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ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

November 12, 2020

The Honorable Karen Fann
President of the Senate
Arizona State Senate
1700 West Washington Street
Phoenix, Arizona 85007

The Honorable Russell Bowers
Speaker of the House
Arizona House of Representatives
1700 West Washington Street
Phoenix, Arizona 85007

Dear President Fann and Speaker Bowers:

The Arizona Attorney General's Office has received a number of inquiries regarding the scope and nature of the manual hand count audit required under A.R.S. § 16-602(B), in light of Maricopa County's use of voting centers during the November 3, 2020 general election. We offer our initial thoughts on this question, which will be analyzed in a formal opinion to follow in due course.

Arizona law has long required each county officer in charge of elections to conduct a post-election hand count audit of a certain percentage (currently at least two percent) of ballots cast on election day. *See* A.R.S. § 16-602(B). In 2011, the Arizona Legislature authorized the use of voting centers for voters to cast ballots. *See* A.R.S. § 16-411(B)(4) ("On a specific resolution of the board, the board may authorize the use of voting centers *in place of* or in addition to specifically designated polling places.") (emphasis added). Thus, the law provides that voting centers can replace or supplement precincts.

The Legislature correctly recognized that it could not predict all of the variations between voting centers and precincts that counties might adopt. Instead, the Legislature directed the Secretary of State to do so through the Election Procedures Manual ("EPM"), which is approved by the Governor and Attorney General. Specifically, the law provides that "[t]he hand count shall be conducted as prescribed by this section and in accordance with hand count procedures established by the secretary of state in the official

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instructions and procedures manual adopted pursuant to section 16-452.” *See* A.R.S. § 16-602(B).

This is not a new procedure. Since 2012, versions of the EPM drafted by Secretaries of State Ken Bennett, Michele Reagan and Katie Hobbs have addressed voting centers with respect to the hand count audit procedure. Two versions of those manuals were approved by Governors Brewer and Ducey and Attorneys General Horne and Brnovich. The most current version of the EPM provides that “[i]n counties that utilize vote centers, each vote center is considered to be a precinct/polling location and the officer in charge of elections must conduct a hand count of regular ballots from at least 2% of the vote centers, or 2 vote centers, whichever is greater.” EPM, Chapter 11, § III(A) (2019).

Some have asserted that the audit should be conducted only using precincts because the statute mentions precincts despite the language in the EPM. The statute, however, is silent on how the hand count audit should be conducted when voting centers are used. Instead, the statute directs the Secretary of State to fill in that gap and establish additional hand count procedures with the approval of the Governor and Attorney General, which was done in 2019. In those counties that use voting centers, the practical effect of a hand count audit based only on precincts could result in no ballots being counted because no ballots would have been cast using tabulating machines at precincts. We do not believe the Legislature intended this result.

The Attorney General believes strongly in the importance of election integrity, including a hand count audit to ensure that all tabulating machines utilized at voting centers were functioning properly. This is why the Attorney General’s Office suggested to the Maricopa County Board of Supervisors on November 4, 2020, that it consider increasing the percentage of ballots audited from two to five percent. Although not required, it is certainly permitted and may help alleviate much of the concern that has been expressed in the past week about the integrity of the vote tabulation process.

Thank you for the opportunity to update you on our efforts with regard to this very important election integrity matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joseph Kanefield', written in a cursive style.

Joseph Kanefield
Chief Deputy & Chief of Staff