COMPLIANCE WITH
ELECTION LAWS AND PROCEDURES
MARICOPA COUNTY
2020 GENERAL ELECTION

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Elections in Arizona are governed by state law, known officially as Arizona Revised Statutes (**A.R.S.**) and the Secretary of State's Election Procedures Manual (**EPM**). The Legislature and Governor pass state laws and the Secretary of State adopts the EPM biannually with consent of the Attorney General and Governor. Combined, **A.R.S.** and the **EPM** contain over 1,300 pages of laws and procedures.

No election can be conducted perfectly, as it is administered by imperfect human beings. But it is through our elections that we, the people, give our "consent of the governed". Every citizen deserves to know that they are treated equally under the law, as our Constitution guarantees. Each legal vote must be counted accurately, and not cancelled out by unlawful votes.

The expressed purpose of the Senate-requested Audit was to verify state laws and procedures were followed, and identify how they can be improved to ensure Arizona elections are conducted with accuracy, integrity and transparency.

This report identifies election laws and procedures with which Maricopa County failed or may have failed to comply in the November 2020 General Election. This being said, I believe the majority of election officials throughout the state are honorable, well-intentioned people. The intent of this report is to identify areas of constructive improvement and to maintain appropriate accountability.

MISSING SIGNATURES ON BALLOT ENVELOPE AFFIDAVITS

A.R.S. 16-547. A requires that early ballots be accompanied by an affidavit signed by the voter declaring, among other things, that the voter is registered in the appropriate county and has not already voted in that election.

A.R.S. 16-548. A provides that the "voter shall make and sign the affidavit", mark the ballot, place it in the provided envelope and mail or deliver it to the county so that it is received "no later than 7:00 p.m. on election day".

Once the envelope with the ballot and affidavit are received by the appropriate election official, **A.R.S. 16-550. A** says that the official "shall compare the signatures" with the voter registration records for that voter. It further states that the election official provides the voter with the opportunity to "correct" the voter's affidavit signature if it appears "inconsistent" with the voter's records, and establishes a cure period for mismatched signatures of three days or five days after election day, based on whether the election includes a federal office.

A.R.S. 16-551. C provides further information on the early ballot process requiring that the county deliver to an early election board all early ballots and original affidavits that were received by 7:00 p.m. on election day. **A.R.S. 16-552. B** directs the early election board to check the voter's affidavit, and **"if it is found to be sufficient, the vote shall be allowed. If the affidavit is insufficient, the vote shall not be allowed."** (emphasis added). The review and tally of early ballots is additionally detailed in the Secretary of State's Election Procedures Manual. The **2019 EPM pp. 68-69**, approved for use in the 2020 election, states: "**If the early ballot affidavit is not signed, the County Recorder shall not count the ballot**. The County Recorder shall then make a reasonable and meaningful attempt to contact the voter via mail, phone, text message, and/or email, to notify the voter the affidavit was not signed and explain to the voter how they may cure the missing signature or cast a replacement ballot before 7:00 pm on Election Day." (emphasis added).

While the Audit scope of work did not include comparing signatures with voter registration records for each voter, it did identify a number of missing signatures on ballot envelope affidavits, which, to the extent the ballots in such envelopes were tallied, would violate the above statutes and procedures.

ORIGINAL AND DUPLICATE BALLOTS WITHOUT MATCHING SERIAL NUMBERS

A.R.S. 16-621. A provides that "If any ballot, including any ballot received from early voting, is damaged or defective so that it cannot properly be counted by the automatic tabulating equipment, a true duplicate copy shall be made of the damaged or defective ballot in the presence of witnesses and substituted for the damaged or defective ballot. **All duplicate ballots created pursuant to this subsection shall be clearly labeled "duplicate" and shall bear a serial number that shall be recorded on the damaged or defective ballot."** (emphasis added).

The **2019 EPM, p. 202**, additionally details the procedures for duplicating damaged or defective ballots:

A damaged or unreadable ballot must be duplicated according to the following procedures:

  • Ensure the correct ballot style for the voter's precinct will be used to create the duplicated ballot;

  • Mark the proper precinct identification code, if applicable;

  • **Record an identical serial number on both the original and duplicate ballot (including spoiled duplicates) – this ties the ballots together and creates a paper trail as required by statute, A.R.S. § 16-621 A;**

  • **Conspicuously mark the original ballot as "DUPLICATED;"**

  • **Conspicuously mark the duplicate ballot as "DUPLICATE," A.R.S. § 16-621 A;** (emphasis added)

On approximately 2,500 duplicated ballots, there was no discernible serial number recorded on either the original or the duplicate ballot. These do not comply with the above statutes and procedures.

MISSING CHAIN OF CUSTODY

A.R.S. 16-621. E. states: "The county recorder or other officer in charge of elections shall maintain records that record the chain of custody for all election equipment and ballots during early voting through the completion of provisional voting tabulation."

Maricopa County has not provided the chain of custody required by this statute and as requested by the Arizona Senate.

COMMON USERNAMES AND PASSWORDS

The **2019 Elections Procedures Manual, p. 209**, states:

1. The application must be part of an EMS that has received federal and state certification and is authorized for use in elections in Arizona.

    • The application must be installed with the EMS on a secure, isolated, closed network and shall not be connected to the internet or an external network.

2. The application shall provide distinct security roles, **with separate usernames and secure passwords for each user or station.** These security roles must have different functions. Each election worker shall be given access to only the components of the application necessary to perform their duties. If a secured username and password are used for each station rather than each user, a detailed log of who utilized each station and at what time(s) shall be maintained.

3. **Users (and, if applicable, stations) shall have unique usernames and secure passwords.** Vendor-supplied generic passwords may not be used.

4. Log-in must be required each time the application is started. The application and/or tabulation system shall be capable of identifying ballots that contain write-in votes.

5. The application shall provide comprehensive logging of any changes to the ballot record for audit purposes, as well as validation of all changes through the use of multiple electronic "signatures" before committing any changes to the EMS results.

6. The application shall include electronic review, attribution of eligible write-in votes, and tallying of official write-in votes within the application.

7. The application shall allow for each transaction to be reviewed and approved by at least two election officials of different political party affiliation (emphasis added).

The Audit found that common usernames and passwords were used, which is inconsistent with the EPM's guidance.

MISSING SERIAL NUMBERS ON ELECTRONICALLY ADJUDICATED BALLOTS

The **2019 EPM Electronic Adjudication Addendum, p. 2**, states:

8. There must be an efficient and reliable means of identifying and locating the physical ballots that have been electronically tallied if needed for auditing. For example, the tabulation machine may be programmed to out-stack and/or **print identification numbers on the ballots with write-in votes to be electronically tallied.** The tabulation equipment may be programmed to stop on, sort, or flag write-in votes for races with official write-in candidates. Official write-in candidates may be entered into the EMS after the write-in filing deadline to facilitate this process as long as doing so does not modify the election programming if L&A testing has been completed (emphasis added).

Maricopa County's election system uses electronic adjudication, not the out-stack method. It does not appear that identification numbers were printed on electronically adjudicated ballots as required by this procedure.

POSSIBLE INELIGIBLE VOTERS

A.R.S. 16 Articles 1, 1.1, and 2, as well as the **EPM**, identify Arizona's requirements for an individual to be considered an eligible voter, and allowed to cast a legal vote. The Audit identified numerous questions regarding possible ineligible voters. However, these determinations were made from comparisons between the County's final voted information and private data sources, not the official voter registration data. Further investigation, with the cooperation of Maricopa County, is necessary to determine whether ineligible persons were allowed to vote in the 2020 election.