



May 23, 2024

Via Email

Navajo County Board of Supervisors

Hon. Jason E. Whiting, Chairman jason.whiting@navajocountvaz.gov

Hon. Fern Benally fern.benally@navajocountvaz.gov

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Hon. Daryl Seymore darvi.seymore@navajocountvaz.gov

Hon. Dawnafe Whitesinger 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.

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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July 1, 2024

Saints of Almighty God
P.O. Box 1925
Litchfield Park, AZ 85340-9998

Re: Letter from Adrain Fontes to Navajo County Board of Supervisors, dated May 23, 2024, Re: Legality of the Hand Tabulation of Ballots and Expanding the Hand Count Audit.

Dear Mr. Fontes, you wrote, addressing the Navajo County Board of Supervisors:

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.

Mr. Fontes, you immediately cast an intentional shadow of doubt over the motivation and character of those who came to the Navajo County Board of Supervisors to encourage the BOS to think about election options. "So called voter-integrity groups" Why is it necessary for you, in your Secretary of State position, to openly belittle a group of people who have strongly held opinions that conflict with your own opinions?

At last look, both the Arizona Declaration of Rights, Article 2, and the United States Constitution Amendment 1, state that People, those who are responsible for maintaining a republican form of government, may write and speak on anything that concerns them. Please see: United States Constitution, Amendment 1; state of Arizona Constitution, Article 2, sections 1, 2, 3, 12, 13, 21, 32, 33. All of these citations speak to the inherent rights of the People to speak, remonstrate, instruct, or otherwise require the People's wishes to be, not only heard, but acted upon.

The People have repeatedly expressed a complete lack of confidence or faith in the use of election machines, those machines you now adamantly, though incorrectly, defend. You also indicate, as your excuse for this behavior, that you are hiding behind federal and state law. The Election Procedures Manual is neither federal nor state law and must therefore have no impact on your proposed discussion.

You indicate that you have four concerns:

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.

Your first problem highlights the People's first problem which you helpfully bring to our attention- The Help America Vote Act of 2002. (HAVA) Perhaps you are unaware that, in Amendment X of the United States Constitution, we find the following: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

One of the rights reserved to the states is that of elections. Amendment IX also states: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." The Congress of the United States, in creating and passing the HAVA, overstepped their constitutional boundaries and stepped into that territory which belongs to only the states and the People. Therefore Mr. Fontes, you are not bound to obey unconstitutional federal law.

The Arizona Constitution verifies this in Article 2 Section 3 which states:

"Supreme law of the land; **authority to exercise sovereign authority against federal action**; use of government personnel and financial resources.

- A. The Constitution of the United States is the supreme law of the land to which all government, state and federal, is subject.
- B. **To protect the people's freedom and to preserve the checks and balances of the United States Constitution**, this state may exercise its sovereign authority to **restrict the actions of its personnel and the use of its financial resources to purposes that are consistent with the constitution** by doing any of the following: 1. Passing an initiative or referendum pursuant to Article IV, Part 1, Section 1. 2. Passing a bill pursuant to Article IV, Part 2 and Article V, Section 7. 3. Pursuing any other available legal remedy.
- C. If the people or their representatives exercise their authority pursuant to this section, **this state and all political subdivisions of this state are prohibited from using any personnel or financial resources to enforce, administer or cooperate with the designated federal action or program.** [Emphasis Added]

Charles Weisman's, Maxims of Law, #71j. "The welfare of the people is the supreme law. *McInerney v. Ervin*, (Fla.) 46 So.2d 458, 463; Bacon, *Max.* reg. 12; 13 *Coke*, 139

You, Mr. Fontes, would have the Navajo BOS believe that you have the best interest of the People as your guiding motive; but, that has been proven wrong by your own words found in your letter.

Based on unconstitutional mandates from the federal government, HAVA, the Arizona legislature inappropriately, and unconstitutionally implemented unlawful state statutes found in A.R.S. Title 16, addressing various aspects of elections.

Charles Weisman's, Maxims of Law, #105a. One wrong does not justify another. Broom,

Max. 395. A wrong does not excuse a wrong. 11 Exch. 822; Branch, *Prine*.

Based on the wrong HAVA and the wrong Title 16 Arizona statutes, you are not required to adhere to: *“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.”*

You, Mr. Fontes, also attempt to indicate that these unlawful, unconstitutional systems: *“enabled all jurisdictions in Arizona to quickly and accurately count voters' ballots and provide election results in a timely and efficient manner.”* This is, of course, a patently incorrect and misguided statement. There is no fact, only fiction, in your comment. Maricopa County and the state of Arizona in general, have become the laughingstock of the United States. Weeks after the election, we still did not have “timely and efficient” election results.

You, Mr. Fontes, make an inaccurate claim: “[I]f greater speed in reporting election results is the goal, changing to solely a hand count would not be taking us in the right direction.” You also indicate something little known to the population at large. States that complied with the HAVA, received federal money for their compliance. The following totals are obtained from the federal government's HAVA site:

Arizona 2003-2020

Year/Grant	Federal Funding
Total Section 101 Funds Awarded:	\$5,451,369
Total Section 102 Funds Awarded:	\$1,564,188
Total Section 251 Funds Awarded:	\$45,516,688
Total Election Security Funds Awarded:	\$15,860,974
Total CARES Funds Awarded:	\$7,874,848
Total Federal Funds Awarded:	\$76,268,067 [Emphasis added]

You second stated concern: “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.”

You, Mr. Fontes, wishing to deflect attention away from the dismal failure of the election system, persist in saying the “elections are secure and accurate.” You mention the “logic and accuracy” testing as if that ought to give the People confidence in the failing system. What you fail to share is that this testing is not done on **all** machines but simply a **few** which may or may not be used among the many during an election.

You also fail to mention that there are A.R.S. Title 16 statutes which are routinely and conveniently overlooked based on a technicality from the HAVA.

A.R.S. § 16-442 clearly states that machines must be tested and certified by an

accredited, approved, laboratory. No such laboratory exists! Instead, the federal government has created their own "laboratory," the Election Assistance Commission, (EAC), that will purportedly test and certify the machines. How is that done at the state level? Every machine must be inspected and certified. Has that happened since 2018? The answer is a resounding, NO! Instead, the EAC has established "voluntary" guidelines for the states to follow. Following your example, Mr. Fontes, even the mainstream news purports to have more information than the People.

See: *It's not true that zero voting machines will be certified before the next presidential election (msn.com)*

Federal law does not require voting machines to be certified in order for them to be used in elections. But voting machines can receive certification from the U.S. Election Assistance Commission, a federal agency created in 2002.

States decide the majority of election laws, including for the administration of presidential elections. Some require their voting machines be certified by the EAC, others do not.

To be certified by the EAC, machines have to meet a set of standards called the Voluntary Voting System Guidelines and be approved by special testing labs.

The problem, of course, is that there are no "special testing labs." Therefore, Mr. Fontes, you may not have it both ways. You either follow the statutes religiously or do not follow them at all. The statutes are clearly unconstitutional, as they are based on unconstitutional federal law; but that aside, you are not even adhering to these statutes. No machine may be certified, therefore, no machine may be used in an election.

A.R.S. § 16-442(B)- "Machines or devices used at any election for federal, state or county offices **may only be certified for use in this state** and may only be used in this state if they comply with the help America vote act of 2002 and **if those machines or devices have been tested and approved by a laboratory that is accredited pursuant to the help America vote act of 2002.**"

A.R.S. § 16-442(C)- "After consultation with the committee prescribed by subsection A of this section, the secretary of state shall adopt standards that specify the criteria for loss of certification for equipment that was used at any election for federal, state or county offices and that was previously certified for use in this state. **On loss of certification, machines or devices used at any election may not be used for any election for federal, state or county offices in this state unless recertified for use in this state.**"

A.R.S. § 16-442(F)- "The secretary of state or the governing body **may provide for the experimental use of a voting system or device without a final adoption of the voting system or device, and its use at the election is as valid as if the machines had been permanently adopted.**" [Emphasis added]

You third stated concern: "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).”

Hancock v. McCarroll, 188 Ariz. 492,498 (App. 1996),” also stated, “The board of supervisors’ power to repeal its own ordinances has been limited by the legislature to **matters necessary to conducting county business**.”

A.R.S. section 11-251.05(A)(1) provides:

A. The board of supervisors may: 1. In the conduct of *county business*, adopt, amend and repeal all ordinances necessary or proper to carry out the duties, responsibilities and functions of the county which are not otherwise specifically limited by § 11-251 or any other law or in conflict with any rule or law of this state.

11-251. Powers of board- (1)(2)(3) The board of supervisors, under such limitations and restrictions as are prescribed by law, may:

1. Supervise the official conduct of all county officers and officers of all districts and other subdivisions of the county charged with assessing, collecting, safekeeping, managing or disbursing the public revenues, see that the officers faithfully perform their duties and direct prosecutions for delinquencies, and, when necessary, require the officers to renew their official bonds, make reports and present their books and accounts for inspection.
2. Divide the counties into districts or precincts as required by law, change the districts or precincts and create others as convenience requires.
3. Establish, abolish and change election precincts, appoint inspectors and judges of elections, canvass election returns, declare the result and issue certificates thereof.

The county Boards of Supervisors may contract with companies to accomplish the business of the county. Likewise, they may choose not to contract with companies of questionable value to the People of the county. The County boards of Supervisors are not dependent upon statute or an Election Manual for their guidance, but may rely upon the United States and Arizona Constitution for their mandate regarding elections.

United States Constitution Article 1 Section 4 states:

“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be **prescribed in each State** by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.” [Emphasis added]

United States Constitution Article 4 Section 4 states:

The United States shall guarantee to every State in this Union a **Republican Form of Government, and shall protect each of them against Invasion**; and on Application of

the Legislature, or of the Executive (when the Legislature cannot be convened), against domestic Violence.” [Emphasis added]

United States Constitution Article 6 clauses 2 and 3 state:

This Constitution, and the Laws of the United States which shall **be made in Pursuance thereof**; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the **Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.**

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, **shall be bound by Oath or Affirmation, to support this Constitution**; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States. [Emphasis added]

The evidence within the Arizona constitution is overwhelming!

Arizona Constitution Article 2 Section 2- Political Power; Purpose of Government

“All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are **established to protect and maintain individual rights.**” [Emphasis added]

Arizona Constitution Article 2 Section 12- Liberty of Conscience

“The liberty of conscience secured by the provisions of this constitution shall not be so construed as to excuse acts of licentiousness, or **justify practices inconsistent with the peace and safety of the state....**” [Emphasis added]

Arizona Constitution Article 2 Section 13- Equal Privileges and Immunities

“No law shall be enacted granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations.”

Arizona Constitution Article 2 Section 21- Free and Equal Elections

“All elections shall be **free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.**” [Emphasis added]

Arizona Constitution Article 2 Section 32- Constitutional Provisions Mandatory

The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise.

Arizona Constitution Article 2 Section 33- Reservation of Rights

“The enumeration in this Constitution of certain rights shall not be construed to deny others retained by the people.”

Arizona Constitution Article 7 Section 1- Method of Voting; Secrecy

“All elections **by the people** shall be by ballot, or by such other method as may be prescribed by law; Provided, that **secrecy in voting** shall be preserved.” [Emphasis added]

Arizona Constitution Article 7 Section 7- Highest Number of Votes Received as Determinative of Person Elected

“In all elections **held by the people in this state**, the person, or persons, receiving the highest number of legal votes shall be declared elected.” [Emphasis added]

Arizona Constitution Article 7 Section 11- General Elections; Date

“There shall be a general election of representatives in congress, and of state, county, and precinct officers on the **first Tuesday after the first Monday in November** of the first even numbered year after the year in which Arizona is admitted to statehood and biennially thereafter.” [Emphasis added]

Arizona Constitution Article 7 Section 12- Registration and Other Laws

“There shall be enacted registration and other laws to **secure the purity of elections and guard against abuses of the elective franchise.**” [Emphasis added]

Arizona Constitution Article 20 Seventh (part b)-

“The state shall **never enact any law restricting or abridging the right of suffrage** on account of race, color, or previous condition of servitude.” [Emphasis added]

Arizona Constitution Article 22 Section 1- Existing rights, Actions, Suits, Proceedings, Contracts, Claims, or Demands; Process

“No rights, actions, suits, proceedings, contracts, claims, or demands, existing at the time of the admission of this State into the Union, shall be affected by a change in the form of government, from Territorial to State, but all shall continue as if no change had taken place; and all process which may have been issued under the authority of the Territory of Arizona, previous to its admission into the Union, **shall be as valid as if issued in the name of the State.**” [Emphasis added]

Arizona Constitution Article 22 Section 2- Territorial Laws

“All laws of the Territory of Arizona now in force, not repugnant to this Constitution, shall remain in force as laws of the State of Arizona until they expire by their own limitations or are altered or repealed by law; Provided, that wherever the word Territory, meaning the Territory of Arizona, appears in said laws, the word State shall be substituted.” [Emphasis added]

Arizona Constitution Article 22 Section 14- Initiative

“Any law which may be enacted by the Legislature under this Constitution may be enacted by the people under the Initiative. Any law which may not be enacted by the Legislature under this Constitution shall not be enacted by the people.”

Mr. Fontes, the evidence is overwhelming. You have accepted the case law and statutes as your guiding principal while fully ignoring the requirements of your oath of office and the mandates of both the United States and Arizona Constitutions. Quoting from or citing statues and case law findings does not negate or cancel the requirements of your oath to uphold the Constitutions of both the United States and the state of Arizona.

You final stated concern: “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.297119, 18 (App. 2023).” [Empasis added]

In response to your “frivolous” accusations and warnings, first, the case you cite concerns a recount rather than an actual hand count after an election. Therefore, this case is not applicable in this setting.

In addition, you demonstrate your disdain for both the People and the Constitutions by your condescending and derogatory comments. The fact remains that the People may choose to exercise a hand count if that is the will of the People. The fact also remains that you may be found in opposition to the constitutions, thus in insurrection and treason, if you do not withdraw your objections to a hand count.

The People are available to speak to you should you wish to pursue a discussion about the merits of a hand count.

Sincerely,

Saints of Almighty God and the People of Arizona