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November 19, 2022

Via Email

Mr. Thomas Liddy
Civil Division Chief
Maricopa County Attorney's Office
225 W. Madison Street
Phoenix, AZ 85003
liddyt@mcao.maricopa.gov

Re: Maricopa County's Administration of the 2022 General Election

Dear Mr. Liddy:

The Elections Integrity Unit ("Unit") of the Arizona Attorney General's Office ("AGO") has received hundreds of complaints since Election Day pertaining to issues related to the administration of the 2022 General Election in Maricopa County. These complaints go beyond pure speculation, but include first-hand witness accounts that raise concerns regarding Maricopa's lawful compliance with Arizona election law. Furthermore, statements made by both Chairman Gates and Recorder Richer, along with information Maricopa County released through official modes of communication appear to confirm potential statutory violations of title 16.

Pursuant to the AGO's authority under A.R.S. § 16-1021, the Unit hereby requests Maricopa formally respond to and address the following concerns that have been raised.

Election Day Ballot-on-Demand Printer Configuration Settings

According to Maricopa County, at least 60 voting locations had issues related to some ballot-on-demand (BOD) printers having printer configuration settings that were non-uniform,¹

¹ State and federal law require "uniform" administration of elections. *See* Ariz. Const. art. 2 § 21; A.R.S. § 16-449(B), -452(A); 42 U.S.C.A. § 1983; U.S. Const. Amends. 1, 14. While this cannot always be perfectly achieved between counties that utilize different election equipment, within a county such uniformity is not only presumed, but mandatory.

which appeared to have resulted in ballots that were unable to be read by on-site ballot tabulators.² Based on sworn complaints submitted by election workers employed by Maricopa County, the BOD printers were tested on Monday, November 7 without any apparent problems. Many of those election workers report that despite the successful testing the night before, the tabulators began experiencing problems reading ballots printed by the BOD printers within the first thirty minutes of voting on Tuesday, November 8, 2022.

Based on the plethora of reports from election workers, poll observers, and voters, combined with Maricopa County's admission that there were in fact widespread problems related to non-uniform BOD printer configuration settings, the Unit requests that Maricopa County provide a comprehensive report detailing with specificity: (1) the voting locations that had problems with either BOD printers or tabulation; (2) the specific problems at each voting location; (3) any other issues related to BOD printers and/or tabulators that may have contributed to the problems at voting locations; (4) a comprehensive log of all changes to the BOD printer configuration settings (to include the identity of individuals making changes); (5) Maricopa County's standards for the BOD printer configuration settings as specified in internal technical specifications and/or manufacturer technical specifications; (6) the precise time the non-uniform printer configuration settings were found to be the root cause of the problem; and (7) the method used to update or reconfigure the printer configuration settings at each voting location (specifically, if technicians were sent to the voting location, when were they deployed in the field and when did they make the changes at each voting location; alternatively, if the network administrator was able to make universal changes, please detail when and how the printer configuration settings were corrected).

Election Day "Check-out" Procedures

Following widespread reports of problems at voting locations on Election Day, Chairman Gates publicly stated that voters who had already checked in to e-Pollbook, but were having difficulties voting could "check out" of that voting location, and would be able to nonetheless vote in another voting location. Based on sworn complaints received by the Unit, not only have poll workers reported that they were not trained and/or not provided with information on how to execute "check out" procedures, but many voters have reported the second voting location required the voter to cast a provisional ballot as the e-Pollbooks maintained the voter had cast a ballot in the original voting location. In fact, Arizona law specifically prohibits provisional ballots to be counted when a voter has signed multiple pollbooks. *See* A.R.S. 16-584(D) (If the voter's name is *not signed on the roster* and if there is no indication that the voter voted an early ballot, the provisional ballot envelope shall be opened and the ballot shall be counted. If there is information

² Many media outlets have disputed that number, and some have suggested upwards to 50% of voting locations experienced one or more difficulties with issues associated with the BOD printers. *See*, *e.g.*, https://twitter.com/Rasmussen_Poll/status/1593368258115211264?s=20&t=rVcK7487_wL6FA_YuUphxfA. Notably, it has also been reported that the BOD printers were discontinued by the manufacturer prior to the 2022 General Election, but were nonetheless used. *See* <https://www.washingtonpost.com/politics/2022/11/10/kari-lake-arizona-maricopa-county/>

showing the person did vote, the provisional ballot shall remain unopened and shall not be counted.) (emphasis added).

Please provide a detailed report indicating: (1) when and how poll workers were trained and/or provided with procedures on how to “check out” voters from one voting location so they could lawfully vote in another location; (2) the legal basis for the “check out” procedures in light of A.R.S. § 16-584(D); (3) why Maricopa continued to publicly encourage voters to leave a voting location after having been notified by the Unit that poll workers appeared to be improperly trained on “check out” procedures;³ and (4) a report detailing all voters who were provided a provisional ballot due to having already signed an e-pollbook at another Election Day voting location and the final disposition of their provisional ballot.

Ballots Deposited in Door 3 and Statutorily Required Election Board Close Out Duties

Due to the widespread problems in non-uniform printer configuration settings, many voters were unable to tabulate their ballots on Election Day using on-site tabulators. Instead, voters were instructed to deposit their ballot in “Door 3.” According to statements by Chairman Gates, Recorder Richer, and Maricopa County official communications, “Door 3” ballots were transported to Maricopa County Tabulation and Center to be tabulated by the HiPro 821 or Cannon G1130 tabulators at central count.

Maricopa County appears to have failed to adhere to the statutory guidelines in segregating, counting, tabulating, tallying, and transporting the “Door 3” ballots. In fact, Maricopa County has admitted that, in some voting locations, “Door 3” non-tabulated ballots were commingled with tabulated ballots at the voting location. Further, we have received a sworn complaint from an election observer indicating that more than 1700 “Door 3” non-tabulated ballots from one voting location were placed in black duffle bags that were intended to be used for tabulated ballots.

Pursuant to Arizona law, Maricopa County was required to complete “reconciliation of ballots cast against check ins”⁴ at the voting locations before leaving the voting location, not at central count. *See* A.R.S. §§ 16-564(A), -602(A), -607(A), -608(A),(B), -614, -615(A),(B), and -616; *see also* 2019 Elections Procedures Manual, Ch. 9 (VIII).

Please provide a copy of each voting location’s Official Ballot Report, including any discrepancies in the report and explanations for any such discrepancies. Please also provide a written statement clarifying the “reconciliation” that appears to have occurred at central count on or around November 16, 2022. Finally, please provide a written report regarding how many ballots were commingled, how many ballots were placed inside the black duffle bags intended for

³ On November 8, 2022, the Unit forwarded complaint #EIU-2022-68567-3370 and # EIU-2022-68645-3417, both of which stated that “it does not appear that poll workers know how to “check out” someone so they can vote at a later time in a different location” and further requested that Maricopa “promptly advise your poll workers how to ‘check out’ voters who wish to leave a voting location, or remove instructions on twitter suggesting this is a viable option.”

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https://twitter.com/MaricopaVote/status/1592984837681713152?s=20&t=L7b_oUOZWe63cz4M3xQIQa

Tom Liddy, Civil Division Chief, Maricopa County Attorney's Office
Re: Maricopa County's Administration of the 2022 General Election
November 19, 2022
Page 4

tabulated ballots, how and when Maricopa became aware of the related problems, and how these problems were ultimately resolved.

Arizonans deserve a full report and accounting of the myriad problems that occurred in relation to Maricopa County's administration of the 2022 General Election. As the canvass is looming, and these issues relate to Maricopa County's ability to lawfully certify election results – the Unit requests a response to the aforementioned issues **on or before Maricopa County submits its official canvass to the Secretary of State, which must occur on or before November 28, 2022.** See A.R.S. § 16-642(A).

Sincerely,



Jennifer Wright
Assistant Attorney General

