates its holding  
13 is limited to its facts. To the contrary, its reasoning applies with force here. Plaintiff’s  
14 claims fail as a matter of law and should be dismissed.

15 Title 16 of the Arizona Revised Statutes provides a litany of specific regulations  
16 relating to the administration of elections, including the use of electronic vote tabulating  
17 equipment and hand counts. And those provisions make clear that Arizona’s scheme  
18 requires the use of electronic tabulating equipment, not a full hand count.

19 Section 16-449(A), for example, provides that boards of supervisors “shall have  
20 the automatic tabulating equipment and programs tested to ascertain that the equipment  
21 and programs will correctly count the votes cast for all offices and on all measures.”  
22 Several other statutory provisions similarly contemplate the use of tabulating equipment.  
23 *See, e.g.*, A.R.S. §§ 16-449, -602, -621. And ultimately, “[t]he result printed by the vote  
24 tabulating equipment [ ] shall constitute the official canvass of each precinct or election  
25 district.” A.R.S. § 16-622(A). In other words, the official results of any election are the  
26 results printed by vote tabulating equipment, nothing else.

27 Hand counts are also discussed in the statutes, which clearly contemplate that hand  
28 counts will play a much more limited role in our elections. Section 16-602(B), for  
example, describes specific procedures for a hand-count audit and provides that for each

1 countywide election, “the county officer in charge of the election shall conduct a hand  
2 count [ ] as prescribed by this section and in accordance with hand count procedures  
3 established by the secretary of state in the [Elections] procedures manual.” As the Court  
4 of Appeals recently explained, § 16-602 provides a “multi-step process that includes  
5 conducting [ ] preliminary and expanded audits” detailed in the statute before a full hand-  
6 count can be contemplated. *See AARA*, 537 P.3d at 822 ¶ 9.

7 Like § 16-602, § 16-621(C) also contemplates the use of hand counts under  
8 extremely limited circumstances. That statute provides that “if for any reason it becomes  
9 impracticable to count all or a part of the ballots with tabulating equipment, the officer in  
10 charge of elections may direct that they be counted manually, following as far as  
11 practicable the provisions governing the counting of paper ballots.” A.R.S. § 16-621(C).  
12 And subsection (A) of § 16-621 provides that votes shall be counted at counting centers  
13 in accordance with the Elections Procedures Manual (*i.e.*, by using electronic tabulating  
14 equipment).

15 Plaintiff urges the Court not only to ignore all of these statutes, but also to adopt  
16 an interpretation at odds with them. Plaintiff relies primarily on § 16-451, which provides  
17 that a board of supervisors “may provide for the payment of the cost of vote tabulating  
18 equipment in such manner and by such method as it may deem for the best local interests.”  
19 [FAC ¶ 15]. The crux of his argument is that because counties have discretion to  
20 determine how to pay for electronic vote tabulating equipment, it follows that counties  
21 have the discretion to determine whether to use electronic vote tabulating equipment at  
22 all. But as is demonstrated above, such an interpretation would be at odds with a litany  
23 of other statutes.

24 “In construing statutes, [courts] have a duty to interpret them in a way that  
25 promotes consistency, harmony, and function.” *Welch–Doden v. Roberts*, 202 Ariz. 201,  
26 206 ¶ 22 (App. 2002). Indeed, “when statutes relate to the same subject matter,” courts  
27 must “construe them together as though they constitute one law and attempt to reconcile  
28 them to give effect to all provisions involved.” *Fleming v. State Dep’t of Pub. Safety*, 237  
Ariz. 414, 417 ¶ 12 (2015); *see also* Antonin Scalia & Bryan A. Garner, *Reading Law:*



1 *The Interpretation of Legal Texts* 252 (2012) (“[L]aws dealing with the same subject . . .  
2 should if possible be interpreted harmoniously.”). Even where there is true conflict  
3 present in statutes, Arizona courts have long abided by this fundamental principle. *See*,  
4 *e.g.*, *Territory ex rel. Hawkins v. Wingfield*, 2 Ariz. 305, 308 (1887) (noting that “courts  
5 are continually called upon . . . to try to make consistent that which is inconsistent; to  
6 harmonize that which is full of discord”). Here, Plaintiff’s proposed statutory  
7 interpretation would introduce significant tension into the statutory scheme, not resolve  
8 tension, as courts routinely must do. The legislature has exercised its power to safeguard  
9 Arizona’s elections by “enacting laws to govern election procedures” in Title 16. *AARA*,  
10 537 P.3d at 824 ¶ 19. The Board is “required to follow the procedures mandated by the  
11 plain language” of those statutes. *Id.* The plain, logical and harmonious reading of the  
12 statutory scheme is that while counties have the discretion to choose the manner and  
13 method used to pay for electronic vote tabulating equipment, counties must use that  
14 equipment in an election unless it becomes impracticable to do so.

15 Finally, Plaintiff’s urged interpretation conflicts not only with several statutes, but  
16 also with the EPM. Section 16-452 “requires the Secretary of State to ‘prescribe rules’  
17 related to ‘collecting, counting, tabulating and storing ballots’ after ‘consultation with  
18 each county board of supervisors or other officer in charge of elections.’ The Secretary  
19 must assemble the rules ‘in an official instructions and procedures manual’ called the  
20 [EPM].” *AARA*, 537 P.3d at 823 (citations omitted). “Once adopted, the EPM has the  
21 force of law; any violation of an EPM rule is punishable as a class two misdemeanor.”  
22 *Id.* (citation omitted).

23 Mirroring the statutory scheme cited above, the current EPM is crystal clear on  
24 this front—“Electronic ballot tabulating systems shall be used for every election, except  
25 in the rare circumstance when electronic tabulation is not practicable.”<sup>17</sup> Plaintiff has not  
26 pled any facts alleging that electronic tabulation is not practicable. He simply doesn’t

---

27 <sup>17</sup>[https://apps.azsos.gov/election/files/epm/2023/EPM\\_20231231\\_Final\\_Edits\\_to\\_Cal\\_1\\_11\\_2024.pdf](https://apps.azsos.gov/election/files/epm/2023/EPM_20231231_Final_Edits_to_Cal_1_11_2024.pdf)  
28

1 have a leg to stand on. Neither the statutes in Title 16 nor the EPM permit the county to  
2 conduct a hand count of all 2024 election ballots.

3 **CONCLUSION**

4 Plaintiff cannot demonstrate that he has any present rights or interests under any  
5 of the statutes for which he seeks a declaration. Nor has Plaintiff alleged an actual  
6 controversy between the parties which is ripe for review. Moreover, even if Plaintiff  
7 could show a cognizable legal interest and justiciable controversy (which he cannot), his  
8 claims fail as a matter of law. Accordingly, the Court must dismiss the FAC under Rule  
9 of Civil Procedure 12(b)(6).

10 **ATTORNEYS' FEES**

11 Attorney General Mayes requests an attorneys' fees award against Supervisor  
12 Gould under A.R.S. § 12-348.01. That statute requires the Court to award fees to the  
13 "successful party" when, as here, one government official sues another. *See, e.g., City of*  
14 *Tempe v. State*, 237 Ariz. 360, 367 ¶ 27 (App. 2015) (holding that "an award of fees [is]  
15 mandatory" under A.R.S. § 12-348.01). Although Plaintiff purports to bring this claim  
16 in his individual capacity, his claims appear to be inextricably intertwined with his  
17 purported "right as a Supervisor of the Mohave County Board of Supervisors to vote"  
18 "according to his conscience." [FAC ¶¶ 2, 6]. Accordingly, fees are warranted and  
19 required under § 12-348.01.

20 **Rule 12(j) Certification**

21 Undersigned counsel certifies that counsel for all parties conferred in good faith  
22 via video conference on February 22, 2024, about the contemplated motions to dismiss.  
23 Counsel for Supervisor Gould did not identify any possible amendments to the FAC that  
24 the parties agreed would cure the deficiencies identified in this motion to dismiss.  
25  
26  
27  
28

1 RESPECTFULLY SUBMITTED this 23rd day of February, 2024.

2  
3 **KRIS MAYES**  
4 **ATTORNEY GENERAL**

5 By: /s/ Emma H. Mark

6 Alexander W. Samuels  
7 Emma H. Mark  
8 Shannon Hawley Mataele  
9 Office of the Arizona Attorney General  
2005 N. Central Avenue  
Phoenix, Arizona 85004

10 *Attorneys for Defendant Arizona*  
11 *Attorney General Kris Mayes*

12  
13  
14  
15  
16  
17  
18 I hereby certify that the foregoing  
19 document was electronically filed  
20 and served this 23rd day of February, 2024, to:

21 Dennis I. Wilenchik  
22 Lisa M. Borowsky  
23 Brian R. Gifford  
24 Wilenchik & Bartness  
25 The Wilenchik & Bartness Building  
2810 North Third Street  
Phoenix, Arizona 85004  
[admin@wb-law.com](mailto:admin@wb-law.com)  
*Attorneys for Plaintiff*

26  
27 /s/ Terrie Chastain

# EXHIBIT A

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# MOHAVE COUNTY REQUEST FOR BOARD ACTION FORM

FROM: Travis Lingenfelter, Supervisor  
CONTACT/EXT: Ext. 4722  
DATE: May 24, 2023  
BOS MEETING DATE: June 5, 2023

FORMAL ACTION:   
CONSENT:   
RESOLUTION:   
OTHER:   
INFORMATION ONLY:

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

During the most recent legislative session, the legislature passed Senate Bill 1074, which stated that electronic equipment may not be used as the primary method for tabulating votes for an election unless the equipment complies with the following: (1) The electronic equipment meets or exceeds the standards set by the U.S. Dept. of Defense regarding cybersecurity, (2) all parts of the electronic equipment are manufactured in the U.S., and (3) all source codes for the electronic equipment are submitted to and maintained on file by the Auditor General. Although passed by the legislature, Governor Hobbs vetoes SB 1074; therefore, it did not become law.

The Arizona legislature also passed Senate Concurrent Resolution 1037 (SCR 1037), which is a concurrent resolution of the Arizona House and Senate supporting the manufacture of voting system components in the United States. The resolution called for no voting system or component or subcomponent of a voting system or component, including firmware software or hardware, assemblies and subassemblies with integrated circuits or on which any firmware or software operates, may be used or purchased as the primary method for casting, recording and tabulating ballots used in any election held in Arizona for federal office unless: (1) all components have been designed, manufactured, integrated and assembled in the U.S. from trusted suppliers, using trusted processes, (2) the source code is made available to the public, (3) the ballot images and system log files from each tabulator are recorded on a secure write-once, read-many media with clear chain of custody and posted on the Secretary of State's website within twenty-four hours after the close of the polls.

On May 22, 2023 Senator Borrelli (District 30, AZ) provided an update to the Board regarding the veto of Senate Bill 1074 as well as the passage of SCR1037.

**\*RECOMMENDED MOTION: For discussion and possible action:** Receive legal advice and consider the County's position regarding Senate Concurrent Resolution 1037, Senator Borrelli's May 22, 2023 letter about the Resolution, and the use of electronic voting systems or hand-counting in future elections for conducting, counting, and tabulating ballots and certifying election results, and take any action the Board believes is necessary related to these items in upcoming elections.

### Reviewed and Approved By:

County Attorney  Human Resources  Finance  County Manager

### Board Action Taken:

Approved as Requested  No Action Taken  Disapproved

Continued to \_\_\_\_\_

Approved with the following changes: *Direct election Director to form plan to hand count 2024 election and return that plan for BOS approval*

Acknowledged receipt and referred to: \_\_\_\_\_

### Filing Information and Retrieval

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

Date Routed: *6/6/23*  
Additional Information: \_\_\_\_\_

XC: \_\_\_\_\_

**#57**

# SENATOR SONNY BORRELLI

1700 WEST WASHINGTON, SUITE 212  
PHOENIX, ARIZONA 85007-2844  
CAPITOL PHONE (602) 926-5051  
TOLL FREE: 1-800-352-8404  
sborrelli@azleg.gov



**MAJORITY LEADER**  
**SENATE COMMITTEES**  
Joint Legislative Audit Committee  
Co-Chairman

Rules  
Vice-Chairman

Elections

Health and Human Services

Military Affairs, Public Safety, and  
Border Security

DISTRICT 30

## Arizona State Senate

May 22, 2023

Mohave County Board of Supervisors  
700 W. Beale Street,  
Kingman, AZ 86401

Dear Chair Lingenfelter,

The purpose of this letter is to inform you of the latest update from the 56<sup>th</sup> Legislature, First Regular Session on necessary national security measures. A press release issued by the office of the United States Secretary of Homeland Security on January 17, 2017, clearly states the designation of election infrastructure. Election infrastructure is critical infrastructure. The obvious reason for this is because elections have a major impact on national security. It's vital that the State of Arizona complies with that inherent intent from the federal government and works to ensure a system of cybersecurity and oversight is established within every political subdivision. The passage of Senate Bill 1074 (SB 1074) would have fulfilled those requirements to protect critical infrastructure.

Unfortunately, the Governor chose to veto SB 1074. As a result, she's exposing our electronic voting systems, which are made with components from countries considered adversaries to the U.S., to attacks and putting Arizona as well as the rest of the nation in an extremely vulnerable and dangerous position.

Accordingly, with the passage of Senate Concurrent Resolution 1037 (SCR 1037) by the Legislature and transmission to the Secretary of State on April 3, 2023, it is now incumbent upon the Legislature to exercise our plenary authority. Enshrined in Article 1, Section 4, Clause 1 of the United States Constitution, "times, places and manner" of conducting federal elections specifically conveys electronic voting systems (manner) are not mandated in statute to be used as a primary method for counting, tabulating or verification.

Therefore, be it resolved by the Fifty-Sixth Legislature, First Regular Session, no electronic voting systems in the state of Arizona may be used as the primary method for conducting, counting, tabulating, or verifying federal elections, unless those systems meet the requirements set forth in SCR 1037.

Respectfully,

A handwritten signature in black ink that reads "Sonny Borrelli".

Senator Sonny Borrelli  
Senate Majority Leader  
Legislative District 30

Senate Engrossed

~~presidential electors; constitutional appointments~~  
(now: elections; systems; equipment)

State of Arizona  
Senate  
Fifty-sixth Legislature  
First Regular Session  
2023

## **SENATE CONCURRENT RESOLUTION 1037**

A CONCURRENT RESOLUTION

SUPPORTING THE MANUFACTURE OF VOTING SYSTEM COMPONENTS IN THE UNITED STATES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1           Whereas, public functions such as voting should be open to the  
2 public and transparent except to preserve voter anonymity; and

3           Whereas, recognizing the vital role of elections in national  
4 security, in 2017 the United States Department of Homeland Security  
5 designated election infrastructure as critical infrastructure of the  
6 United States; and

7           Whereas, supply chain risks related to manufacturing, assembling and  
8 testing critical infrastructure items, including computerized voting  
9 machines, can be mitigated by appropriate standards and actions adopted by  
10 the United States government; and

11           Whereas, computerized voting machines and systems used in this state  
12 contain electronic components that are manufactured, assembled or tested  
13 in foreign nations that pose a threat to the United States and include  
14 unsecure components in computerized devices that can and have been used to  
15 infiltrate, exfiltrate and manipulate data as discussed in various  
16 publications; and

17           Whereas, actual breaches of computerized devices and computer  
18 systems have been discovered at the United States Department of Defense,  
19 thousands of government contractors and agencies and Fortune 100  
20 companies, illustrating the threat to computerized systems, including  
21 computerized voting machines as noted by the United States Cybersecurity  
22 and Infrastructure Security Agency and various media outlets; and

23           Whereas, the United States Senate Intelligence Committee held a  
24 hearing on March 21, 2018 relating to potential foreign interference in  
25 the 2016 election; and

26           Whereas, at the March 21, 2018 meeting Election Systems and Software  
27 denied selling voting machines with remote access software, a fact  
28 Election Systems and Software later admitted was true in a letter to  
29 Senator Ron Wyden; and

30           Whereas, Election Systems and Software represented to its customers  
31 and potential customers that its DS200 voting system was "fully certified  
32 and compliant with United States Election Assistance Commission  
33 guidelines" even if used with a modem, a critical access point by which  
34 unauthorized access can be made; and

35           Whereas, the United States Election Assistance Commission issued a  
36 letter to Election Systems and Software dated March 20, 2020 stating that  
37 Election Systems and Software misrepresented that its voting machines with  
38 modems complied with the United States Election Assistance Commission  
39 requirements and required Election Systems and Software to correct its  
40 misrepresentations; and

41           Whereas, on June 3, 2022, the United States Cybersecurity and  
42 Infrastructure Security Agency issued an advisory warning identifying nine  
43 critical security vulnerabilities in the Dominion ImageCast X devices and  
44 any voting machine components having a direct or indirect connection to  
45 that device; and



1           Whereas, the Dominion ImageCast X devices and any voting machine  
2 components having a direct or indirect connection to that device are used  
3 in sixteen states, including this state; and

4           Whereas, the United States Cybersecurity and Infrastructure Security  
5 Agency issued a June 3, 2022 advisory warning in direct response to the  
6 findings of a recognized computer science expert, Dr. J. Alex Halderman,  
7 who had twelve weeks to examine this voting system; and

8           Whereas, before the United States Cybersecurity and Infrastructure  
9 Security Agency's warning, Dr. Halderman filed multiple sworn declarations  
10 in federal court attesting that:

11           1. Certain security failures could be exploited to steal or alter  
12 votes while evading all known safety procedures such as logic and accuracy  
13 tests and risk-limiting audits; and

14           2. Dominion ignored Dr. Halderman's requests to meet to seek a  
15 remedy for these security failures; and

16           3. It would take many months for Dominion to try to fix these  
17 security failures and obtain United States Election Assistance Commission  
18 and state-level approvals for such changes; and

19           Whereas, Dr. Halderman filed a twenty-five thousand word report with  
20 a federal district court detailing the critical security failures related  
21 to United States Cybersecurity and Infrastructure Security Agency's June  
22 3, 2022 advisory warning; and

23           Whereas, Dominion has a copy of that report and has not made or  
24 sought the court's permission to make that report available to the public;  
25 and

26           Whereas, the presence of the security failures identified in the  
27 United States Cybersecurity and Infrastructure Security Agency's advisory  
28 warning would directly prevent computerized voting systems' compliance  
29 with voting systems standards; and

30           Whereas, although the United States Cybersecurity and Infrastructure  
31 Security Agency stated in that advisory that it has "no evidence that  
32 these vulnerabilities have been exploited in any election," there is no  
33 indication that the United States Cybersecurity and Infrastructure  
34 Security Agency or officials in this state ever investigated whether  
35 computerized voting machines in this state have been exploited through  
36 these known vulnerabilities or any other vulnerabilities; and

37           Whereas, the United States Cybersecurity and Infrastructure Security  
38 Agency's June 3, 2022 advisory warning identified thirteen defensive  
39 measures that have not been undertaken in this state; and

40           Whereas, computerized voting machines used in this state are  
41 unsecure, lack full public transparency and deprive voters of the right to  
42 know that their votes are counted and reported in an accurate, auditable,  
43 legal and transparent process; and

44           Whereas, on November 3, 2021, the Tennessee Secretary of State's  
45 office reported to the United States Election Assistance Commission that

1 an "anomaly" was observed during a municipal election in Williamson  
2 county, Tennessee, which used Dominion tabulators for a municipal  
3 election; and

4 Whereas, the Tennessee anomaly caused the scanners to mislabel valid  
5 ballots as provisional, and therefore did not include these ballots in the  
6 poll report totals; and

7 Whereas, after conducting a formal investigation of the Tennessee  
8 anomaly, the United States Election Assistance Commission issued a report  
9 on March 31, 2022 concluding that the "anomaly" was likely rooted in  
10 "erroneous code" present in Dominion's system; and

11 Whereas, there was no conclusion in the United States Election  
12 Assistance Commission report on how the "erroneous code" came to be on the  
13 voting machine, or how such code was not detected in the certification  
14 process or other safety testing procedures; and

15 Whereas, instances of computerized voting machine failures to  
16 accurately record vote totals have repeatedly occurred since 2002 and  
17 continue to occur to this day; and

18 Whereas, because of the lack of transparency and detailed public  
19 postelection audits of computerized voting machines, there is no way to  
20 tell how many times inaccurate election results have been wrongly  
21 certified; and

22 Whereas, the United States government employs open source technology  
23 to foster transparency; and

24 Whereas, the source code used to read and tabulate ballots in  
25 computerized voting machines used in elections in this state for federal  
26 office is not open source and not openly available to the public to  
27 evaluate that code for malicious activity; and

28 Whereas, Article I, Section 4, Clause 1 of the United States  
29 Constitution empowers state legislatures, including the legislature of  
30 this state, to prescribe the "Times, Places and Manner" of conducting  
31 federal elections; and

32 Whereas, the definition of "manner" is at the sole discretion of the  
33 legislature; and

34 Whereas, Article II, Section 1, Clause 2 of the United States  
35 Constitution empowers state Legislatures, including the legislature of  
36 this state, to direct the manner of appointing electors for President and  
37 Vice President of the United States.

38 Therefore

39 Be it resolved by the Senate of the State of Arizona, the House of  
40 Representatives concurring:

41 That no voting system or component or subcomponent of a voting  
42 system or component, including firmware software or hardware, assemblies  
43 and subassemblies with integrated circuits or on which any firmware or  
44 software operates, may be used or purchased as the primary method for

1 casting, recording and tabulating ballots used in any election held in  
2 this state for federal office unless:

3 1. All components have been designed, manufactured, integrated and  
4 assembled in the United States from trusted suppliers, using trusted  
5 processes accredited by the Defense Microelectronics Activity as  
6 prescribed by the United States Department of Defense; and

7 2. The source code used in any computerized voting machine for  
8 federal elections is made available to the public; and

9 3. The ballot images and system log files from each tabulator are  
10 recorded on a secure write-once, read-many media with clear chain of  
11 custody and posted on the Secretary of State's website free of charge to  
12 the public within twenty-four hours after the close of the polls; and

13 4. The legislature transmits this resolution to the secretary of  
14 state.

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Senate Engrossed

election; contest; technical correction  
(now: ♦ tabulating equipment; standards; source codes)

State of Arizona  
Senate  
Fifty-sixth Legislature  
First Regular Session  
2023

# SENATE BILL 1074

AN ACT

AMENDING TITLE 16, CHAPTER 4, ARTICLE 4, ARIZONA REVISED STATUTES, BY  
ADDING SECTION 16-442.02; RELATING TO VOTING EQUIPMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 16, chapter 4, article 4, Arizona Revised Statutes, is amended by adding section 16-442.02, to read:

16-442.02. Electronic tabulating equipment; standards; source codes; auditor general; superior court

A. NOTWITHSTANDING ANY OTHER LAW AND IN ADDITION TO MEETING THE REQUIREMENTS PRESCRIBED BY SECTION 16-442, ELECTRONIC EQUIPMENT MAY NOT BE USED AS THE PRIMARY METHOD FOR TABULATING VOTES IN ANY CITY, TOWN, COUNTY, STATE OR FEDERAL ELECTION UNLESS THE ELECTRONIC EQUIPMENT COMPLIES WITH THE FOLLOWING:

1. THE ELECTRONIC EQUIPMENT MEETS OR EXCEEDS THE STANDARDS SET BY THE UNITED STATES DEPARTMENT OF DEFENSE REGARDING CYBERSECURITY.

2. ALL PARTS OF THE ELECTRONIC EQUIPMENT ARE MANUFACTURED IN THE UNITED STATES.

3. ALL SOURCE CODES FOR THE ELECTRONIC EQUIPMENT ARE SUBMITTED TO AND MAINTAINED ON FILE BY THE AUDITOR GENERAL.

B. ON REQUEST BY THE LEGISLATURE OR A COUNTY BOARD OF SUPERVISORS, COUNTY RECORDER OR OTHER OFFICER IN CHARGE OF ELECTIONS, THE AUDITOR GENERAL SHALL RELEASE TO THE REQUESTING PARTY THE SOURCE CODES FOR THE ELECTRONIC EQUIPMENT FOR THE PURPOSES OF VERIFYING THAT THE ELECTRONIC EQUIPMENT IS OPERATING PROPERLY AND IN COMPLIANCE WITH ANY CONTRACT REQUIREMENTS. ♦

C. FOR ANY SUPERIOR COURT ACTION IN WHICH THE TABULATION OF VOTES IS AT ISSUE, THE COURT MAY APPOINT A SPECIAL MASTER TO REVIEW THE SOURCE CODES FOR ANY ELECTRONIC TABULATING EQUIPMENT, AND THE AUDITOR GENERAL SHALL PROVIDE THE SOURCE CODES FOR THE EQUIPMENT. ♦ THE SPECIAL MASTER MAY EXAMINE THE EQUIPMENT AND SOURCE CODES, SHALL ISSUE A PUBLIC REPORT TO THE COURT REGARDING THE TABULATION OF VOTES AND SHALL SUBMIT THE REPORT TO THE SECRETARY OF STATE FOR THE PURPOSES OF REVIEWING THE CERTIFICATION OF THE EQUIPMENT FOR USE IN THIS STATE PURSUANT TO SECTION 16-442.

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# EXHIBIT B

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# MOHAVE COUNTY REQUEST FOR BOARD ACTION FORM

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

*ATA*

FORMAL ACTION:   
CONSENT   
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: *BT*  
County Attorney  Human Resources  Finance  County Manager

Board Action Taken:  
Approved as Requested  No Action Taken  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:





**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
<b>Total Additional Estimated Cost to Hand Tally Three 2024 Elections</b>	<b>\$1,108,486</b>

**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
<b>EXAMPLE 1</b> ● CANDIDATE 1 ○ CANDIDATE 2 ○ _____	<b>EXAMPLE 2</b> ○ CANDIDATE 1 ● CANDIDATE 2 ○ _____	<b>EXAMPLE 3</b> ● CANDIDATE 1 ● CANDIDATE 2 ○ _____	<b>EXAMPLE 4</b> ○ CANDIDATE 1 ○ CANDIDATE 2 ○ _____	<b>EXAMPLE 5</b> ● CANDIDATE 1 ● CANDIDATE 2 ○ _____	
<b>EXAMPLE 6</b> ● <del>CANDIDATE 1</del> ● CANDIDATE 2 ○ _____	<b>EXAMPLE 7</b> ● CANDIDATE 1 ✕ CANDIDATE 2 ○ _____	<b>EXAMPLE 8</b> ● CANDIDATE 1 ● <del>CANDIDATE 2</del> ○ <i>Voter's Initials</i>	<b>EXAMPLE 9</b> ● <del>CANDIDATE 1</del> ● <del>CANDIDATE 2</del> ● Eligible Write-In	<b>EXAMPLE 10</b> ● <del>XXXX</del> ● CANDIDATE 2 ○ _____	
<b>EXAMPLE 11</b> ● <i>This one</i> CANDIDATE 1 ● CANDIDATE 2 ○ _____	<b>EXAMPLE 12</b> ● CANDIDATE 1 ● <i>Mistake</i> CANDIDATE 2 ○ _____	<b>EXAMPLE 13</b> ● CANDIDATE 1 ✕ CANDIDATE 2 ○ _____	<b>EXAMPLE 14</b> ○ CANDIDATE 1 ○ CANDIDATE 2 ○ _____	<b>EXAMPLE 15</b> ● <i>Wavy</i> CANDIDATE 1 ● CANDIDATE 2 ○ _____	
<b>EXAMPLE 16</b> ● CANDIDATE 1 ● CANDIDATE 2 ○ _____	<b>EXAMPLE 17</b> ○ CANDIDATE 1 ● <del>CANDIDATE 2</del> ○ _____	<b>EXAMPLE 18</b> ○ CAND 1 (REP) ○ CAND 2 (DEM) ○ _____	<b>EXAMPLE 19</b> ○ CAND 1 (REP) ○ CAND 2 (DEM) ○ _____	<b>EXAMPLE 20</b> ● CANDIDATE 1 ○ CANDIDATE 2 ● Candidate 1 - Write-In	

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

Exhibit A