



May 23, 2024

*Via Email*

Navajo County Board of Supervisors

Hon. Jason E. Whiting, Chairman [jason.whiting@navajocountvaz.gov](mailto:jason.whiting@navajocountvaz.gov)

Hon. Fern Benally [fern.benally@navajocountvaz.gov](mailto:fern.benally@navajocountvaz.gov)

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Hon. Dawnafe Whitesinger [dawnafe.whitesinger@navajocountvaz.gov](mailto:dawnafe.whitesinger@navajocountvaz.gov)

**Re: Legality of the Hand Tabulation of Ballots and Expanding the Hand Count Audit.**

Dear Supervisors:

Recently, so called voter-integrity groups appeared at your Board of Supervisor meeting to advocate for the abandonment of electronic voting equipment. I write today to express my concerns regarding any plan that fails to adhere to federal and state law as well as Election Procedures Manual requirements.

There are four items of concern to my office:

First, the Help America Vote Act of 2002 (HAVA) requires a state plan and certification of compliance with applicable laws and requirements. The voting systems that a state adopts and uses under HAVA allow votes to be cast and counted, among other things, by those systems. As a policy matter, this has enabled all jurisdictions in Arizona to quickly and accurately count voters' ballots and provide election results in a timely and efficient manner. I recognize that many people would prefer to have those results even more quickly. However, if greater speed in reporting election results is the goal, changing to solely a hand count would not be taking us in the right direction. The Arizona State Plan, developed under the leadership of then-Governor Jan Brewer, outlined how the monies given to our state would be used; to that end, the State adopted voting system guidelines and processes consistent with the requirements of HAVA Sec. 301.

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Second, even prior to HAVA, Arizona had a history of secure and efficient vote tabulation due to our own state laws and the Election Procedures Manual, which was bolstered by the new federal requirements and funding. All of these requirements ensure that electronic voting systems used in Arizona elections are secure and accurate. As you are aware, state law requires pre- and post-election logic and accuracy testing of the election equipment and provides for post-election hand count audits. State law and the Election Procedures Manual provide for many different layers of security to ensure that no single point of breakdown will lead to systemwide failure. These types of strict processes and procedures to ensure integrity, accuracy and security are not in place for a full hand count. This lack of accountability could result in significant human error.

Third, county boards of supervisors have only those powers "expressly conferred by statute," and the Board "may exercise no powers except those specifically granted by statute and in the manner fixed by statute." *Hancock v. McCarroll*, 188 Ariz. 492, 498 (App. 1996) (quotations omitted). State statute does not authorize explicitly or implicitly, the manual (hand) tabulation of ballots unless impracticable under A.R.S. § 16-621(C).

In 2018 the Legislature repealed all the relevant sections relating to the manual tabulation of ballots. *See* Laws 2018, Ch. 261, § 37, 39 (Repealing A.R.S. 16-601, 16-604 through 16-606.) Further, even if statute permits hand tabulation, there are currently no procedures directing counties on a process to ensure safe, secure, and transparent tabulation. State statute and the Elections Procedures Manual only provide for the tabulation of ballots via electronic tabulators. A.R.S. §§ 16-621(C), 16-622(A), EPM at 91. Counties may not deviate from the detailed legislative scheme established in Title 16. *See Arizona All for Retired Americans, Inc. v. Crosby*, 256 Ariz. 297, 1111, 19 (App. 2023).

Finally, courts in Arizona have settled the law that counties may not expand the hand count audit beyond the statutory and regulatory limits as directed by A.R.S. § 16-602. Cochise County attempted such a feat following the 2022 Election. The Court of Appeals shot down this frivolous notion in the case *Arizona All for Retired Americans, Inc. v. Crosby*. 256 Ariz. 297, 1119, 18 (App. 2023).

I wanted to take the opportunity to share my concerns before the Board takes any action, especially this close to an election. I hope this letter answers outstanding questions about the legality of hand tabulation and expanding the hand count audit. My office is available to assist the County in executing a safe, secure, and transparent election.

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ADRIAN P. FONTES  
Secretary of State

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EAC funding 2003-2020

California

**Total Section 101 Funds Awarded: \$27,340,830**  
**Total Section 102 Funds Awarded: \$57,322,707**  
**Total Section 251 Funds Awarded: \$296,305,593**  
**Total Election Security Funds Awarded: \$73,502,386**  
**Total CARES Funds Awarded: \$36,485,465**  
**Total Federal Funds Awarded: \$490,956,981**

Georgia

**Total Section 101 Funds Awarded: \$7,816,328**  
**Total Section 102 Funds Awarded: \$4,740,448**  
**Total Section 251 Funds Awarded: \$72,641,828**  
**Total Election Security Funds Awarded: \$21,907,178**  
**Total CARES Funds Awarded: \$10,875,912**  
**Total Federal Funds Awarded: \$117,981,694**

Hawaii

**Total Section 101 Funds Awarded: \$5,000,000**  
**Total Section 102 Funds Awarded: \$0**  
**Total Section 251 Funds Awarded: \$13,028,257**  
**Total Election Security Funds Awarded: \$6,642,675**  
**Total CARES Funds Awarded: \$3,295,842**  
**Total Federal Funds Awarded: \$27,966,774**

Michigan

**Total Section 101 Funds Awarded: \$9,207,323**  
**Total Section 102 Funds Awarded: \$6,432,323**  
**Total Section 251 Funds Awarded: \$88,575,455**  
**Total Election Security Funds Awarded: \$22,760,697**  
**Total CARES Funds Awarded: \$11,299,561**  
**Total Federal Funds Awarded: \$138,275,359**