

From: Russell Bowers <RBowers@azleg.gov>
Sent: Wednesday, November 18, 2020 10:17 AM
Subject: POST-ELECTION FREQUENTLY ASKED QUESTIONS

Dear Colleagues,

I am writing to address the reelection bid of President Donald J. Trump. I strongly supported his campaign. I walked for him, Martha McSally, and other Republican candidates. I supported the good his administration achieved, and how he worked to complete his promises. He got the job done, and I support him. I am indebted to the work and energy that President Trump put into Arizona, and I voted for him!

Now, given the outcome of the presidential race in Arizona, an enormous amount of pressure is being directed at my office and my colleagues.

I wish to respond by simply saying – I took an oath to support the Constitution of the United States and the Constitution and laws of the State of Arizona. I have been around to see some of the laws concerning elections come before this body, and some of my current Republican peers sponsored and voted for the laws that currently guide the elections throughout the State. We are currently being asked by some to reconsider our position on these laws to the favor of our candidates. Many of the issues are or have been adjudicated, and the courts will move forward in this legal appeals process, which at some time will end.

Here are some points of law and fact that are impressive to my position, and I wanted to share them with you to do with as you choose. We all are emotionally vested to one degree or another, but these are truths that I feel bound to uphold, expecting that the courts will give a final expression of their binding force upon me and us.

I wish you all wisdom as we consider these issues.

Russell W.
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POST-ELECTION FREQUENTLY ASKED QUESTIONS

Q. Can the Arizona Legislature select different presidential electors?

A. Under Arizona law ([A.R.S. § 16-212](#)), voters elect the State's presidential electors on Election Day. Because the electors already have been elected, the Legislature cannot retroactively change the selection method for the November 2020 election.

Q. Can Arizona's presidential electors cast their electoral college votes for whichever candidate they prefer?

A. After statutory [changes](#) made in 2017, [A.R.S. § 16-212](#) requires presidential electors to cast their electoral college votes for the candidates for president and vice president who jointly received the most votes according to the statewide canvass. An elector who knowingly refuses to do so automatically is removed from office. Representative Kern was the prime sponsor of the bill that made these changes, which received near-unanimous support from Republicans in both the House and the Senate.

Q. Can the Legislature force a statewide or countywide hand count now?

A. [A.R.S. § 16-602](#) requires each county officer in charge of an election to conduct a hand count according to a statutory process, as well as the hand count procedures established by the Secretary of State in the [Election Procedures Manual](#). Once that hand count is complete, the county can conduct another one only if the first hand count produces a certain margin of discrepancy. Maricopa County's hand count produced zero discrepancies. Consequently, the county considers that the official count by statute.

Q. Can the Legislature demand that Maricopa County hand count the votes cast at five or even 100 percent of the county's vote centers?

A. [A.R.S. § 16-602](#) and the [Election Procedures Manual](#) require counties to hand count the votes cast in at least two percent of the precincts or vote centers in the county, or two precincts or vote centers, whichever is greater. So, before its hand count occurred, Maricopa County could have decided to hand count five percent or even 100 percent of the votes cast in the county's vote centers. But it was not required to do so, and once the hand count was complete and showed no discrepancies, the law did not authorize Maricopa County to expand its hand count to include additional vote centers.

Q. A.R.S. § 16-602 requires a hand count of the votes cast in two or two percent of *precincts*, but the Election Procedures Manual says that counties that use vote centers can hand count the votes cast in two or two percent of *vote centers*. Do these provisions conflict?

A. The Attorney General's Office informally opined that these provisions do not conflict, because (among other reasons) [A.R.S. § 16-602](#) states that "[t]he hand count shall be conducted as prescribed in this section *and* in accordance with hand count procedures established by the secretary of state in the official instructions and procedures manual adopted pursuant to § 16-452" – that is, the [Election Procedures Manual](#). The EPM has addressed hand counts of ballots cast at vote centers since 2012. This issue is currently being litigated in [Arizona Republican Party v. Fontes](#) (No. CV2020-014553).

Q. Can the Legislature force a statewide or countywide recount?

A. [A.R.S. § 16-661](#) *et seq.* provide for a recount only when the canvass of returns shows a specified, narrow margin of victory, but no race in Arizona is within any of those statutory margins. Additionally, [A.R.S. § 16-671](#) *et seq.* authorize election contests, including on grounds that votes were cast illegally or counted erroneously ([A.R.S. § 16-672\(A\)\(4\)–\(5\)](#)). No such election contest has been filed so far.

Q. Can the Legislature force an additional audit of the Dominion Voting Systems machines?

A. Arizona law includes many safeguards for ensuring the reliability and integrity of the voting equipment that is used here. For example, under [A.R.S. § 16-442](#) and the [Election Procedures Manual](#), a new voting system must be certified by a Voting System Test Laboratory accredited in accordance with federal law, the federal Election Assistance Commission, and the Secretary of State, based on a recommendation from the state Election Equipment Certification Committee. Additionally, [A.R.S. § 16-449](#) and the [EPM](#) require extensive testing of voting equipment both before and after the election. That testing is open to designated political party representatives, candidates, government officials, the public, and the press. None of the testing of Maricopa County's tabulation equipment has revealed any tabulation errors, and no law authorizes the Legislature to require additional testing now.

Q. What is the status of the election lawsuits?

A. The Trump campaign dropped its [lawsuit](#) against the Secretary of State and Maricopa County officials last Friday. Two lawsuits remain pending in Maricopa County Superior Court: [Arizona Republican Party v. Fontes](#) (No. CV2020-014553), in which the plaintiff asserts that Arizona law requires counties to hand count ballots cast in at least two percent of precincts, not vote centers; and [Aguilera v. Fontes](#) (No. CV2020-014562), in which one voter claims she was denied the right to vote, and a second voter claims he was denied the right to have his vote counted. Neither pending lawsuit alleges that fraud occurred, and the Trump campaign repeatedly [disavowed](#) claims that it did.

Q. What election-integrity measures has the Legislature enacted recently?

A. To take just a few examples, since 2019, the Legislature has enacted election-integrity measures that:

- permitted the use of new ballot counting and processing equipment in order to increase the speed and accuracy of tabulating ballots and resolving discrepancies ([SB1135](#)—E. Farnsworth, 2020);
- advanced the deadline for issuing an Election Procedures Manual in order to provide election officials ample time to review and implement the policies and procedures the EPM establishes ([HB2238](#)—Townsend, 2019);
- required voters to present a valid form of identification before they are given a ballot ([SB1072](#)—Ugenti-Rita, 2019);
- required the county recorders to report the number of persons who are registered to vote but have not presented proof of citizenship, and—after each general election—the number of federal-only ballots cast ([HB2039](#)—Townsend, 2019); and
- established emergency voting procedures, along with additional guidelines to combat voter fraud ([SB1090](#)—Ugenti-Rita, 2019).

Q. What other election-integrity measures are in place?

A. Over decades, the Republican-led Legislature has built an electoral system in Arizona that is efficient, reliable, transparent, and secure. Among the many election-integrity measures already in place are laws:

- governing the procedures for opening, exhibits, locking, removal, and reopening of ballot boxes ([A.R.S. § 16-564](#));
- requiring that voting or marking devices be sealed after the polls close, and that unused ballots be sealed for return to the board of supervisors or other officer in charge of elections ([A.R.S. § 16-566\(B\)](#));
- mandating that voting machines be in full view of all election officers and observers at the polling place ([A.R.S. § 16-570\(B\)](#));
- requiring, after the polls close, that sealed ballot boxes be delivered by two election board members from different political parties to a counting place, and allowing county party chairmen to designate a party member to accompany the ballots ([A.R.S. § 16-608](#));
- prescribing detailed procedures for ensuring that votes are tabulated in a transparent manner, including live video recording of the custody of all ballots while they are present in a tabulation room ([A.R.S. § 16-621](#));
- prohibiting ballot harvesting and other practices that compromise ballot integrity ([A.R.S. § 16-1005](#)).

