

Subject: RE: Public Records Request (AZ-SEN-22-0579)
Date: Monday, July 18, 2022 at 1:13:13 PM Eastern Daylight Time
From: Pete Galvan
To: AO Records
Attachments: Results - AO 0579.pdf

EXTERNAL SENDER

Please find attached 401 pages of records responsive to your request.

Pete Galvan
Arizona State Senate | Associate Rules Attorney
(602) 926-3777 | pgalvan@azleg.gov

From: Pete Galvan
Sent: Wednesday, June 8, 2022 10:09 AM
To: AO Records <records@americanoversight.org>
Subject: RE: Public Records Request (AZ-SEN-22-0579)

Your request has been received and will be processed.

Pete Galvan
Arizona State Senate | Associate Rules Attorney
(602) 926-3777 | pgalvan@azleg.gov

From: AO Records <records@americanoversight.org>
Sent: Wednesday, June 8, 2022 10:02 AM
To: Pete Galvan <pgalvan@azleg.gov>
Subject: Public Records Request (AZ-SEN-22-0579)

Dear Public Records Officer:

Please find attached a request for records under Arizona's Public Records Law.

Sincerely,

--

Sarah Wishingrad
Pronouns: she/her
Paralegal
American Oversight
records@americanoversight.org
www.americanoversight.org | @weareoversight

PRR: AZ-SEN-22-0579

From: [Mark Lewis](#)
To: [Mark Lewis](#)
Subject: Senators Don't support canceling early voting - lawsuits ?
Date: Tuesday, March 1, 2022 7:08:52 AM
Attachments: [GOP Lawsuit to cancel early voting 2022-02-25-petition.pdf](#)

Dear 2022 senators and senate candidates,

Don't go out on a limb with the GOP lawsuit to end early voting in AZ. (attached)

In the last 2020 election, MC republicans won 80% of close races, (except President) because of our VBM GOTV efforts. I called / texted 82,000 VBM ballot holders 3 times and did my GOTV effort for legislative victories. I turned out 22,031 VMB ballot holders in the last 36 hours, over objections by the Trump campaign.

1) Voter ID is much more important, and 2) cleaning up the voter rolls is much more important.

The lawsuit is attached and it makes 3 claims that are not supported by other federal lawsuits that allow voting in non polling locations.

No-excuse Mail-in (or “Early” or “Absentee”) Voting Is Unconstitutional, Either in Whole or in Part; Alternatively, It Must Be Narrowly Construed to Conform to the Arizona Constitution 19

A. Arizona Constitutional Provisions—by their Plain Meaning, History, and Initial Principles—Require In-person Voting at the Polls on a Specific Day .. 21 (People vote from jails & nursing homes every year, under federal settlements)

B. “Early Voting” is Contrary to Secure, In-person Voting at the Polls on a Specific Day and Is Therefore Unconstitutional 39 (Secure in person voting, is contrary to VMB statutes since 1998, because we use signature matching)

C. In the Alternative, “Early Voting” Must Be Construed Narrowly to Conform to the Arizona Constitution 40 (People vote from jails & nursing homes every year, under federal settlements)

Don't let slight errors in GOP judgement color your campaign comments to end VBM.

82% of voters like VBM. 9% of GOP grassroots want to end it. Do the math.

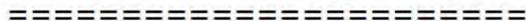
VBM = Republican victories since 1998.

Sincerely,

[Mark Lewis](#)

Mark Lewis, VP Engineering
Water Resource Institute, LLC
8485 E. McDonald Dr. Ste 55
Scottsdale, AZ 85250

602-499-3095



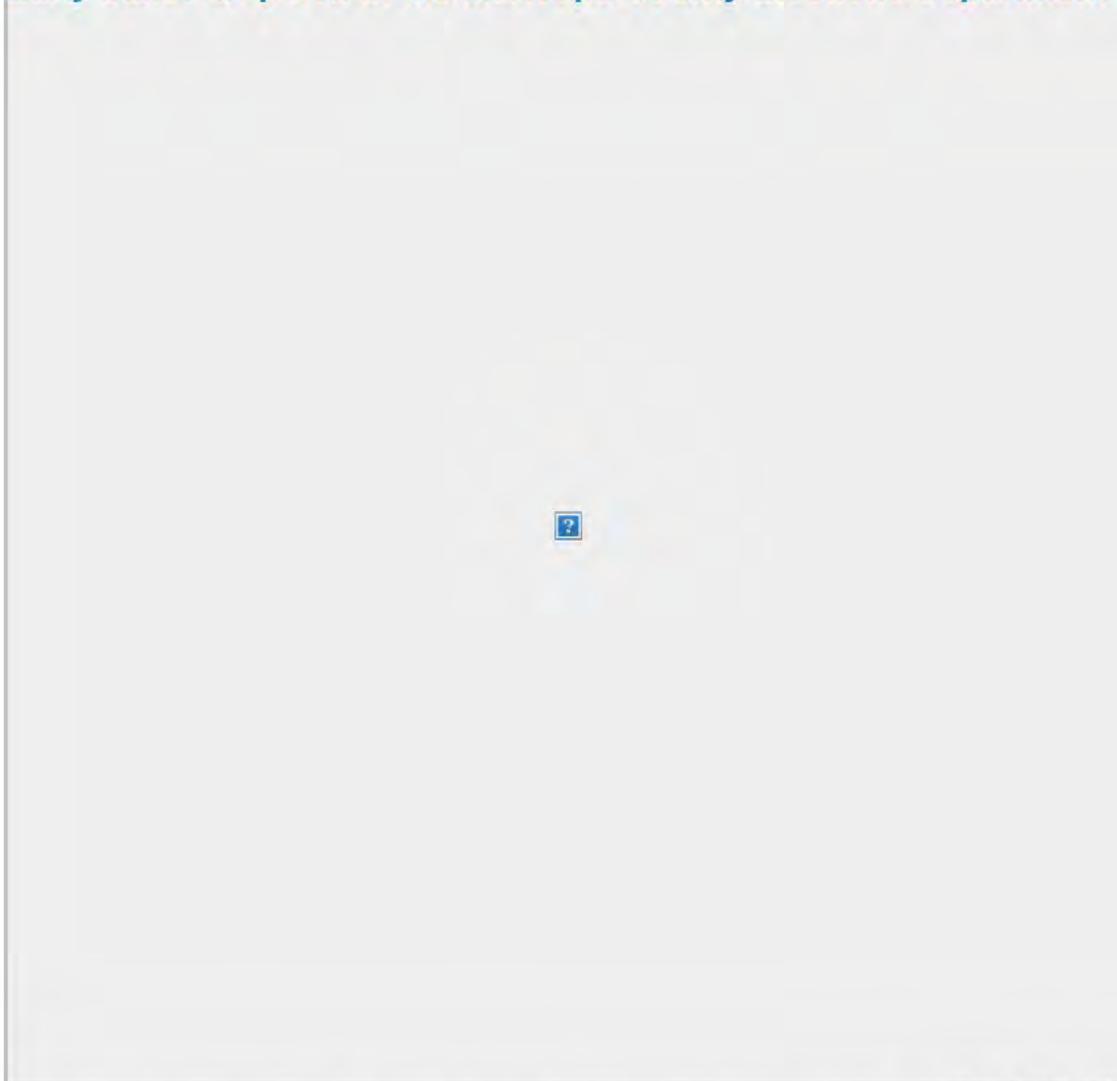
Arizona GOP files legal challenge to end Arizona's no-excuse early ballot system

By Howard Fischer/Capitol Media Services

Published: Monday, February 28, 2022 - 1:21pm

Updated: Monday, February 28, 2022 - 1:25pm

Early ballot drop box at the Maricopa County Elections Department



Tim Agne/KJZZ

Early ballot drop box at the Maricopa County Elections Department in Phoenix.

The Arizona Republican Party is trying to kill the preferred method of voting of more than 80% of state residents.

Legal papers filed Friday ask the Arizona Supreme Court to conclude that there is nothing in the state constitution to allow for early voting. Attorney Alexander Kolodin told Capitol Media Services the only form of voting specifically authorized by the framers of the constitution is in person and on Election Day.

What that means, he said, is that anything else — including the current system of no-excuse early ballots created by the Legislature in 1991 — is illegal.

If the justices don't buy that argument, Kolodin has an alternate legal theory. He argues that, at the very least, the state is required to return to the way the situation was prior to 1991.

That still allowed people to get early ballots, but also had to provide some proof they needed it, like being away from their voting precinct on Election Day or a physical disability. And Kolodin said that, at least, would provide more security over early ballots than the current system.

Secretary of State Katie Hobbs, a Democrat who is named as a defendant in the lawsuit, [tweeted a statement defending the security of Arizona's longstanding early ballot system](#). "This lawsuit filed by the Republican Party of Arizona has a single aim – to make it more difficult to vote," Hobbs wrote. "I look forward to once again defending the voters of Arizona and defeating this ridiculous attempt to undermine our elections."

The move comes amid extensive debate about early voting and whether it provides opportunities for fraud.

Some Republican lawmakers have proposed repealing early voting statutes entirely. But that has not found favor among sufficient members of the GOP to pass muster given the popularity among voters from both major parties as well as the political independents who make up about a third of registered voters.

Instead, [Republican legislators have coalesced around a plan to impose new restrictions beyond the sole existing requirement](#) to sign the exterior

of the envelope with the idea that county election officials compare the signatures with those on file. The plan, set for a final roll-call vote, would oblige early voters to provide a date of birth and information from another government document like a Social Security card or Arizona driver's license.

That issue of the legality of early voting isn't the only claim in the new lawsuit.

Kolodin also contends that if early voting is legal — a point he disputes — that still doesn't permit the use of "drop boxes" for early ballots, something Hobbs has permitted in the Election Procedures Manual. He said state law provides for only two ways for early voters to transmit ballots for tabulation: delivering or mailing "to the county recorder or other officer in charge of elections," or depositing "at any polling place in the county."

"A drop box is not an office of the county recorder, nor is it a 'polling place,'" he told the justices. And Kolodin said none of this is helped by laws that allow county supervisors to authorize "voting centers."

"Drop boxes are also not voting centers — which, like polling places, are staffed so that a voter may present identification 'to receive the appropriate ballot for that voter on election day,'" he said. By contrast, Kolodin said, drop boxes are not staffed.

Even assuming that the Arizona Constitution allows the Legislature to authorize drop boxes, Kolodin said lawmakers have never enacted such a statute.

"Thus, the secretary exceeds her legal authority by prescribing drop-box rules," he said.

Separately, Kolodin said Hobbs is violating the law by not setting up uniform rules for counties to use when verifying the signatures on early ballot envelopes. But it is the effort to quash early voting that has the potential to forever change how elections are run in the state.

Kolodin is not working from a blank slate.

In January a state court in Pennsylvania struck down that state's law, first enacted in 2019, which allows for no-excuse early voting.

Judge Mary Hannah Leavitt, a Republican, writing for the majority in the 3-2 ruling, said that voting "requires the physical presence of the elector. And she said the Legislature cannot change voting laws without first amending the state constitution.

That case, cited by Kolodin in his legal arguments here, is on appeal to the Pennsylvania Supreme Court.

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[ALERTS](#)
[LITIGATION](#)
[ARIZONA](#)

Republicans Sue Over Mail-in Voting in Arizona

February 28, 2022

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WASHINGTON, D.C. — On Friday, Feb. 25, the Arizona Republican Party and a Republican voter filed a [lawsuit](#) challenging the state’s mail-in voting laws. At the center of the lawsuit is Arizona’s extremely popular no-excuse mail-in voting system, which has been in place since 1991.

The petition alleges that the Arizona Constitution does not allow for any system of early voting, including absentee or mail-in voting, because “[i]n-person voting at the polls on a fixed date (election day) is the only constitutional manner of voting in Arizona.” Because of this, the petitioners argue that Arizona’s early voting statutes should be struck down.

If the Arizona Supreme Court does not agree with the lawsuit’s interpretation of the Arizona Constitution, the petitioners ask the court to reinstate the mail-in voting rules that were in place before 1991 and require individuals to have a “valid reason” to cast a mail-in ballot.

The lawsuit also focuses on two issues related to mail-in voting: 1) signature verification and 2) drop boxes.

The petition alleges that Arizona Secretary of State Katie Hobbs (D) did not

properly codify signature verification procedures for mail-in ballots during the 2020 election cycle, which “perpetuates inconsistent and non-uniform signature verification procedures by allowing her and the various Arizona counties to create and change their own procedures at will.”

The petition also alleges that the secretary exceeded her authority by allowing the use of drop boxes for mail-in ballot collection, arguing that they are not allowed under the Arizona Constitution.

Overall, the lawsuit asks the state Supreme Court to decide whether “the Secretary must include signature verification guidelines [in election rules], whether she may create drop-box rules without legal authority, and whether mail-in voting statutes are constitutional.”

In an unusual attempt to bypass the state trial court and avoid any lengthy appeals process, the lawsuit was filed directly in the Arizona Supreme Court. The petitioners are asking the state Supreme Court to exercise jurisdiction and decide the “purely legal” questions of the case before the next election cycle.

[Read the petition here.](#)

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The Arizona Republican Party is so scared of you that it's suing to outlaw early voting

Opinion: The Arizona Republican Party is suing to end the state's wildly popular early voting program. But this isn't about 'election integrity.' It's about a fear of voters.



Laurie Roberts Arizona Republic



The Arizona Republican Party, unable to get over the fact that Donald Trump lost the 2020 election, on Friday filed a lawsuit to outlaw early voting in Arizona.

Never mind that Arizona has allowed early voting for 30 years, during which time Republicans have dominated statewide and legislative elections.

Never mind that the program has worked so well for Republicans that in 2007, the GOP-controlled Legislature made it even easier to vote early, allowing voters to sign up to automatically get an early ballot in the mail.

In 2020, it backfired on them, as Democrats turned out in record numbers to vote early and well, you know the result.

Now, suddenly, the state's long-lauded early voting program is apparently a hotbed of fraud and corruption.

And unconstitutional, too, they cry.

So much corruption, the Ninjas couldn't find it

So the Arizona Republican Party is asking the Arizona Supreme Court to end the wildly popular program used by nearly 90% of voters who cast ballots in the 2020 presidential election that Trump lost.

I'd ask what state GOP Chairwoman Kelli Ward and her cohorts are afraid of. but I already know.

We watch that fear in action every day at the Capitol, as Republican legislators scheme to put up all manner of new and inventive roadblocks to make it more difficult to vote, in

the name of “election integrity.”

We see it on the campaign trail as various Republican candidates for the Senate (Jim Lamon) and governor (Kari Lake and Matt Salmon) have pledged to put an end to early voting.

“There’s so much corruption and cheating in our elections and much of it is coming from mail-in voting ... ,” Lake told me last fall, via her spokesman.

So much corruption and cheating, in fact, that the Arizona Senate’s Cyber Ninja auditors couldn’t find any actual widespread evidence of corruption or cheating – only “anomalies” that are quickly cleared up if you take the time to read Maricopa County’s rebuttal of their findings.

Senate lacks the votes to end early voting

Which matters not a hoot to the Republican Party because this isn’t really about “election integrity.” It isn’t about “restoring voter confidence” in elections that Ward, Senate President Karen Fann, Rep. Paul Gosar, Sen. Wendy Rogers and other GOP leaders have sought at every turn to undermine.

It’s about election survival for a party that has been taken over by the far-right fringe.

This, in a state that is turning a distinct shade of purple.

Just on Monday, Maricopa County Recorder Stephen Richer announced that independents now outnumber Republicans.

Meanwhile, moderate Republicans and independents in recent years have helped Democrats take both of Arizona’s U.S. Senate seats and the presidential election.

Of course, the party could respond by broadening its base. Instead, it's decided to do whatever it takes to get voters to sit elections out.

Which brings us to the plan to outlaw early voting.

Gov. Doug Ducey and the Legislature could simply end early voting. In fact, there are several bills to do just that. But it became clear last week that the votes aren’t there in the Senate.

And so comes the party’s appeal to the Supreme Court to outlaw early voting.

In a special action filed Friday, the party’s attorney Alexander Kolodin contends the only legal way to vote is in person and on Election Day.

He knows this because the state Constitution talks about providing ballots in “such manner that the electors may express at the polls their approval or disapproval of [a] measure.”

So, the Republican Party has filed a lawsuit

Apparently, the kitchen table that serves as the polling place for nearly three million

Arizona voters is downright unconstitutional.

“Because no-excuse mail-in voting is not exercised at the polls, it is unconstitutional,” he told Capitol Media Services’ Howard Fischer.

Which, I suppose, would mean that Ducey is no longer our governor. And our Legislature? That bunch of bums are all usurpers.

At least, if you go by the Republican Party’s logic.

Funny, I don’t recall ever hearing the party make the argument that early voting was illegal in all the years that Republicans dominated early balloting, giving them a leg up in every election.

I don’t recall hearing it after the 2020 primary election when 88% of voters cast early ballots and not a single one of our esteemed leaders cried fraud. (In fact, most of them won their seats that night given the way most legislative and congressional districts are gerrymandered.)

It's not about fraud. It's about fear

Now, however, the drive is underway in all fronts to end an insanely popular program that for 30 years has boosted turnout and served the state well.

All this, because one sore loser can’t accept defeat and too darned few of our so-called leaders will tell the emperor to put on some freaking clothes.

This isn’t about fraud. It’s about fear.

The Arizona Republican Party is scared stiff of Arizona voters.

And if its leaders somehow succeed in killing early voting, they’ll have reason to be.

Reach Roberts at laurie.roberts@arizonarepublic.com. Follow her on Twitter at [@LaurieRoberts](https://twitter.com/LaurieRoberts).

www.azcentral.com/story/opinion/op-ed/laurieroberts/2022/02/28/arizona-republican-party-scared-voters-suing-end-early-voting/9321257002/

From: [Merissa Hamilton](#)
To: [Sonny Borrelli](#)
Subject: SONNY EYES ONLY - COUNTY RFP
Date: Thursday, December 10, 2020 2:38:28 PM
Attachments: [Merissa Hamilton - Briefing Note 2020 Election 12.9.20.pdf](#)
[MC_190265-Solicitation_Addendum 2_04-09-19.pdf](#)
[MC_190265-CONTRACT.PDF](#)
[Maricopa County Dominion document \(contract\).pdf](#)

Hello Sonny,

Attached are the Maricopa County Dominion RFP Documents. I have also attached my Briefing Note with my findings of concern. For your convenience, I have also listed the pertinent sections below:

1.2 MARICOPA COUNTY DOMINION RFP

On [May 20th, 2019](#), the Elections Committee reported to BOS their intention to conduct an RFP for a new election tabulation system. They failed to state at this meeting that not only had they already begun the RFP in March, but they had chosen a vendor. Only final contract formalities and a vote remained.

Maricopa County records reflect no other vendors participated in the RFP, no screening documents with a pass/fail requirement was presented by Procurement, and no technical or security analysis reports were published before or after securing the contract with Dominion.

The [RFP](#) contains limited security requirements by Maricopa County and does not inquire regarding:

- Ownership of Dominion
- Location of Offices
- Location of Developers
- Location of Servers
- Redundancy
- Foreign Interference
- Subsidiaries
- Donations
- Investors

The Maricopa County contract with Dominion includes a [pilot period](#) that ended December 31st, 2019. No concluding tech reports of the pilot are publicly available for review.

1.3 ARIZONA SECRETARY OF STATE DOMINION CERTIFICATION

The AZ SOS Equipment Certification Advisory Committee conducted the only publicly available review of Dominion 5.5B. Anti-Trump, [Antifa apologist](#), Dominion executive Eric Coomer led two sales demos, instead of a formal Committee-driven technical analysis, to satisfy the State certification requirement. The Committee did not produce any examination reports of their findings. Only meeting [minutes](#) on October 29th, 2019 and January 28th, 2020 are publicly available, documenting the sales demos.

1.4 DOMINION SECURITY CONCERNS

In the AZ SOS [October 29th](#) meeting, Coomer says the login for adjudication is set-up as one login per adjudication team instead of an individual user. Maricopa County chose not to have full traceability and chain of custody by logging each adjudicator's user name on their machines during the election.

On [page](#) 31 of the RFP, Dominion insists on a requirement that they "must fully participate in and support the

County’s final election readiness security audit.” Direct mandatory participation in a security activity is an unusual request as the industry standard is for technology companies to always be an arms-length distance for security purposes.

On the day before Early Voting began on October 6th, 2020, Maricopa County published a video called [“Vote Centers: Inside Look”](#) that displayed all of the Dominion USB ports of the voting machines were open and unsealed. Open USB ports was the top security concern causing [Texas](#) to reject Dominion’s software model.

1.5 DOMINION TRANSPARENCY OPPORTUNITIES

On [pages](#) 19 and 37 of the RFP, Maricopa County states Dominion must be capable of posting all ballot images and adjudication records with markings on a public website. Dominion confirmed their ability to fulfill this request. Maricopa County never implemented a transparency website. After being sued for access to ballots and signatures, Maricopa County argued in court that they must [“limit eyes”](#) on any of these records.

On [page 35](#) of the RFP, Dominion confirms a key feature is conducting hand counts and risk-limiting-audits. At this time, Maricopa County BOS are ignoring public requests for a full hand count or additional audits to be conducted.

1.6 EAC CERTIFICATION

Per the US Election Assistance Commission, Dominion 5.5 B was certified based on the 15-year-old EAC voluntary guidelines from 2005. EAC was unable to update standards until 2015 because they lacked a sufficient quorum for four years. It is unknown why EAC did not use the 2015 standards to certify Dominion in 2019. MC BOS and AZ SOS claim this 15-year-old standard is sufficient to make 2020 the most secure election of our lifetime.

Merissa Hamilton
(480) 374-0102

December 9th, 2020 – **Section 1.9 and 1.10 Updated**

BRIEFING: ARIZONA ELECTION 2020

PURPOSE

This briefing documents concerns and irregularities with the 2020 General Election in Arizona with a focus on Maricopa County unless otherwise stated.

1.1 MARICOPA COUNTY VOTER REGISTRATION

*"So we did some, we did some fun stuff, and some fun negotiations to make this happen, brought some more stakeholders into the game, and they're the ones with the pockets. So we could do a lot."
~ Adrian Fontes, Democrat Activist Maricopa County Recorder on Negotiating Dominion*

In June 2019, Maricopa County Board of Supervisors (BOS) voted to remove the election operation authority from Democrat activist, County Recorder Adrian Fontes. Fontes, quoted above, described it as "some fun negotiations"...bringing in additional stakeholders with deep pockets to make this happen. Fontes negotiated to keep the responsibility of managing voter registrations and for the BOS to purchase a lease agreement with Dominion to run the election. Fontes referred to this agreement as "doing a lot."

The AZ SOS manual only requires a name, address, date of birth, and a checkmark pledging to be over 18 years of age and a citizen to register to vote. The source of the voter registration is kept confidential, preventing audits of likely fraud by 3rd parties.

If the County Recorder's office is unable to identify the voter as a valid registration, they are compelled to register the voter anyway. They may send a letter requesting confirmation of additional information. If they cannot determine legal status, then the voter is registered as a Federal Only voter, allowing them to vote in Federal elections. Arizona has approximately 34k Federal Only voters. It is unknown at this time how many voters cast Federal Only ballots.

When a voter receives election mail for someone not living at their address, there is no legal method for them to notify the Recorder and for the Recorder to correct the records for the invalid voter information. Only the voter may update their own record.

Maricopa County did state in their Election Manual that they validate voter registration against vital records. The number of inactive voter registrations due to the vital records audit is unknown.

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1.7 MARICOPA COUNTY HAND COUNT

Maricopa Counted counted 2,917 election day ballots, which is less than the 2% statutory requirement. In comparison, 2% of 167,878 election day ballots equates to 3,358 ballots.

A statistically significant hand count with 99% confidence and 1% margin of error of Election Day Ballots equates to 15,141 ballots. The current hand count conducted by Maricopa County is not sufficient and only ceremonial at best

1.8 ANALYSIS OF HIGH BIDEN/KELLY MARICOPA COUNTY PRECINCTS

There are only 127 precincts identified as 70%+ Biden/Kelly.

1.9 DECEASED VOTERS IN ARIZONA ANALYSIS

In mid-November 2020, over 129 people assisted in a preliminary audit using data supplied by the GOP Data Center to identify if there were ballots cast by deceased voters in the General Election. [Results](#) were submitted to the Arizona Attorney General's Election Integrity Unit (Intake Number: EIU-2020-29902-2316). The team researched registered voters against a highly regarded national database of persons, recommended by Forbes as a top comprehensive person search application. Three rounds of audits were conducted on alleged deceased voters that cast a ballot. When

available, the audit team cross-checked for obituary listings. Since the Maricopa County website would not accept most State Voter ID numbers as valid, it is unknown how many ballot signatures were accepted.

The sample size is statistically significant at a confidence level of 98% with a 1.74% margin of error. The results of the audit are as follows: 3,961 voter records aged 90+ reviewed | 405 (10%) records identified as possible deceased, sent a ballot and 356 ballots not cast | Of the 405 deceased records, 43 records (10% of deceased voters), possible deceased voters with ballots cast which includes 21 confirmed as likely deceased (15 in Maricopa County) , 12 possible deceased with more research needed (11 in MC) , and 10 deceased after casting a ballot.

With 10% of voter records in scope identified as alleged deceased & receiving a ballot, and 1% returning a ballot, there is a statistical possibility that the Presidential election results are not valid.

If the percentages of deceased voters held across registered voters age 79+ (or 200k voters), these illegally seeded and returned ballots are capable of overturning the results of the Presidential election in Arizona.

1.10 ANALYSIS OF TRUMP VS BIDEN DOWN BALLOT PRECINCTS

The analysis compares the Presidential & US Senate races to Congressional, State Senate, and Board of Supervisor races at the precinct level in Maricopa County. There is not a single precinct where Democrats won all down-ballot races but lost the Presidential race. The vote difference combined in all 15 Precincts referenced totals 997 with Biden receiving 25,061 (49.7%) votes and Trump receiving 24,064 (47.8%) votes. The results are as follows:

- In two precincts Biden and Trump tied in votes with Republicans winning down-ballot races except US Senate
 - LAYTON LAKES (253 VOTES) | VARNEY PARK (1650 VOTES)
- There are three precincts where Republicans won all down-ballot races in scope including US Senate, but Trump allegedly lost the Presidential race
 - 0036 AVIANO | 0193 DOBSON PARK | 0571 SAN VICTOR
- There are ten precincts where Republicans won all down-ballot races in scope but the US Senate and Presidential races
 - 0122 COLONIA | 0127 COMPADRE | 0133 COPPERWOOD | 0356 LANTANA CANYON | 0357 LAREDO | 0457 OLD WEST | 0508 PINON | 0538 RIO PASEO | 0580 SCOTTSDALE | 0584 SENTRY
- Voter turnout percentages in these precincts are unusually high:
 - The average swing voter turnout in Maricopa County is 65%, while the 15 sample precincts experienced swing voter turnout average 69%, with the highest precinct at 83%.
 - The average turnout percentage for 0/4 voters is 65%, and the average newly registered voter turnout is 71%

September Group followed up with a voter poll conducted on December 3rd and 4th with 1,926 calls made and 72 surveys completed.

- *33.3% of respondents identified as voting for Biden versus 65% identified as voting for Trump, with 1.7% responding as voting for another candidate*

CONCLUSION

With 500k new voter registrations potentially seeding illegal ballots, admittance by Sen Quezada of ballot harvesting efforts occurring in Maricopa County in past elections with a promise to continue in 2020, Dominion security concerns, and analysis showing frequent voter turnout anomalies not matching poll responses, there must be a full audit of the Arizona 2020 General Election with a focus on invalid voter registrations and ballot harvesting in unusually high voter turnout for 0/4 and new voter registrations precincts.

PENDING INVESTIGATIONS AND REVIEW

Public records requests to identify if COVID19 federal funds were funneled through organizations that may have participated in fraudulent voter registration or ballot harvesting operations are pending. Legislation is needed in 2021 to correct the identified opportunities for fraud.

PENDING FUNDING

Further work related to 1.9 and 1.10 require additional funding to identify the required illegal votes to overturn the Arizona Presidential Electors.

ADDENDUM #2 (DATED 04/09/19): SEE SECTION 2.3.3

Addendum #1 (Dated 04/04/19): See Sections 1.2, 2.0, 2.2, 5.7, 5.7.1, 5.7.3.



NOTICE OF SOLICITATION

SERIAL 190265- RFP

REQUEST FOR PROPOSAL FOR: ELECTIONS TABULATION SYSTEM

Notice is hereby given that Maricopa County is conducting this request for proposals, electronically through an outside agent, BidSync.com, until **2:00 P.M. Phoenix Time (M.S.T.) on April 30, 2019** for **SERIAL#190265-REQUEST FOR PROPOSALS FOR ELECTIONS TABULATION SYSTEM** for Maricopa County.

To participate in this bidding process, vendors shall register through BidSync.com. To register with BidSync, please go to (www.BidSync.com) and click on the orange 'Register' link. Registration has no cost, and will allow you to access all of the bid information, bid documents, receive bid notifications, and submit a response. **ONLY RESPONSES THAT ARE SUBMITTED THROUGH BIDSYNC.COM WILL BE CONSIDERED FOR AWARD.**

For assistance, please contact BidSync Vendor Support Department via phone or email, during regular business hours: 1-800-990-9339 or (support@BidSync.com).

All responses shall be submitted **electronically** to BidSync.com prior to the bid closing. The bid will be listed under **"1900265-RFP REQUEST FOR PROPOSAL FOR ELECTIONS TABULATION SYSTEM"**.

The Maricopa County Procurement Code ("The Code") governs this procurement and is incorporated by reference. Any protest concerning this Request for Proposal must be filed with the Procurement Officer in accordance with Section MC1-905 of the Code.

ALL ADMINISTRATIVE INFORMATION CONCERNING THIS REQUEST FOR PROPOSAL CAN BE LOCATED AT (<https://www.maricopa.gov/DocumentCenter/View/6453>).

ANY ADDENDA TO THIS REQUEST FOR PROPOSAL WILL BE POSTED ON THE MARICOPA COUNTY OFFICE OF PROCUREMENT SERVICES WEB SITE UNDER THE SOLICITATION SERIAL NUMBER. THIS INFORMATION WILL ALSO BE POSTED ONLINE AT (WWW.BIDSYNC.COM).

FAILURE TO REVIEW ANY ADDENDA DOES NOT NEGATE YOUR INITIAL OFFER AND HOLDS THE RESPONDENT RESPONSIBLE FOR ANY CHANGES PRIOR TO BID CLOSING.

DIRECT ALL INQUIRIES TO:
CORY SLAMA
PURCHASING MANAGER
TELEPHONE: (602) 506-2248
EMAIL: CORRY.SLAMA@maricopa.gov

THERE WILL BE A MANDATORY PRE-PROPOSAL CONFERENCE ON APRIL 8, 2019 AT 9:30 A.M. M.S.T., AT THE MARICOPA COUNTY RECORDERS OFFICE MCTEC FACILITY, 510 S. 3RD AVENUE, PHOENIX, ARIZONA 85003.

NOTE: MARICOPA COUNTY PUBLISHES ITS SOLICITATIONS ONLINE AND THEY ARE AVAILABLE FOR VIEWING AND/OR DOWNLOADING AT THE FOLLOWING INTERNET ADDRESS:

<https://www.maricopa.gov/2191/Open-Solicitations>

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REQUEST FOR PROPOSAL FOR: ELECTIONS TABULATION SYSTEM**1.0 INTENT:****1.1 Background**

For the recent 2018 election cycle, Maricopa County Elections Department (County) utilized a hybrid approach for in-person voting and it will maintain this model for the 2020 election cycle. For context, that process was as follows:

For **in-person Early Voting** (beginning at twenty seven (27) days prior to an election), Maricopa County established forty (40) “vote anywhere” Vote Center locations and utilized its ballot print vendor’s “Ballot-on-Demand” (BOD) equipment to allow for any and all ballot styles to be made available to the voter. For this Early Voting process, Maricopa County used a central count method where the voter sealed their voted ballot in an Affidavit Envelope that had their specific voter information printed on the outside of the envelope. The envelopes were transported back to our ‘Maricopa County Tabulation & Election Center’ (MCTEC) for processing through central count tabulators. As far as a tabulation system goes, the only on-site tabulation related equipment provided for Early Voting were the accessible devices required by the Help America Vote Act (HAVA).

For **in-person Election Day Voting**, the forty (40) “vote anywhere” Vote Centers remained open and were assigned a single precinct to each of those sites. They served as both a precinct assigned location for specific voters and also a “vote anywhere” Vote Center for all other voters. This required a precinct based tabulator to be deployed to those forty (40) Vote Centers but, only for Election Day. For all other voters not within an assigned precinct, they went to one of these Vote Centers on Election Day. At these Vote Centers, Maricopa County continued the central count method where the voter sealed their voted ballot in an Affidavit Envelope that was transported back to our facility on Election Night. Additionally, Maricopa County also offered the traditional precinct based polling place where voters from a specific precinct were assigned to a polling location. For the seven hundred forty three (743) precincts in Maricopa County that contain voters, several of these were consolidated for a grand total of five hundred three (503) physical locations for in-person voting on Election Day. The hybrid approach for Election Day meant that of the five hundred three (503) locations, forty (40) were Vote Centers and remaining four hundred sixty three (463) were set as traditional assigned precinct based polling locations with pre-printed ballots and precinct based tabulators.

1.2 Goal

Based on the proposals received through this solicitation, it is Maricopa County’s intent to lease or rent a voting system that is federally certified and approved for use through the U.S. Election Assistance Commission (EAC). The County will only consider proposals associated with voting systems approved by the EAC under the VVSG 1.0 Standards or greater. These standards are hereby incorporated, by reference, to the scope of work for this RFP.

The successful proposer shall replace the current tabulation system/Election Management System (EMS) and continue the hybrid approach of offering precinct based tabulators along with central count tabulators for early voting returns. In addition, at all in-person sites (early or Election Day), a HAVA compliant accessible marking or voting device is required.

A full complement of equipment to meet the goal outlined above shall be comprised of five hundred fifty three (553) precinct based tabulators (503 locations + 10% backup) and central count equipment to accommodate for tabulation of over 1.5 million vote-by-mail (early) ballots in a given election as further outlined in the minimum qualifications, Section 2.0.

Arizona Secretary of State (SOS) Certification of the tabulation system is also required. If such certification has not yet been acquired, a one (1) election cycle allowance will be granted to permit for “piloting” of new equipment by the County. The County will consider this allowance if the Proposer does not yet have SOS certification but, the Proposer must outline in its proposal, and accept as part of a final contract, that they will apply for SOS certification before the “**SOS** pilot” allowance timeframe expires. If SOS Certification is not sought or issued **by the SOS** for any reason, **the County will terminate the contract, and** the Proposer ~~will~~**shall have no recourse. hold the County harmless.** For

any contractual obligations that may have already been entered into, those obligations will be considered null and void and permit the County to cancel the contract with no penalty.

Other governmental entities under agreement with the County may have access to services provided hereunder (see also Section 3.17 and 3.18 below)

2.0 SCOPE OF WORK:

All descriptions stated in Section 1.0 above are to be considered inclusive to this Scope of Work.

Pilot Deployment

The County intends to ~~award a contract enter an agreement that allows~~ for a “pilot” or partial voting system deployment to be in place and ready for use on or before July 8, 2019. The voting system will be used in a local election occurring on November 5, 2019. **This “pilot,” or partial deployment, will only require precinct based equipment for no more than four (4) locations and central count tabulators to accommodate no more than 50,000 returned early ballots.**

In order to meet the “ready for use” July 8, 2019 date, the limited set of equipment must be delivered for acceptance testing and setup no later than June 17, 2019. Equipment must be delivered to the County MCTEC facility warehouse, located at 315 W BUCHANAN PHOENIX, AZ 85003.

All proposals must include a quote for the cost of this “pilot” program that will allow the County and the voters to use the proposed voting system in this reduced equipment environment. Proposers must be able to provide complete, fully functioning voting systems and all necessary equipment, software and related technology to accommodate these locations, as well as early ballot returns, along with technical support for this “pilot” deployment. Assessment of the “pilot” program shall be considered in the evaluation to determine whether or not a final agreement will be entered into.

Final Deployment

With a successful “pilot” deployment, the County **reserves the option to direct the successful proposer to provide** ~~anticipates it would consider entering into a final agreement as early as November 8, 2019. This agreement would request~~ the full scope of equipment as recommended by the Proposer and agreed upon by the County that meets the minimum qualifications noted below to accommodate the equipment quantities noted in Section 1.0 above. The Election Management System (EMS) software would already be in place from the “pilot” program, so upon awarding the final agreement, the balance of the hardware and equipment must begin to be provided so that it is received no later than January 10, 2020 in order to begin acceptance testing for use for the March 2020 elections.

Should the “pilot” be ~~deemed~~ unsuccessful, as determined **in the sole discretion** by the County, the **County may choose to option will exist at the discretion of the County to** either not move forward with a final agreement with the awarded firm or to extend the voting system testing under a “continued pilot” process for the next scheduled election. The next scheduled election would be March 10, 2020. If the “continued pilot” option is exercised, it will continue to be a deployment of no more than four (4) locations with central count tabulators to accommodate for 50,000 returned early ballots.

If the “continued pilot” program occurs, and after assessment by the County is found to be successful, the County **reserves the option to enter** ~~would consider entering~~ into a final agreement by March 13, 2020 to lease or rent a full complement and quantity of equipment as recommended by the Proposer and agreed upon by the County that meets the minimum qualifications noted below to accommodate the equipment quantities noted in Section 1.0 above. The Election Management System (EMS) software would already be in place from this “continued pilot” program so, upon awarding the final agreement, the balance of the hardware and equipment must be received no later than March 23, 2020 in order to begin acceptance testing for use for the August 2020 election.

Minimum Qualifications

All proposals must represent voting systems that fulfill the following minimum qualifications. (Any proposal representing a system that does not meet the minimum qualifications will be declared non-responsive and given no further consideration.):

Certification and Scope

- Certified by the EAC under the Voluntary Voting System Guide (VVSG) 1.0 or greater.
- Certified by the SOS or, if under “pilot” status, agrees to apply for certification as outlined in this scope of work.
- Supports a minimum of 2.2 million registered voters with evidence of a current customer that is using the proposed equipment and system that has over 900,000 registered voters.

Capabilities

- Uses paper ballots.
- Precinct based and central count tabulators must provide for tabulation of up to 15,000 (30,000 preferred) ballots styles to allow for district splits and coding to prevent certain ballots from tabulating at the polls.
- Allows for the printing of hard copy result reports of votes cast at each polling location.
- Ability to process over 1.5 million returned vote-by-mail ballots within a one-week time period during an eight (8) hour daily shift. Typically, over 400,000 ballots are received within the two days prior to Election Day, including ballots dropped off on Election Day. In this proposal, Proposer should provide the estimated quantity of central count equipment necessary to meet this volume.
- Supports the processing of multi-page ballots.
- Provide for the ability to import district relations and candidate data files for the ballot building processes without major conversion requirements (e.g. accept flat files, text files, etc.).
- Ballots must provide for offset targets so that on a two-sided ballot, if bleed through occurred, it would not land on the opposite sided target.
- Ability to provide rotation using the Arizona specific rotation formula and, if not currently available, at the County’s discretion and request, would code and seek EAC certification for such rotation at no added cost.
- Ability to process provisional ballots returned from polling locations through central count tabulators.
- Ability to tabulate and, subsequently, report out by user defined categories including Election Day, Provisional and Early. Additionally, have the ability to report by ballot type for each of these categories (i.e. paper ballot and accessible device), with the option to add additional reportable categories in the future (e.g. Duplicated Ballots, Write-in Ballots, etc.).
- Ability to use print vendor of County choice for ballot production (Proposer can establish certification requirements).
- Ability to Co-Locate precincts while maintaining ability to report results by unique precincts.
- Ability to Consolidate Jurisdictions (splits) while maintaining the ability to report results by jurisdiction - most importantly the capability to report at the ballot split level (“Ballots Cast,” registered voter results).
- Ability to handle and defined process for handling Recounts of over 1.6 million ballots within a six (6) day window.

Accessible Voting

- Supports accessible voting to occur in excess of five hundred three (503) polling locations with fifty (50) backup units.
- Accessible devices must securely allow for use at early voting locations that require these units to remain open (without having to close polls daily).
- If proposing an accessible marking device, must not store any votes and must instead print a paper ballot that can either be tabulated on site through a precinct based tabulator or central count.
- Accessible voting or marking device must open and load for the voter in approximately one (1) minute for all options, to include an audio ballot.
- Accessible voting device that is used as a tabulator must provide for a paper audit trail.
- Accessible voting device that is used as a tabulator must provide for tabulation of up to 30,000 ballots styles.

Adjudication

- Must allow for digital adjudication of blanks, over-votes, and write-ins.
- Ability to configure adjudication using upwards of one hundred (100) terminals and allow for or capable of working towards an air-gap between central count tabulators and the server used for adjudication.

Leasing

Proposers are advised to develop proposals to not only allow for the above noted “pilot” process but, also, for a final lease or rental agreement that contemplates initial terms of three (3), four (4), and five (5) years. Additionally, each proposal should include a maximum of three (3) one (1)-year extension options that would only be exercised after the initial term expires **for a maximum contract term of six years.** Any final agreement will require the Proposer to maintain a performance bond for the duration of the agreement in the amount of \$1.5 million. **A performance bond is not required until after the successful completion of the pilot program for which the performance bond must be provided to Maricopa County’s Office of Procurement Services within ten (10) calendar days after the Recorders Office notifies the successful firm of the successful pilot program.**

The County’s purpose in leasing or renting, rather than purchasing a voting system, is to increase the County’s flexibility in adopting better technologies and/or transitioning to different voting models during the term of the contract. For instance, under the agreement, the Selected Proposer will update the EMS software with newer and/or updated software without additional costs to the County, should updates become available.

Future Service Models

One possible model the County may adopt during the term of the contract is for all voters to receive vote-by-mail ballots and organizing several Vote Centers. The final agreement will require the awarded contractor to provide the necessary equipment and services associated with the County adopting different service models at the same per unit cost as prescribed for at the beginning of the contract (e.g. more central count equipment may be required during the term of the contract and should be made available at original equipment lease pricing).

Open Data

The County practices and promotes open data initiatives. The County intends to continually increase the data that is publicly available in open formats, including data generated by the leased or rented system. As such, the County may publish cast vote records and the voting system’s adjudications of each marking of a ballot.

Responses to this RFP must fully describe the functionalities of their systems that support the County in implementing post-election “Hand Count” audits. The specificities of this process can be provided in detail to the Proposer but basically, during the central count tabulation process, the voting system and tabulator must be able to efficiently report the results for a specific batch of ballots run. The reports are sequestered and sealed with that batch of ballots for a post-election citizen-board “Hand Count” audit. In the future, the County may consider conducting ballot-level audits of multiple contests simultaneously. Ballot-level audits are likely the most efficient type of audit in assessing and predicting whether election results for one (1) or more contests are valid. Any system selected must be able to move towards that method of auditing (i.e. risk-limiting audit).

Disposition of Current System and Equipment

~~The County encourages Proposers to provide solutions regarding the disposition of the County’s current voting system. Any disposition of the current system must comply with and follow the EAC and the Department of Defense (DoD) recommendations for disposal of voting equipment so that, prior to such disposal, all software and firmware is removed rendering the system and all equipment non-functioning.~~

Multiple Concurrent Elections

Voting systems proposed must be capable of conducting all regular, consolidated, recall, special, and district elections. In the event the County must prepare for more than one (1) election concurrently, the proposed voting system must facilitate preparation and ballot formatting for multiple or separate elections within the same timeframe.

Ballot Styles

The configuration and operation of the voting system proposed must be capable of processing up to 15,000 (30,000 preferred) different ballot styles for one (1) election.

The proposed voting systems must allow for official ballot content to be formatted in English and Spanish in hard copy, digital, and audio formats. The proposed voting systems must allow the County to import audio files for languages which are not written languages (e.g. Tohono O’odham). The voting systems must demonstrate the capability to increase the number of languages available for ballot formatting if needed.

Image-based System

The County is interested in obtaining an image-based voting system, **but an image based system is not required.** Image-based voting systems can more effectively append the interpretation or intent of each vote to a ballot image. This provides an additional layer of review regarding the system's accuracy.

All proposals must represent voting systems utilizing technology that captures images of ballots with the ability to tabulate vote tallies from those images. The voting systems must capture images of all ballots voted at either polling locations or vote-by-mail (early) voters. The voting systems must also be capable of accumulating both sets of ballot data for tallying and result reporting.

In regards to adjudication programs or applications, the voting systems represented in all proposals must facilitate an image-based adjudication application or program that describes how the voting systems interpreted each vote-marking. The systems must either incorporate an adjudication application or program into the functions of the base voting systems as approved by the EAC, or the voting systems must facilitate an adjudication function that is separate from the base voting systems but must have approval and certification from the EAC.

Technology Delineation

The proposal ~~shall~~ outline all of the components of the technology solution including software and hardware. The proposals ~~shall~~ also delineate which of these technology components will be provided by the vendor and which are to be provided by the County. The proposal ~~shall~~ also outline how these technology components will be maintained and supported over the course of the pilot and on an ongoing basis.

2.1 **SUPPORT SERVICES:**

The County also seeks support for the entire pilot election process from early voting through tabulation and canvassing. These services are outlined as follows:

- 2.1.1 **System Support Services** – The Proposer selected under this RFP will be responsible for all aspects of the initial implementation of the voting system. The Proposer will also be responsible for providing the necessary materials and documentation associated with the voting system implementation to the County such as, but not limited to, the following:
- Initial acceptance testing to ensure all system components are operating correctly.
 - Deliver the entire system and all components to the County.
 - Prepare the system network in concert with the County IT Department to ensure the voting system is secure and operating properly.
 - Install all components to fully conduct elections.
 - Provide system documentation to include Use Procedures, training materials and maintenance plans.
 - Provide information on proposed maintenance plan (e.g. yearly preventative maintenance).
 - Conduct approval testing to verify that all installed components operate properly, as a complete, fully-functioning voting system to include:
 - Conduct end-to-end testing on the voting system prior to final approval. This will include specific information security testing as outlined by the County's information security group.
 - Prepare the voting system for conducting logic and accuracy testing using a process approved by the County.
 - Conduct functional testing that includes stress testing the voting system to ensure that all components will properly process the volume of materials and data similar to volumes the County expects during an election.
- 2.1.2 **Training and Instruction** - The final agreement will require the Selected Proposer to provide instruction to the County's personnel to successfully and independently conduct elections using the voting system. Proposals must describe the manner by which County personnel will be trained and instructed to successfully and independently use all aspects of the voting system. Training and instruction should include:
- Training materials and manuals

- Should be outlined for both the “pilot” deployment and for future elections
- Should note how training would occur when updates or system changes are made

2.1.3 **Election-Specific Support** - Certain support elements may be based on the actual equipment and software selected so the “final agreement” will outline the exact levels of support requested designed around the voting system selected. There are known standard support items needed for all system and the Proposer must provide quotes for the following:

- Assigning personnel experienced in the operation and maintenance of the system to staff a phone bank on Election Day at the MCTEC facility.
- Assigning personnel to fulfill roles as technicians to support the County on Election Day to ensure all equipment and technology is operating appropriately at all polling locations and in the various County offices.
- Assigning personnel who are experienced in repairing the voting system’s equipment during the election cycle, to include anytime the ballots are being tabulated (pre & post-election), or a timeframe as determined by the County.
- Assigning personnel to train County Staff and support the County in the use of the EMS for tabulating and generating result reports.
- Maintaining an inventory of parts for repairing equipment to remove risks that the voting system or its equipment are inoperable due to a lack of spare parts.
- Assigning personnel to assist the County in performing maintenance and repairs based on the maintenance plan submitted, should it be required.

Additional Services

Additionally, proposals must include descriptions of the Proposer’s ability, upon the request of the County, to provide on-site support for critical processes such as those listed below, and for the cost of such support to be factored into the price of the proposal:

- Formatting and building of ballots to include data imports from County’s system.
- Logic and accuracy testing.
- Ballot tabulation.
- Results accumulation.
- Results reporting.
- Equipment repair and preventative maintenance.
- Equipment storage and off-cycle maintenance.

The County reserves the right to add additional contractors, at the County’s sole discretion, in cases where the currently listed contractors are of an insufficient number or skill-set to satisfy the County’s needs or to ensure adequate competition on any project or task order work.

2.2 **OPTIONAL PREFERENCES:**

The County verifies hash codes of all software and firmware that is in escrow at the Secretary of State’s (SOS) Office and on file with National Institute of Standards and Technology (NIST). The County is interested in also hashing result reports and any documents associated with the certification of elections. This process should be supported for all software and preferably, in current or future iterations for all daily result reports, as well as the statement of the vote, and any letter of certification the County submits to the Board of Supervisors with final results. The County expects to extend this practice to other reports that the leased or rented voting system could generate, such as transaction log reports. ~~Proposers may gain additional points to their proposal’s evaluation scores for systems that facilitate the hashing of result reports and other system-related information.~~ Ideally, at the time the system generates result reports, the system will also generate a cryptographic hash for the content that can be posted on the County’s website.

Arizona does not currently use ranked-choice voting (RCV) but, with legislative changes possible from session to session, and a possible lease term of five (5) years or more, it is preferred that the proposed voting system be capable of conducting RCV elections. The specifics of such a process are not defined for Arizona, proof that a variation of RCV is available in the system is adequate.

The County conducts “Hand Count Audits” as noted in Section 2.0 but as an option preference, the County requests that the Proposers describe how their voting systems support the application of risk-limiting post-election audits.

For the digital adjudication, there is a preference to allow for both digital adjudication that writes directly to the ballots cast record (tabulation) along with a “print queue” feature as well as an option to print the adjudicated ballot as a hard copy version.

While not an element included in the minimum qualifications for proposals, the County prefers an imaged-based voting system that will facilitate the format and issuance of ballots to voters through a remote accessible option (e.g. UOCAVA Voters). The ballot should be in a fillable portable data format (PDF) for distribution/delivery to these voters.

The County prefers the voting system to have the ability to identify a digitally adjudicated ballot should the gathering of the physical ballot be required. As part of this RFP and in the below Evaluation Phase, the County will ask the Proposer to describe in more detail how the voting system scanners will work towards identifying adjudicated ballots.

Disposition of Current System and Equipment

The County encourages Proposers to provide solutions regarding the disposition of the County’s current voting system. Any disposition of the current system must comply with and follow the EAC and the Department of Defense (DoD) recommendations for disposal of voting equipment so that, prior to such disposal, all software and firmware is removed rendering the system and all equipment non-functioning.

2.3 **MISCELLANEOUS:**

2.3.1 **Warranty** - For the duration of any final agreement, the selected voting system will be under full warranty. The warranty will cover all aspects of the voting system, including all equipment, technology and all components attached to or necessary for functionality of the equipment to conduct elections in the County. The warranty must also cover any software or firmware patches, fixes, and updates, including any associated installation, testing, the necessary support to implement the changes, as well as the approval by the SOS. The proposal must identify the minimum response time for said warranty repairs for each warranted item noted.

2.3.2 **Adjudication of Ballot Markings** - The County may opt to post all ballot images on its website to increase the transparency of vote tallying and election results. Additionally, the County may opt to post information indicating how the system interpreted each marked vote for each contest on every ballot. All proposals must clearly state and provide examples of how the related voting systems will facilitate adjudications and the posting of the ballot-specific adjudication records for each marked vote and related data sets on the County’s website.

2.3.3 **Maricopa County Ballot Building & EMS Import Files**

For the past 2018 General Election there are a total of 65 items that were imported to build that election. The 5 listed below are the main files used to build and setup the election, district relations and State Candidates and those all are .CSV files. These particular files are imported out of Maricopa County’s “Voter Registration/Candidate Filling” internal system to be used to import into an EMS for ballot building purposes.

The below listed files are being provided as a .zip file titled “**BASE IMPORTS**”:

- Ballot Order
- Candidates
- Districts
- Offices
- Precincts

In addition, the County also has 60 word documents that contain the text for the Statewide Propositions along with all jurisdictional/local candidates and measures (*in a .zip file titled “**JURID IMPORTS-Local and State**”*). These are specific to those entities (city/town) that tag onto this countywide election in addition to how the County captures and imports the Statewide Propositions. There are separate documents for English and Spanish because the County does not have enough

room on a General Election ballot to put both languages on one ballot. With that, the County instead builds separate ballots for English and Spanish during General Elections. For Primary and other standalone local elections, the English and Spanish appear on the same ballot.

These 65 documents have been collected and are being provided should a vendor choose to download them to validate usability within ones EMS and Ballot Building Software.

3.0 **PROCUREMENT REQUIREMENTS:**

3.1 **DELIVERY:**

3.1.1 Delivery shall be stipulated on the Purchase Order. Contractor shall notify County Representative listed on the order if the requested delivery date cannot be met and the anticipated lead time. Failure to communicate to County changes in the order status may result in default proceedings.

3.1.2 Delivery shall be F.O.B. Destination Freight Prepaid.

3.2 **PERFORMANCE:**

It shall be the Contractor's responsibility to meet the proposed performance requirements. Maricopa County reserves the right to obtain services on the open market in the event the Contractor fails to perform and any price differential will be charged against the Contractor.

3.3 **SHIPPING TERMS:**

Bid price(s) and terms shall be F.O.B. Destination at Phoenix, Arizona 85003.

3.4 **OPERATING MANUALS:**

Upon delivery, Contractor shall provide comprehensive operational manuals, service manuals and schematic diagrams, if required by the Department.

3.5 **INSTALLATION:**

The Contractor's price shall include delivery and installation of all equipment in a complete operating condition.

3.6 **ACCEPTANCE:**

Upon delivery and successful installation, the material(s) shall be deemed accepted and the warranty period shall begin. All documentation shall be completed prior to final acceptance.

3.7 **INFRINGEMENT DEFENSE INDEMNIFICATION:**

3.7.1 Defense and Indemnity: Contractor shall defend, Participate and Share in the Cost, as defined below, in the full defense of the County against any Claim, as defined below, and will indemnify and hold harmless the County as provided for in this Section for any judgments, settlements and court awarded attorney's fees resulting from a Claim where the claimant is adjudged the successful party in the Claim. Contractor's obligations under this Section are conditioned on the following: (i) County promptly notifies Contractor of the Claim in writing upon made aware of the Claim; (ii) County gives Contractor lead authority and County being control of the defense and (if applicable) settlement of the Claim, provided that County's legal counsel may participate in such defense and settlement, at County's expense, and (iii) County provides all information and assistance reasonably requested by Contractor to handle the defense or settlement of the Claim. For purposes of this Section, "Claim" means any cause of action in a third party action, suit or proceeding against County alleging that Contractor software, or its upgrades, modifications, or revisions, as of its delivery date under this Agreement, infringes a valid U.S. patent, copyright or trademark. For the purposes of this

section, “Participate and Share in the Costs” means Contractor will assist the County in the defense of the claim, to the extent agreed to by the parties, except that Contractor shall be solely responsible for any and all costs adjudged in a successful Claim against the County.

- 3.7.2 Remedial Measures: If software becomes, or Contractor reasonably believes use of software may become, the subject of a Claim, Contractor may, at its own expense and option: (i) procure for County the right to continue use of the Product; (ii) replace or modify the software; or to the extent that neither (i) nor (ii) are deemed commercially practicable, (iii) refund to County a pro-rated portion of the applicable fees for software based on a linear depreciation monthly over ten (10) year useful life, in which case County will cease all use of software and return it to Contractor.
- 3.7.2.1 Exceptions: Contractor will have no defense or indemnity obligation for any Claim based on: (i) modifications by someone other than Contractor; (ii) software has been modified by Contractor in accordance with County-provided specifications or instructions; (iii) use or combination by the County of software with Third Party Products, open source or freeware technology; (iv) Third Party Products, open source or freeware technology; (v) a product that is used or located by County in a country other than the country in which or for which it was supplied by Contractor; (vi) possession or use of a product after Contractor has informed County of modifications or changes required to avoid such Claim and offered to implement those modifications or changes, if such Claim would have been avoided by implementation of Contractor's suggestions and to the extent County did not provide Contractor with a reasonable opportunity to implement Contractor's suggestions; or (vii) the amount of revenue or profits earned or other value obtained by the use of Products, or the amount of use of the Products. “Third Party Products” means any products made by a party other than Contractor, and may include, without limitation, products ordered by County from third parties. However, components of Contractor branded Products are not Third Party Products if they are both: (i) embedded in Third Party Products (i.e., not recognizable as standalone items); and (ii) not identified as separate items on Contractor’s price list, quotes, order specifications forms or Documentation.
- 3.7.3 The foregoing states Contractor’s entire liability, and County’s sole and exclusive remedy except as provided at law or equity, with respect to any infringement or misappropriation of any intellectual property rights of another party.

3.8 SOURCE CODE ESCROW REQUIREMENT:

- 3.8.1 The Contractor shall provide all source code and any updates or fixes for the Contractor Commercial Off the Shelf (“COTS”) application software that Maricopa County has purchased from Contractor for safekeeping with an mutually acceptable escrow agent within thirty (30) days of award. The software source deposited with the escrow agent will be a snapshot of all source code maintained by Contractor in the form of a Microsoft Visual Source Safe Archive. In this way, as beneficiary of the escrow agreement between Contractor and escrow agent, Maricopa County will have access to all source code of the products that they license for all versions of the software. Furthermore, the escrowed code shall include all code specifically developed for Maricopa County including, but not limited to: interfaces, Extraction-Transformation-Loading (ETL) routines for data conversion, and all custom code. Upon taking possession of the source code, Maricopa County will have the right to use the source for products that they license in the versions currently installed on the System or any subsequent versions in the archive. Contractor will make a deposit of the Source Safe Archive with the escrow agent upon the release of version release or once every six (6) months, whichever occurs first.
- 3.8.2 Maricopa County hereby agrees to pay the yearly standard fee for a beneficiary of the source code.
- 3.8.3 Maricopa County shall have access to the source code in the event any of the following circumstances:

- 3.8.3.1 The sale, assignment, or transfer to any third party of any of Contractor's rights in the licensed product (or any portion thereof) if such sale, assignment, or transfer would prevent Contractor from fully performing any of its obligations under any agreement with Maricopa County;
 - 3.8.3.2 Contractor becomes insolvent or commits any affirmative act of insolvency, or generally fails to pay, or admits in writing its inability to pay, debts as they become due, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under, or case in, any bankruptcy or insolvency law, or Contractor takes any action to authorize, or in the furtherance of, any of the foregoing;
 - 3.8.3.3 Contractor discontinues providing full support and maintenance services for the licensed product in accordance with its obligations pursuant to any agreement with Maricopa County;
 - 3.8.3.4 Contractor has ceased to do business or improperly refuses to provide any services pursuant to any agreement with Maricopa County;
 - 3.8.3.5 Contractor has breached (and if subject to a cure period, has not cured such breach within such period) any material term or condition of any agreement with Maricopa County;
 - 3.8.3.6 Any change of control of Contractor or Contractor's parent company, where such party is acquired, directly or indirectly, in a single transaction or series of related transactions, or all or substantially all of the assets of such party are acquired by any entity, or such party is merged with or into another entity to form a new entity; or
 - 3.8.3.7 Any other circumstance in which Maricopa County is entitled to access or use the applicable deposit materials (including, but not limited to, the source code) under the express terms of any agreement between Contractor and Maricopa County.
- 3.8.4 Upon Maricopa County taking possession of the source code, Maricopa County hereby agrees as follows:
- 3.8.4.1 Maricopa County accepts full and total responsibility for the safekeeping of the source code. Maricopa County agrees that such source code shall be subject to the restrictions of transfer, sale, and reproduction placed on the software itself as stated in the software license signed by all parties.
 - 3.8.4.2 Maricopa County agrees to only use source code related to applications for which they own a license. There will be source from other applications in the archive.
 - 3.8.4.3 Maricopa County agrees, if so ordered by a court of competent jurisdiction, to compensate Contractor for any and all damages Contractor suffers, to include reasonable attorney's fees, resulting directly or indirectly from, but not limited to, the mishandling, misuse, or theft of the source code, regardless of intent, or the absence thereof, by Maricopa County, its employees, agents and third party contractors.
 - 3.8.4.4 No license under any trademark, patent, copyright, or any other intellectual property right, is either granted or implied by the disclosure of the source code to Maricopa County. The Contractor's disclosure of the source code to Maricopa County shall not constitute any representation, warranty, assurance, guarantee or inducement by the Contractor to Maricopa County of any kind, and, in particular, with respect to the non-infringement of trademarks, patents, copyrights, or any other intellectual property rights, or other rights of third persons or of Contractor.

3.8.4.5 Contractor will not be responsible for maintaining the source code. Furthermore, Contractor will not be liable for any consequences related to the use of source code modified by Maricopa County.

3.9 CONTRACTOR EMPLOYEE MANAGEMENT:

3.9.1 Contractor shall endeavor to maintain the personnel proposed in their proposal throughout the performance of this Contract. In the event that Contractor personnel's employment status changes, Contractor shall provide County a list of proposed candidates with equivalent experience. Under no circumstances is it acceptable for the implementation schedule to be impacted by a personnel change on the part of the Contractor.

3.9.2 Contractor shall not reassign any key personnel without the express consent of the County.

3.9.3 County reserves the right to immediately remove from its premises any Contractor personnel it determines is a risk to County operations.

3.9.4 County reserves the right to request the replacement of Contractor personnel at any time, for any reason.

3.10 WARRANTY:

3.10.1 All items furnished under this Contract shall conform to the requirements of this Contract and shall be free from defects in design, materials and workmanship.

3.10.2 The warranty period for workmanship and materials shall be for an initial period of twelve (12) months and commence upon acceptance by County.

3.10.2.1 The Contractor shall indicate on the Price Sheet the duration of the warranty and any applicable limitations or conditions which may apply.

3.10.2.2 The Contractor agrees that he will, at his own expense, provide all labor and parts required to remove, repair or replace, and reinstall any such defective workmanship and/or materials which becomes or is found to be defective during the term of this warranty. The Contractor shall guarantee the equipment to be supplied complies with all applicable regulations.

3.11 FACTORY AUTHORIZED SERVICE AVAILABILITY:

The Contractor shall have and maintain a local factory authorized service facility within the Phoenix, Arizona metropolitan area. The facility shall be capable of supplying and installing component parts, troubleshooting, repairing and maintaining the material(s). Minimum service hours shall be from 8:00 A.M. through 5:00 P.M., M.S.T., Monday through Friday.

3.12 BACKGROUND CHECK:

Bidders/proposers need to be aware that there may be multiple background checks (Sheriff's Office, County Attorney's Office, Courts as well as Maricopa County general government) to determine if the respondent is acceptable to do business with the County. This applies to (but is not limited to) the company, subcontractors and employees and the failure to pass these checks shall deem the respondent non-responsible.

3.13 INVOICES AND PAYMENTS:

3.13.1 The Contractor shall submit one (1) legible copy of their detailed invoice before payment(s) can be made. Incomplete invoices will not be processed. At a minimum, the invoice must provide the following information:

- Company name, address and contact

- County bill-to name and contact information
- Contract Serial Number
- County purchase order number
- Invoice number and date
- Payment terms
- Date of service or delivery
- Quantity
- Contract Item number(s)
- Description of Purchase (product or services)
- Pricing per unit of purchase
- Freight (if applicable)
- Extended price
- Mileage w/rate (if applicable)
- Arrival and completion time (if applicable)
- Total Amount Due

3.13.2 Problems regarding billing or invoicing shall be directed to the Department as listed on the Purchase Order.

3.13.3 Payment shall only be made to the Contractor by Accounts Payable through the Maricopa County Vendor Express Payment Program. This is an Electronic Funds Transfer (EFT) process. After Contract Award the Contractor shall complete the Vendor Registration Form located on the County Department of Finance Vendor Registration Web Site (<http://www.maricopa.gov/922/Vendors>).

3.13.4 Discounts offered in the contract shall be calculated based on the date a properly completed invoice is received by the County.

3.13.5 EFT payments to the routing and account numbers designated by the Contractor will include the details on the specific invoices that the payment covers. The Contractor is required to discuss remittance delivery capabilities with their designated financial institution for access to those details.

3.14 APPLICABLE TAXES:

3.14.1 Payment of Taxes: The Contractor shall pay all applicable taxes. With respect to any installation labor on items that are not attached to real property performed by Contractor under the terms of this Contract, the installation labor cost and the gross receipts for materials provided shall be listed separately on the Contractor's invoices.

3.14.2 State and Local Transaction Privilege Taxes: To the extent any State and local transaction privilege taxes apply to sales made under the terms of this contract it is the responsibility of the seller to collect and remit all applicable taxes to the proper taxing jurisdiction of authority.

3.14.3 Tax Indemnification: Contractor and all subcontractors shall pay all Federal, State, and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold Maricopa County harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or State and local laws and regulations, and any other costs including; transaction privilege taxes, unemployment compensation insurance, Social Security, and Worker's Compensation.

3.15 TAX (SERVICES):

No tax shall be invoiced or paid against Contractor's labor. It is the responsibility of the Contractor to determine any and all applicable taxes and include the cost in the proposal price.

3.16 TAX (COMMODITIES):

Tax shall not be invoiced against Contractor's labor. It is the responsibility of the Contractor to determine any and all applicable taxes and include the tax percentage in their proposal.

3.17 STRATEGIC ALLIANCE for VOLUME EXPENDITURES (\$AVE):

The County is a member of the \$AVE cooperative purchasing group. \$AVE includes the State of Arizona, many Phoenix metropolitan area municipalities, and many K-12 unified school districts. Under the \$AVE Cooperative Purchasing Agreement, and with the concurrence of the successful Respondent under this solicitation, a member of \$AVE may access a contract resulting from a solicitation issued by the County. If you do not want to grant such access to a member of \$AVE, please so state in your proposal. In the absence of a statement to the contrary, the County will assume that you do wish to grant access to any contract that may result from this Request for Proposal.

3.18 INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENTS (ICPA's):

County currently holds ICPA's with numerous governmental entities. These agreements allow those entities, with the approval of the Contractor, to purchase their requirements under the terms and conditions of the County Contract. It is the responsibility of the non-County government entity to perform its own due diligence on the acceptability of the Contract under its procurement rules, processes and procedures.

3.19 POST AWARD MEETING:

The Contractor may be required to attend a post-award meeting with the Department to discuss the terms and conditions of this Contract. This meeting will be coordinated by the Procurement Officer of the Contract.

3.20 CONFIDENTIALITY:

In the course of the solicitation process, the County may disclose information that is proprietary or confidential. By submitting a proposal to the solicitation, the offeror agrees that, except as necessary to prepare a response to this solicitation, neither it nor its agents or employees will communicate, divulge or disseminate to any third party-persons or entities, any information that is disclosed to it by the County during the course of these discussions without the express written authorization of the County. If the offeror does disclose County proprietary or confidential information to a third party in preparing a response to this solicitation, it shall require the third party to acknowledge and comply with this provision.

3.21 PUBLIC RECORDS:

Under Arizona law, all Offers submitted and opened are public records and must be retained by the Records Manager at the Office of Procurement Services. Offers shall be open to public inspection and copying after Contract award and execution, except for such Offers or sections thereof determined to contain proprietary or confidential information by the Office of Procurement Services. If an Offeror believes that information in its Offer or any resulting Contract should not be released in response to a public record request under Arizona law, the Offeror shall indicate the specific information deemed confidential or proprietary and submit a statement with its offer detailing the reasons that the information should not be disclosed. Such reasons shall include the specific harm or prejudice which may arise from disclosure. The Records Manager of the Office of Procurement Services shall determine whether the identified information is confidential pursuant to the Maricopa County Procurement Code.

3.22 INFLUENCE:

As prescribed in MC1-1203 of the Maricopa County Procurement Code, any effort to influence an employee or agent to breach the Maricopa County Ethical Code of Conduct or any ethical conduct, may be grounds for Disbarment or Suspension under MC1-902.

An attempt to influence includes, but is not limited to:

- 3.22.1 A Person offering or providing a gratuity, gift, tip, present, donation, money, entertainment or educational passes or tickets, or any type of valuable contribution or subsidy,
- 3.22.2 That is offered or given with the intent to influence a decision, obtain a contract, garner favorable treatment, or gain favorable consideration of any kind.

If a Person attempts to influence any employee or agent of Maricopa County, the Chief Procurement Officer, or his designee, reserves the right to seek any remedy provided by the Maricopa County Procurement Code, any remedy in equity or in the law, or any remedy provided by this contract.

ABSOLUTELY NO CONTACT BETWEEN THE RESPONDENT AND ANY COUNTY PERSONNEL, OTHER THAN THE OFFICE OF PROCUREMENT SERVICES, IS ALLOWED DURING THE SOLICITATION PROCESS UNLESS THE COMMUNICATION IS IN REGARDS TO PRE-EXISTING BUSINESS WITH THE COUNTY. ANY COMMUNICATIONS REGARDING THE SOLICITATION, ITS PARTICIPANTS OR ANY DOCUMENTATION PRIOR TO THE CONTRACT AWARD MAY BE GROUNDS FOR DISMISSAL OF THE RESPONDENT FROM THE EVALUATION PROCESS.

4.0 CONTRACTUAL AND SPECIAL TERMS & CONDITIONS:

4.1 DRAFT CONTRACT SEE EXHIBIT 5:

5.0 INSTRUCTIONS TO RESPONDENTS: (Please note that this Section does not become part of any resultant contract.)

Proposers are solely responsible for submitting proposals, and any modifications or withdrawals, to be received at the time and designated location required by the solicitation (ITN, RFP, or any other solicitation notice).

Any proposal, modification, or withdrawal received after the designated time is “late” and will be rejected and shall not be evaluated per Paragraph MC1-320 of the Maricopa County Procurement Code.

5.1 SCHEDULE OF EVENTS:

Request for Proposals Issued: March 28, 2019

Pre-Proposal Conference: April 8, 2019

Deadline for written questions is two (2) business days after Pre-Proposal Conference. Questions will **not** be responded to prior to the Pre-Proposal Conference or after the two (2) business day deadline has elapsed. All questions and answers shall be posted to (www.bidsync.com) under the Q&A’s tab for the solicitation and must be received by the end of business, 5:00 PM Phoenix Time (M.S.T.)

Proposals Opening Date: April 30, 2019

Deadline for submission of proposals is 2:00 P.M., Phoenix Time (M.S.T.), on **April 30, 2019**. All proposals must be received before 2:00 P.M., Phoenix Time (M.S.T.), on the date above via BidSync.com.

Proposed review of Proposals and short list decision: May 8, 2019

Proposed Respondent presentations: (if required) Week of May 17, 2019

Proposed selection and negotiation: Week of May 24, 2019

Proposed Best & Final (if required) Week of May 31, 2019

Proposed award of Contract: June 26, 2019

All responses to this Request for Proposal become the property of Maricopa County and (other than pricing) will be held confidential, to the extent permissible by law. The County will not be held accountable if material from proposal responses is obtained without the written consent of the Respondent by parties other than the County.

5.2 INQUIRIES AND NOTICES:

All inquiries concerning information herein shall be addressed to:

Maricopa County
Office of Procurement Services
320 West Lincoln Street
Phoenix, Arizona 85003

Administrative telephone inquiries shall be addressed to:

Corry Slama, Procurement Supervisor, 602-506-2248
(corry.slama@maricopa.gov)

Inquiries may be submitted by telephone but must be followed up in writing. No oral communication is binding on Maricopa County.

5.3 INSTRUCTIONS FOR PREPARING AND SUBMITTING PROPOSALS:

Respondents shall submit their proposals electronically via the BidSync.com system in accordance with Section 5.5 as follows:

- Respondents shall upload each response document individually.
- All documents must be uploaded in their native file format (Word, Excel, etc.).
- The following naming convention shall be utilized for each document: Vendor Name – Document Name as indicated in section 5.5.
- In the event that the Respondent would like to request that certain documents be held confidential, they need to have a name indicating confidential. Please see Exhibit 4 – Draft Contract section 6.29 Public Records for more information.
- Proposals shall be signed by an owner, partner or corporate official who has been authorized to make such commitments (Attachment B). All prices shall be held firm for a period of one (1) year after the RFP closing date.

5.4 GENERAL CONTENT:

5.4.1 The Proposal should be specific and complete in every detail. It should be practical and provide a straightforward, concise delineation of capabilities to satisfactorily perform the Contract being sought.

5.4.2 The Respondent should not necessarily limit the proposal to the performance of the services in accordance with this Request for Proposal but should outline any additional services and their costs if the Respondent deems them necessary to accomplish the program.

5.5 FORMAT AND CONTENT:

To aid in the evaluation, it is desired that all proposals follow the same general format. The proposal must be submitted electronically and have sections clearly labeled as below: (Responses are limited to one hundred (100) pages, ten (10) point font type).

5.5.1 Letter of Transmittal (Exhibit 2)

5.5.2 Executive Summary – This section shall contain an outline of the general approach utilized in the proposal.

- 5.5.3 Proposal – This section should contain a statement of all of the programs and services proposed, including conclusions and generalized recommendations. Proposals should be all-inclusive, detailing respondent’s best offer. Proposers must clearly demonstrate that their voting systems meet these minimum qualifications in Section 2.0. Insufficient or incomplete information may result in a proposal being considered non-responsive and ineligible for entering into a final agreement. If required information is complete, but the selection panel determines that the Proposer does not meet the minimum qualifications, the Proposer may be deemed non-responsive.
- 5.5.4 Qualifications – This section shall describe the respondent’s ability and experience related to the programs and services proposed. All project personnel, as applicable, shall be listed including a description of assignments and responsibilities, a resume of professional experience, an estimate of the time each would devote to this program, and other pertinent information.
- 5.5.5 Proposal exceptions
- 5.5.6 Attachment A (Pricing)
- 5.5.7 Attachment B (Agreement Page)
- 5.5.8 Attachment C (References)
- 5.5.9 Exhibit 3, Sole Proprietor Waiver (If applicable)

5.6 EXCEPTIONS TO THE SOLICITATION:

The Respondent shall identify and list all exceptions taken to all sections of 190265-RFP and list these exceptions referencing the section/paragraph where the exception exists and identify the exceptions and the proposed wording for the Respondent’s exception under the heading, “Exception to the Proposal Solicitation, SERIAL 190265-RFP”. **Exceptions that surface elsewhere and that do not also appear under the heading, “Exceptions to the Proposal Solicitation, SERIAL 190265-RFP” shall be considered invalid and void and of no contractual significance.**

The County reserves the rights to: accept any exception, discuss the exemption with the offeror, or reject any exception.

5.7 EVALUATION OF PROPOSAL – SELECTION FACTORS:

Screening of Minimum Qualifications (Pass/Fail) - The selection panel will review the proposals and determine whether or not the Proposer’s system meets the minimum qualifications referenced in Section 2.0 of this RFP, **(i.e. Certification and Scope, Capabilities, Accessible Voting, Adjudication (and sub-bulleted items for these sections.))** The level of review of the minimum qualifications is a pass or fail determination and will not be scored. Only those proposals that meet the minimum qualifications are eligible to proceed to the succeeding evaluation phases.

The County reserves the right to request clarifications from Proposer’s prior to rejecting a proposal for failing to meet the minimum qualifications. Clarifications are limited exchanges between the County and Proposers for the purpose of clarifying certain aspects of the proposals, and will not provide Proposers the opportunity to revise or modify their proposal.

A Proposal Evaluation Committee shall be appointed and chaired by the Procurement Officer to evaluate each Proposal **that meets the minimum qualifications.** At the County’s option, Respondents may be invited to make presentations to the Evaluation Committee. Best and final offers and/or negotiations may be conducted, as needed, with the highest rated Respondent(s).

All requirements in Section 2.2, Optional Preferences will not be scored or considered in evaluating the proposals.

Proposals **that meet the Minimum Qualifications** will be evaluated on the following criteria which are listed in descending or equal order of importance.

5.7.1 Respondent's Written Proposed Solution/Compliance with Specifications

- a. **Proposer Meets County Contractor Requirements** - The County's Office of Procurement Services will review the documentation that Proposer submits to determine whether, at the time of submitting the proposal, Proposer meets all of the requirements necessary for Contractors to do business with the County.
- b. **Open Source Software Features** - The County supports voting systems using open source software on Commercial Off-The-Shelf (COTS) hardware. Evaluations of proposals will determine the ability of the system to incorporate open source components or applications and COTS hardware, based on whether or not it:
 - Uses or has the ability to incorporate open source components, programs, or applications into or in conjunction with the Proposer's system.
 - Uses or has the ability to incorporate COTS hardware.
 - Supports programs or applications to conduct post-election audits **to include but, not limited to, risk limiting audits** using open source programs or applications incorporated into or in conjunction with the Proposer's system.
- c. **Supports County's Open Data Initiative** - The Department practices and promotes the County's open data initiatives. An evaluation of the proposals will determine the ability of the Proposer's system to increase the data available in machine-readable formats for posting on the Department's website, submitted to the SOS and made available to the public. **This is a mandatory requirement.**
- d. **Warranty** - During the term of a lease or rental agreement, Proposers **willshall** ensure a warranty on all aspects of their system. The warranty must also cover any software or firmware patches, fixes, and updates, including any associated installation, testing, approval by the SOS, and necessary support to implement the changes.
 - Proposer indicates the lease or rental agreement will provide warranty for hardware.
 - Proposer indicates the lease or rental agreement will provide warranty on all software, firmware, patches, and fixes, including those required by the SOS or by changes in law.
- e. **Adjudication Programs or Applications** - The County prefers a system with a robust ballot adjudication program or application that clearly explains how the system interpreted each vote-marked, on each ballot, for each contest or measure, which is incorporated into the system's functions.
 - The adjudication program or application operates seamlessly with tabulation processes with minimal additional steps or processing.
 - The adjudication program or application exports interpretations of votes-marked for posting on the County's website.
 - The adjudication program or application provides easy-to-read ballot-level reports.
 - The adjudication program or application provides clear association between adjudication reports and the original ballots.
 - Proposer **it to** describes how the voting system scanners identify adjudicated ballots. If available in the Proposer's voting system, describe whether the voting system can export the information in a manner that the County could cross-reference if needed to gather the original ballot.
- f. **Supports Cryptographic Hashing of System, Election-Related Data, and Reports** - The County can manually apply SHA-512 cryptographic hashes to daily result reports, statements of vote, and letter of certification the County submits to the Board of Supervisors to formally declare the results of an election.

Definition: A cryptographic hash function is a special classification that has certain properties which make it suitable for use in cryptography. It is a mathematical algorithm that maps data of arbitrary size to a bit string of a fixed size (a hash) and is designed to be a one-way function, that is, a function which is infeasible to invert. (*Wikipedia*).

Ideally, the County prefers that, at the time the system generates result reports, the system also generates and archives a cryptographic hash for content that can be posted on the County's website. **This preference will not be scored as part of the evaluation. Proposals may receive additional points on their evaluation scores if the system facilitates the hashing of result reports, other system related information, and data when generated by the system.**

5.7.2 Support Services Offered

a. Installation Plan - Provides clear plans, outcomes, and documentation regarding the installation of the system as it relates to:

- Delivering the system to the County.
- Conducting initial acceptance testing.
- Preparing the system network, ensuring the system is secure and operating properly.
- Installing all system components to fully conduct elections.
- Providing system documentation, user manuals, training materials, and maintenance plans and procedures.
- Conducting approval testing to verify all components are operating properly.
- Conducting end-to-end testing prior to final acceptance.

Additionally, the Installation Plan must also:

- Provide clearly stated project approach.
- Provide an understanding of the project and the tasks to be performed.
- Provide reasonable work schedule and project approach.
- Indicate the availability of Proposer's personnel with recent experience in similar projects and a description of the tasks to be performed.
- Demonstrate successful completion of recent similar projects with an adherence to stated schedules, deadlines and budgets.

b. Training and Instruction - All Proposers must describe the manner by which County personnel will be trained and instructed to successfully and independently use all aspects of the system. Proposers must demonstrate that they are able, upon the request of the County, to provide on-site support and training for critical processes such as those listed below:

- Formatting ballots, to include but not limited to:
 - Candidate import from County system.
 - District relation import from County system.
 - Candidate rotation build (AZ Rotation).
 - Graphic/image import.
 - Proof generation and reports.
- Logic and accuracy testing.
- Ballot processing.
- Results accumulation.
- Results reporting.
- Equipment repair and preventative maintenance.
- Storage and off-cycle maintenance.

c. Election-Specific Support - Proposers must provide detailed information regarding their ability to provide personnel and support during each election cycle regarding the operation of their systems and equipment at the polls and at the County offices. This support requested would be specific to Federal Elections unless otherwise noted, to include:

- **For Federal elections:** Assigning at least one (1) individual experienced in the operation of the system to staff a phone bank at the MCTEC Facility on Election Day.
 - **For Federal elections:** Assigning an adequate number of personnel who are experienced in repairing the system’s equipment during the election cycle and on Election Day.
 - **For all elections:** Assigning at least one individual experienced to serve as troubleshooting technicians at the MCTEC Facility or to serve as field technicians in specific areas of the County on Election Day.
 - **For all elections:** Assigning an adequate number of personnel to support the system’s functions that accumulate voting result data and generate result reports.
- d. **Maintenance Plan** - Proposers must provide detailed information regarding the proposed maintenance of their systems and equipment to include:
- Assigning an adequate number of personnel during any pre-election and post-election maintenance cycles as recommended to successfully upkeep system and equipment.
 - Maintaining an inventory of parts for repairing equipment during testing and use during election cycles to remove risks that the system or its equipment are inoperable due to a lack of spare parts.
 - Providing COTS equipment information and specifications along with any alternate COTS hardware or peripherals that are compatible with the voting system.
 - Timelines expected for any and all recommended maintenance cycles and plans.
 - Assigning personnel to assist the Department in performing preventative maintenance and repairs.

5.7.3 Pilot Program Offered

Due to the condensed timeframe in which this RFP is looking to be executed and finalized, **successful implementation of** the “pilot” program is critical to the **decision whether the option for award of the full scope of this requirement** point as to if a final agreement will be entered into with the awarded contractor for the full scope of equipment.

As noted in Section 2.0, this “pilot,” or partial deployment will only require **precinct based equipment for no more than four (4) locations and central count tabulators to accommodate no more than 50,000 returned early ballots**. There is a limited number of upcoming election opportunities to conduct this “pilot” deployment so, this portion of the RFP is vital with the equipment needing to be received by June 17, 2019, as further outlined in the scope of work. The evaluation of this phase is based on the following:

- a. **Pilot Cost (Shipping, Installation, Setup and Testing)** – Provide recovery costs requested for shipping and delivery to the County of the “pilot” equipment and system. Additionally, provide setup, installation and testing costs that are requested to be covered by the County as part of this “pilot” or limited system deployment.
- b. **Pilot Installation Plan** – As critical as this “pilot” deployment is to the finalization of an agreement, like a full system deployment, it is requested that clear plans, outcomes, and documentation regarding the installation of the “pilot” system be provided as it relates to:
- Delivering the “pilot” system to the County.
 - Conducting initial acceptance testing.
 - Preparing the system network, ensuring the system is secure and operating properly.
 - Installing all system components to fully conduct “pilot” election.
 - Conducting approval testing to verify all components are operating properly.
 - Providing “pilot” project timelines that work within the noted timeframes as indicated in the Scope 2.0.
 - Provide an understanding of the “pilot” project and the tasks to be performed.
- c. **Pilot Training and Instruction** - All Proposers must describe the manner by which

Department personnel will be trained and instructed to successfully conduct this “pilot” election. Due to the condensed timeframes and with the limited scope of this “pilot” deployment, high overview training for County Staff is allowed for but preference is given to those Proposers that can demonstrate that they are able to provide support and training for the specific and critical processes such as:

- Formatting ballots, to include but not limited to:
 - Candidate import from County system.
 - District relation import from County system.
 - Candidate rotation build (AZ Rotation).
 - Graphic/image import.
 - Proof generation and reports.
- Logic and accuracy testing.
- Ballot processing.
- Results accumulation.
- Results reporting.

d. Pilot Election Support - Proposers must provide detailed information regarding their ability to provide personnel and support during this “pilot” election regarding the operation of their system and equipment. The support structure proposed should be geared towards this limited equipment deployment as noted above and further outlined in Sections 1 and 2. This “pilot” support should include:

- Assigning at least one individual that is experienced in both the operation of the system and as a troubleshooter technician that can be on-site to staff a phone bank at the MCTEC Facility for Election Day.
- Assigning adequate number of personnel to support the system’s functions that accumulate voting result data and generate result reports.
- Assigning an adequate number of personnel during the “pilot” election and on Election Day who are experienced in repairing the system’s equipment. Due to the limited equipment deployment, this responsibility can be assigned to the “troubleshooter technician,” if proficient.

5.7.4 Price

NOTE 1: RESPONDENTS ARE REQUIRED TO USE ATTACHED FORMS TO SUBMIT THEIR PROPOSAL.

NOTE 2: RESPONDENTS ARE STRONGLY ENCOURAGED TO REVIEW MARICOPA COUNTY’S PROCUREMENT ADMINISTRATIVE INFORMATION PRIOR TO SUBMITTING A BID. FOR THIS INFORMATION, GO TO: (<https://www.maricopa.gov/DocumentCenter/View/6453>).

ATTACHMENT A

PRICING

SEE BIDSYN.COM EXCEL SPREADSHEET STAND-ALONE PRICING PAGE

ATTACHMENT B

AGREEMENT

Respondent hereby certifies that Respondent has read, understands and agrees that acceptance by Maricopa County of the Respondent's Offer will create a binding Contract. Respondent agrees to fully comply with all terms and conditions as set forth in the Maricopa County Procurement Code, and amendments thereto, together with the specifications and other documentary forms herewith made a part of this specific procurement.

BY SIGNING THIS PAGE THE SUBMITTING RESPONDENT CERTIFIES THAT RESPONDENT HAS REVIEWED THE ADMINISTRATIVE INFORMATION AND STANDARD CONTRACT'S TERMS AND CONDITIONS LOCATED AT (<http://www.maricopa.gov/DocumentCenter/View/6453>) AND AGREE TO BE CONTRACTUALLY BOUND TO THEM.

Small Business Enterprise (SBE) (check box if applicable)

RESPONDENT (FIRM) SUBMITTING PROPOSAL

FEDERAL TAX ID NUMBER

DUNS #

PRINTED NAME AND TITLE

AUTHORIZED SIGNATURE

ADDRESS

TELEPHONE

FAX #

CITY

STATE

ZIP

DATE

WEB SITE

EMAIL ADDRESS

ATTACHMENT C

RESPONDENT'S REFERENCES

RESPONDENT SUBMITTING PROPOSAL: _____

1. COMPANY NAME: _____
ADDRESS: _____
CONTACT PERSON: _____
TELEPHONE: _____ E-MAIL ADDRESS: _____

2. COMPANY NAME: _____
ADDRESS: _____
CONTACT PERSON: _____
TELEPHONE: _____ E-MAIL ADDRESS: _____

3. COMPANY NAME: _____
ADDRESS: _____
CONTACT PERSON: _____
TELEPHONE: _____ E-MAIL ADDRESS: _____

4. COMPANY NAME: _____
ADDRESS: _____
CONTACT PERSON: _____
TELEPHONE: _____ E-MAIL ADDRESS: _____

5. COMPANY NAME: _____
ADDRESS: _____
CONTACT PERSON: _____
TELEPHONE: _____ E-MAIL ADDRESS: _____

EXHIBIT 1**BIDSYNC REGISTRATION AND ELECTRONIC SUBMISSION REQUIREMENTS**

BidSync.com Registration is FREE and REQUIRED for all vendors.

Register On-line at (<https://www.bidsync.com>).

Select Free Registration. Upon completion of your on-line registration, you are responsible for updating any changes to your information. Please retain your Login ID and Password for future use.

For assistance, please contact BidSync Vendor Support Department via phone or email, during regular business hours: 1-800-990-9339 or (agency support@BidSync.com).

BIDSYNC ELECTRONIC SUBMISSION INSTRUCTIONS

When submitting a response (proposal, quote or bid) electronically through BidSync, it is the sole responsibility of the supplier to ensure that the response is received by BidSync prior to the closing date and time. Each of the following steps in BidSync MUST be completed in order to place an offer:

- A. Login to www.bidsync.com;
- B. Locate the bid (solicitation) to which you are responding;
 - a. Click the “Search” tab on the top left of the page;
 - b. Enter keyword or bid (solicitation) number and click “Search”;
- C. Click on the “Bid title/description” to open the Bid (solicitation) Information Page;
- D. “View and Accept” documents in the document section;
- E. Select “Place Offer” found at the bottom of the page;
- F. Enter your pricing, notes, other required information, and upload attachments to this page;
- G. Click “Submit” at the bottom of the page;
- H. Review Offer(s); and
- I. Enter your password and click “Confirm”.

Note that the final step in submitting a response involves the supplier’s acknowledgement that the information and documents entered into the BidSync system are accurate and represent the supplier’s actual proposal, quote or bid. This acknowledgement is registered in BidSync when the supplier clicks “Confirm”. BidSync will post a notice that the offer has been received. This notice from BidSync MUST be recorded prior to the closing date and time or the response will be considered late and will not be accepted. Be aware that entering information and uploading documents into BidSync may take considerable time. Please allow sufficient time to complete the online forms and upload documents. Suppliers should not wait until the last minute to submit a response. It is recommended that suppliers submit responses a minimum of 24 hours prior to the closing deadline. The deadline for submitting information and documents will end at the closing time indicated in the solicitation. All information and documents must be fully

entered, uploaded, acknowledged (Confirm) and recorded into BidSync before the closing time or the system will stop the process and the response will be considered late and will not be accepted.

Responses submitted in BidSync are completely secure. No one (including County purchasing staff) can see responses until after the deadline. Suppliers may modify or change their response at any time prior to the closing deadline. However, all modifications or changes must be completed and acknowledged (Confirm) in the BidSync system prior to the deadline. BidSync will post a notice that the modification/change (new offer) has been received. This notice from BidSync MUST be recorded prior to the closing date and time or the response will be considered late and will not be accepted. If you have not been asked to enter your password and click Save to save your response, your offer has not been updated.

Please be aware that typing in your password acts as your electronic signature, which is just as legal and binding as an original signature. (See Electronic Signatures in Global and National Commerce Act for more information.)

EXHIBIT 2

SAMPLE TRANSMITTAL LETTER

(To be typed on the letterhead of Offeror)

Maricopa County
Office of Procurement Services
320 West Lincoln Street
Phoenix, Arizona 85003-2494

Re: 190265-RFP; Elections Tabulation System

To Whom It May Concern:

(NAME OF COMPANY) (Herein referred to as the "RESPONDENT"), hereby submits its response to your Request for Proposal dated _____, and agrees to perform as proposed in their proposal, if awarded the contract. The Respondent shall thereupon be contractually obligated to carry out its responsibilities respecting the services proposed.

Kindly advise this in writing on or before _____ if you should desire to accept this proposal.

Very truly yours,

NAME (please print)

SIGNATURE

TITLE (please print)

EXHIBIT 3

SOLE PROPRIETOR WAIVER



MARICOPA COUNTY RISK MANAGEMENT
222 North Central Avenue, Suite 1110
Phoenix, Arizona 85004

SOLE PROPRIETOR WAIVER

NOTE: THIS FORM APPLIES ONLY TO MARICOPA COUNTY DEPARTMENTS, DISTRICTS, BOARDS, COMMISSIONS AND UNIVERSITIES UTILIZING SOLE PROPRIETORS WITH NO EMPLOYEES. IF YOU ARE CONTRACTING WITH A CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP OR SOLE PROPRIETORS WITH EMPLOYEES, THIS FORM DOES NOT APPLY.

The following is a written waiver under the compulsory Workers' Compensation laws of the State of Arizona, A.R.S. §23-901 (et. seq.), and specifically, A.R.S. §23-961(L), that provides that a Sole Proprietor may waive his/her rights to Workers' Compensation coverage and benefits.

I am a sole proprietor and I am doing business as _____ (name of Sole Proprietor's Business). I am performing work as an independent contractor for Maricopa County. For Workers' Compensation purposes, therefore, I am not entitled to Workers' Compensation benefits from Maricopa County.

I understand that if I have any employees working for me, I must maintain Workers' Compensation insurance on them.

Name of Sole Proprietor			Social Security Number	Telephone Number
Street Address / P.O. Box		City	State	Zip Code
Signature of Sole Proprietor			Date	
Maricopa County Office of Procurement Services				
Signature of Procurement Officer			Date	

Both signatures must be present and the completed form submitted by the Procurement Officer to Maricopa County Risk Management, 222 North Central Avenue, Suite 1110, Phoenix, AZ 85004. An authorized Risk Management Representative will sign and return to the Maricopa County Office of Procurement Services to be maintained in their records.

Signature of Risk Management Representative

Date

EXHIBIT 4**OFFICE OF PROCUREMENT SERVICES CONTRACTOR TRAVEL AND PER DIEM POLICY**

- 1.0 All contract-related travel plans and arrangements shall be prior-approved by the County Contract Administrator.
- 2.0 Lodging, per diem and incidental expenses incurred in performance of Maricopa County/Special District (County) contracts shall be reimbursed based on current U.S. General Services Administration (GSA) domestic per diem rates for Phoenix, Arizona. Contractors must access the following internet site to determine rates (no exceptions): (www.gsa.gov).
 - 2.1 Additional incidental expenses (i.e., telephone, fax, internet and copying charges) shall not be reimbursed. They should be included in the contractor's hourly rate as an overhead charge.
 - 2.2 The County will not (under no circumstances) reimburse for Contractor guest lodging, per diem or incidentals.
- 3.0 Commercial air travel shall be reimbursed as follows:
 - 3.1 Coach airfare will be reimbursed by the County. Business class airfare may be allowed only when preapproved in writing by the County Contract Administrator as a result of the business need of the County when there is no lower fare available.
 - 3.2 The lowest direct flight airfare rate from the Contractors assigned duty post (pre-defined at the time of contract signing) will be reimbursed. Under no circumstances will the County reimburse for airfares related to transportation to or from an alternate site.
 - 3.3 The County will not (under no circumstances) reimburse for Contractor guest commercial air travel.
- 4.0 Rental vehicles may only be used if such use would result in an overall reduction in the total cost of the trip, not for the personal convenience of the traveler. Multiple vehicles for the same set of travelers for the same travel period will not be permitted without prior written approval by the County Contract Administrator.
 - 4.1 Purchase of comprehensive and collision liability insurance shall be at the expense of the contractor. The County will not reimburse contractor if the contractor chooses to purchase this coverage.
 - 4.2 Rental vehicles are restricted to sub-compact, compact or mid-size sedans unless a larger vehicle is necessary for cost efficiency due to the number of travelers. (NOTE: contractors shall obtain pre-approval in writing from the County Contract Administrator prior to rental of a larger vehicle.)
 - 4.3 County will reimburse for parking expenses if free, public parking is not available within a reasonable distance of the place of County business. All opportunities must be exhausted prior to securing parking that incurs costs for the County. Opportunities to be reviewed are the DASH; shuttles, etc. that can transport the contractor to and from County buildings with minimal costs.
 - 4.4 County will reimburse for the lowest rate, long-term uncovered (e.g. covered or enclosed parking will not be reimbursed) airport parking only if it is less expensive than shuttle service to and from the airport.
 - 4.5 The County will not (under no circumstances) reimburse the Contractor for guest vehicle rental(s) or other any transportation costs.
- 5.0 Contractor is responsible for all costs not directly related to the travel except those that have been pre-approved by the County Contract Administrator. These costs include (but not limited to) the following: in-room movies, valet service, valet parking, laundry service, costs associated with storing luggage at a hotel, fuel costs associated with non-County activities, tips that exceed the per diem allowance, health club fees, and entertainment costs. Claims for unauthorized travel expenses will not be honored and are not reimbursable.

- 6.0 Travel and per diem expenses shall be capped at 15% of project price unless otherwise specified in individual contracts.
- 7.0 Contractor shall provide, (upon request) with their invoice(s), copies of receipts supporting travel and per diem expenses, and if applicable with a copy of the written consent issued by the Contract Administrator. No travel and per diem expenses shall be paid by County without copies of the written consent as described in this policy and copies of all receipts.

EXHIBIT 5
DRAFT CONTRACT

SERIAL 190265 RFP ELECTIONS TABULATION SYSTEM

DATE OF LAST REVISION: June 26, 2019

CONTRACT END DATE: July 31, 2022

CONTRACT PERIOD THROUGH JULY 31, 2022

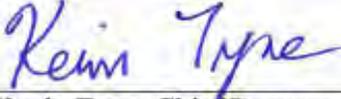
TO: All Departments

FROM: Office of Procurement Services

SUBJECT: Contract for **ELECTIONS TABULATION SYSTEM**

Attached to this letter is published an effective purchasing contract for products and/or services to be supplied to Maricopa County activities as awarded by Maricopa County on **June 26, 2019 (Eff. 08/01/19)**.

All purchases of products and/or services listed on the attached pages of this letter are to be obtained from the vendor holding the contract. Individuals are responsible to the vendor for purchases made outside of contracts. The contract period is indicated above.



Kevin Tyne, Chief Procurement Officer
Office of Procurement Services

CS/mm
Attach

Copy to: Office of Procurement Services
Rey Valenzuela, Records Office/Elections



CONTRACT: ELECTIONS TABULATION SYSTEM (190265-RFP)

This Contract is entered into this 26th day of July, 2019 by and between Maricopa County (“County”), a political subdivision of the State of Arizona, and Dominion Voting Systems, Inc., a Delaware corporation (“Contractor”) for the purchase of Maricopa Election Tabulation System.

1.0 CONTRACT TERM:

1.1 This Contract is for a term of three (3) years, beginning on the 1st day of August, 2019 and ending the 31st day of July, 2022.

1.2 The County may, at its option and with the agreement of the Contractor, renew the term of this Contract for additional terms up to a maximum of three (3) additional years, (or at the County’s sole discretion, extend the contract on a month-to-month bases for a maximum of six (6) months after expiration). The County shall notify the Contractor in writing of its intent to extend the Contract term at least sixty (60) calendar days prior to the expiration of the original contract term, or any additional term thereafter.

1.3 CONTRACT COMPLETION:

The Contractor shall make all reasonable efforts for an orderly transition of its duties and responsibilities to another provider and/or to the County. This may include, but is not limited to the preparation of a transition plan and cooperation with the County or other providers in the transition. The transition includes the transfer of all records, and other data in the possession, custody or control of Contractor required to be provided to the County either by the terms of this agreement or as a matter of law. The provisions of this clause shall survive the expiration or termination of this agreement.

2.0 PRICE ADJUSTMENTS:

Any requests for reasonable price adjustments must be submitted sixty (60) calendar days prior to the Contract expiration or annual anniversary or bi-annual date etc. Requests for adjustment in cost of labor and/or materials must be supported by appropriate documentation. The reasonableness of the request will be determined by comparing the request with the Consumer Price Index or by performing a market survey. If County agrees to the adjusted price terms, County shall issue written approval of the change and provide an updated version of the Contract. The new change shall not be in effect until the date stipulated on the Contract.

3.0 PAYMENTS:

3.1 As consideration for performance of the duties described herein, County shall pay Contractor the sum(s) stated in Exhibit “A.” **Maricopa County is not required to lease the following optional items as part of the final contract, Dominion shall, however, provide a demonstration of these Optional offerings as part of the pilot program.:**

- **ImageCast Precinct Ballot Box-553,**
- **Automated Test Deck-1,**
- **Remote UOCAVA-1.**

- 3.2 Payment shall be made upon the County's receipt of a properly completed invoice.
- 3.3 INVOICES:
- 3.3.1 The Contractor shall submit one (1) legible copy of their detailed invoice before payment(s) will be made. Incomplete invoices will not be processed. At a minimum, the invoice must provide the following information:
- Company name, address and contact
 - County bill-to name and contact information
 - Contract Serial Number
 - County purchase order number
 - Project name and/or number
 - Invoice number and date
 - Payment terms
 - Date of service or delivery
 - Quantity
 - Contract Item number(s)
 - Description of Purchase (product or services)
 - Pricing per unit of purchase
 - Freight (if applicable)
 - Extended price
 - Mileage w/rate (if applicable)
 - Arrival and completion time (if applicable)
 - Total Amount Due
- 3.3.2 Problems regarding billing or invoicing shall be directed to the Department as listed on the Purchase Order.
- 3.3.3 Payment shall only be made to the Contractor by Accounts Payable through the Maricopa County Vendor Express Payment Program. This is an Electronic Funds Transfer (EFT) process. After Contract Award the Contractor shall complete the Vendor Registration Form located on the County Department of Finance Vendor Registration Web Site (<http://www.maricopa.gov/922/Vendors>).
- 3.3.4 Discounts offered in the contract shall be calculated based on the date a properly completed invoice is received by the County.
- 3.3.5 EFT payments to the routing and account numbers designated by the Contractor will include the details on the specific invoices that the payment covers. The Contractor is required to discuss remittance delivery capabilities with their designated financial institution for access to those details.
- 3.4 APPLICABLE TAXES:
- 3.4.1 Payment of Taxes: The Contractor shall pay all applicable taxes. With respect to any installation labor on items that are not attached to real property performed by Contractor under the terms of this Contract, the installation labor cost and the gross receipts for materials provided shall be listed separately on the Contractor's invoices.
- 3.4.2 State and Local Transaction Privilege Taxes: To the extent any State and local transaction privilege taxes apply to sales made under the terms of this Contract it is the responsibility of the seller to collect and remit all applicable taxes to the proper taxing jurisdiction of authority.
- 3.4.3 Tax Indemnification: Contractor and all subcontractors shall pay all Federal, State, and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold Maricopa County harmless from

any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or State and local laws and regulations, and any other costs including; transaction privilege taxes, unemployment compensation insurance, Social Security, and Worker's Compensation.

3.5 TAX (SERVICES):

No tax shall be invoiced or paid against Contractor's labor. It is the responsibility of the Contractor to determine any and all applicable taxes.

3.6 TAX (COMMODITIES):

Tax shall not be invoiced against Contractor's labor. It is the responsibility of the Contractor to determine any and all applicable taxes.

3.7 STRATEGIC ALLIANCE for VOLUME EXPENDITURES (\$AVE):

The County is a member of the \$AVE cooperative purchasing group. \$AVE includes the State of Arizona, many Phoenix metropolitan area municipalities, and many K-12 unified school districts. Under the \$AVE Cooperative Purchasing Agreement, and with the concurrence of the successful Respondent under this solicitation, a member of \$AVE may access a contract resulting from a solicitation issued by the County.

3.8 INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENTS (ICPA's):

County currently holds ICPA's with numerous governmental entities. These agreements allow those entities, with the approval of the Contractor, to purchase their requirements under the terms and conditions of the County Contract. It is the responsibility of the non-County government entity to perform its own due diligence on the acceptability of the Contract under its procurement rules, processes and procedures.

4.0 AVAILABILITY OF FUNDS:

4.1 The provisions of this Contract relating to payment for services shall become effective when funds assigned for the purpose of compensating the Contractor as herein provided are actually available to County for disbursement. The County shall be the sole judge and authority in determining the availability of funds under this Contract. County shall keep the Contractor fully informed as to the availability of funds.

4.2 If any action is taken by, any State agency, Federal department, or any other agency or instrumentality to suspend, decrease, or terminate its fiscal obligations under, or in connection with, this Contract, County may amend, suspend, decrease, or terminate its obligations under, or in connection with, this Contract. In the event of termination, County shall be liable for payment only for services rendered prior to the effective date of the termination, provided that such services are performed in accordance with the provisions of this Contract. County shall give written notice of the effective date of any suspension, amendment, or termination under this Section, at least ten (10) days in advance.

5.0 DUTIES:

5.1 The Contractor shall perform all duties stated in Exhibit "B", or as otherwise directed in writing by the Procurement Officer.

5.2 During the Contract term, County may provide Contractor's personnel with adequate workspace for consultants and such other related facilities as may be required by Contractor to carry out its contractual obligations.

6.0 TERMS AND CONDITIONS:

6.1 INDEMNIFICATION:

To the fullest extent permitted by law, and to the extent that claims, damages, losses or expenses are not covered and paid by insurance purchased by the Contractor, the Contractor shall defend indemnify and hold harmless the County (as Owner), its agents, representatives, agents, officers, directors, officials, and employees from and against all claims, damages, losses, and expenses (including, but not limited to attorneys' fees, court costs, expert witness fees, and the costs and attorneys' fees for appellate proceedings) arising out of, or alleged to have resulted from the negligent acts, errors, omissions, or mistakes relating to the performance of this Contract.

Contractor's duty to defend, indemnify, and hold harmless the County, its agents, representatives, agents, officers, directors, officials, and employees shall arise in connection with any claim, damage, loss, or expense that is attributable to bodily injury, sickness, disease, death or injury to, impairment of, or destruction of tangible property, including loss of use resulting there from, caused by negligent acts, errors, omissions, or mistakes in the performance of this Contract, but only to the extent caused by the negligent acts or omissions of the Contractor, a subcontractor, any one directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

The scope of this indemnification does not extend to the sole negligence of County.

Except for the indemnification obligations contained in this agreement, Contractor's total aggregate liability for any loss, damage, costs or expenses under or in connection with this agreement, howsoever arising, including without limitation, loss, damage, costs or expenses caused by breach of contract, negligence, strict liability, breach of statutory or any other duty shall in no circumstances exceed the total dollar amount of the agreement. Neither party shall be liable for any loss of profits, loss of business, loss of data, loss of use or any other indirect, incidental, punitive, special or consequential loss or damage whatsoever, howsoever arising, incurred by the other party or any third party, whether in an action in contract, negligence or other tort, even if the parties or their representatives have been advised of the possibility of such damages.

6.2 INFRINGEMENT DEFENSE INDEMNIFICATION:

6.2.1 Defense and Indemnity: Contractor shall defend, Participate and Share in the Cost, as defined below, in the full defense of the County against any Claim, as defined below, and will indemnify and hold harmless the County as provided for in this Section for any judgments, settlements and court awarded attorney's fees resulting from a Claim where the claimant is adjudged the successful party in the Claim. Contractor's obligations under this Section are conditioned on the following: (i) County promptly notifies Contractor of the Claim in writing upon being made aware of the Claim; (ii) County gives Contractor lead authority and County being control of the defense and (if applicable) settlement of the Claim, provided that County's legal counsel may participate in such defense and settlement, at County's expense, and (iii) County provides all information and assistance reasonably requested by Contractor to handle the defense or settlement of the Claim. For purposes of this Section, "Claim" means any cause of action in a third party action, suit or proceeding against County alleging that Contractor software, or its upgrades, modifications, or revisions, as of its delivery date under this Contract, infringes a valid U.S. patent, copyright or trademark. For the purposes of this section, "Participate and Share in the Costs" means Contractor will assist the County in the defense of the claim, to the extent agreed to by the parties, except that Contractor shall be solely responsible for any and all costs adjudged in a successful Claim against the County.

6.2.2 Remedial Measures: If software becomes, or Contractor reasonably believes use of software may become the subject of a Claim, Contractor may, at its own expense and

option: (i) procure for County the right to continue use of the Product; (ii) replace or modify the software; or to the extent that neither (i) nor (ii) are deemed commercially practicable, (iii) refund to County a pro-rated portion of the applicable fees for software based on a linear depreciation monthly over 10 year useful life, in which case County will cease all use of software and return it to Contractor.

6.2.2.1 Exceptions: Contractor will have no defense or indemnity obligation for any Claim based on: (i) modifications by someone other than Contractor; (ii) software has been modified by Contractor in accordance with County-provided specifications or instructions; (iii) use or combination by the County of software with Third Party Products, open source or freeware technology; (iv) Third Party Products, open source or freeware technology; (v) a product that is used or located by County in a country other than the country in which or for which it was supplied by Contractor; (vi) possession or use of a product after Contractor has informed County of modifications or changes required to avoid such Claim and offered to implement those modifications or changes, if such Claim would have been avoided by implementation of Contractor's suggestions and to the extent County did not provide Contractor with a reasonable opportunity to implement Contractor's suggestions; or (vii) the amount of revenue or profits earned or other value obtained by the use of Products, or the amount of use of the Products. "Third Party Products" means any products made by a party other than Contractor, and may include, without limitation, products ordered by County from third parties. However, components of Contractor branded Products are not Third Party Products if they are both: (i) embedded in Third Party Products (i.e., not recognizable as standalone items); and (ii) not identified as separate items on Contractor's price list, quotes, order specifications forms or documentation.

6.2.3 The foregoing states Contractor's entire liability, and County's sole and exclusive remedy except as provided at law or equity, with respect to any infringement or misappropriation of any intellectual property rights of another party.

6.3 INSURANCE:

6.3.1 Contractor, at Contractor's own expense, shall purchase and maintain the herein stipulated minimum insurance from a company or companies duly licensed by the State of Arizona and possessing a current A.M. Best, Inc. rating of B++. In lieu of State of Arizona licensing, the stipulated insurance may be purchased from a company or companies, which are authorized to do business in the State of Arizona, provided that said insurance companies meet the approval of County. The form of any insurance policies and forms must be acceptable to County.

6.3.2 All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of County, constitute a material breach of this Contract.

6.3.3 Contractor's insurance shall be primary insurance as respects County, and any insurance or self-insurance maintained by County shall not contribute to it.

6.3.4 Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect the County's right to coverage afforded under the insurance policies.

6.3.5 The insurance policies may provide coverage that contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to County under such policies. Contractor shall be solely responsible for the deductible and/or self-insured retention and County, at its option, may require Contractor to secure payment of such deductibles or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

6.3.6 The insurance policies required by this Contract, except Workers' Compensation and Errors and Omissions, shall name County, its agents, representatives, officers, directors, officials and employees as Additional Insureds.

6.3.7 The policies required hereunder, except Workers' Compensation and Errors and Omissions, shall contain a waiver of transfer of rights of recovery (subrogation) against County, its agents, representatives, officers, directors, officials and employees for any claims arising out of Contractor's work or service.

6.3.8 Commercial General Liability:

Commercial General Liability insurance and, if necessary, Commercial Umbrella insurance with a limit of not less than \$2,000,000 for each occurrence, \$4,000,000 Products/Completed Operations Aggregate, and \$4,000,000 General Aggregate Limit. The policy shall include coverage for premises liability, bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage, and shall not contain any provisions which would serve to limit third party action over claims. There shall be no endorsement or modifications of the CGL limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

6.3.9 Automobile Liability:

Commercial/Business Automobile Liability insurance and, if necessary, Commercial Umbrella insurance with a combined single limit for bodily injury and property damage of not less than \$2,000,000 each occurrence with respect to any of the Contractor's owned, hired, and non-owned vehicles assigned to or used in performance of the Contractor's work or services or use or maintenance of the premises under this Contract.

6.3.10 Workers' Compensation:

Workers' Compensation insurance to cover obligations imposed by Federal and State statutes having jurisdiction of Contractor's employees engaged in the performance of the work or services under this Contract; and Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee, and \$1,000,000 disease policy limit.

Contractor, its contractors and its subcontractors waive all rights against Contract and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the Workers' Compensation and Employer's Liability or commercial umbrella liability insurance obtained by Contractor, its contractors and its subcontractors pursuant to this Contract.

6.3.11 Technology Errors & Omission Insurance:

- Each claim \$2,000,000
- Annual Aggregate \$2,000,000

Such insurance shall cover any, and all errors, omissions, or negligent acts in the delivery of products, services, and/or licensed programs under this Contract.

In the event that the Tech E&O insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years, beginning at the time work under this Contract is completed.

6.3.12 Certificates of Insurance:

6.3.12.1 Prior to Contract award, Contractor shall furnish the County with valid and complete certificates of insurance, or formal endorsements as required by the Contract in the form provided by the County, issued by Contractor's insurer(s), as evidence that policies providing the required coverage, conditions and limits required by this Contract are in full force and effect. Such certificates shall identify this contract number and title.

6.3.12.2 In the event any insurance policy(ies) required by this Contract is(are) written on a claims made basis, coverage shall extend for two years past completion and acceptance of Contractor's work or services and as evidenced by annual Certificates of Insurance.

6.3.12.3 If a policy does expire during the life of the Contract, a renewal certificate must be sent to County fifteen (15) calendar days prior to the expiration date.

6.3.13 Cancellation and Expiration Notice:

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to Maricopa County. Contractor must provide to Maricopa County, within two (2) business days of receipt, if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to Maricopa County Office of Procurement Services and shall be mailed or hand delivered to 320 West Lincoln Street, Phoenix, AZ 85003, or emailed to the Procurement Officer noted in the solicitation.

6.4 FORCE MAJEURE:

6.4.1 Neither party shall be liable for failure of performance, nor incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Contract if such delay or failure is caused by events, occurrences, or causes beyond the reasonable control and without negligence of the parties. Such events, occurrences, or causes will include Acts of God/Nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, riots, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, lockout, blockage, embargo, labor dispute, strike, interruption or failure of electricity or telecommunication service.

6.4.2 Each party, as applicable, shall give the other party notice of its inability to perform and particulars in reasonable detail of the cause of the inability. Each party must use best efforts to remedy the situation and remove, as soon as practicable, the cause of its inability to perform or comply.

6.4.3 The party asserting *Force Majeure* as a cause for non-performance shall have the burden of proving that reasonable steps were taken to minimize delay or damages caused by foreseeable events, that all non-excused obligations were substantially fulfilled, and that the other party was timely notified of the likelihood or actual occurrence which would justify such an assertion, so that other prudent precautions could be contemplated.

6.5 WARRANTY OF SERVICES:

6.5.1 The Contractor warrants that all services provided hereunder will conform to the requirements of the Contract, including all descriptions, specifications and attachments made a part of this Contract. County's acceptance of services or goods provided by the Contractor shall not relieve the Contractor from its obligations under this warranty.

6.5.2 In addition to its other remedies, County may, at the Contractor's expense, require prompt correction of any services failing to meet the Contractor's warranty herein. Services corrected by the Contractor shall be subject to all the provisions of this Contract in the manner and to the same extent as services originally furnished hereunder.

6.6 INSPECTION OF SERVICES:

6.6.1 The Contractor shall provide and maintain an inspection system acceptable to County covering the services under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to County during Contract performance and for as long afterwards as the Contract requires.

6.6.2 County has the right to inspect and test all services called for by the Contract, to the extent practicable at all times and places during the term of the Contract. County shall perform inspections and tests in a manner that will not unduly delay the work.

6.6.3 If any of the services do not conform to Contract requirements, County may require the Contractor to perform the services again in conformity with Contract requirements, at no cost to the County. When the defects in services cannot be corrected by re-performance, County may:

6.6.3.1 Require the Contractor to take necessary action to ensure that future performance conforms to Contract requirements; and

6.6.3.2 Reduce the Contract price to reflect the reduced value of the services performed.

6.6.4 If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with Contract requirements, County may:

6.6.4.1 By Contract or otherwise, perform the services and charge to the Contractor, through direct billing or through payment reduction, any cost incurred by County that is directly related to the performance of such service; or

6.6.4.2 Terminate the Contract for default.

6.7 ORDERING AUTHORITY:

Any request for purchase shall be accompanied by a valid purchase order, issued by Office of Procurement Services, a Purchase Order issued by the using Department or direction by a Certified Agency Procurement Aid (CAPA) with a Purchase Card for payment.

6.8 NO MINIMUM OR MAXIMUM PURCHASE OBLIGATION:

6.8.1 This Contract does not guarantee any minimum or maximum purchases will be made. Orders will only be placed under this Contract when the County identifies a need and proper authorization and documentation have been approved.

6.8.2 Contractors agree to accept verbal notification of cancellation of Purchase Orders from the County Procurement Officer with written notification to follow. Contractor specifically acknowledges to be bound by this cancellation policy.

6.9 PURCHASE ORDERS:

County reserves the right to cancel Purchase Orders within a reasonable period of time after issuance. Should a Purchase Order be canceled, the County agrees to reimburse the Contractor for actual and documentable costs incurred by the Contractor in response to the Purchase Order. The County will not reimburse the Contractor for any costs incurred after receipt of County notice of cancellation, or for lost profits, shipment of product prior to issuance of Purchase Order, etc.

6.10 BACKGROUND CHECK:

Contractors need to be aware that there may be multiple background checks (Sheriff's Office, County Attorney's Office, Courts as well as Maricopa County general government) to determine if the respondent is acceptable to do business with the County. This applies to (but is not limited to) the Contractor, subcontractors and employees.

6.11 SUSPENSION OF WORK:

The Procurement Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Procurement Officer determines appropriate for the convenience of the County. No adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor. No request for adjustment under this clause shall be granted unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the Contract.

6.12 STOP WORK ORDER:

The Procurement Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of ninety (90) calendar days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 calendar days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Procurement Officer shall either:

- 6.12.1 Cancel the stop work order; or
- 6.12.2 Terminate the work covered by the order as provided in the Default, or the Termination for Convenience clause of this Contract.
- 6.12.3 The Procurement Officer may make an equitable adjustment in the delivery schedule and/or Contract price, or otherwise, and the Contract shall be modified, in writing, accordingly, if the Contractor demonstrates that the stop work order resulted in an increase in costs to the Contractor.

6.13 TERMINATION FOR CONVENIENCE:

Maricopa County may terminate the Contract for convenience by providing sixty (60) calendar days advance notice to the Contractor. The Contractor shall be entitled to receive just and equitable compensation for work in progress and all amounts owing to the Contractor for work completed and materials accepted before the effective date of the termination.

6.14 TERMINATION FOR DEFAULT:

The County may, by written notice of default to the Contractor, terminate this Contract in whole or in part if the Contractor fails to:

- 6.14.1 Deliver the supplies or to perform the services within the time specified in this Contract or any extension;
- 6.14.2 Make progress, so as to endanger performance of this Contract; or
- 6.14.3 Perform any of the other provisions of this Contract.

The County's right to terminate this contract under these subparagraphs may be exercised if the Contractor does not cure such failure within ten (10) business days (or more if authorized in writing by the County) after receipt of the notice from the Procurement Officer specifying the failure.

6.15 STATUTORY RIGHT OF CANCELLATION FOR CONFLICT OF INTEREST:

Notice is given that pursuant to A.R.S. § 38-511 the County may cancel any Contract without penalty or further obligation within three years after execution of the Contract, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the County is at any time while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to the Contract in any capacity or consultant to any other party of the Contract with respect to the subject matter of the Contract. Additionally, pursuant to A.R.S. § 38-511 the County may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the County from any other party to the Contract arising as the result of the Contract.

6.16 CONTRACTOR LICENSE REQUIREMENT:

6.16.1 The Contractor shall procure all permits, insurance, licenses and pay the charges and fees necessary and incidental to the lawful conduct of his/her business, and as necessary complete any required certification requirements, required by any and all governmental or non-governmental entities as mandated to maintain compliance with and in good standing for all permits and/or licenses. The Contractor shall keep fully informed of existing and future trade or industry requirements, Federal, State and Local laws, ordinances, and regulations which in any manner affect the fulfillment of a Contract and shall comply with the same. Contractor shall immediately notify both Office of Procurement Services and the Department of any and all changes concerning permits, insurance or licenses.

6.17 SUBCONTRACTING:

6.17.1 The Contractor may not assign to another contractor or subcontract to another party for performance of the terms and conditions hereof without the written consent of the County. All correspondence authorizing subcontracting must reference the Contract Number and identify the job project.

6.17.2 The subcontractor's rate for the job shall not exceed that of the Prime Contractor's rate, as bid in the pricing section, unless the Prime Contractor is willing to absorb any higher rates or the County has approved the increase. The subcontractor's invoice shall be invoiced directly to the Prime Contractor, who in turn shall pass-through the costs to the County, without mark-up. A copy of the subcontractor's invoice must accompany the Prime Contractor's invoice.

6.18 AMENDMENTS:

All amendments to this Contract shall be in writing and approved/signed by both parties. Maricopa County Office of Procurement Services shall be responsible for approving all amendments for Maricopa County.

6.19 ADDITIONS/DELETIONS OF REQUIREMENTS:

The County reserves the right to add and/or delete materials and services to a Contract. If a service requirement is deleted, payment to the Contractor will be reduced proportionately, to the amount of service reduced in accordance with the bid price. If additional materials or services are required from a Contract, prices for such additions will be negotiated between the Contractor and the County.

6.20 STRICT COMPLIANCE:

Acceptance by County of a performance that is not in strict compliance with the terms of the Contract shall not be deemed to be a waiver of strict compliance with respect to all other terms of the Contract.

6.21 VALIDITY:

The invalidity, in whole or in part, of any provision of this Contract shall not void or affect the validity of any other provision of the Contract.

6.22 SEVERABILITY:

The removal, in whole or in part, of any provision of this Contract shall not void or affect the validity of any other provision of this Contract.

6.23 RIGHTS IN DATA:

The County shall have the use of data and reports resulting from a Contract without additional cost or other restriction except as may be established by law or applicable regulation. Each Party shall supply to the other Party, upon request, any available information that is relevant to a Contract and to the performance thereunder.

6.24 NON-DISCRIMINATION:

Contractor agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 including flow down of all provisions and requirements to any subcontractors. Executive Order 2009-09 supersedes Executive order 99-4 and amends Executive order 75-5 and may be viewed and downloaded at the Arizona State Library Research website (<http://azmemory.azlibrary.gov/cdm/singleitem/collection/execorders/id/680/rec/1>) which is hereby incorporated into this contract as if set forth in full herein. During the performance of this Contract, Contractor shall not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

6.25 CERTIFICATION REGARDING DEBARMENT AND SUSPENSION:

6.25.1 The undersigned (authorized official signing on behalf of the Contractor) certifies to the best of his or her knowledge and belief that the Contractor, its current officers and directors;

6.25.2 are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from being awarded any contract or grant by any United States Department or Agency or any state, or local jurisdiction;

6.25.2.1 have not within three (3) year period preceding this Contract;

6.25.2.1.1 been convicted of fraud or any criminal offense in connection with obtaining, attempting to obtain, or as the result of performing a government entity (Federal, State or local) transaction or contract; and

6.25.2.1.2 been convicted of violation of any Federal or State antitrust statutes or conviction for embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property regarding a government entity transaction or contract;

6.25.2.1.3 are not presently indicted or criminally charged by a government entity (Federal, State or local) with commission of any criminal offenses in connection with obtaining, attempting to obtain, or as the result of performing a government entity public (Federal, State or local) transaction or contract; and are not presently facing any civil

charges from any governmental entity regarding obtaining, attempting to obtain, or from performing any governmental entity contract or other transaction; and have not within a three (3) year period preceding this Contract had any public transaction (Federal, State or local) terminated for cause or default.

6.25.2.2 If any of the above circumstances described in the paragraph are applicable to the entity submitting a bid for this requirement, include with your bid an explanation of the matter including any final resolution.

6.25.3 The Contractor shall include, without modification, this clause in all lower tier covered transactions (i.e. transactions with subcontractors) and in all solicitations for lower tier covered transactions related to this Contract.

6.26 VERIFICATION REGARDING COMPLIANCE WITH A.R.S. §41-4401 AND FEDERAL IMMIGRATION LAWS AND REGULATIONS:

6.26.1 By entering into the Contract, the Contractor warrants compliance with the Immigration and Nationality Act (INA using e-verify) and all other Federal immigration laws and regulations related to the immigration status of its employees and A.R.S. §23-214(A). The Contractor shall obtain statements from its subcontractors certifying compliance and shall furnish the statements to the Procurement Officer upon request. These warranties shall remain in effect through the term of the Contract. The Contractor and its subcontractors shall also maintain Employment Eligibility Verification forms (I-9) as required by the Immigration Reform and Control Act of 1986, as amended from time to time, for all employees performing work under the Contract and verify employee compliance using the E-verify system and shall keep a record of the verification for the duration of the employee's employment or at least three (3) years, whichever is longer. I-9 forms are available for download at USCIS.GOV.

6.26.2 The County retains the legal right to inspect Contractor and subcontractor employee documents performing work under this Contract to verify compliance with paragraph 6.26.1 of this Section. Contractor and subcontractor shall be given reasonable notice of the County's intent to inspect and shall make the documents available at the time and date specified. Should the County suspect or find that the Contractor or any of its subcontractors are not in compliance, the County will consider this a material breach of the Contract and may pursue any and all remedies allowed by law, including, but not limited to; suspension of work, termination of the Contract for default, and suspension and/or debarment of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.

6.27 INFLUENCE:

As prescribed in MC1-1203 of the Maricopa County Procurement Code, any effort to influence an employee or agent to breach the Maricopa County Ethical Code of Conduct or any ethical conduct may be grounds for Disbarment or Suspension under MC1-902.

An attempt to influence includes, but is not limited to:

6.27.1 A Person offering or providing a gratuity, gift, tip, present, donation, money, entertainment or educational passes or tickets, or any type of valuable contribution or subsidy,

6.27.2 That is offered or given with the intent to influence a decision, obtain a contract, garner favorable treatment, or gain favorable consideration of any kind.

If a Person attempts to influence any employee or agent of Maricopa County, the Chief Procurement Officer, or his designee, reserves the right to seek any remedy provided by the Maricopa County Procurement Code, any remedy in equity or in the law, or any remedy provided by this contract.

6.28 UNIFORM ADMINISTRATIVE REQUIREMENTS:

By entering into this Contract the Contractor agrees to comply with all applicable provisions of Title 2, Subtitle A, Chapter II, PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS contained in Title 2 C.F.R. § 200 et seq.

6.29 ACCESS TO AND RETENTION OF RECORDS FOR THE PURPOSE OF AUDIT AND/OR OTHER REVIEW:

6.29.1 In accordance with section MCI 371 of the Maricopa County Procurement Code the Contractor agrees to retain (physical or digital copies of) all books, records, accounts, statements, reports, files, and other records and back-up documentation relevant to this Contract for six (6) years after final payment or until after the resolution of any audit questions which could be more than six (6) years, whichever is latest. The County, Federal or State auditors and any other persons duly authorized by the Department shall have full access to, and the right to examine, copy and make use of, any and all said materials.

6.29.2 If the Contractor's books, records, accounts, statements, reports, files, and other records and back-up documentation relevant to this Contract are not sufficient to support and document that requested services were provided, the Contractor shall reimburse Maricopa County for the services not so adequately supported and documented.

6.30 AUDIT DISALLOWANCES:

If at any time it is determined by the County that a cost for which payment has been made is a disallowed cost, the County shall notify the Contractor in writing of the disallowance. The course of action to address the disallowance shall be at sole discretion of the County, and may include either an adjustment to future invoices, request for credit, request for a check or a deduction from current invoices submitted by the Contractor equal to the amount of the disallowance, or to require reimbursement forthwith of the disallowed amount by the Contractor by issuing a check payable to Maricopa County.

6.31 OFFSET FOR DAMAGES:

In addition to all other remedies at Law or Equity, the County may offset from any money due to the Contractor any amounts Contractor owes to the County for damages resulting from breach or deficiencies in performance of the Contract.

6.32 CONFIDENTIAL INFORMATION:

Any information obtained in the course of performing this Contract may include information that is proprietary or confidential to the County. This provision establishes the Contractor's obligation regarding such information.

The Contractor shall establish and maintain procedures and controls that are adequate to assure that no information contained in its records and/or obtained from the County or from others in carrying out its functions (services) under the Contract shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Contract. The Contractor's procedures and controls at a minimum must be the same procedures and controls it uses to protect its own proprietary or confidential information. If, at any time during the duration of the Contract, the County determines that the procedures and controls in place are not adequate, the Contractor shall institute any new and/or additional measures requested by the County within fifteen (15) calendar days of the written request to do so.

Any requests to the Contractor for County proprietary or confidential information shall be referred to the County for review and approval, prior to any dissemination.

6.33 PUBLIC RECORDS:

Under Arizona law, all Offers submitted and opened are public records and must be retained by the Records Manager at the Office of Procurement Services. Offers shall be open to public inspection and copying after Contract award and execution, except for such Offers or sections thereof determined to contain proprietary or confidential information by the Office of Procurement Services. If an Offeror believes that information in its Offer or any resulting Contract should not be released in response to a public record request under Arizona law, the Offeror shall indicate the specific information deemed confidential or proprietary and submit a statement with its offer detailing the reasons that the information should not be disclosed. Such reasons shall include the specific harm or prejudice which may arise from disclosure. The Records Manager of the Office of Procurement Services shall determine whether the identified information is confidential pursuant to the Maricopa County Procurement Code.

6.34 PRICES:

Contractor warrants that prices extended to County under this Contract are no higher than those paid by any other customer for these or similar services.

6.35 INTEGRATION:

This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, proposals, communications, understandings, representations, or agreements, whether oral or written, express or implied.

6.36 RELATIONSHIPS:

6.36.1 In the performance of the services described herein, the Contractor shall act solely as an independent contractor, and nothing herein or implied herein shall at any time be construed as to create the relationship of employer and employee, co-employee, partnership, principal and agent, or joint venture between the County and the Contractor.

6.36.2 The County reserves the right of final approval on proposed staff for all Task Orders. Also, upon request by the County, the Contractor will be required to remove any employees working on County projects and substitute personnel based on the discretion of the County within Two (2) business days, unless previously approved by the County.

6.37 GOVERNING LAW:

This Contract shall be governed by the laws of the State of Arizona. Venue for any actions or lawsuits involving this Contract will be in Maricopa County Superior Court, Phoenix, Arizona.

6.38 ORDER OF PRECEDENCE:

In the event of a conflict in the provisions of this Contract and Contractor's license agreement, if applicable, the terms of this Contract shall prevail.

6.39 INCORPORATION OF DOCUMENTS:

The following are to be attached to and made part of this Contract. In the event of any inconsistency in interpreting the documents which constitute this Contract, the inconsistency shall be resolved by giving precedence in the following order of priority: (1) the text of this Contract, (2) Exhibit A, (3) Exhibit B, (4) Exhibit C, (5) Exhibit D.

6.39.1 Exhibit A, Pricing;

6.39.2 Exhibit B, Scope of Work;

6.39.3 Exhibit C, Voting System Managed Services Terms, Licenses and Warranties; and

6.39.4 Exhibit D, Office of Procurement Services Contractor Travel and Per Diem Policy.
<https://www.maricopa.gov/DocumentCenter/View/42923/Policy-for-Contractor-Travel-and-Per-Diem-PDF?bidId=>

NOTICES:

All notices given pursuant to the terms of this Contract shall be addressed to:

For County:

Maricopa County
Office of Procurement Services
ATTN: Contract Administration
320 West Lincoln Street
Phoenix, Arizona 85003-2494

For Contractor:

Dominion Voting Systems, Inc.
ATTN: Contracts Administrator
1201 18th Street, Suite 210
Denver, CO 80202
sales@dominionvoting.com

IN WITNESS WHEREOF, this Contract is executed on the date set forth above.

CONTRACTOR



AUTHORIZED SIGNATURE

Michael Frontera, Executive Vice President
PRINTED NAME AND TITLE

1201 18th St., Suite 210, Denver, CO 80202
ADDRESS

6/20/2019
DATE

MARICOPA COUNTY

CHAIRMAN, BOARD OF SUPERVISORS

DATE

ATTESTED:

CLERK OF THE BOARD

DATE

APPROVED AS TO FORM:

DEPUTY COUNTY ATTORNEY

DATE

**EXHIBIT A
PRICING**

SERIAL 190265-RFP, Elections Tabulation System	
NIGP CODE: 578-34	DOMINION VOTING SYSTEMS
Option 4A: High Speed, G1130 Scanner with ImageCast BMD & ImageCast Precinct	

3 YEAR LEASE TERM					
DESCRIPTION/SERVICE/EQUIPMENT		Enter Model# and Proposed Quantity (when applicable)	Unit Lease Price per Month		
			1st Year	2nd Year	3rd Year
1	Precinct Based Tabulators	ImageCast BMD - 553 / ImageCast Precinct - 553			
		ImageCast BMD - 553	\$61.12	\$61.12	\$61.12
		ImageCast Precinct - 553	\$75.08	\$75.08	\$75.08
2	Central Count Tabulators	G1130 - 12	\$481.25	\$481.25	\$481.25
2	Central Count Tabulators	High Speed Scanner - 2	\$3,522.75	\$3,522.75	\$3,522.75
3	Accessible Marking -or- Voting Device	ImageCast BMD Audio Tactile Interface (ATI) - 553 / ImageCast Precinct Audio Tactile Interface (ATI) - 553			
		ImageCast BMD Audio Tactile Interface (ATI) - 553	\$7.22	\$7.22	\$7.22
		ImageCast Precinct Audio Tactile Interface (ATI) - 553	\$4.62	\$4.62	\$4.62
4	Election Management Hardware	Standard Server - 2 / Client Workstation - 4 / Adjudication - 4 / UPS - 1			
		Standard Server - 2	\$327.25	\$327.25	\$327.25
		Client Workstation - 4	\$32.73	\$32.73	\$32.73
		Adjudication - 4	\$32.73	\$32.73	\$32.73
		UPS - 1	\$15.40	\$15.40	\$15.40
5	Additional Peripherals (if needed)	Voting Booth - 553 / ImageCast BMD Transport Bag - 553 / ImageCast Precinct Ballot Box - 553			
		Voting Booth - 553	\$5.68	\$5.68	\$5.68
		ImageCast BMD Transport Bag - 553	\$2.41	\$2.41	\$2.41
		ImageCast Precinct Ballot Box - 553	\$19.25	\$19.25	\$19.25
		UPS - 50	\$0.00	\$0.00	\$0.00
6	Consumable Supplies (if needed)	Seals, etc. - 1	\$192.50	\$192.50	\$192.50
7	Software	Democracy Suite Light / Adjudication / Automated Test Deck / Remote UOCAVA			
		Democracy Suite Light - 1	\$3,368.75	\$3,368.75	\$3,368.75

		Adjudication - 1	\$2,887.50	\$2,887.50	\$2,887.50
		Automated Test Deck - 1	\$1,010.63	\$1,010.63	\$1,010.63
		Remote UOCAVA - 1	\$962.50	\$962.50	\$962.50
8	Licenses	Software License / G1130 - 12 / ImageCast BMD - 553 / ImageCast Precinct - 553			
		Democracy Suite Light - 1	\$802.08	\$802.08	\$802.08
		Adjudication - 1	\$687.50	\$687.50	\$687.50
		Automated Test Deck - 1	\$240.63	\$240.63	\$240.63
		Remote UOCAVA - 1	\$229.17	\$229.17	\$229.17
		G1130 - 12	\$59.01	\$59.01	\$59.01
		ImageCast BMD - 553	\$3.44	\$3.44	\$3.44
		ImageCast Precinct - 553	\$5.23	\$5.23	\$5.23
		ImageCast HSS - 2	\$236.04	\$236.04	\$236.04
9	Warranty	G1130 - 12 / ImageCast BMD - 553 / ImageCast Precinct - 553			
		G1130 - 12	\$34.38	\$34.38	\$34.38
		ImageCast BMD - 553	\$3.55	\$3.55	\$3.55
		ImageCast Precinct - 553	\$3.09	\$3.09	\$3.09
		ImageCast HSS - 2	\$194.79	\$194.79	\$194.79
10	Maintenance (Acceptance Testing, PM, etc.)	Included in Warranty	-	-	-
11	Support Services (e.g. Election Cycle, Off Cycle, etc.)	Includes Implementation, Training, Election Support - 1	\$37,033.33	\$37,033.33	\$37,033.33
12	Training	Included in Support Services	-	-	-
*Freight not included above and will not exceed \$45,000					

EXHIBIT B SCOPE OF WORK

ELECTIONS TABULATION SYSTEM

OVERVIEW:

This “FINAL SCOPE OF WORK” is specifically focused on the proposal submitted by Dominion Voting Systems. The intent of this document is to review Dominion Voting’s responses and specifications within their proposal and confirm in writing what Maricopa County (County) understands as being offered and clarify what the County expects as a deliverable.

Through the term of the lease, the County intends to continue using the hybrid approach for its upcoming and future voting process where we offer both “vote anywhere” sites in conjunction with assigned precinct-level sites. This would include a total of 40 forty (40) “vote anywhere” Vote Center locations to be used for both in-person Early and Election Day voting.

Maricopa County Elections tabulates Early in-person ballots using a “Central Count” methodology but for the future, the County could seek to move towards having the ImageCast Precinct (ICP) tabulator count onsite all possible ballots for both Early and Election Day.

For in-person Election Day, those forty (40) “vote anywhere” Vote Centers will the remain open and in the hybrid mode they convert to Election Day assigned precinct sites. Despite being set as an assigned precinct-level location, it is expected that the ICP tabulator could be programmed to tabulate any and all ballot styles if Maricopa County opts to go to a true “vote anywhere” environment (*currently upwards of 15,000 with a aim of tabulating up to 30,000 unique ballot styles*).

For non-statewide Local Elections (*e.g. city, town, etc.*) Maricopa County offers sites that are completely “vote anywhere” and it is future goal to be able to offer that for statewide elections at the current 503 locations. For that Maricopa County looks to leverage the “Mobile Ballot Printing” feature and looks to capitalize on the system being hardware “agnostic”. Under that process Maricopa County expects to be able to use our existing print hardware, SiteBook check-in system and other commercially available off-the-shelf (COTS) printers. Dominion Voting Systems shall include support in fulfilling this “Mobile Ballot Printing” objective and this will be an absolute requirement that must be availed to Maricopa County Elections for use in the Local Elections of 2021, and theoretically for all future Statewide Primary and General Elections after the initial 2020 cycle. Being that Maricopa County owns it voter check-in equipment and system, the County is requesting that Dominion ready itself to show how we can integrate this optional solution for “Mobile Printing” with our voter check-in equipment. Also we request Dominion to ready a pricing structure for this integration.

SCOPE OF WORK:

As a mandatory requisite, the voting system provided by Dominion Voting Systems (herein after referred to as Dominion) must be federally certified and approved for use through the U.S. Election Assistance Commission (EAC). Documentation shows currently that the system proposed by Dominion meets this requirement. Further, it is Maricopa County’s understanding that Dominion’s development team is continually working on refining its products and functionality, and that such enhancements will lead to annual federal certification campaigns with the EAC, as well as seeking out state certifications when required.

The equipment, supplies and services then requested by Maricopa for this contract are as follows:

DESCRIPTION/SERVICE/EQUIPMENT	Enter Model# and Proposed Quantity (when applicable)
Precinct Based Tabulators	ImageCast BMD - 553 / ImageCast Precinct - 553
Central Count Tabulators	G1130 - 12
Central Count Tabulators	High Speed Scanner - 2
Accessible Marking -or- Voting Device	ImageCast BMD Audio Tactile Interface (ATI) - 553 / ImageCast Precinct Audio Tactile Interface (ATI) - 553
Election Management Hardware	Standard Server - 2 / Client Workstation - 4 / Adjudication - 4 / UPS - 1
Additional Peripherals (if needed)	Voting Booth - 553 / ImageCast BMD Transport Bag - 553 / ImageCast Precinct Ballot Box - 553
Consumable Supplies (if needed)	Seals, etc.
Software	Democracy Suite Light / Adjudication / Automated Test Deck / Remote UOCAVA
Licenses	Software License / G1130 - 12 / ImageCast BMD - 553 / ImageCast Precinct - 553
Warranty	G1130 - 12 / ImageCast BMD - 553 / ImageCast Precinct - 553
Maintenance (Acceptance Testing, PM, etc.)	Included in Warranty
Support Services (e.g. Election Cycle, Off Cycle, etc.)	Includes Implementation, Training, Election Support
Training	Included in Support Services

Arizona Secretary of State (SOS) Certification of the tabulation system is required. Dominion shall work under the “pilot” program status and further agrees to apply for certification...” It is further noted in the proposal that Dominion will actively seek “updated voting system certifications of Democracy Suite, thus ensuring that they system always meets the needs of the County”.

If SOS Certification is not sought or issued **by the SOS** for any reason after the “SoS Pilot” allowance, **the County will terminate the contract**, and Dominion **shall have no recourse**. For any contractual obligations that may have already been entered into, those obligations shall be considered null and void and permit the County to cancel the contract with no penalty.

Pilot Deployment

Dominion agrees that there will not be a cost for the small pilot deployment. Dominion further agrees through its Project Implementation Plan that includes the Continued Pilot program for a total of two pilots taking place in November and possibly March, followed with first use in the August election of the complete system. The County will select a jurisdiction to test with that **will only require precinct based equipment for no more than four (4) locations and central count tabulators to accommodate no more than 50,000 returned early ballots.**

Dominion agrees to meet the “pilot” or partial voting system deployment and the “ready for use” date if July 8, 2019. Dominion’s pilot program shall provide a complete, fully functioning voting system including all necessary equipment, software and related technology to run the partial deployment. This also includes early ballot returns and technical support. Further, Dominion shall include all components of the system for the pilot election so that Maricopa County can better determine the final product mix as well as the potential quantities required for a full deployment.

Dominion is allowing for a mix of equipment for the “pilot” to allow the County to evaluate all options and models. The county has requested pricing for certain models as shown in the earlier matrix (e.g. BMD, ICP, G1130, HSS, etc.) but reserves the option to modify this mix after the November 2019 Election. **With a successful “pilot” deployment in November, the County will award Dominion the contract that requests the full scope of equipment to be provided for models and quantities jointly decided upon by the County and Dominion.**

Should the November “pilot” and if needed a March “continued pilot” be deemed unsuccessful, as determined at the sole discretion of the County, the County may choose to not move forward with a final agreement and terminate this contract. Dominion agrees or does not dispute these terms.

Minimum Qualifications

The Dominion system being offered shall meet these minimum qualifications. **The “checklist” list below is intended to reiterate those minimum qualifications and to memorialize that “meets” status of those requirements:**

Certification and Scope

- ✓ Dominion is Certified by the EAC under the Voluntary Voting System Guide (VVSG) 1.0.
- ✓ Dominion will fall under the “SoS pilot” status as far as State Certification goes but confirms and agrees to apply for certification after that “SoS pilot” status expires.

- ✓ Dominion supports a minimum of 2.2 million registered voters and has provided evidence of a current customer that is using the proposed equipment and system that has over 900,000 registered voters (Clark County, Nevada: 1,119,203 voters; Cook County, Chicago: 1.4 million voters <more references are availed in the proposal>).

Capabilities

- ✓ Dominion’s system uses paper ballots.
- ✓ Dominion precinct-level tabulators can accommodate for 15,000 ballot styles and that its Election Event Designer can handle 30,000 ballot styles that allows for district splits and coding to prevent ballots marked for out stack from tabulating at the polls. **Nonetheless, to add clarity, the County is indicating in this document our definition of a “ballot style” to ensure Dominion is clear on our expectations. For the County, a ballot style is a uniquely identified ballot whose header is not replicated on any other ballot and that ballot can then be differentiated, tabulated and reported by that given ballot header. A given political party ballot is a style, a Federal Only ballot is a style, a city only ballot is s style, etc. Additionally, all of those “styles” are then increased by the number of precincts to be reported and splits.**
- ✓ Dominion’s system allows for the printing of hard copy result reports of votes cast at each polling location. Moreover, Dominion allows for precinct-level (polling location) Statement of Votes Cast result report in industry standard format including XML, HTML, CSV, MS Excel, and PDFs.
- ✓ Dominion’s twelve (12) G1130 tabulators will allow for the ability to process over 1.5 million returned vote-by-mail ballots within a one-week time period during an eight (8) hour daily shift. The County is asking for pricing of the High Speed Scanner (HSS - HiPro Central Scanner) in case we move to an option to have both types of scanners on-hand due to volume and for use in any recounts – that require faster throughput and have larger batches.
- ✓ Dominion supports the processing of multi-page ballots.
- ✓ Dominion provides for the ability (Election Event Designer) to import district relations and candidate data files for the ballot building processes without major conversion requirements.
- ✓ *“If a bleed through occurs it shall not land on the opposite side of the target”* which then complies with the requirement for ballot to be able to have offset targets so that on a two-sided ballot, if bleed through occurred, it would not land on the opposite sided target. This will be verified in the “pilot” and in testing.
- ✓ Dominion confirms their ability to provide rotation using the Arizona specific rotation formula.
- ✓ Dominion notes the ability to process provisional ballots through the ImageCast central count tabulators.
- ✓ Dominion confirms that its Results Tally and Reporting (RTR) application has the ability to tabulate and report out by user defined categories including Election Day, Provisional and Early along with customizable/ad hoc reports for future needs or categories (e.g. Duplicated Ballots, Write-in Ballots, etc.).
- ✓ Dominion confirms the ability to use a print vendor of the County’s choice for ballot production and presently certifies our current print vendor (Runbeck Election Services).
- ✓ Dominion acknowledges that its Democracy Suite has the ability within the Election Event Designer to Co-Locate precincts while maintaining the ability to report results by unique precincts.
- ✓ Dominion acknowledges the ability to Consolidate Jurisdictions (splits) while maintaining the ability to report results by jurisdiction, whether that is as Ballots Cast or as registered voter results.
- ✓ Dominion confirms its ability to handle recounts of over 1.6 million ballots within a six (6) day window. Its Democracy Suite platform can facilitate recounts, manual hand counts, or risk limiting audits.

Accessible Voting

- ✓ Dominion shall provide a ImageCast Ballot Marking Device (ICX-BMD) that supports accessible voting to occur in excess of five hundred three (503) polling locations with fifty (50) backup units. **The ICX-BMD is not used as a tabulator.**
- ✓ Dominion’s ICX-BMD accessible devices can securely remain open (without having to close daily).
- ✓ Dominion indicates that no votes are stored on the ICX-BM touchscreen unit. The ImageCast Central tabulators store and tabulate all votes.
- ✓ Accessible voting or marking device must open and load for the voter in approximately one (1) minute for all options, to include an audio ballot. Dominion’s ICX-BMD loads an accessible voting session including an audio ballot in less than one minute.

Adjudication

- ✓ The ImageCast Adjudication must allow for digital adjudication with customer-defined out stack conditions that include blanks, marginal votes, over-votes, under-votes and write-ins.
- ✓ The County requested the ability to configure adjudication using upwards of one hundred (100) terminals and allow for or capable of working towards an air-gap between central count tabulators and the server used for adjudication. Dominion confirms that ImageCast Central and Adjudication workstations can be networked together. Up to one-hundred (100) ImageCast Central workstations and one-hundred (100) Adjudication

workstations can be networked together at the same time. In addition, the central tabulation system can be air-gapped from the main tally/adjudication system.

Leasing

Initially the County requested proposals to not only allow for the above noted “pilot” process but also for a final lease or rental agreement that contemplates initial terms of three (3), four (4), and five (5) years. Upon review, the County selected to entertain only the “3 Year Lease Term” option. **However, the County wants to clarify in this document that it will still request and expects Dominion to provide for a maximum of three (3) one (1)-year extension options that would only be exercised after the initial term expires, for a maximum contract term of six (6) years.**

Any final agreement will require Dominion to maintain a performance bond for the duration of the agreement and Dominion agrees to provide the agreed upon performance bond after the successful completion of the pilot program.

Future Service Models

The County may adopt during the term of this “3 Year Lease” that all voters be sent vote-by-mail ballots in addition to offering several replacement ballot Vote Centers. The Dominion proposal notes that they will work with Maricopa County to maintain service costs should the County move to a different voting and service model in the future.

Open Data

The primary concern with “open data” is the ability to increase the data that is publicly available in open formats, including data generated by the leased or rented system. As such, the County may publish cast vote records and the voting system’s adjudications of each marking of a ballot. Dominion’s proposal delimitates that it can generate results, ballot images and other output items for posting if desired by the County.

Dominion further outlines its features as it relates to their process of developing a Ballot Audit and Review System to assist election officials in performing election canvasses and risk-limiting audits. This tool shall be capable of sorting and filtering images of ballots by ballot style, precinct, polling location, contest, and candidate, for the purposes of a recount or post-election audit. Officials can review all the digital ballot images in an election, or a subset of ballots based on the chosen filtering conditions.

Dominion’s system shall handle post-election “Hand Count” audits where, during the central count tabulation process, their G1130 and HSS shall print batch results for a specific batch of ballots run.

Multiple Concurrent Elections

The supplied Dominion Democracy Suite shall conduct all regular, consolidated, recall, special, and district elections along with multiple concurrent elections at once. Moreover, as part of this agreement, Dominion “will aid in the facilitation, preparation, and ballot formatting multiple and separate elections within concurrent timeframes happening simultaneously.”

Ballot Styles

The configuration and operation of Dominion’s supplied voting system shall process up to 15,000 different ballot styles for one (1) election. Confirmation of this ability will be made to ensure compliance with this request.

Image-based System

Dominion’s system is an Image Based System as is preferred by the County. Dominion further denotes that their AuditMark technology shall provide for a ballot-level audit trail to allow for review not only of the ballot image but also of the tabulators’ interpretation of each ballot. The ballot shall be labeled with the tabulator number, batch number, and sequence number within the batch, which then corresponds to the physical ballot in the stack. The County reserves the right to request enhancements to this “labeling” process should other identifiers be deemed necessary, with an understanding that this would be part of a negotiated upgrade and possibly subject to EAC certification.

The voting systems technology supplied shall capture images of ballots with the ability to tabulate vote tallies from those images.

Dominion’s AuditMark system shall provide a means of correlating the digital Cast Vote Record data to the image scanned and finally to the physical paper ballot, all without tying the ballot to a given voter.

Technology Delineation

Dominion’s proposal outlines all of the components of the technology solutions including software and hardware. Those details have been reviewed and those items and components are listed below to confirm what the makeup is for the proposed system. **The County, however, reserves the right to review these in practice during the “pilot” to verify the functionality and veracity of these components to include software and hardware.**

DOMINION TECHNOLOGY DELINEATION (FROM PROPOSAL):

Democracy Suite is an Election Management System (EMS) that supports all ImageCast voting channels: early votes, vote by mail votes, Election Day votes from touchscreen ballot marking devices (TSBMD) and Scanner, and Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) votes, from a single comprehensive database.

Democracy Suite EMS will be hosted exclusively on the Customer’s internal network, on an isolated network segment that will not be connected to either the Customer WAN or the Internet. The minimum system requirements are as follows and included in equipment specified to be purchased by Customer:

- All EMS Data Center server components utilize new generation quad core XEON CPUs
- EMS Data Center server components utilize FB DIMM ECC memory
- EMS Data Center servers are connected to the Gigabit LAN network using Cat6 cables provided by Dominion
- TCP/IP network protocol used for data input/output and inter-process and inter- module communication

From a logical point of view, the EMS system implements interfaces into the ImageCast tabulator’s ballot counting and marking platform using the binary election files specifications. These logical interfacing entities are defined by Dominion and are used for communications between Democracy Suite platform components.

The structure of the election files, as well as the content of the iButton security keys, is bit- level sensitive with regards to accuracy and precision. This means that a single bit change can influence system behavior. The structure of these interfacing entities is dependent on the election domain business logic implemented within the system. Therefore, within the EMS EED application, election files and iButton security keys can only be created when the election project is in the “ballot generated” state.

From an accuracy point of view, CRC checks are implemented. From a security point of view, election files utilize SHA256 (keyed hash HMAC) or digital certificates and AES encryption for data integrity and confidentiality. The figure below presents an overview of the EMS interfaces, focusing on Democracy Suite’s internal and external entities.

The Democracy Suite platform includes the following third-party Software:

EMS Standard Server Prerequisites:

- Microsoft Visual J#
- Microsoft Visual C++ 2013 Redistributable Package
- Microsoft Visual C++ 2013 Redistributable Package (64bit)
- Microsoft Visual C++ 2015 Redistributable Package (32bit)
- Microsoft Visual C++ 2015 Redistributable Package (64bit)
- Java Runtime Environment
- Microsoft SQL Server 2016 Standard (Microsoft SQL Server Management Tools)
- Cepstral Voices
- Arial Narrow Fonts
- BMD-Audio printer drivers

EMS Client Workstation Prerequisites

- Microsoft Visual J#
- Microsoft Visual C++ 2013 Redistributable Package
- Microsoft Visual C++ 2015 Redistributable Package 64bit
- Java Runtime Environment
- Maxim iButton Driver
- Adobe Reader
- Microsoft Access Database Engine
- Open XML SDK 2.0 for Microsoft Office
- Arial Narrow Fonts

Adjudication Workstation Prerequisites

- Dell Latitude T3420 Laptop
- Microsoft Visual J#
- Microsoft Visual C++ 2013 Redistributable Package
- Microsoft Visual C++ 2015 Redistributable Package 64bit
- Java Runtime Environment
- Adobe Reader

Democracy Suite EMS consists of the following Dominion Software modules:

Election Event Designer (EED). EED application is used for the definition and management of election event. EED contains all ballot content utilized to define election projects. Each election project is represented as an instance of the election domain database with associated set of election project file. The definition of the election project can be initiated by importing the election data through the Election Data Translator (EDT) module from external systems that contain the necessary relational data to build a ballot or by defining election project entities without importing external data. It is important to note that an election project initiated through EDT can be further modified within the EED Client Application. The EED module can generate two types of paper ballots:

Proofing ballots – ballots produced to allow election project stakeholders to proof ballot content and styling. These ballots cannot be processed by the ImageCast as they don't have proper ballot barcodes. These ballots are overprinted with the text "Proofing Ballots – date/time" Official ballots – represent production ready, press ready ballots in PDF format with barcodes and without any overprinting.

Results Tally and Reporting (RTR). RTR application is used for the tally, reporting and publishing of election results. For the RTR module, inputs represent encrypted and signed election result files, log files and scanned ballot images with Dominion's patented AuditMark, produced by the ImageCast Precinct and Central tabulators (PNG and TIFF images). Outputs represent a variety of election result reports, as well as auditing information (XML, HTML, CSV, MS Excel and PDF formats).

The program uploads the result files into the results tally module, and consolidated results are verified, tabulated, and published. Once the vote data is uploaded into the result tally module, the flow of results to the public and media can be controlled.

RTR allows election officials to review the results before releasing them, and the system provides a number of reporting methods, including but not limited to summary and precinct-level (Statement of Votes Cast) result reports. In addition to the static, pre-defined reports found in most reporting systems, RTR summary and precinct-level reports use the Microsoft SQL Server reporting services engine to offer maximum flexibility to user. These reports feature a variety of configurable options and filters, including detailed breakdowns of provisional ballots cast, ballots cast during early voting, on Election Day, and by mail.

Adjudication. The adjudication module is used to review and adjudicate ImageCast ballot images. The application uses tabulator results files and scanned images to allow election administrators to electronically adjudicate ballots requiring review based on exception criteria. Exceptions include overvotes, undervotes, blank contests, blank ballots, write-in selections, and marginal marks. After a ballot is adjudicated, the ballot image is appended with a record of that decision including the user's name, action taken by the user, and date and time of the action. This adjudication AuditMark is appended to the ballot image under the original AuditMark, which was manifested during tabulation.

Audio Studio (AS). Audio studio uses Cepstral, a third-party text-to-audio synthesizer, to automatically generate audio ballots for the ImageCast X Ballot Marking Device. The Customer also has the option to import human-recorded audio, with or without the use of Audio Studio. Pronunciation may be modified using the Cepstral's Swifttalker application. The system outputs audio ballots (PNG images, SPX audio files and XML definition files), definition reports (XML, Excel or HTML files), and election definition files required to program the ImageCast X.

Automated Test Deck (ATD). ATD is an application used to create test decks for running Pre-Logic and Accuracy Test with marking pattern requirements. The application can be used to access the election database and produce a set of print-ready PDFs and results tables for testing.

The table below includes the EMS Hardware descriptions:

Description
DOMAIN CONTROLLER: DELL POWEREDGE R330 RACK SERVER 16GB RAM, 2X120GB SSD, WINDOWS SERVER 2016
LOG SERVER: DELL POWEREDGE R330 RACK SERVER 16GB RAM, 2X2TB SATA, WINDOWS SERVER 2016
EMS SERVER: DELL POWEREDGE R630 RACK SERVER 64GB RAM, 2x400GB SSD, WINDOWS SERVER 2016
SQL SERVER 2016 LICENSE W/5 CALs
SQL SERVER 2016 - 10 CALs PACK
VOICE SYNTHESIS SOFTWARE LICENSE, ALLISON - ENG - CEPSTRAL 6.2
VOICE SYNTHESIS SOFTWARE LICENSE, ALEJANDRA SPA - CEPSTRAL 6.2
VOICE SYNTHESIS SOFTWARE LICENSE - SAVE TO FILE FOR WINDOWS
VOICE SYNTHESIS SOFTWARE LICENSE - AUDIO DISTRIBUTION LICENSE
VOICE SYNTHESIS SOFTWARE LICENSE - CONCURRENT PORT FOR
Description
WINDOWS
ANTI-VIRUS - AVAST! ENDPOINT PROTECTION SUITE, 5-PACK LICENSE

STORAGE: SAN EQUALOGIC PS-4210E (12X2TB SATA RAID6)
POWERCONNECT 2808 SWITCH
POWERCONNECT 3524 SWITCH
DELL NETWORKING N1500 SERIES
SERVER UPS: UPS 3000VA (270W) - 2U
SERVER RACK: 42U-48U ES RACKS
REPORT PRINTER: DELL SMART PRINTER 35830DN
KMM MONITOR CONSOLE (18.5")
Network Switches: KVM SERVER SWITCH 16 PORTS
PATCH CABLE, CAT6, 10 FT. , BLACK
PATCH CABLE, CAT6, 10 FT. , BLUE
PATCH CABLE, CAT6, 10 FT. , RED
PATCH CABLE, CAT6, 10 FT. , WHITE
ETHERNET SWITCH, 16 PORTS AND 2 1GBE SFP UPLINK PORTS*
EDES STATION: DELL PRECISION T3420 (INTEL I5-7600, 8GB RAM, 256GB SSD, W10X64PRO) W/24" MONITOR, K&M, and 20 SD CARD READER/Writers
SINGLE IBUTTON PROGRAMMER WITH USB ADAPTER, IBRW-100A
USB TO 1-WIRE/IBUTTON ADAPTER
PATCH CABLE, CAT6, 25 FT. , BLUE
STATION UPS - TRIPP LITE UPS SMART 1300VA
SINGLE IBUTTON PROGRAMMER WITH USB ADAPTER, IBRW-100A
USB TO 1-WIRE/IBUTTON ADAPTER
PATCH CABLE, CAT6, 25 FT. , BLUE
STATION UPS - TRIPP LITE UPS SMART 1300VA
RTM LAPTOP: LATITUDE 3380 (INTEL 4415U, 4GB RAM, 128GB SSD, 13.3" HDF DISPLAY, W10X64PRO)
LEXAR PROFESSIONAL WORKFLOW CFR1 SD MEMORY CARD USB 3.0 READER

The following descriptions include the voting and tabulation hardware details:

ImageCast X Ballot Marking Device (ICX-BMD)

Application: ImageCast X-Prime BMD is a touchscreen in-person voting device and ballot marking device. Voting sessions are initiated on the tablet by either a smart card or the entry of a numeric code based on activation. The ballot is loaded directly onto the standalone device. All voting activity is performed at the tablet, including accessible voting. Accessible voting interfaces connect to the tablet via an Audio Tactile Interface or ATI. For all modes of voting, after the voter reviews the ballot selections, a paper ballot is created for the voter from a printer in the voting booth. The printed ballot contains a written summary of the voter's choices, as well as a 2D barcode which is read by Dominion's ImageCast Precinct or Central

tabulator. No votes are stored on the ImageCast X-BMD unit. All votes can be tabulated and stored both the ImageCast Central and Precinct Tabulators.

Components: ImageCast X-Prime BMD is composed of a 21.5" Avalue touchscreen, Android OS 4.4.4, DC 19V input, HP LaserJet Pro M402dne laser printer, 6' cable. 5 smart cards, 8GB flash drive, audio tactile interface (ATI) with USD cable and headphone set.

ImageCast Precinct Tabulator (ICP)

ImageCast Precinct Scanner and Tabulator is an optical scan ballot tabulator used to scan marked paper ballots, interpret voter marks on the paper ballot, communicate these interpretations back to the voter and upon voter acceptance, deposits the ballot in the ballot box.

The ImageCast Precinct consists of the following:

- Two (2) optical imaging scanners for creating a duplex scanned image of each side of the ballot. Ballots can be fed in all four (4) orientations.
- Linux Operating System.
- Two SD memory cards ports for storage capabilities. Two (2) 8GB SD memory cards will be provided and located behind two securable doors (Administrator Door and Pollworker Door).
- An interactive electronic display in the form of an ultra-high contrast graphical color 5.7" LCD screen, and a built-in touch screen for administration purposes.
- An internal 3" thermal printer and one (1) 3" paper roll for generating reports.
- One (1) administrative security key (iButton) used with an integrated receptacle (physically attached to the top of the unit and electrically connected to the motherboard) used for a variety of verification and security tasks such control, data confidentiality and integrity functions.
- A motorized paper feed mechanism for detecting and moving the ballot within the scanner. Ballots used with the ImageCast Precinct must be 8.5" wide by a variable length (11", 14", 17" and 22"). The paper feed mechanisms physically capable of moving the ballot forward into the machine, across image sensors, enabling complete image capture of both sides of the ballot.
- Power supply module uses 120 Vac, 60Hz, one phase power. It has a power consumption of 0.07Amps at 120 Volts AC.
- An internal battery which is rated to provide six (2.5) hours of normal use in the absence of AC power. In addition to internal 2.5 hours battery an internal 6 hours battery option is also available. There is also a connection for an external 12VDC SLA battery.
- Patented functionality known as the AuditMark. For each ballot scanned and accepted into the unit, a corresponding ballot image is created and stored for audit purposes. The image consists of two parts described below:
 - The top portion of the image contains a scanned image of the ballot.
 - The bottom portion consists of a machine-generated text showing each mark that the unit interpreted for that particular ballot. This is referred to as the AuditMark.

ImageCast Molded Plastic Ballot Box

A textured molded plastic ballot box per ImageCast Precinct unit. The ballot box is made of a three (3) compartments, custom designed for use with the ImageCast Precinct. Dominion indicates that they have developed a custom attachment that would allow the new precinct tabulators to be attached to the County's current large blue ballot boxes. With that, the ImageCast Molded Plastic Ballot Boxes would not need to be purchased and the County could exercise this option upon further review of the attachment and its cost.

ImageCast Central Scanner (ICC)

The ImageCast Central Scanner consists of commercial off-the-shelf digital scanners configured to work with the ImageCast Central Software for high speed ballot tabulation. Each ImageCast Central Scanner includes the following:

- Canon DR-G1130 high speed document scanner
- ImageCast Central Software
- DELL AIO 7450 Computer 24" Touchscreen
- iButton Security Key
- iButton Programmer and iButton Key Switch & Cat5 RJ 45 Cables used with Democracy Suite to transfer security and election information to the iButtons for use with the ICC.
- Patented functionality known as the AuditMark. For each ballot scanned and accepted into the unit, a corresponding ballot image is created and stored for audit purposes. The image consists of two parts described below.

- The top portion of the image contains a scanned image of the ballot.
- The bottom portion consists of a machine-generated text showing each mark that the unit interpreted for that particular ballot, known as the AuditMark.

Dominion is responsible for providing all components of the Democracy Suite platform, including both hardware and software.

Life Expectancy

Dominion mitigates the risk concerning proprietary hardware with our partnerships with our manufacturers. Our partnership allows us to provide product availability for 10+ years. Our manufacturers along with our development staff continuously identify any end of life concerns and recertifies any parts with State and Federal certification authorities.

Per the County's license agreement, all certified improvements, enhancements, bug fixes and/or updates are available as detailed in the Standard License Agreement.

Per the County's license agreement, all certified improvements, enhancements, bug fixes and/or updates are available as detailed in the Standard License Agreement.

The County will have ongoing visibility as to which future version of Democracy Suite will include any Arizona-specific upgrades or updates; Dominion will devise an upgrade plan as required by the County.

The proposed voting system is supported by Dominion for the duration of the agreement with the County. The modalities depend on County-selected options, such as optional extended warranties.

Dominion is constantly working with Commercial off the Shelf equipment providers, such as Canon, Avalue and Dell, to ensure visibility regarding end-of-life components and available replacements. This is done in conjunction with managing ongoing state and federal certification campaigns, to ensure that Democracy Suite remains fully operational and available to customers. Where possible Dominion strives to integrate any new product offerings and enhancements to the currently certified system version to prevent having to replace certain infrastructure components.

Dominion understands that election officials need to ensure that the significant investment required to upgrade a voting system is made with confidence and peace of mind that the technology will keep up with changing requirements and public expectations. Dominion's development team is continually working on refining existing products and functionality, leading to annual federal certification campaigns with the EAC, as well as state certifications where required.

Maintenance and Parts

Dominion will address on-going support, repair, and preventative maintenance in a comprehensive and effective manner as characterized by the following:

- **Engineering** – Key components are designed with redundancy.
- **Manufacture** – All components are manufactured using ISO 9001 practices.
- **Design** – The solution architecture is redundant (redundant servers, redundant storage, etc.)
- **Warranty** – We provide hardware and software warranty to meet customer specification.
- **Preventative Maintenance** – Dominion will provide technical training to Maricopa County in order to ensure proper functioning of voting equipment
- **Repair** – Dominion maintains a warehouse in McKinney, Texas with an inventory of all parts and supplies needed for the Tabulator Solution and can respond quickly should a need arise.
- **Readiness** – During the identified pre-election period, Dominion will comply with requirements for enhanced response time to warranty requests.
- **Tracking and Reporting** – Dominion and its subcontractors utilize its Customer Relations Management system (CRM) to oversee repair and maintenance issues. This is the same ticket tracking system that is used for problem escalation.

Dominion and its team use a Customer Relations Management system (CRM) database to capture service calls to ensure all issues are resolved effectively. Once a call/email is received, a work ticket is created, and the initiating party will be contacted by a member of the service team.

Initial contact will be established after notification. At that time, additional troubleshooting instructions may

be provided to help the service team better respond to the failure or defect. If the defect or failure cannot be addressed in this manner, a service representative will make the appropriate arrangements for resolution. The diagram on the previous page summarizes this process.

If a failed component is under warranty, a Dominion technician will schedule an onsite visit to repair / rectify the defective or failed component. Where a failed or defective component is not covered by warranty, a request for an on-site visit to assess and repair the failed / defective component may be made.

The County will be trained on maintenance tasks to best upkeep the ImageCast Central system running efficiently during the ballot tabulation process. Dominion recommends at approximately 2,000 to 3,000 ballots scanned either wiping the ballot path with a supplied microfiber cloth, a dust clearing brush, or vacuuming of key locations on hardware. Additionally, Dominion will train the County to remove and clean all uptake rollers to manufacturer specifications.

Dominion will provide Preventative Maintenance training to the County. Preventative maintenance consists of standard steps and checklists for each type of ImageCast Ballot Marking Devices and accessible voting system component. Preventative maintenance for Dominion's Democracy Suite is designed to minimize all maintenance and is primarily focused on the mechanical components. Compliance with the requirements set out in the product maintenance guides and warehousing specifications is mandatory.

We will coordinate all repair and maintenance actions with the County or Authorized User. Dominion will track and retain documentation on maintenance and repair activities. The County will be given paperwork stating completion of work performed and status of the Voting System. Warranty and repair parts shall be new. At the conclusion of the warranty period and at the discretion of Maricopa County officials, responsibility for this function can be transferred to County staff (or a suggested third party), who have completed a Dominion technician training course. Dominion can also be contracted to continue to provide preventative maintenance support at our standard service rates. Dominion also offers different, optional extended warranty agreements, which allow the customer to select a plan which meets their specific needs.

END OF DOMINION TECHNOLOGY DELINEATION (FROM PROPOSAL):

The original Request for Proposal (RFP) asked vendors to delineate which of these technology components will be provided by the vendor and which are to be provided by the County. The proposal notes that all hardware (proprietary and COTS) will be provided by Dominion for the prices noted. This is acceptable but the **County will look to negotiate certain elements prior to entering into a full award for consumable supplies and COTS hardware such as the Oki "Mobile Ballot Printing" printers, if there are other avenues to attain those items through current County procurement contracts, if confirmed by Dominion to be viable for use.**

Additionally, for each election Maricopa County will conduct a full security review of the configuration and setup for an intended election. When there is equipment and technology that interacts or integrates with the system that is not already security tested or certified through the EAC Certification, then those components will be part of the security audit. **Dominion must fully participate in and support the County's final election readiness security audit.**

SUPPORT SERVICES:

The County also requires support for the entire pilot election process from early voting through tabulation and canvassing. These services are outlined as follows:

System Support Services – Dominion is responsible for all aspects of the initial implementation of the voting system.

Dominion shall provide all "Project Management" and "Implementation Activities" onsite with "*experienced Customer Relations Manager and the technical resources that are familiar with the unique requirements, processes and procedures applicable to Maricopa County*". The process will begin with a "Kick-Off Meeting" between the County team and the Dominion Project Manager and the Dominion Technical Lead assigned.

The agenda for this initial Kick-Off Meeting" meeting shall be as follows and the County agrees with this plan:

1. Review project governance structure, project roles and responsibilities
2. Project Management Artifacts Review
 - a. Review and adjust the following with a view to finalize immediately following contract signing:

- i. Project plan activities, schedule and milestones
 - ii. Issue tracking & escalation plan
 - iii. Risk mitigation plan
 - iv. Communication plan
 - v. Conflict resolution plan
- 3. Training Plan finalization
 - a. Review and adjust training sessions and schedule
- 4. Review Architectural & Technical Specifications deliverables

Additionally, the below deployment steps are as noted by Dominion in the proposal. The County concurs with the proposed structure for deployment as follows:

- **Requirements Gathering, Gap Analysis & Application Configuration** - A key phase in the initial stages of the project implementation will be a gap analysis performed by the Dominion team, and subsequent configuration will be developed and implemented.
 - Create Election Data Import Bridge - in this series of steps, Dominion works with the IT professional responsible for the creation and maintenance of the EMS database to create a bridge that allows the direct import of geopolitical data into Democracy Suite EMS. In this way, election divisions, contests, candidate names, propositions and other essential data need not be input twice, reducing the likelihood of user error.
 - Customization of Configurable Options - the County will provide final input and approval on ballot layouts, reports content, and the configuration of the options of the ImageCast voting terminals.
 - End-to-End Test - all systems undergo a rigorous operational test prior to release to the customer. This end-to-end test simulates real-election conditions and utilizes Election Day configurations.
 - Procurement and Delivery - Procurement will be conducted in a manner that allows the coordination of supplies and consumables to be shipped directly to the County. During the procurement phase of the project, all of the commercial off the shelf components used in our election system are purchased. Dominion will deliver all required equipment to the County based on the timeline outlined in the project plan. Provision in the project plan has been made to allow incremental orders to be placed following change management processes. Maricopa County always has the opportunity to work with the Dominion Project Manager to place additional orders.
- **Installation & Acceptance Testing** - Maricopa County is responsible for User Acceptance Testing, and Dominion will provide an onsite presence to support acceptance testing performed by the County. Acceptance testing involves a visual inspection of the voting platforms, successfully completing a series of internal diagnostics, and successfully tabulating ballots from a sample test election. Dominion provides documentation and training for client technicians, as well as warehouse set-up guidelines for inbound acceptance testing.
 - Preparation for Acceptance Testing - Dominion will provide guidelines & checklists to the County for acceptance testing and coordinate dates with the staff for software installation. This includes assessing suitability and identifying any modifications required, identifying areas for each process including a secure area for inventory control, preparing necessary acceptance documentation, and ensuring all necessary supplies are available.
 - Installation - Dominion will configure and install all software including the operating system and application software and set up the solution including all hardware and connections provided as part of the system.
 - Acceptance Testing - The County's Acceptance Team, with support from Dominion staff, will conduct detailed acceptance testing of the voting equipment. This acceptance testing provides assurance of full product functionality and accuracy. Acceptance testing is an essential part of the Dominion quality assurance process and takes place on-site at the customer location.
- **Training** - Dominion will work closely with Maricopa County to ensure that the training program is customized to meet your specific needs. Dominion will prepare and provide all needed training material, which includes training manuals, quick reference guides, website instructional courses, and technical reference manuals when necessary. Training and curriculum particular to the resources, staff, and needs of Maricopa County will be developed as part of the implementation meetings and materials will be provided before implementation for both hardware and software functions. In addition to formal training, our specialists will work to transfer the required knowledge and skills to relevant Maricopa County staff, with the objective of ensuring that your staff is empowered to manage all aspects of the system's availability and functionality. Dominion takes pride in our ability to transfer to local officials the skills necessary to conduct even complex elections with autonomy.

- **Election Programming** - The creation of the election database is a critical step in the election implementation. Given the very limited time available between the certification of the final ballot and the distribution of UOCAVA / Mail ballots, it is very important that timelines are appropriately managed. Dominion employs an iterative approach to ballot and report creation, where successive rounds of proofs are provided to election officials as more information becomes available. Using this approach, in many cases ballots have already been approved by the time they are certified, maximizing the time available for pre-election testing and logistics.
- **Logic and Accuracy Testing** - Maricopa County officials and their staff will conduct logic and accuracy testing of voting equipment, using processes, procedures, and support provided by Dominion. The Dominion project team will be available throughout the L&A process available to assist on an as required basis. Training for Maricopa County officials on the L&A process will take place prior to Logic and Accuracy testing.
- **Election Support** - The Dominion project team will reach an agreement with Maricopa County on their specific roles during ballot scanning and Election Night. Dominion’s on-site support resource will have the necessary skills to assist Maricopa County to ensure the polling location opens in a timely fashion and that the equipment functions properly. In addition, a key role for the on-site support resource is to assist Maricopa County with tabulation and results reporting. Dominion’s active voting support strategy can be customized to meet Maricopa County’s specific needs.
- **Post-Election Debrief Meeting** - Within 30 days following election event, Dominion will coordinate a post-election debrief meeting to discuss post-election events and activities with Maricopa County. The debrief meeting is an opportunity to review lessons learned from both Dominion and Maricopa County, evaluate success factors and areas for improvement for process enhancement in future election cycles. On completion of these reviews, project documentation and the project plan will be revised to reflect learning from the first election.

Training and Instruction – Dominion shall *“provide all training and instructional activities onsite with an experienced Customer Relations Manager and the technical resources that are familiar with the unique requirements, processes and procedures applicable to Maricopa County”*.

Dominion shall also provide documentation that is specific to individual roles and situations for County Staff. In addition, Dominion shall supply guides and documentation for *“Acceptance Check Lists, Unit Tracking Procedures, and Troubleshooting Guides are examples of items used in Preventative Maintenance and Hardware Acceptance Training. User Guides and Quick Reference Guides are examples of items used in Election Poll Worker Training.*

Dominion shall also provide User Guides that will cover all aspects of various topics such as *“Vote Tabulators and Accessible Components”* along with Quick Reference Guides that are *“brief, focused and image-oriented; they are designed for reference-at-a-glance in practical election situations.”*

Dominion shall effectively work with the County towards creating custom training materials as it relates to these new system components using **“Dominion Training Focus and Approach”** in detail and the County accepts and welcomes this comprehensive and customizable platforms as it relates to the Instructional Design, Delivery Methodology, Hardware Operations Training, Democracy Suite Training, Election Day Rover Training, and Train-the-Trainer Poll Worker Training.

In regards to training for future system updates, when updates or system changes occur over the life of the contract that effect the County, Dominion *“will work with the County to implement updated training programs using the same methodology detailed above. This includes working closely with the County to schedule training activities in advance of any live election event to ensure County staff has the knowledge and understanding of the system updates and changes.”*

Election-Specific Support – Dominion agrees to develop customized Election-Specific Support plan that meets the needs of the County. This plan will include assigning support for the County in the following areas:

- Operation and maintenance of the system to staff a phone bank on Election Day at the MCTEC facility
- Technicians to support the County on Election Day to ensure proposed technology is operating appropriately at all polling locations and in County offices

- Voting system repair technician during the election cycle, during ballots tabulation period, or at timeframes determined by the County
- Training personnel for County Staff, to support the use of the EMS
- Maintain an inventory of parts to reduce downtime risk and ensure equipment can be readily repaired
- Personnel to assist the County in performing maintenance and repairs based on a maintenance plan

Specifically, “**Standard Remote Service Availability and Response**” includes the following for which Dominion is responsible for:

- a. Standard hours of all support staff availability are from 8:00 a.m. to 5:30 p.m. EST, Monday to Friday excluding public holidays.
- b. Support staff is available outside standard hours by mutual agreement of the parties. The County will be given mobile phone numbers for members of the implementation team.

Phase	Type of Support	Initial Response	Estimation Response	Resolution
Outside an Election period	On-site, telephone, and video	Up to one business day	Up to 2 business days	Up to 10 to 15 business days
During creation of the Election database and ballots	On-site and telephone	Up to next business day	Up to 2 business days	Up to 3 business days
From ballot mailing to Election Day	On-site and telephone	Up to 12 hours	Up to next business day	Up to 2 business days
On Election Day	On-site	Immediate	60 minutes	Within 1 hour
From Election Day until Election certification	Telephone and video	Up to 12 hours.	Up to next business day	Up to 2 business days
During a recount	If required, on-site	Up to 6 hours	Up to next business day	Up to 1 business day

OPTIONAL PREFERENCES:

The County verifies hash codes of all software and firmware that is in escrow at the Secretary of State’s (SOS) Office and on file with National Institute of Standards and Technology (NIST). Dominion agrees to the following:

Data generated by the Democracy Suite platform, including results reporting, is protected by the deployment of FIPS-approved symmetric AES and asymmetric RSA encryption. The Democracy Suite Election Management System uses these techniques to encrypt election files prior to their use on ImageCast tabulators. Once the polls have been closed, the ImageCast tabulators encrypt all of the results files prior to transmitting them back to EMS.

SHA-256 hashes are used for all data integrity and verification. Should an intrusive process or altering of any file occur, hash values will be, in turn, altered as well. With that said, any presence of an intrusive process will be detected, as the hashes of any altered data will not match the value initially determined.

Although Arizona does not currently use ranked-choice voting (RCV), with legislative changes possible from session to session the County has an interest in a system that can support RCV. Dominion notes in their proposal that “Democracy Suite system supports the ability for Ranked Choice or Instant Runoff Voting on all voting devices, including the ImageCast Precinct, ImageCast X Ballot Marking Device and ImageCast Central.”

In further detail, Dominion clarifies that their Ranked Choice Voting functionality supports the following:

- Various ballot layout options with flexibility to include ranked choice contests on the same ballot as first-past-the-post contests.
- Supports instant runoff voting (IRV) as well as single transferable vote (STV).
- Tabulation of qualified write-in candidates
- Option to include warnings to voters if they have made an error voting their ballot (such as over-voting a ranking).

- System automatically captures images of all votes cast and each digital ballot image is appended with an AuditMark, showing a record of how the voter's marks were interpreted by the tabulator.
- RCV CVRs can be exported using the CVR report in JSON report.

The County conducts "Hand Count Audits" and the County requested that the Proposers to describe how their voting systems support the application of risk-limiting post-election audits and manual hand count audits. Accordingly, Dominion confirms their ability to comply with all types of audits and specifically the following:

Dominion's Democracy Suite solution can facilitate recounts, manual hand counts, and risk limiting audits. The system can identify and automate the removal of selected ballots from a batch for recount purposes. Dominion has developed a Ballot Audit and Review System to assist election officials in performing election canvasses and risk-limiting audits. This tool will be capable of sorting and filtering images of ballots by ballot style, precinct, polling location, contest, and candidate, for the purposes of a recount or post-election audit. Officials can review all the digital ballot images in an election, or a subset of ballots based on the chosen filtering conditions. This tool will provide an efficient and user-friendly interface for reviewing ballot images and associated results, as well as providing a framework to support a variety of auditing methodologies.

This tool allows multiple officials to access digital ballot images with their Digital Ballot AuditMark marks, digital Cast Vote Records, and related review notes. Filtering options enables the creation of ballot review subsets for specific audit reviews. This tool resides in a secure post-election environment that is separate from EMS

For the digital adjudication, there is a preference to allow for both digital adjudication that writes directly to the ballots cast record (tabulation) along with a "print queue" feature as well as an option to print the adjudicated ballot as a hard copy version. The ImageCast Adjudication module provided by Dominion shall allow for the County to resolve over votes, under votes, write-ins, ballots with damaged voting targets, interprets voter intent marks, and allows for the scanning of redacted provisional ballots. Dominion verifies that the adjudicated ballot, with the adjudicated AuditMark, is a multi-page ".tiff" image file that can be printed upon request.

While not an element included in the minimum qualifications for proposals, the County preferred an imaged-based voting system that will facilitate the format and issuance of ballots to voters through a remote accessible option (e.g. UOCAVA Voters). Dominion shall provide a "ImageCast Remote" offering (RAVBM/UOCAVA) where a ballot can be provided to a voter remotely. Upon authentication of the voter, the ballot can make selections, review, confirm selections and generate a PDF for return to the County. That PDF can be emailed or printed, and returned to election officials for processing.

This process is denoted as not requiring an internet connection, and therefore the voter selection data is protected and remains private. The summary of what is sent to the voter is a coversheet, ballot with the 2D barcode and human-readable summary of selections, and a return envelope.

The County preferred the voting system to have the ability to identify a digitally adjudicated ballot should the gathering of the physical ballot be required. This is possible through Dominion's system and "Each image/CVR combination is correlated to a given tabulator and batch of ballots scanned making it easy to find the specific ballot paper for further investigation if needed."

Disposition of Current System and Equipment - The County encouraged Proposers to provide solutions regarding the disposition of the County's current voting system. Dominion's proposal did not address this optional disposition of the current system and equipment. The County, however, reserves the right to discuss and negotiate some assistance from Dominion with disposal of the current system following the EAC and the Department of Defense (DoD) recommendations for disposal of voting equipment.

MISCELLANEOUS:

Warranty – The County requested that for the duration of any final agreement, the selected voting system will be under full warranty. That the warranty cover all aspects of the voting system, including all equipment, technology and all components attached to or necessary for functionality of the equipment to conduct elections in the County. The warranty must also cover any software or firmware patches, fixes, and updates, including any associated installation, testing, the necessary support to implement the changes, as well as the approval by the SOS.

Dominion’s terms for the warranty are noted as follows and the County reserve the right to review and negotiate these terms to get to a warranty and maintenance plan that fulfills the County’s needs:

Dominion shall include a warranty of the included ImageCast tabulators and Democracy Suite products (voting equipment hardware and EMS software, excluding consumables) for the first year upon formal acceptance of the equipment. This is a full warranty of any defects or failures on the ImageCast or Democracy Suites products.

Beyond the first year of ownership, Dominion offers a broad range of warranty and maintenance services which can easily be tailored to fit the County’s needs. These options range from an extended warranty package, and/or annual onsite preventative maintenance, or customers can choose to have items repaired under our time and material repair service.

Additionally, Dominion can also provide tier-1 technician training, to cover basic repairs and maintenance. Dominion’s Extended Warranty Agreements can be for one, two or more years, allowing for coverage adjustments over the lifetime of the voting system.

Dominion warranties exclude warranties for COTS equipment. Those warranties are provided by the Original Equipment Manufacturer.

For the first year, the Dominion warranty is a full warranty of any defects or failures on the ImageCast or Democracy Suites products. After the first year, Dominion shall provide extended warranty services or provide repairs on a time and materials basis.

Under the warranty, and on non-election day, Dominion endeavors to repair the equipment first. If the problem cannot be reasonably repaired, Dominion shall replace the affected equipment. On Election Day, equipment is replaced.

For clarity, the County defines “*reasonably repaired*” to mean a repair that can be done within a half hour timeframe. Because this is Election Day, recovery and response is time sensitive and we must take into consideration possible logistical and delivery timeframes for the piece of equipment, so this “half hour” repair for Election Day equipment is what we will look to. To formalize then, if a piece of equipment needs repair and the repair cannot be done within a half hour timeframe on Election Day, then the equipment must be replaced.

Adjudication of Ballot Markings - The County may opt to post all ballot images on its website to increase the transparency of vote tallying and election results. All proposals were required to state how the related voting systems will facilitate adjudications and the posting of the ballot-specific adjudication records for each marked vote and related data sets on the County’s website. Dominions response meet this County request and are as follows:

Ballots do not include any voter-identifying information, therefore the County can post all ballots in order to increase the transparency of vote tallying and election results. Posted ballots will include Dominion’ patented AuditMark technology, along with any outstacked adjudicated ballots where voter intent has been established. Dominion will work with Maricopa County officials to ensure that adjudications and ballot-specific adjudication records for all data sets are in conformance with the County’s guidelines in order to be posted.

Additionally, Dominion is currently working with several jurisdictions to support this capability, including the City and County of San Francisco. As we develop best practices and procedures with San Francisco, we will be able to share information with Maricopa County.

PROPOSAL EXCEPTIONS

In section 5.6 of the RFP there is an allowance for “EXCEPTIONS TO THE SOLICITATION” where the Respondents may identify and list all exceptions taken to all sections of 190265-RFP. In this proposal Dominion indicates its “*right to negotiate the final terms and conditions as part of the overall contract discussion with the County of Maricopa*”. With that, Dominion submitted the following exception or suggestions regarding the draft agreement or RFP legal requirements. **The County, upon review, agrees to the “Exception” requests made by Dominion as noted below:**

SECTION 3.8 SOURCE CODE ESCROW REQUIREMENT

Dominion suggest using the escrow terms from the current agreement between the parties. – “CONTRACTOR agrees to enter into a Third Party Escrow Services Agreement naming the Arizona Secretary of State as beneficiary. All application source code for the software used in the Vote Tabulation System, and all upgrades thereto shall be held in escrow under said Agreement. If CONTRACTOR ceases operations or becomes unable to support the software while under an obligation to do so, CONTRACTOR shall grant the Arizona Secretary of State authority to release the source code to the County, and the County shall have a limited license to use the source code to perform CONTRACTOR’s obligations hereunder. The source code will remain CONTRACTOR’s property and may not be otherwise used by the County.”

SECTION 6.1

Per current agreement between the parties, addition of a section for limitation of liability – “Except for the indemnification obligations contained in this agreement, CONTRACTOR’s total aggregate liability for any loss, damage, costs or expenses under or in connection with this agreement, howsoever arising, including without limitation, loss, damage, costs or expenses caused by breach of contract, negligence, strict liability, breach of statutory or any other duty shall in no circumstances exceed the total dollar amount of the agreement. Neither party shall be liable for any loss of profits, loss of business, loss of data, loss of use or any other indirect, incidental, punitive, special or consequential loss or damage whatsoever, howsoever arising, incurred by the other party or any third party, whether in an action in contract, negligence or other tort, even if the parties or their representatives have been advised of the possibility of such damages.”

SECTION 6.13

Per current agreement between the parties, addition of a last sentence to this section – “The CONTRACTOR shall be entitled to receive just and equitable compensation for work in progress and all amounts owing to the CONTRACTOR for work completed and materials accepted before the effective date of the termination.”

EXHIBIT C**VOTING SYSTEM MANAGED SERVICES TERMS, LICENSES AND WARRANTIES**

1. **Composition of Exhibit C.** This Exhibit consists of the terms and conditions contained in the following sections and the listed Schedules:

Schedule 1: Software License Terms and Conditions
Schedule 2: Print Copyright License Terms and Conditions

2. **Definitions.**

- 2.1. "Acceptance" means the successful completion of the acceptance testing performed by the Customer on the Dominion Hardware and related Dominion Software, after delivery in accordance with testing criteria developed and updated from time to time by Dominion, or the occurrence of other events defined in Section 6.
- 2.2. "Dominion Software" means software and firmware programs licensed to the Customer by Dominion and any associated documentation as more specifically described in Exhibit A.
- 2.3. "Dominion Hardware" means the ImageCast[®] system hardware as more specifically described in Exhibit A.
- 2.4. "Election" means a single election event administered by the Customer including any absentee and early voting activity associated with the election event. Election shall not mean any follow-on events occurring after the initial election event, including without limitations, run-offs or recall replacements elections. Any other event shall be considered an Election in and of itself.
- 2.5. "Election Management System Hardware" or "EMS Hardware" means third party hardware required for operating Dominion Software as used in conjunction with the Dominion Hardware.
- 2.6. "Specifications" means descriptions and data regarding the features, functions and performance of the Software, as set forth in user manuals or other applicable documentation provided by Dominion.
- 2.7. "System" means the combination of Dominion Software, Dominion Hardware and EMS Hardware.
- 2.8. "Third Party Software" means software, other than the Dominion Software, which is owned by third parties, and which Dominion provides to Customer pursuant to sublicenses or end user license agreements with the owners of such Third Party Software. Third Party Software includes, but is not limited to, various operating systems, software drivers, and report writing subroutines.

3. **Dominion's Responsibilities.** Dominion shall:

- 3.1. Provide the System and services as described in Exhibit A - Pricing.
- 3.2. Provide the Customer with a Dominion Software use License as described in Schedule 1 - Software License Terms and Conditions.
- 3.3. Appoint a Project Manager to oversee the general operations of the project. The project manager shall be responsible for arranging all meetings, visits and consultations between the Parties and for all administrative matters such as invoices, payments and amendments. The project manager shall communicate with the Customer as to the status of information, procedures and progress on the tasks set out in the Agreement and alert of any material change in such plans.
- 3.4. Assist in the Acceptance Testing process as required by Section 6 herein.
- 3.5. Provide Customer with one (1) reproducible electronic copy of the documentation.

- 3.6. Provide the System that Dominion designs, manufactures, and/or licenses, which is certified for use as a voting system in the Customer’s jurisdiction.
- 3.7. Provide invoices to Customer pursuant to the payment schedule in Exhibit A.

4. Customer’s Responsibilities. Customer shall:

- 4.1. Pay invoices in a timely manner and no later than thirty (30) calendar days from receipt of a Dominion invoice.
 - 4.1.1. Dominion shall issue invoices to Customer pursuant to the invoice schedule listed in Exhibit A.
 - 4.1.2. Payments exclusive of all excise, sale, use and other taxes imposed by any governmental authority, all of which shall be reimbursed by the Customer. If the Customer is exempt from taxes, Customer shall supply Dominion a tax exemption certificate or other similar form demonstrating its exempt status.
- 4.2. Appoint a Project Manager who shall be responsible for review, analysis and acceptance of the System and the coordination of Customer personnel, equipment, vehicles and facilities. The Project Manager shall be empowered to make decisions on behalf of the Customer with respect to the work being performed under this Agreement. The Project Manager shall also have direct access to the Customer’s top management at all times for purposes of problem resolution.
- 4.3. Conduct Acceptance Testing process as required by Section 6.
- 4.4. Customer shall provide reasonable access and entry into all Customer property required by Dominion to provide the System and perform the services described in this Agreement. All such access and entry shall be provided at Customer’s expense.

5. Title and Risk of Loss.

- 5.1. Title to the System. The System shall be provided by Dominion to the Customer as part of the managed services described herein. Title to the System or any portion thereof, shall not pass to the Customer and shall remain with Dominion.
- 5.2. Software. Dominion Software and Third Party Software is licensed, not sold. The original and any copies of the Dominion Software, or other software provided pursuant to this Agreement, in whole or in part, including any subsequent improvements or updates, shall remain the property of Dominion, or any third party that owns such software.
- 5.3. Risk of Loss. Dominion shall bear the responsibility for all risk of physical loss or damage to each portion of the System until such portion is delivered to the “ship to” address, except to the extent such damage is caused by Customer. Customer shall provide Dominion with a single location for shipment and Dominion shall not be responsible for shipping to more than one location. To retain the benefit of this clause, Customer shall notify Dominion of any loss or damage within ten (10) business days of the receipt of any or all portions of the System, or such shorter period as may be required to comply with the claims requirements of the shipper, and shall cooperate in the processing of any claims made by Dominion.

6. Acceptance.

- 6.1. Dominion Software or Dominion Hardware. After delivery Dominion Software or Dominion Hardware, the Customer will conduct acceptance testing of such items, in accordance with the acceptance criteria developed and updated, from time to time, by Dominion. Such acceptance testing shall occur at a time mutually agreed upon by the Parties, but no later than ten (10) business days after delivery.
- 6.2. System Acceptance Testing. To the extent not tested as part of the testing pursuant to Section 6, upon

completing the installation of the System, the Customer will conduct system acceptance testing, according to the acceptance test procedures developed and updated, from time to time, by Dominion. Such acceptance testing shall occur at a time mutually agreed upon by the Parties, but no later than ten (10) business days after installation of the System.

7. Software License and Use.

- 7.1. License. Upon mutual execution of this Agreement, Dominion grants to the Customer, and the Customer accepts a non-exclusive, non-transferable, license (“License”) to use the Dominion Software subject to the terms and conditions of this Agreement and the Software License Terms and Conditions incorporated herein as Schedule 1.
- 7.2. Third Party Software. The System includes Third Party Software, the use of which is subject to the terms and conditions imposed by the owners of such Third Party Software. Customer consents to the terms and conditions of the Third Party License Agreements by Customer’s first use of the System.

8. Dominion Software Warranty.

- 8.1. Dominion Software Warranty. The Dominion Software Warranty is subject to the Software License Terms and Conditions of Schedule 1.
- 8.2. Third Party Software Warranty. To the extent permitted by the licensor of Third Party Software, Dominion shall pass to Customer all warranties such licensors make available to Dominion regarding the operation of Third Party Software.
- 8.3. No Other Software Warranties. DOMINION DISCLAIMS ALL OTHER SOFTWARE WARRANTIES AND REPRESENTATIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY BASED ON A COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

9. Hardware Warranty.

- 9.1. Dominion Hardware Warranty Terms. Dominion warrants that when used with the configuration approved by Dominion, each component of Dominion Hardware will be free of defects that would prevent the Dominion Hardware from operating in conformity in all material respects with its specifications. The Dominion Hardware Warranty shall remain in effect during the Agreement Term.
- 9.2. Dominion Hardware Warranty Services. Dominion shall repair or replace the Dominion Hardware so that each item thereof operates in conformity with its specifications, so long as such Dominion Hardware is operated with its designated software and third party products (if applicable) approved by Dominion for use with the Dominion Hardware. If any Dominion Hardware item fails to operate in conformity with the specifications during the Agreement term, Dominion shall fully repair or, at Dominion’s sole option, replace the Dominion Hardware. The following conditions apply to the Dominion Hardware services:
 - 9.2.1 Dominion shall bear the costs for ground-shipping Dominion Hardware parts or the repaired/replaced item to and from the Customer. Shipping costs are based on ground service rates. If faster shipping service is required, the shipping cost shall be at the Customer’s expense.
 - 9.2.2 The following services are not covered by the Dominion Hardware warranty, but may be available for purchase at Dominion’s then current time and material rates:
 - a. Replacement of consumable items including but not limited to batteries, pens, paper rolls, seals, printer ink, removable memory devices, etc.;
 - b. Repair or replacement of Dominion Hardware damaged by of accident, disaster, theft, vandalism, neglect, abuse, or any improper usage;

- c. Repair or replacement of Dominion Hardware modified by any person other than those expressly authorized in writing by Dominion;
 - d. Repair or replacement of Dominion Hardware products from which the serial numbers have been removed, defaced or changed.
- 9.3. EMS Hardware Warranty. To the extent permitted by the manufacturers of the EMS Hardware, Dominion shall pass to the Customer all warranties such manufacturers make available to Dominion.
- 9.4. No Other Warranties. DOMINION DISCLAIMS ALL OTHER WARRANTIES AND REPRESENTATIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY BASED ON A COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

SCHEDULE 1

SOFTWARE LICENSE TERMS AND CONDITIONS

1. License Terms.

1.1. License Limitations. Customer's use of the Dominion Software pursuant to the License granted in the Agreement is subject to the terms herein. Customer may only use the Dominion Software for its own internal business purposes and conducting elections and solely in conjunction with the EMS Hardware. The License shall only be effective during the Term and cannot be transferred or sublicensed.

1.2. Print Copyright License. Subject to the Print Copyright License terms and conditions as defined in Schedule 2 attached hereto, Dominion grants to Customer a non-exclusive, non-transferable print copyright license as defined in Schedule 2.

1.3. Third-Party Software. When applicable, Dominion hereby sublicenses any software that constitutes or is contained in Third-Party Software, in object code form only, to Customer for use during the Term.

1.4. No Other Licenses. Other than as expressly set forth herein, (a) Dominion grants no licenses, expressly or by implication, and (b) Dominion's entering into the Agreement will not be deemed to license or assign any intellectual property rights of Dominion to Customer or any third party. Customer agrees not to use the Dominion Software as a service bureau for elections outside the Customer's jurisdiction and agrees not to reverse engineer or otherwise attempt to derive the source code of the Dominion Software. The Customer shall have no power to transfer or grant sub-licenses for the Dominion Software. Any use of all or any portion of the Dominion Software not expressly permitted is strictly prohibited.

1.5. Intellectual Property Infringement Indemnification. If a third party claims that the Dominion Software or System infringes any United States patent, copyright, trade secret or similar intellectual property right, Dominion shall defend Customer against such claim at Dominion's expense and pay all damages that a court finally awards against Customer. If such a claim is made or appears possible, Dominion shall, within sixty (60) days of such claim, and at its option: (a) secure for Customer the right to continue to use the infringing portion of the Dominion Software or System; or (b) modify or replace the Dominion Software and System so that it is non-infringing but retains equivalent functionality. If neither of the foregoing options is reasonably available, Dominion shall require Customer to return the Dominion Software or System, and Dominion shall refund Customer amounts calculated pursuant to the Dominion Software License fee, on a pro-rate basis. The foregoing notwithstanding, Dominion shall have no obligation to indemnify Customer for any infringement claim based on Customer's modification or misuse of the Dominion Software, if the claim would have been avoided had the Dominion Software not been modified or misused.

2. Payment. In consideration of the grant of the license, the Customer shall pay the license fees set forth in the Agreement and Exhibit A of the Agreement.

3. Upgrades and Certification. During the Term, Dominion may provide upgrades to Customer under the following terms and conditions.

3.1. Upgrades. In the event that Dominion, at its sole discretion, certifies a Dominion Software upgrade under the applicable laws and regulations of the Customer's State, Dominion shall make the certified Dominion Software upgrade available to the Customer at no additional cost.

3.2. Certification Requirement. Notwithstanding any other terms of this Agreement, Dominion shall not provide, and shall not be obligated to provide under this Agreement any upgrade, enhancement or other Dominion Software update that has not been certified under the applicable provisions of the election laws and regulations of the Customer's State.

4. **Prohibited Acts.** The Customer shall not, without the prior written permission of Dominion:

4.1. Transfer or copy onto any other storage device or hardware or otherwise copy the Dominion Software in whole or in part except for purposes of system backup;

4.2. Reverse engineer, disassemble, decompile, decipher or analyze the Dominion Software in whole or in part;

4.3. Alter or modify the Dominion Software in any way or prepare any derivative works of the Dominion Software or any part of parts of the Dominion Software;

4.4. Alter, remove or obstruct any copyright or proprietary notices from the Dominion Software, or fail to reproduce the same on any lawful copies of the Dominion Software.

5. **Return of Dominion Software.** Upon termination or expiration of this Agreement, Customer shall forthwith return to Dominion all Dominion Software in its possession or control, or destroy all such Dominion Software from any electronic media, and certify in writing to Dominion that it has been destroyed.

6. **Warranties.** The following warranties will apply to all Dominion Software during the Term.

6.1. Dominion Software Warranty Terms. Dominion warrants that during the Term, the Software will function substantially in accordance with the Specification. If the Customer believes that the Software is not functioning substantially in accordance with the Specifications, the Customer shall provide Dominion with written notice of the material failure within thirty (30) days of discovering the material failure, provided that the Customer can reproduce the material failure to Dominion. The foregoing warranty shall be void in the event of the Software (i) having been modified by any party other than Dominion or (ii) having been used by the Customer for purposes other than those for which the Software was designed by Dominion. If Dominion and Customer are unable to agree whether the reported material failure is covered by the foregoing warranty, the issue shall be handled in accordance with the Dispute procedures in the Maricopa County Procurement Code.

6.2. Corrections. If the Customer believes that the Dominion Software is not functioning substantially in accordance with the Specifications or Requirements, the Customer shall provide Dominion with written notice of the material failure within thirty (30) days of discovering the material failure, provided that the Customer can reproduce the material failure to Dominion. Dominion shall correct the deficiencies, at no additional cost to the Customer and incorporate such corrections into the next version certified by the Customer's State.

6.3 Third-Party Software. The warranties herein do not apply to any Third-Party Software. However, to the extent permitted by the manufacturers of Third-Party Software, Dominion shall pass through to Customer all warranties such manufacturers make to Dominion regarding the operation of such Third-Party Software.

6.4. NO OTHER WARRANTIES. EXCEPT AS SET FORTH IN THE AGREEMENT AND HEREIN, DOMINION DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY BASED ON A COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

SCHEDULE 2

PRINT COPYRIGHT LICENSE TERMS AND CONDITIONS

1. Definitions.

- 1.1. “Derivative Works” means any work that is based upon or derived from Dominion’s voting systems’ ballots, including without limitation, sample ballots and voting booklets.
- 1.2. “Voting Systems’ Ballots” means any ballot created for use with any voting system owned or licensed by Dominion.

2. Print Copyright License and Use.

- 2.1. Copyright License Grant. Dominion grants to the Customer a non-exclusive, non-transferable copyright license to print, reproduce, distribute or otherwise copy Dominion’s Voting Systems’ Ballots and any Derivative Works (collectively the “Materials”) pursuant to the terms and conditions of this Schedule 2.
- 2.2. Copyright License Use. Other than as expressly set forth herein, (a) Dominion grants no other licenses, expressly or by implication, and (b) Dominion’s entering into and performing the Agreement will not be deemed to license or assign any intellectual property rights of Dominion to Customer or any third party, (c) the copyright license granted herein cannot be transferred or sublicensed and the Voting Systems’ Ballots or Derivative Works cannot be reproduced by any third party without the prior written consent of Dominion, including without limitation:
 - (i) any commercial or non-commercial printer
 - (ii) any third party vendor using ballot on demand system.
- 2.3. Rights and Interests. All right, title and interest in the Material, including without limitation, any copyright, shall remain with Dominion.

3. No Copyright Warranties. EXCEPT AS SET FORTH HEREIN, DOMINION DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY BASED ON A COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE

DOMINION VOTING SYSTEMS, INC., 1201 18TH STREET, SUITE 210, DENVER, CO 80202

PRICING SHEET: NIGP CODE 57834

Terms:	NET 30
Vendor Number:	VC0000002816
Certificates of Insurance	Required
Contract Period:	To cover the period ending July 31, 2022.

SERIAL 190265 RFP ELECTIONS TABULATION SYSTEM

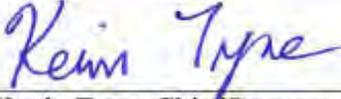
DATE OF LAST REVISION: February 10, 2010 CONTRACT END DATE: December 31, 2022

CONTRACT PERIOD THROUGH ~~JULY~~ DECEMBER 31, 2022

TO: All Departments
FROM: Office of Procurement Services
SUBJECT: Contract for **ELECTIONS TABULATION SYSTEM**

Attached to this letter is published an effective purchasing contract for products and/or services to be supplied to Maricopa County activities as awarded by Maricopa County on **June 26, 2019 (Eff. 08/01/19)**.

All purchases of products and/or services listed on the attached pages of this letter are to be obtained from the vendor holding the contract. Individuals are responsible to the vendor for purchases made outside of contracts. The contract period is indicated above.



Kevin Tyne, Chief Procurement Officer
Office of Procurement Services

ES/mm
Attach

Copy to: Office of Procurement Services
 Rey Valenzuela, Recorders Office/Elections

CONTRACT: ELECTIONS TABULATION SYSTEM (190265-RFP)

This Contract is entered into this 26th day of July 2019 by and between Maricopa County (“County”), a political subdivision of the State of Arizona, and Dominion Voting Systems, Inc., a Delaware corporation (“Contractor”) for the purchase of Maricopa Election Tabulation System.

1.0 CONTRACT TERM:

~~This Contract is for a term of three (3) years, beginning on the 1st day of August 2019 and ending the 31st day of July, 2022.~~

1.1 This Contract is for a term of three (3) years and five (5) months, beginning on the 1st day of August 2019 and ending the 31st day of December 2022. The contract will consist of two independent phases.

1.1.1 Phase 1 - Pilot: Over the course of the first five months of the Contract Term (August 1, 2019 through December 31, 2019) the County will conduct a pilot test of Dominion’s equipment at no cost to the County.

1.1.2 Phase 2 - System Installation and Ongoing Services: Beginning January 1, 2020 through the December 31, 2022, Dominion shall provide all equipment, services and related licenses to the County at the corresponding prices as outlined in this Agreement.

1.2 The County may, at its option and with the agreement of the Contractor, renew the term of this Contract for additional terms up to a maximum of ~~three (3) additional~~ **two (2) years and seven (7) months**, (or at the County’s sole discretion, extend the contract on a month-to-month bases for a maximum of six (6) months after expiration). The County shall notify the Contractor in writing of its intent to extend the Contract term at least sixty (60) calendar days prior to the expiration of the original contract term, or any additional term thereafter.

1.3 CONTRACT COMPLETION:

The Contractor shall make all reasonable efforts for an orderly transition of its duties and responsibilities to another provider and/or to the County. This may include, but is not limited to the preparation of a transition plan and cooperation with the County or other providers in the transition. The transition includes the transfer of all records, and other data in the possession, custody or control of Contractor required to be provided to the County either by the terms of this agreement or as a matter of law. The provisions of this clause shall survive the expiration or termination of this agreement.

2.0 PRICE ADJUSTMENTS:

Any requests for reasonable price adjustments must be submitted sixty (60) calendar days prior to the Contract expiration or annual anniversary or bi-annual date etc. Requests for adjustment in cost of labor and/or materials must be supported by appropriate documentation. The reasonableness of the request will be determined by comparing the request with the Consumer Price Index or by performing a market survey. If County agrees to the adjusted price terms, County shall issue written approval of the change and provide

an updated version of the Contract. The new change shall not be in effect until the date stipulated on the Contract.

3.0 PAYMENTS:

3.1 As consideration for performance of the duties described herein, County shall pay Contractor the sum(s) stated in Exhibit "A." **Maricopa County is not required to lease the following optional items as part of the final contract, Dominion shall, however, provide a demonstration of these Optional offerings as part of the pilot program.:**

- **ImageCast Precinct Ballot Box-553,**
- **Automated Test Deck-1,**
- **Remote UOCAVA-1.**

3.2 Payment shall be made upon the County's receipt of a properly completed invoice.

3.3 INVOICES:

3.3.1 The Contractor shall submit one (1) legible copy of their detailed invoice before payment(s) will be made. Incomplete invoices will not be processed. At a minimum, the invoice must provide the following information:

- Company name, address and contact
- County bill-to name and contact information
- Contract Serial Number
- County purchase order number
- Project name and/or number
- Invoice number and date
- Payment terms
- Date of service or delivery
- Quantity
- Contract Item number(s)
- Description of Purchase (product or services)
- Pricing per unit of purchase
- Freight (if applicable)
- Extended price
- Mileage w/rate (if applicable)
- Arrival and completion time (if applicable)
- Total Amount Due

3.3.2 Problems regarding billing or invoicing shall be directed to the Department as listed on the Purchase Order.

3.3.3 Payment shall only be made to the Contractor by Accounts Payable through the Maricopa County Vendor Express Payment Program. This is an Electronic Funds Transfer (EFT) process. After Contract Award the Contractor shall complete the Vendor Registration Form located on the County Department of Finance Vendor Registration Web Site (<http://www.maricopa.gov/922/Vendors>).

3.3.4 Discounts offered in the contract shall be calculated based on the date a properly completed invoice is received by the County.

3.3.5 EFT payments to the routing and account numbers designated by the Contractor will include the details on the specific invoices that the payment covers. The Contractor is required to discuss remittance delivery capabilities with their designated financial institution for access to those details.

3.4 APPLICABLE TAXES:

3.4.1 Payment of Taxes: The Contractor shall pay all applicable taxes. With respect to any installation labor on items that are not attached to real property performed by Contractor under the terms of this Contract, the installation labor cost and the gross receipts for materials provided shall be listed separately on the Contractor's invoices.

3.4.2 State and Local Transaction Privilege Taxes: To the extent any State and local transaction privilege taxes apply to sales made under the terms of this Contract it is the responsibility of the seller to collect and remit all applicable taxes to the proper taxing jurisdiction of authority.

3.4.3 Tax Indemnification: Contractor and all subcontractors shall pay all Federal, State, and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold Maricopa County harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or State and local laws and regulations, and any other costs including; transaction privilege taxes, unemployment compensation insurance, Social Security, and Worker's Compensation.

3.5 TAX (SERVICES):

No tax shall be invoiced or paid against Contractor's labor. It is the responsibility of the Contractor to determine any and all applicable taxes.

3.6 TAX (COMMODITIES):

Tax shall not be invoiced against Contractor's labor. It is the responsibility of the Contractor to determine any and all applicable taxes.

3.7 STRATEGIC ALLIANCE for VOLUME EXPENDITURES (\$AVE):

The County is a member of the \$AVE cooperative purchasing group. \$AVE includes the State of Arizona, many Phoenix metropolitan area municipalities, and many K-12 unified school districts. Under the \$AVE Cooperative Purchasing Agreement, and with the concurrence of the successful Respondent under this solicitation, a member of \$AVE may access a contract resulting from a solicitation issued by the County.

3.8 INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENTS (ICPA's):

County currently holds ICPA's with numerous governmental entities. These agreements allow those entities, with the approval of the Contractor, to purchase their requirements under the terms and conditions of the County Contract. It is the responsibility of the non-County government entity to perform its own due diligence on the acceptability of the Contract under its procurement rules, processes and procedures.

4.0 AVAILABILITY OF FUNDS:

4.1 The provisions of this Contract relating to payment for services shall become effective when funds assigned for the purpose of compensating the Contractor as herein provided are actually available to County for disbursement. The County shall be the sole judge and authority in determining the availability of funds under this Contract. County shall keep the Contractor fully informed as to the availability of funds.

4.2 If any action is taken by, any State agency, Federal department, or any other agency or instrumentality to suspend, decrease, or terminate its fiscal obligations under, or in connection with, this Contract, County may amend, suspend, decrease, or terminate its obligations under, or in connection with, this Contract. In the event of termination, County shall be liable for payment only for services rendered prior to the effective date of the termination, provided that such services

are performed in accordance with the provisions of this Contract. County shall give written notice of the effective date of any suspension, amendment, or termination under this Section, at least ten (10) days in advance.

5.0 DUTIES:

- 5.1 The Contractor shall perform all duties stated in Exhibit "B", or as otherwise directed in writing by the Procurement Officer.
- 5.2 During the Contract term, County may provide Contractor's personnel with adequate workspace for consultants and such other related facilities as may be required by Contractor to carry out its contractual obligations.

6.0 TERMS AND CONDITIONS:

6.1 INDEMNIFICATION:

To the fullest extent permitted by law, and to the extent that claims, damages, losses or expenses are not covered and paid by insurance purchased by the Contractor, the Contractor shall defend indemnify and hold harmless the County (as Owner), its agents, representatives, agents, officers, directors, officials, and employees from and against all claims, damages, losses, and expenses (including, but not limited to attorneys' fees, court costs, expert witness fees, and the costs and attorneys' fees for appellate proceedings) arising out of, or alleged to have resulted from the negligent acts, errors, omissions, or mistakes relating to the performance of this Contract.

Contractor's duty to defend, indemnify, and hold harmless the County, its agents, representatives, agents, officers, directors, officials, and employees shall arise in connection with any claim, damage, loss, or expense that is attributable to bodily injury, sickness, disease, death or injury to, impairment of, or destruction of tangible property, including loss of use resulting there from, caused by negligent acts, errors, omissions, or mistakes in the performance of this Contract, but only to the extent caused by the negligent acts or omissions of the Contractor, a subcontractor, any one directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

The scope of this indemnification does not extend to the sole negligence of County.

Except for the indemnification obligations contained in this agreement, Contractor's total aggregate liability for any loss, damage, costs or expenses under or in connection with this agreement, howsoever arising, including without limitation, loss, damage, costs or expenses caused by breach of contract, negligence, strict liability, breach of statutory or any other duty shall in no circumstances exceed the total dollar amount of the agreement. Neither party shall be liable for any loss of profits, loss of business, loss of data, loss of use or any other indirect, incidental, punitive, special or consequential loss or damage whatsoever, howsoever arising, incurred by the other party or any third party, whether in an action in contract, negligence or other tort, even if the parties or their representatives have been advised of the possibility of such damages.

6.2 INFRINGEMENT DEFENSE INDEMNIFICATION:

- 6.2.1 Defense and Indemnity: Contractor shall defend, Participate and Share in the Cost, as defined below, in the full defense of the County against any Claim, as defined below, and will indemnify and hold harmless the County as provided for in this Section for any judgments, settlements and court awarded attorney's fees resulting from a Claim where the claimant is adjudged the successful party in the Claim. Contractor's obligations under this Section are conditioned on the following: (i) County promptly notifies Contractor of the Claim in writing upon being made aware of the Claim; (ii) County gives Contractor

lead authority and County being control of the defense and (if applicable) settlement of the Claim, provided that County’s legal counsel may participate in such defense and settlement, at County’s expense, and (iii) County provides all information and assistance reasonably requested by Contractor to handle the defense or settlement of the Claim. For purposes of this Section, “Claim” means any cause of action in a third party action, suit or proceeding against County alleging that Contractor software, or its upgrades, modifications, or revisions, as of its delivery date under this Contract, infringes a valid U.S. patent, copyright or trademark. For the purposes of this section, “Participate and Share in the Costs” means Contractor will assist the County in the defense of the claim, to the extent agreed to by the parties, except that Contractor shall be solely responsible for any and all costs adjudged in a successful Claim against the County.

6.2.2 Remedial Measures: If software becomes, or Contractor reasonably believes use of software may become the subject of a Claim, Contractor may, at its own expense and option: (i) procure for County the right to continue use of the Product; (ii) replace or modify the software; or to the extent that neither (i) nor (ii) are deemed commercially practicable, (iii) refund to County a pro-rated portion of the applicable fees for software based on a linear depreciation monthly over 10 year useful life, in which case County will cease all use of software and return it to Contractor.

6.2.2.1 Exceptions: Contractor will have no defense or indemnity obligation for any Claim based on: (i) modifications by someone other than Contractor; (ii) software has been modified by Contractor in accordance with County-provided specifications or instructions; (iii) use or combination by the County of software with Third Party Products, open source or freeware technology; (iv) Third Party Products, open source or freeware technology; (v) a product that is used or located by County in a country other than the country in which or for which it was supplied by Contractor; (vi) possession or use of a product after Contractor has informed County of modifications or changes required to avoid such Claim and offered to implement those modifications or changes, if such Claim would have been avoided by implementation of Contractor's suggestions and to the extent County did not provide Contractor with a reasonable opportunity to implement Contractor's suggestions; or (vii) the amount of revenue or profits earned or other value obtained by the use of Products, or the amount of use of the Products. “Third Party Products” means any products made by a party other than Contractor, and may include, without limitation, products ordered by County from third parties. However, components of Contractor branded Products are not Third Party Products if they are both: (i) embedded in Third Party Products (i.e., not recognizable as standalone items); and (ii) not identified as separate items on Contractor’s price list, quotes, order specifications forms or documentation.

6.2.3 The foregoing states Contractor’s entire liability, and County’s sole and exclusive remedy except as provided at law or equity, with respect to any infringement or misappropriation of any intellectual property rights of another party.

6.3 INSURANCE:

6.3.1 Contractor, at Contractor’s own expense, shall purchase and maintain the herein stipulated minimum insurance from a company or companies duly licensed by the State of Arizona and possessing a current A.M. Best, Inc. rating of B++. In lieu of State of Arizona licensing, the stipulated insurance may be purchased from a company or companies, which are authorized to do business in the State of Arizona, provided that said insurance companies meet the approval of County. The form of any insurance policies and forms must be acceptable to County.

6.3.2 All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily

completed and formally accepted. Failure to do so may, at the sole discretion of County, constitute a material breach of this Contract.

6.3.3 Contractor's insurance shall be primary insurance as respects County, and any insurance or self-insurance maintained by County shall not contribute to it.

6.3.4 Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect the County's right to coverage afforded under the insurance policies.

6.3.5 The insurance policies may provide coverage that contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to County under such policies. Contractor shall be solely responsible for the deductible and/or self-insured retention and County, at its option, may require Contractor to secure payment of such deductibles or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

6.3.6 The insurance policies required by this Contract, except Workers' Compensation and Errors and Omissions, shall name County, its agents, representatives, officers, directors, officials and employees as Additional Insureds.

6.3.7 The policies required hereunder, except Workers' Compensation and Errors and Omissions, shall contain a waiver of transfer of rights of recovery (subrogation) against County, its agents, representatives, officers, directors, officials and employees for any claims arising out of Contractor's work or service.

6.3.8 Commercial General Liability:

Commercial General Liability insurance and, if necessary, Commercial Umbrella insurance with a limit of not less than \$2,000,000 for each occurrence, \$4,000,000 Products/Completed Operations Aggregate, and \$4,000,000 General Aggregate Limit. The policy shall include coverage for premises liability, bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage, and shall not contain any provisions which would serve to limit third party action over claims. There shall be no endorsement or modifications of the CGL limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

6.3.9 Automobile Liability:

Commercial/Business Automobile Liability insurance and, if necessary, Commercial Umbrella insurance with a combined single limit for bodily injury and property damage of not less than \$2,000,000 each occurrence with respect to any of the Contractor's owned, hired, and non-owned vehicles assigned to or used in performance of the Contractor's work or services or use or maintenance of the premises under this Contract.

6.3.10 Workers' Compensation:

Workers' Compensation insurance to cover obligations imposed by Federal and State statutes having jurisdiction of Contractor's employees engaged in the performance of the work or services under this Contract; and Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee, and \$1,000,000 disease policy limit.

Contractor, its contractors and its subcontractors waive all rights against Contract and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the Workers' Compensation and Employer's Liability or commercial umbrella liability insurance obtained by Contractor, its contractors and its subcontractors pursuant to this Contract.

6.3.11 Technology Errors & Omission Insurance:

- Each claim \$2,000,000
- Annual Aggregate \$2,000,000

Such insurance shall cover any, and all errors, omissions, or negligent acts in the delivery of products, services, and/or licensed programs under this Contract.

In the event that the Tech E&O insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years, beginning at the time work under this Contract is completed.

6.3.12 Certificates of Insurance:

6.3.12.1 Prior to Contract award, Contractor shall furnish the County with valid and complete certificates of insurance, or formal endorsements as required by the Contract in the form provided by the County, issued by Contractor's insurer(s), as evidence that policies providing the required coverage, conditions and limits required by this Contract are in full force and effect. Such certificates shall identify this contract number and title.

6.3.12.2 In the event any insurance policy(ies) required by this Contract is(are) written on a claims made basis, coverage shall extend for two years past completion and acceptance of Contractor's work or services and as evidenced by annual Certificates of Insurance.

6.3.12.3 If a policy does expire during the life of the Contract, a renewal certificate must be sent to County fifteen (15) calendar days prior to the expiration date.

6.3.13 Cancellation and Expiration Notice:

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to Maricopa County. Contractor must provide to Maricopa County, within two (2) business days of receipt, if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to Maricopa County Office of Procurement Services and shall be mailed or hand delivered to 320 West Lincoln Street, Phoenix, AZ 85003, or emailed to the Procurement Officer noted in the solicitation.

6.4 FORCE MAJEURE:

6.4.1 Neither party shall be liable for failure of performance, nor incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Contract if such delay or failure is caused by events, occurrences, or causes beyond the reasonable control and without negligence of the parties. Such events, occurrences, or causes will include Acts of God/Nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, riots, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, lockout, blockage, embargo, labor dispute, strike, interruption or failure of electricity or telecommunication service.

6.4.2 Each party, as applicable, shall give the other party notice of its inability to perform and particulars in reasonable detail of the cause of the inability. Each party must use best

efforts to remedy the situation and remove, as soon as practicable, the cause of its inability to perform or comply.

- 6.4.3 The party asserting *Force Majeure* as a cause for non-performance shall have the burden of proving that reasonable steps were taken to minimize delay or damages caused by foreseeable events, that all non-excused obligations were substantially fulfilled, and that the other party was timely notified of the likelihood or actual occurrence which would justify such an assertion, so that other prudent precautions could be contemplated.

6.5 WARRANTY OF SERVICES:

- 6.5.1 The Contractor warrants that all services provided hereunder will conform to the requirements of the Contract, including all descriptions, specifications and attachments made a part of this Contract. County's acceptance of services or goods provided by the Contractor shall not relieve the Contractor from its obligations under this warranty.

- 6.5.2 In addition to its other remedies, County may, at the Contractor's expense, require prompt correction of any services failing to meet the Contractor's warranty herein. Services corrected by the Contractor shall be subject to all the provisions of this Contract in the manner and to the same extent as services originally furnished hereunder.

6.6 INSPECTION OF SERVICES:

- 6.6.1 The Contractor shall provide and maintain an inspection system acceptable to County covering the services under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to County during Contract performance and for as long afterwards as the Contract requires.

- 6.6.2 County has the right to inspect and test all services called for by the Contract, to the extent practicable at all times and places during the term of the Contract. County shall perform inspections and tests in a manner that will not unduly delay the work.

- 6.6.3 If any of the services do not conform to Contract requirements, County may require the Contractor to perform the services again in conformity with Contract requirements, at no cost to the County. When the defects in services cannot be corrected by re-performance, County may:

6.6.3.1 Require the Contractor to take necessary action to ensure that future performance conforms to Contract requirements; and

6.6.3.2 Reduce the Contract price to reflect the reduced value of the services performed.

- 6.6.4 If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with Contract requirements, County may:

6.6.4.1 By Contract or otherwise, perform the services and charge to the Contractor, through direct billing or through payment reduction, any cost incurred by County that is directly related to the performance of such service; or

6.6.4.2 Terminate the Contract for default.

6.7 ORDERING AUTHORITY:

Any request for purchase shall be accompanied by a valid purchase order, issued by Office of Procurement Services, a Purchase Order issued by the using Department or direction by a Certified Agency Procurement Aid (CAPA) with a Purchase Card for payment.

6.8 NO MINIMUM OR MAXIMUM PURCHASE OBLIGATION:

6.8.1 This Contract does not guarantee any minimum or maximum purchases will be made. Orders will only be placed under this Contract when the County identifies a need and proper authorization and documentation have been approved.

6.8.2 Contractors agree to accept verbal notification of cancellation of Purchase Orders from the County Procurement Officer with written notification to follow. Contractor specifically acknowledges to be bound by this cancellation policy.

6.9 PURCHASE ORDERS:

County reserves the right to cancel Purchase Orders within a reasonable period of time after issuance. Should a Purchase Order be canceled, the County agrees to reimburse the Contractor for actual and documentable costs incurred by the Contractor in response to the Purchase Order. The County will not reimburse the Contractor for any costs incurred after receipt of County notice of cancellation, or for lost profits, shipment of product prior to issuance of Purchase Order, etc.

6.10 BACKGROUND CHECK:

Contractors need to be aware that there may be multiple background checks (Sheriff's Office, County Attorney's Office, Courts as well as Maricopa County general government) to determine if the respondent is acceptable to do business with the County. This applies to (but is not limited to) the Contractor, subcontractors and employees.

6.11 SUSPENSION OF WORK:

The Procurement Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Procurement Officer determines appropriate for the convenience of the County. No adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor. No request for adjustment under this clause shall be granted unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the Contract.

6.12 STOP WORK ORDER:

The Procurement Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of ninety (90) calendar days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 calendar days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Procurement Officer shall either:

6.12.1 Cancel the stop work order; or

6.12.2 Terminate the work covered by the order as provided in the Default, or the Termination for Convenience clause of this Contract.

6.12.3 The Procurement Officer may make an equitable adjustment in the delivery schedule and/or Contract price, or otherwise, and the Contract shall be modified, in writing, accordingly, if the Contractor demonstrates that the stop work order resulted in an increase in costs to the Contractor.

6.13 TERMINATION FOR CONVENIENCE:

Maricopa County may terminate the Contract for convenience by providing sixty (60) calendar days advance notice to the Contractor. The Contractor shall be entitled to receive just and equitable compensation for work in progress and all amounts owing to the Contractor for work completed and materials accepted before the effective date of the termination.

6.14 TERMINATION FOR DEFAULT:

The County may, by written notice of default to the Contractor, terminate this Contract in whole or in part if the Contractor fails to:

6.14.1 Deliver the supplies or to perform the services within the time specified in this Contract or any extension;

6.14.2 Make progress, so as to endanger performance of this Contract; or

6.14.3 Perform any of the other provisions of this Contract.

The County's right to terminate this contract under these subparagraphs may be exercised if the Contractor does not cure such failure within ten (10) business days (or more if authorized in writing by the County) after receipt of the notice from the Procurement Officer specifying the failure.

6.15 STATUTORY RIGHT OF CANCELLATION FOR CONFLICT OF INTEREST:

Notice is given that pursuant to A.R.S. § 38-511 the County may cancel any Contract without penalty or further obligation within three years after execution of the Contract, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the County is at any time while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to the Contract in any capacity or consultant to any other party of the Contract with respect to the subject matter of the Contract. Additionally, pursuant to A.R.S § 38-511 the County may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the County from any other party to the Contract arising as the result of the Contract.

6.16 CONTRACTOR LICENSE REQUIREMENT:

6.16.1 The Contractor shall procure all permits, insurance, licenses and pay the charges and fees necessary and incidental to the lawful conduct of his/her business, and as necessary complete any required certification requirements, required by any and all governmental or non-governmental entities as mandated to maintain compliance with and in good standing for all permits and/or licenses. The Contractor shall keep fully informed of existing and future trade or industry requirements, Federal, State and Local laws, ordinances, and regulations which in any manner affect the fulfillment of a Contract and shall comply with the same. Contractor shall immediately notify both Office of Procurement Services and the Department of any and all changes concerning permits, insurance or licenses.

6.17 SUBCONTRACTING:

6.17.1 The Contractor may not assign to another contractor or subcontract to another party for performance of the terms and conditions hereof without the written consent of the County. All correspondence authorizing subcontracting must reference the Contract Number and identify the job project.

6.17.2 The subcontractor's rate for the job shall not exceed that of the Prime Contractor's rate, as bid in the pricing section, unless the Prime Contractor is willing to absorb any higher rates or the County has approved the increase. The subcontractor's invoice shall be invoiced directly to the Prime Contractor, who in turn shall pass-through the costs to the

County, without mark-up. A copy of the subcontractor's invoice must accompany the Prime Contractor's invoice.

6.18 AMENDMENTS:

All amendments to this Contract shall be in writing and approved/signed by both parties. Maricopa County Office of Procurement Services shall be responsible for approving all amendments for Maricopa County.

6.19 ADDITIONS/DELETIONS OF REQUIREMENTS:

The County reserves the right to add and/or delete materials and services to a Contract. If a service requirement is deleted, payment to the Contractor will be reduced proportionately, to the amount of service reduced in accordance with the bid price. If additional materials or services are required from a Contract, prices for such additions will be negotiated between the Contractor and the County.

6.20 STRICT COMPLIANCE:

Acceptance by County of a performance that is not in strict compliance with the terms of the Contract shall not be deemed to be a waiver of strict compliance with respect to all other terms of the Contract.

6.21 VALIDITY:

The invalidity, in whole or in part, of any provision of this Contract shall not void or affect the validity of any other provision of the Contract.

6.22 SEVERABILITY:

The removal, in whole or in part, of any provision of this Contract shall not void or affect the validity of any other provision of this Contract.

6.23 RIGHTS IN DATA:

The County shall have the use of data and reports resulting from a Contract without additional cost or other restriction except as may be established by law or applicable regulation. Each Party shall supply to the other Party, upon request, any available information that is relevant to a Contract and to the performance thereunder.

6.24 NON-DISCRIMINATION:

Contractor agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 including flow down of all provisions and requirements to any subcontractors. Executive Order 2009-09 supersedes Executive order 99-4 and amends Executive order 75-5 and may be viewed and downloaded at the Arizona State Library Research website (<http://azmemory.azlibrary.gov/cdm/singleitem/collection/execorders/id/680/rec/1>) which is hereby incorporated into this contract as if set forth in full herein. During the performance of this Contract, Contractor shall not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

6.25 CERTIFICATION REGARDING DEBARMENT AND SUSPENSION:

6.25.1 The undersigned (authorized official signing on behalf of the Contractor) certifies to the best of his or her knowledge and belief that the Contractor, its current officers and directors;

6.25.2 are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from being awarded any contract or grant by any United States Department or Agency or any state, or local jurisdiction;

6.25.2.1 have not within three (3) year period preceding this Contract;

6.25.2.1.1 been convicted of fraud or any criminal offense in connection with obtaining, attempting to obtain, or as the result of performing a government entity (Federal, State or local) transaction or contract; and

6.25.2.1.2 been convicted of violation of any Federal or State antitrust statutes or conviction for embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property regarding a government entity transaction or contract;

6.25.2.1.3 are not presently indicted or criminally charged by a government entity (Federal, State or local) with commission of any criminal offenses in connection with obtaining, attempting to obtain, or as the result of performing a government entity public (Federal, State or local) transaction or contract; and are not presently facing any civil charges from any governmental entity regarding obtaining, attempting to obtain, or from performing any governmental entity contract or other transaction; and have not within a three (3) year period preceding this Contract had any public transaction (Federal, State or local) terminated for cause or default.

6.25.2.2 If any of the above circumstances described in the paragraph are applicable to the entity submitting a bid for this requirement, include with your bid an explanation of the matter including any final resolution.

6.25.3 The Contractor shall include, without modification, this clause in all lower tier covered transactions (i.e. transactions with subcontractors) and in all solicitations for lower tier covered transactions related to this Contract.

6.26 VERIFICATION REGARDING COMPLIANCE WITH A.R.S. §41-4401 AND FEDERAL IMMIGRATION LAWS AND REGULATIONS:

6.26.1 By entering into the Contract, the Contractor warrants compliance with the Immigration and Nationality Act (INA using e-verify) and all other Federal immigration laws and regulations related to the immigration status of its employees and A.R.S. §23-214(A). The Contractor shall obtain statements from its subcontractors certifying compliance and shall furnish the statements to the Procurement Officer upon request. These warranties shall remain in effect through the term of the Contract. The Contractor and its subcontractors shall also maintain Employment Eligibility Verification forms (I-9) as required by the Immigration Reform and Control Act of 1986, as amended from time to time, for all employees performing work under the Contract and verify employee compliance using the E-verify system and shall keep a record of the verification for the duration of the employee's employment or at least three (3) years, whichever is longer. I-9 forms are available for download at USCIS.GOV.

6.26.2 The County retains the legal right to inspect Contractor and subcontractor employee documents performing work under this Contract to verify compliance with paragraph 6.26.1 of this Section. Contractor and subcontractor shall be given reasonable notice of the County's intent to inspect and shall make the documents available at the time and date specified. Should the County suspect or find that the Contractor or any of its subcontractors are not in compliance, the County will consider this a material breach of the Contract and may pursue any and all remedies allowed by law, including, but not limited to; suspension of work, termination of the Contract for default, and suspension and/or debarment of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.

6.27 INFLUENCE:

As prescribed in MC1-1203 of the Maricopa County Procurement Code, any effort to influence an employee or agent to breach the Maricopa County Ethical Code of Conduct or any ethical conduct may be grounds for Disbarment or Suspension under MC1-902.

An attempt to influence includes, but is not limited to:

6.27.1 A Person offering or providing a gratuity, gift, tip, present, donation, money, entertainment or educational passes or tickets, or any type of valuable contribution or subsidy,

6.27.2 That is offered or given with the intent to influence a decision, obtain a contract, garner favorable treatment, or gain favorable consideration of any kind.

If a Person attempts to influence any employee or agent of Maricopa County, the Chief Procurement Officer, or his designee, reserves the right to seek any remedy provided by the Maricopa County Procurement Code, any remedy in equity or in the law, or any remedy provided by this contract.

6.28 UNIFORM ADMINISTRATIVE REQUIREMENTS:

By entering into this Contract the Contractor agrees to comply with all applicable provisions of Title 2, Subtitle A, Chapter II, PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS contained in Title 2 C.F.R. § 200 et seq.

6.29 ACCESS TO AND RETENTION OF RECORDS FOR THE PURPOSE OF AUDIT AND/OR OTHER REVIEW:

6.29.1 In accordance with section MCI 371 of the Maricopa County Procurement Code the Contractor agrees to retain (physical or digital copies of) all books, records, accounts, statements, reports, files, and other records and back-up documentation relevant to this Contract for six (6) years after final payment or until after the resolution of any audit questions which could be more than six (6) years, whichever is latest. The County, Federal or State auditors and any other persons duly authorized by the Department shall have full access to, and the right to examine, copy and make use of, any and all said materials.

6.29.2 If the Contractor's books, records, accounts, statements, reports, files, and other records and back-up documentation relevant to this Contract are not sufficient to support and document that requested services were provided, the Contractor shall reimburse Maricopa County for the services not so adequately supported and documented.

6.30 AUDIT DISALLOWANCES:

If at any time it is determined by the County that a cost for which payment has been made is a disallowed cost, the County shall notify the Contractor in writing of the disallowance. The course of action to address the disallowance shall be at sole discretion of the County, and may include either an adjustment to future invoices, request for credit, request for a check or a deduction from current invoices submitted by the Contractor equal to the amount of the disallowance, or to require reimbursement forthwith of the disallowed amount by the Contractor by issuing a check payable to Maricopa County.

6.31 OFFSET FOR DAMAGES:

In addition to all other remedies at Law or Equity, the County may offset from any money due to the Contractor any amounts Contractor owes to the County for damages resulting from breach or deficiencies in performance of the Contract.

6.32 CONFIDENTIAL INFORMATION:

Any information obtained in the course of performing this Contract may include information that is proprietary or confidential to the County. This provision establishes the Contractor's obligation regarding such information.

The Contractor shall establish and maintain procedures and controls that are adequate to assure that no information contained in its records and/or obtained from the County or from others in carrying out its functions (services) under the Contract shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Contract. The Contractor's procedures and controls at a minimum must be the same procedures and controls it uses to protect its own proprietary or confidential information. If, at any time during the duration of the Contract, the County determines that the procedures and controls in place are not adequate, the Contractor shall institute any new and/or additional measures requested by the County within fifteen (15) calendar days of the written request to do so.

Any requests to the Contractor for County proprietary or confidential information shall be referred to the County for review and approval, prior to any dissemination.

6.33 PUBLIC RECORDS:

Under Arizona law, all Offers submitted and opened are public records and must be retained by the Records Manager at the Office of Procurement Services. Offers shall be open to public inspection and copying after Contract award and execution, except for such Offers or sections thereof determined to contain proprietary or confidential information by the Office of Procurement Services. If an Offeror believes that information in its Offer or any resulting Contract should not be released in response to a public record request under Arizona law, the Offeror shall indicate the specific information deemed confidential or proprietary and submit a statement with its offer detailing the reasons that the information should not be disclosed. Such reasons shall include the specific harm or prejudice which may arise from disclosure. The Records Manager of the Office of Procurement Services shall determine whether the identified information is confidential pursuant to the Maricopa County Procurement Code.

6.34 PRICES:

Contractor warrants that prices extended to County under this Contract are no higher than those paid by any other customer for these or similar services.

6.35 INTEGRATION:

This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, proposals, communications, understandings, representations, or agreements, whether oral or written, express or implied.

6.36 RELATIONSHIPS:

6.36.1 In the performance of the services described herein, the Contractor shall act solely as an independent contractor, and nothing herein or implied herein shall at any time be construed as to create the relationship of employer and employee, co-employee, partnership, principal and agent, or joint venture between the County and the Contractor.

6.36.2 The County reserves the right of final approval on proposed staff for all Task Orders. Also, upon request by the County, the Contractor will be required to remove any employees working on County projects and substitute personnel based on the discretion of the County within Two (2) business days, unless previously approved by the County.

6.37 GOVERNING LAW:

This Contract shall be governed by the laws of the State of Arizona. Venue for any actions or lawsuits involving this Contract will be in Maricopa County Superior Court, Phoenix, Arizona.

6.38 ORDER OF PRECEDENCE:

In the event of a conflict in the provisions of this Contract and Contractor's license agreement, if applicable, the terms of this Contract shall prevail.

6.39 INCORPORATION OF DOCUMENTS:

The following are to be attached to and made part of this Contract. In the event of any inconsistency in interpreting the documents which constitute this Contract, the inconsistency shall be resolved by giving precedence in the following order of priority: (1) the text of this Contract, (2) Exhibit A, (3) Exhibit B, (4) Exhibit C, (5) Exhibit D.

6.39.1 Exhibit A, Pricing;

6.39.2 Exhibit B, Scope of Work;

6.39.3 Exhibit C, Voting System Managed Services Terms, Licenses and Warranties; and

6.39.4 Exhibit D, Office of Procurement Services Contractor Travel and Per Diem Policy.
<https://www.maricopa.gov/DocumentCenter/View/42923/Policy-for-Contractor-Travel-and-Per-Diem-PDF?bidId=>

NOTICES:

All notices given pursuant to the terms of this Contract shall be addressed to:

For County:

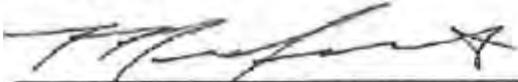
Maricopa County
Office of Procurement Services
ATTN: Contract Administration
320 West Lincoln Street
Phoenix, Arizona 85003-2494

For Contractor:

Dominion Voting Systems, Inc.
ATTN; Contracts Administrator
1201 18th Street, Suite 210
Denver, CO 80202
sales@dominionvoting.com

IN WITNESS WHEREOF, this Contract is executed on the date set forth above.

CONTRACTOR



AUTHORIZED SIGNATURE

Michael Frontera, Executive Vice President

PRINTED NAME AND TITLE

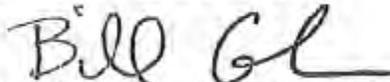
1201 18th St., Suite 210, Denver, CO 80202

ADDRESS

6/20/2019

DATE

MARICOPA COUNTY



CHAIRMAN, BOARD OF SUPERVISORS

JUN 26 2019

DATE

ATTESTED:

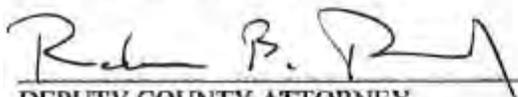


CLERK OF THE BOARD

JUN 26 2019

DATE

APPROVED AS TO FORM:



DEPUTY COUNTY ATTORNEY

June 21, 2019

DATE

**EXHIBIT A
CONTRACTOR INFORMATION / PRICING**

SERIAL 190265-RFP			
NIGP CODE: 578-34			
RESPONDENT'S NAME:	Dominion Voting Systems, Inc.		
COUNTY VENDOR NUMBER:			
ADDRESS:	1201 18th Street Suite 210 Denver, CO 80202 717 17th Street Suite 310 Denver, CO 80202		
P.O. ADDRESS:			
TELEPHONE NUMBER:	(866) 654-8683 or 510/610-6634		
FACSIMILE NUMBER:	(303) 291-3909		
WEB SITE:	www.dominionvoting.com		
CONTACT (REPRESENTATIVE):	John Hastings, Regional Sales Manager John Poulos, President/CEO		
REPRESENTATIVE'S E-MAIL ADDRESS:	John.Hastings@DominionVoting.com John.poulos@dominionvoting.com		
		YES	NO
WILL ALLOW OTHER GOVERNMENTAL ENTITIES TO PURCHASE FROM THIS CONTRACT			
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
RESPONDENT IS REQUIRED TO PICK ONE OF THE FOLLOWING PAYMENT TERMS. FAILURE TO INDICATE PAYMENT TERMS WILL RESULT IN A DEFAULT TO NET 30 DAYS. RESPONDENT MUST INITIAL THEIR SELECTION BELOW.			
<input type="checkbox"/>	NET 10 DAYS	<input type="checkbox"/>	NET 45 DAYS
<input type="checkbox"/>	NET 15 DAYS	<input type="checkbox"/>	NET 60 DAYS
<input type="checkbox"/>	NET 20 DAYS	<input type="checkbox"/>	NET 90 DAYS
<input checked="" type="checkbox"/>	NET 30 DAYS	<input type="checkbox"/>	2% 10 DAYS NET 30 DAYS
<input type="checkbox"/>		<input type="checkbox"/>	1% 10 DAYS NET 30 DAYS
<input type="checkbox"/>		<input type="checkbox"/>	2% 30 DAYS NET 31 DAYS
<input type="checkbox"/>		<input type="checkbox"/>	1% 30 DAYS NET 31 DAYS
<input type="checkbox"/>		<input type="checkbox"/>	5% 30 DAYS NET 31 DAYS
1.0 PRICING:			
(See additional Excel file in BidSync for pricing format)			

The billing period will start January 1st, 2020 and will run on a 3-year cycle through December 31st, 2022.

3 YEAR LEASE TERM					
DESCRIPTION/SERVICE/EQUIPMENT		Enter Model# and Proposed Quantity (when applicable)	Unit Lease Price per Month		
			1st Year	2nd Year	3rd Year
1	Precinct Based Tabulators	ImageCast BMD - 553 / ImageCast Precinct - 553			
		ImageCast BMD - 553	\$61.12	\$61.12	\$61.12
		ImageCast Precinct - 553	\$75.08	\$75.08	\$75.08
2	Central Count Tabulators	G1130 - 42 5	\$481.25	\$481.25	\$481.25
2	Central Count Tabulators	High Speed Scanner - 2 4	\$3,522.75	\$3,522.75	\$3,522.75
3	Accessible Marking -or- Voting Device	ImageCast BMD Audio Tactile Interface (ATI) - 553 / ImageCast Precinct Audio Tactile Interface (ATI) - 553			
		ImageCast BMD Audio Tactile Interface (ATI) - 553	\$7.22	\$7.22	\$7.22
		ImageCast Precinct Audio Tactile Interface (ATI) - 553	\$4.62	\$4.62	\$4.62
4	Election Management Hardware	Standard Server - 2 / Client Workstation - 4 / Adjudication - 4 - 20 / UPS - 1			

		Standard Server - 2	\$327.25	\$327.25	\$327.25
		Client Workstation - 4	\$32.73	\$32.73	\$32.73
		Adjudication - 4- 20	\$32.73	\$32.73	\$32.73
		UPS - 1	\$15.40	\$15.40	\$15.40
5	Additional Peripherals (if needed)	Voting Booth - 553 / Privacy Screens - 553 / ImageCast BMD Transport Bag - 553 / ImageCast Precinct Adapter for use with Eagle Ballot Box - 553 / ImageCast Precinct Ballot Box - 553			
		Voting Booth - 553	\$5.68	\$5.68	\$5.68
		Privacy Screens - 553	\$0.45	\$0.45	\$0.45
		ImageCast BMD Transport Bag - 553	\$2.41	\$2.41	\$2.41
		ImageCast Precinct Ballot Box - 553	\$19.25	\$19.25	\$19.25
		ImageCast Precinct Adapter for use with Eagle Ballot Box - 553	\$14.58	\$14.58	\$14.58
		UPS - 50	\$0.00	\$0.00	\$0.00
6	Consumable Supplies (if needed)	Seals, etc. - 1	\$192.50	\$192.50	\$192.50
7	Software	Democracy Suite Light / Adjudication / Automated Test Deck / Remote UOCAVA			
		Democracy Suite Light - 1	\$3,368.75	\$3,368.75	\$3,368.75
		Adjudication - 1	\$2,887.50	\$2,887.50	\$2,887.50
		Automated Test Deck - 1	\$1,010.63	\$1,010.63	\$1,010.63
		Remote UOCAVA - 1	\$962.50	\$962.50	\$962.50
8	Licenses	Software License / G1130 - 42- 5 / ImageCast BMD - 553 / ImageCast Precinct - 553			
		Democracy Suite Light - 1	\$802.08	\$802.08	\$802.08
		Adjudication - 1	\$687.50	\$687.50	\$687.50
		Automated Test Deck - 1	\$240.63	\$240.63	\$240.63
		Remote UOCAVA - 1	\$229.17	\$229.17	\$229.17
		G1130 - 42- 5	\$59.01	\$59.01	\$59.01
		ImageCast BMD - 553	\$3.44	\$3.44	\$3.44
		ImageCast Precinct - 553	\$5.23	\$5.23	\$5.23
		ImageCast HSS - 2- 4	\$236.04	\$236.04	\$236.04
9	Warranty	G1130 - 42- 5 / ImageCast BMD - 553 / ImageCast Precinct - 553			
		G1130 - 42- 5	\$34.38	\$34.38	\$34.38
		ImageCast BMD - 553	\$3.55	\$3.55	\$3.55
		ImageCast Precinct - 553	\$3.09	\$3.09	\$3.09
		ImageCast HSS - 2- 4	\$194.79	\$194.79	\$194.79
10	Maintenance (Acceptance Testing, PM, etc.)	Included in Warranty	-	-	-
11	Support Services (e.g. Election Cycle, Off Cycle, etc.)	Includes Implementation, Training, Election Support - 1	\$37,033.33	\$37,033.33	\$37,033.33
12	Training	Included in Support Services	-	-	-

*Freight not included above and will not exceed \$45,000

EXHIBIT B SCOPE OF WORK

ELECTIONS TABULATION SYSTEM

OVERVIEW:

This “FINAL SCOPE OF WORK” is specifically focused on the proposal submitted by Dominion Voting Systems. The intent of this document is to review Dominion Voting’s responses and specifications within their proposal and confirm in writing what Maricopa County (County) understands as being offered and clarify what the County expects as a deliverable.

Through the term of the lease, the County intends to continue using the hybrid approach for its upcoming and future voting process where we offer both “vote anywhere” sites in conjunction with assigned precinct-level sites. This would include a total of 40 forty (40) “vote anywhere” Vote Center locations to be used for both in-person Early and Election Day voting.

Maricopa County Elections tabulates Early in-person ballots using a “Central Count” methodology but for the future, the County could seek to move towards having the ImageCast Precinct (ICP) tabulator count onsite all possible ballots for both Early and Election Day.

For in-person Election Day, those forty (40) “vote anywhere” Vote Centers will the remain open and in the hybrid mode they convert to Election Day assigned precinct sites. Despite being set as an assigned precinct-level location, it is expected that the ICP tabulator could be programmed to tabulate any and all ballot styles if Maricopa County opts to go to a true “vote anywhere” environment (*currently upwards of 15,000 with a aim of tabulating up to 30,000 unique ballot styles*).

For non-statewide Local Elections (*e.g. city, town, etc.*) Maricopa County offers sites that are completely “vote anywhere” and it is future goal to be able to offer that for statewide elections at the current 503 locations. For that Maricopa County looks to leverage the “Mobile Ballot Printing” feature and looks to capitalize on the system being hardware “agnostic”. Under that process Maricopa County expects to be able to use our existing print hardware, SiteBook check-in system and other commercially available off-the-shelf (COTS) printers. Dominion Voting Systems shall include support in fulfilling this “Mobile Ballot Printing” objective and this will be an absolute requirement that must be availed to Maricopa County Elections for use in the Local Elections of 2021, and theoretically for all future Statewide Primary and General Elections after the initial 2020 cycle. Being that Maricopa County owns it voter check-in equipment and system, the County is requesting that Dominion ready itself to show how we can integrate this optional solution for “Mobile Printing” with our voter check-in equipment. Also we request Dominion to ready a pricing structure for this integration.

SCOPE OF WORK:

As a mandatory requisite, the voting system provided by Dominion Voting Systems (herein after referred to as Dominion) must be federally certified and approved for use through the U.S. Election Assistance Commission (EAC). Documentation shows currently that the system proposed by Dominion meets this requirement. Further, it is Maricopa County’s understanding that Dominion’s development team is continually working on refining its products and functionality, and that such enhancements will lead to annual federal certification campaigns with the EAC, as well as seeking out state certifications when required.

The equipment, supplies and services then requested by Maricopa for this contract are as follows:

DESCRIPTION/SERVICE/EQUIPMENT	Enter Model# and Proposed Quantity (when applicable)
Precinct Based Tabulators	ImageCast BMD - 553 / ImageCast Precinct - 553
Central Count Tabulators	G1130 - 12
Central Count Tabulators	High Speed Scanner - 2
Accessible Marking -or- Voting Device	ImageCast BMD Audio Tactile Interface (ATI) - 553 / ImageCast Precinct Audio Tactile Interface (ATI) - 553
Election Management Hardware	Standard Server - 2 / Client Workstation - 4 / Adjudication - 4 / UPS - 1
Additional Peripherals (if needed)	Voting Booth - 553 / ImageCast BMD Transport Bag - 553 / ImageCast Precinct Ballot Box - 553
Consumable Supplies (if needed)	Seals, etc.
Software	Democracy Suite Light / Adjudication / Automated Test Deck / Remote UOCAVA
Licenses	Software License / G1130 - 12 / ImageCast BMD - 553 / ImageCast Precinct - 553
Warranty	G1130 - 12 / ImageCast BMD - 553 / ImageCast Precinct - 553
Maintenance (Acceptance Testing, PM, etc.)	Included in Warranty
Support Services (e.g. Election Cycle, Off Cycle, etc.)	Includes Implementation, Training, Election Support
Training	Included in Support Services

New table replacing the one above:

DESCRIPTION/SERVICE/EQUIPMENT	Enter Model# and Proposed Quantity (when applicable)
1 Precinct Based Tabulators	ImageCast BMD - 553 / ImageCast Precinct - 553
2 Central Count Tabulators	G1130 - 12 5
Central Count Tabulators	High Speed Scanner - 2 4
3 Accessible Marking -or- Voting Device	ImageCast BMD Audio Tactile Interface (ATI) - 553 / ImageCast Precinct Audio Tactile Interface (ATI) - 553
4 Election Management Hardware	Standard Server - 2 / Client Workstation - 4 / Adjudication - 4 20 / UPS - 1
5 Additional Peripherals (if needed)	Voting Booth - 553 / Privacy Screens - 553 / ImageCast BMD Transport Bag - 553 / ImageCast Precinct Adapter for use with Eagle Ballot Box - 553 / ImageCast Precinct Ballot Box - 553
6 Consumable Supplies (if needed)	Seals, etc.
7 Software	Democracy Suite Light -1/ Adjudication-1 / Automated Test Deck-1 / Remote UOCAVA-1
8 Licenses	Software License / G1130 - 12 5 / ImageCast BMD - 553 / ImageCast Precinct - 553
9 Warranty	Software License / G1130 - 12 5 / ImageCast BMD - 553 / ImageCast Precinct - 553
10 Maintenance (Acceptance Testing, PM, etc.)	Included in Warranty
11 Support Services (e.g. Election Cycle, Off Cycle, etc.)	Includes Implementation, Training, Election Support-1
12 Training	Included in Support Services

Arizona Secretary of State (SOS) Certification of the tabulation system is required. Dominion shall work under the “pilot” program status and further agrees to apply for certification...” It is further noted in the proposal that Dominion will actively seek “updated voting system certifications of Democracy Suite, thus ensuring that they system always meets the needs of the County”.

If SOS Certification is not sought or issued **by the SOS** for any reason after the “SoS Pilot” allowance, **the County will terminate the contract**, and Dominion **shall have no recourse**. For any contractual obligations that may have already been entered into, those obligations shall be considered null and void and permit the County to cancel the contract with no penalty.

Pilot Deployment

Dominion agrees that there will not be a cost for the small pilot deployment. Dominion further agrees through its Project Implementation Plan that includes the Continued Pilot program for a total of two pilots taking place in November and possibly March, followed with first use in the August election of the complete system. The County will select a jurisdiction to test with that **will only require precinct based equipment for no more than four (4) locations and central count tabulators to accommodate no more than 50,000 returned early ballots.**

Dominion agrees to meet the “pilot” or partial voting system deployment and the “ready for use” date if July 8, 2019. Dominion’s pilot program shall provide a complete, fully functioning voting system including all necessary equipment, software and related technology to run the partial deployment. This also includes early ballot returns and technical support. Further, Dominion shall include all components of the system for the pilot election so that

Maricopa County can better determine the final product mix as well as the potential quantities required for a full deployment.

Dominion is allowing for a mix of equipment for the “pilot” to allow the County to evaluate all options and models. The county has requested pricing for certain models as shown in the earlier matrix (e.g. BMD, ICP, G1130, HSS, etc.) but reserves the option to modify this mix after the November 2019 Election. **With a successful “pilot” deployment in November, the County will award Dominion the contract that requests the full scope of equipment to be provided for models and quantities jointly decided upon by the County and Dominion.**

Should the November “pilot” and if needed a March “continued pilot” be deemed unsuccessful, as determined at the sole discretion of the County, the County may choose to not move forward with a final agreement and terminate this contract. Dominion agrees or does not dispute these terms.

Minimum Qualifications

The Dominion system being offered shall meet these minimum qualifications. **The “checklist” list below is intended to reiterate those minimum qualifications and to memorialize that “meets” status of those requirements:**

Certification and Scope

- ✓ Dominion is Certified by the EAC under the Voluntary Voting System Guide (VVSG) 1.0.
- ✓ Dominion will fall under the “SoS pilot” status as far as State Certification goes but confirms and agrees to apply for certification after that “SoS pilot” status expires.
- ✓ Dominion supports a minimum of 2.2 million registered voters and has provided evidence of a current customer that is using the proposed equipment and system that has over 900,000 registered voters (Clark County, Nevada: 1,119,203 voters; Cook County, Chicago: 1.4 million voters *<more references are availed in the proposal>*).

Capabilities

- ✓ Dominion’s system uses paper ballots.
- ✓ Dominion precinct-level tabulators can accommodate for 15,000 ballot styles and that its Election Event Designer can handle 30,000 ballot styles that allows for district splits and coding to prevent ballots marked for out stack from tabulating at the polls. **Nonetheless, to add clarity, the County is indicating in this document our definition of a “ballot style” to ensure Dominion is clear on our expectations. For the County, a ballot style is a uniquely identified ballot whose header is not replicated on any other ballot and that ballot can then be differentiated, tabulated and reported by that given ballot header. A given political party ballot is a style, a Federal Only ballot is a style, a city only ballot is a style, etc. Additionally, all of those “styles” are then increased by the number of precincts to be reported and splits.**
- ✓ Dominion’s system allows for the printing of hard copy result reports of votes cast at each polling location. Moreover, Dominion allows for precinct-level (polling location) Statement of Votes Cast result report in industry standard format including XML, HTML, CSV, MS Excel, and PDFs.
- ✓ Dominion’s twelve (12) G1130 tabulators will allow for the ability to process over 1.5 million returned vote-by-mail ballots within a one-week time period during an eight (8) hour daily shift. The County is asking for pricing of the High Speed Scanner (HSS - HiPro Central Scanner) in case we move to an option to have both types of scanners on-hand due to volume and for use in any recounts – that require faster throughput and have larger batches.
- ✓ Dominion supports the processing of multi-page ballots.
- ✓ Dominion provides for the ability (Election Event Designer) to import district relations and candidate data files for the ballot building processes without major conversion requirements.
- ✓ *“If a bleed through occurs it shall not land on the opposite side of the target”* which then complies with the requirement for ballot to be able to have offset targets so that on a two-sided ballot, if bleed through occurred, it would not land on the opposite sided target. This will be verified in the “pilot” and in testing.
- ✓ Dominion confirms their ability to provide rotation using the Arizona specific rotation formula.
- ✓ Dominion notes the ability to process provisional ballots through the ImageCast central count tabulators.
- ✓ Dominion confirms that its Results Tally and Reporting (RTR) application has the ability to tabulate and report out by user defined categories including Election Day, Provisional and Early along with customizable/ad hoc reports for future needs or categories (e.g. Duplicated Ballots, Write-in Ballots, etc.).
- ✓ Dominion confirms the ability to use a print vendor of the County’s choice for ballot production and presently certifies our current print vendor (Runbeck Election Services).

- ✓ Dominion acknowledges that its Democracy Suite has the ability within the Election Event Designer to Co-Locate precincts while maintaining the ability to report results by unique precincts.
- ✓ Dominion acknowledges the ability to Consolidate Jurisdictions (splits) while maintaining the ability to report results by jurisdiction, whether that is as Ballots Cast or as registered voter results.
- ✓ Dominion confirms its ability to handle recounts of over 1.6 million ballots within a six (6) day window. Its Democracy Suite platform can facilitate recounts, manual hand counts, or risk limiting audits.

Accessible Voting

- ✓ Dominion shall provide a ImageCast Ballot Marking Device (ICX-BMD) that supports accessible voting to occur in excess of five hundred three (503) polling locations with fifty (50) backup units. **The ICX-BMD is not used as a tabulator.**
- ✓ Dominions ICX-BMD accessible devices can securely remain open (without having to close daily).
- ✓ Dominion indicates that no votes are stored on the ICX-BM touchscreen unit. The ImageCast Central tabulators store and tabulate all votes.
- ✓ Accessible voting or marking device must open and load for the voter in approximately one (1) minute for all options, to include an audio ballot. Dominion's ICX-BMD loads an accessible voting session including an audio ballot in less than one minute.

Adjudication

- ✓ The ImageCast Adjudication must allow for digital adjudication with customer-defined out stack conditions that include blanks, marginal votes, over-votes, under-votes and write-ins.
- ✓ The County requested the ability to configure adjudication using upwards of one hundred (100) terminals and allow for or capable of working towards an air-gap between central count tabulators and the server used for adjudication. Dominion confirms that ImageCast Central and Adjudication workstations can be networked together. Up to one-hundred (100) ImageCast Central workstations and one-hundred (100) Adjudication workstations can be networked together at the same time. In addition, the central tabulation system can be air-gapped from the main tally/adjudication system.

Leasing

Initially the County requested proposals to not only allow for the above noted "pilot" process but also for a final lease or rental agreement that contemplates initial terms of three (3), four (4), and five (5) years. Upon review, the County selected to entertain only the "3 Year Lease Term" option. **However, the County wants to clarify in this document that it will still request and expects Dominion to provide for a maximum of three (3) one (1)-year extension options that would only be exercised after the initial term expires, for a maximum contract term of six (6) years.**

Any final agreement will require Dominion to maintain a performance bond for the duration of the agreement and Dominion agrees to provide the agreed upon performance bond after the successful completion of the pilot program.

Future Service Models

The County may adopt during the term of this "3 Year Lease" that all voters be sent vote-by-mail ballots in addition to offering several replacement ballot Vote Centers. The Dominion proposal notes that they will work with Maricopa County to maintain service costs should the County move to a different voting and service model in the future.

Open Data

The primary concern with "open data" is the ability to increase the data that is publicly available in open formats, including data generated by the leased or rented system. As such, the County may publish cast vote records and the voting system's adjudications of each marking of a ballot. Dominions proposal delimitates that is can generate results, ballot images and other output items for posting if desired by the County.

Dominion further outlines it features as it relates to their process of developing a Ballot Audit and Review System to assist election officials in performing election canvasses and risk-limiting audits. This tool shall be capable of sorting and filtering images of ballots by ballot style, precinct, polling location, contest, and candidate, for the purposes of a recount or post-election audit. Officials can review all the digital ballot images in an election, or a subset of ballots based on the chosen filtering conditions.

Dominion's system shall handle post-election "Hand Count" audits where, during the central count tabulation process, their G1130 and HSS shall print batch results for a specific batch of ballots run.

Multiple Concurrent Elections

The supplied Dominion Democracy Suite shall conduct all regular, consolidated, recall, special, and district elections along with multiple concurrent elections at once. Moreover, as part of this agreement, Dominion “will aid in the facilitation, preparation, and ballot formatting multiple and separate elections within concurrent timeframes happening simultaneously.”

Ballot Styles

The configuration and operation of Dominion’s supplied voting system shall process up to 15,000 different ballot styles for one (1) election. Confirmation of this ability will be made to ensure compliance with this request.

Image-based System

Dominion’s system is an Image Based System as is preferred by the County. Dominion further denotes that their AuditMark technology shall provide for a ballot-level audit trail to allow for review not only of the ballot image but also of the tabulators interpretation of each ballot. The ballot shall be labeled with the tabulator number, batch number, and sequence number within the batch, which then corresponds to the physical ballot in the stack. The County reserves the right to request enhancements to this “labeling” process should other identifiers be deemed necessary, with an understanding that this would be part of a negotiated upgrade and possibly subject to EAC certification.

The voting systems technology supplied shall capture images of ballots with the ability to tabulate vote tallies from those images.

Dominion’s AuditMark system shall provide a means of correlating the digital Cast Vote Record data to the image scanned and finally to the physical paper ballot, all without tying the ballot to a given voter.

Technology Delineation

Dominion’s proposal outlines all of the components of the technology solutions including software and hardware. Those details have been reviewed and those items and components are listed below to confirm what the makeup is for the proposed system. **The County, however, reserves the right to review these in practice during the “pilot” to verify the functionality and veracity of these components to include software and hardware.**

DOMINION TECHNOLOGY DELINEATION (FROM PROPOSAL):

Democracy Suite is an Election Management System (EMS) that supports all ImageCast voting channels: early votes, vote by mail votes, Election Day votes from touchscreen ballot marking devices (TSBMD) and Scanner, and Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) votes, from a single comprehensive database.

Democracy Suite EMS will be hosted exclusively on the Customer’s internal network, on an isolated network segment that will not be connected to either the Customer WAN or the Internet. The minimum system requirements are as follows and included in equipment specified to be purchased by Customer:

- All EMS Data Center server components utilize new generation quad core XEON CPUs
- EMS Data Center server components utilize FB DIMM ECC memory
- EMS Data Center servers are connected to the Gigabit LAN network using Cat6 cables provided by Dominion
- TCP/IP network protocol used for data input/output and inter-process and inter- module communication

From a logical point of view, the EMS system implements interfaces into the ImageCast tabulator’s ballot counting and marking platform using the binary election files specifications. These logical interfacing entities are defined by Dominion and are used for communications between Democracy Suite platform components.

The structure of the election files, as well as the content of the iButton security keys, is bit- level sensitive with regards to accuracy and precision. This means that a single bit change can influence system behavior. The structure of these interfacing entities is dependent on the election domain business logic implemented within the system. Therefore, within the EMS EED application, election files and iButton security keys can only be created when the election project is in the “ballot generated” state.

From an accuracy point of view, CRC checks are implemented. From a security point of view, election files utilize SHA256 (keyed hash HMAC) or digital certificates and AES encryption for data integrity and confidentiality. The

figure below presents an overview of the EMS interfaces, focusing on Democracy Suite's internal and external entities.

The Democracy Suite platform includes the following third-party Software:

EMS Standard Server Prerequisites:

- Microsoft Visual J#
- Microsoft Visual C++ 2013 Redistributable Package
- Microsoft Visual C++ 2013 Redistributable Package (64bit)
- Microsoft Visual C++ 2015 Redistributable Package (32bit)
- Microsoft Visual C++ 2015 Redistributable Package (64bit)
- Java Runtime Environment
- Microsoft SQL Server 2016 Standard (Microsoft SQL Server Management Tools)
- Cepstral Voices
- Arial Narrow Fonts
- BMD-Audio printer drivers

EMS Client Workstation Prerequisites

- Microsoft Visual J#
- Microsoft Visual C++ 2013 Redistributable Package
- Microsoft Visual C++ 2015 Redistributable Package 64bit
- Java Runtime Environment
- Maxim iButton Driver
- Adobe Reader
- Microsoft Access Database Engine
- Open XML SDK 2.0 for Microsoft Office
- Arial Narrow Fonts

Adjudication Workstation Prerequisites

- Dell Latitude T3420 Laptop
- Microsoft Visual J#
- Microsoft Visual C++ 2013 Redistributable Package
- Microsoft Visual C++ 2015 Redistributable Package 64bit
- Java Runtime Environment
- Adobe Reader

Democracy Suite EMS consists of the following Dominion Software modules:

Election Event Designer (EED). EED application is used for the definition and management of election event. EED contains all ballot content utilized to define election projects. Each election project is represented as an instance of the election domain database with associated set of election project file. The definition of the election project can be initiated by importing the election data through the Election Data Translator (EDT) module from external systems that contain the necessary relational data to build a ballot or by defining election project entities without importing external data. It is important to note that an election project initiated through EDT can be further modified within the EED Client Application. The EED module can generate two types of paper ballots:

Proofing ballots – ballots produced to allow election project stakeholders to proof ballot content and styling. These ballots cannot be processed by the ImageCast as they don't have proper ballot barcodes. These ballots are overprinted with the text "Proofing Ballots – date/time" Official ballots – represent production ready, press ready ballots in PDF format with barcodes and without any overprinting.

Results Tally and Reporting (RTR). RTR application is used for the tally, reporting and publishing of election results. For the RTR module, inputs represent encrypted and signed election result files, log files and scanned ballot images with Dominion's patented AuditMark, produced by the ImageCast Precinct and Central tabulators (PNG and TIFF images). Outputs represent a variety of election result reports, as well as auditing information (XML, HTML, CSV, MS Excel and PDF formats).

The program uploads the result files into the results tally module, and consolidated results are verified, tabulated, and published. Once the vote data is uploaded into the result tally module, the flow of results to the public and media can be controlled.

RTR allows election officials to review the results before releasing them, and the system provides a number of reporting methods, including but not limited to summary and precinct-level (Statement of Votes Cast) result reports. In addition to the static, pre-defined reports found in most reporting systems, RTR summary and precinct-level reports use the Microsoft SQL Server reporting services engine to offer maximum flexibility to user. These reports feature a variety of configurable options and filters, including detailed breakdowns of provisional ballots cast, ballots cast during early voting, on Election Day, and by mail.

Adjudication. The adjudication module is used to review and adjudicate ImageCast ballot images. The application uses tabulator results files and scanned images to allow election administrators to electronically adjudicate ballots requiring review based on exception criteria. Exceptions include overvotes, undervotes, blank contests, blank ballots, write-in selections, and marginal marks. After a ballot is adjudicated, the ballot image is appended with a record of that decision including the user's name, action taken by the user, and date and time of the action. This adjudication AuditMark is appended to the ballot image under the original AuditMark, which was manifested during tabulation.

Audio Studio (AS). Audio studio uses Cepstral, a third-party text-to-audio synthesizer, to automatically generate audio ballots for the ImageCast X Ballot Marking Device. The Customer also has the option to import human-recorded audio, with or without the use of Audio Studio. Pronunciation may be modified using the Cepstral's Swifftalker application. The system outputs audio ballots (PNG images, SPX audio files and XML definition files), definition reports (XML, Excel or HTML files), and election definition files required to program the ImageCast X.

Automated Test Deck (ATD). ATD is an application used to create test decks for running Pre-Logic and Accuracy Test with marking pattern requirements. The application can be used to access the election database and produce a set of print- ready PDFs and results tables for testing.

The table below includes the EMS Hardware descriptions:

Description
DOMAIN CONTROLLER: DELL POWEREDGE R330 RACK SERVER 16GB RAM, 2X120GB SSD, WINDOWS SERVER 2016
LOG SERVER: DELL POWEREDGE R330 RACK SERVER 16GB RAM, 2X2TB SATA, WINDOWS SERVER 2016
EMS SERVER: DELL POWEREDGE R630 RACK SERVER 64GB RAM, 2x400GB SSD, WINDOWS SERVER 2016
SQL SERVER 2016 LICENSE W/5 CALs
SQL SERVER 2016 - 10 CALs PACK
VOICE SYNTHESIS SOFTWARE LICENSE, ALLISON - ENG - CEPSTRAL 6.2
VOICE SYNTHESIS SOFTWARE LICENSE, ALEJANDRA SPA - CEPSTRAL 6.2
VOICE SYNTHESIS SOFTWARE LICENSE - SAVE TO FILE FOR WINDOWS
VOICE SYNTHESIS SOFTWARE LICENSE - AUDIO DISTRIBUTION LICENSE
VOICE SYNTHESIS SOFTWARE LICENSE - CONCURRENT PORT FOR
Description
WINDOWS
ANTI-VIRUS - AVAST! ENDPOINT PROTECTION SUITE, 5-PACK LICENSE

STORAGE: SAN EQUALOGIC PS-4210E (12X2TB SATA RAID6)
POWERCONNECT 2808 SWITCH
POWERCONNECT 3524 SWITCH
DELL NETWORKING N1500 SERIES
SERVER UPS: UPS 3000VA (270W) - 2U
SERVER RACK: 42U-48U ES RACKS
REPORT PRINTER: DELL SMART PRINTER 35830DN
KMM MONITOR CONSOLE (18.5")
Network Switches: KVM SERVER SWITCH 16 PORTS
PATCH CABLE, CAT6, 10 FT. , BLACK
PATCH CABLE, CAT6, 10 FT. , BLUE
PATCH CABLE, CAT6, 10 FT. , RED
PATCH CABLE, CAT6, 10 FT. , WHITE
ETHERNET SWITCH, 16 PORTS AND 2 1GBE SFP UPLINK PORTS*
EDES STATION: DELL PRECISION T3420 (INTEL I5-7600, 8GB RAM, 256GB SSD, W10X64PRO) W/24" MONITOR, K&M, and 20 SD CARD READER/WRITERS
SINGLE IBUTTON PROGRAMMER WITH USB ADAPTER, IBRW-100A
USB TO 1-WIRE/IBUTTON ADAPTER
PATCH CABLE, CAT6, 25 FT. , BLUE
STATION UPS - TRIPP LITE UPS SMART 1300VA
SINGLE IBUTTON PROGRAMMER WITH USB ADAPTER, IBRW-100A
USB TO 1-WIRE/IBUTTON ADAPTER
PATCH CABLE, CAT6, 25 FT. , BLUE
STATION UPS - TRIPP LITE UPS SMART 1300VA
RTM LAPTOP: LATITUDE 3380 (INTEL 4415U, 4GB RAM, 128GB SSD, 13.3" HDF DISPLAY, W10X64PRO)
LEXAR PROFESSIONAL WORKFLOW CFR1 SD MEMORY CARD USB 3.0 READER

The following descriptions include the voting and tabulation hardware details:

ImageCast X Ballot Marking Device (ICX-BMD)

Application: ImageCast X-Prime BMD is a touchscreen in-person voting device and ballot marking device. Voting sessions are initiated on the tablet by either a smart card or the entry of a numeric code based on activation. The ballot is loaded directly onto the standalone device. All voting activity is performed at the tablet, including accessible voting. Accessible voting interfaces connect to the tablet via an Audio Tactile Interface or ATI. For all modes of voting, after the voter reviews the ballot selections, a paper ballot is created for the voter from a printer in the voting booth. The printed ballot contains a written summary of the voter’s choices, as well as a 2D barcode which is read by Dominion’s ImageCast Precinct or Central

tabulator. No votes are stored on the ImageCast X-BMD unit. All votes can be tabulated and stored both the ImageCast Central and Precinct Tabulators.

Components: ImageCast X-Prime BMD is composed of a 21.5" Avalue touchscreen, Android OS 4.4.4, DC 19V input, HP LaserJet Pro M402dne laser printer, 6' cable. 5 smart cards, 8GB flash drive, audio tactile interface (ATI) with USD cable and headphone set.

ImageCast Precinct Tabulator (ICP)

ImageCast Precinct Scanner and Tabulator is an optical scan ballot tabulator used to scan marked paper ballots, interpret voter marks on the paper ballot, communicate these interpretations back to the voter and upon voter acceptance, deposits the ballot in the ballot box.

The ImageCast Precinct consists of the following:

- Two (2) optical imaging scanners for creating a duplex scanned image of each side of the ballot. Ballots can be fed in all four (4) orientations.
- Linux Operating System.
- Two SD memory cards ports for storage capabilities. Two (2) 8GB SD memory cards will be provided and located behind two securable doors (Administrator Door and Pollworker Door).
- An interactive electronic display in the form of an ultra-high contrast graphical color 5.7" LCD screen, and a built-in touch screen for administration purposes.
- An internal 3" thermal printer and one (1) 3" paper roll for generating reports.
- One (1) administrative security key (iButton) used with an integrated receptacle (physically attached to the top of the unit and electrically connected to the motherboard) used for a variety of verification and security tasks such control, data confidentiality and integrity functions.
- A motorized paper feed mechanism for detecting and moving the ballot within the scanner. Ballots used with the ImageCast Precinct must be 8.5" wide by a variable length (11", 14", 17" and 22"). The paper feed mechanisms physically capable of moving the ballot forward into the machine, across image sensors, enabling complete image capture of both sides of the ballot.
- Power supply module uses 120 Vac, 60Hz, one phase power. It has a power consumption of 0.07Amps at 120 Volts AC.
- An internal battery which is rated to provide six (2.5) hours of normal use in the absence of AC power. In addition to internal 2.5 hours battery an internal 6 hours battery option is also available. There is also a connection for an external 12VDC SLA battery.
- Patented functionality known as the AuditMark. For each ballot scanned and accepted into the unit, a corresponding ballot image is created and stored for audit purposes. The image consists of two parts described below:
 - The top portion of the image contains a scanned image of the ballot.
 - The bottom portion consists of a machine-generated text showing each mark that the unit interpreted for that particular ballot. This is referred to as the AuditMark.

ImageCast Molded Plastic Ballot Box

A textured molded plastic ballot box per ImageCast Precinct unit. The ballot box is made of a three (3) compartments, custom designed for use with the ImageCast Precinct. Dominion indicates that they have developed a custom attachment that would allow the new precinct tabulators to be attached to the County's current large blue ballot boxes. With that, the ImageCast Molded Plastic Ballot Boxes would not need to be purchased and the County could exercise this option upon further review of the attachment and its cost.

ImageCast Central Scanner (ICC)

The ImageCast Central Scanner consists of commercial off-the-shelf digital scanners configured to work with the ImageCast Central Software for high speed ballot tabulation. Each ImageCast Central Scanner includes the following:

- Canon DR-G1130 high speed document scanner
- ImageCast Central Software
- DELL AIO 7450 Computer 24" Touchscreen
- iButton Security Key
- iButton Programmer and iButton Key Switch & Cat5 RJ 45 Cables used with Democracy Suite to transfer security and election information to the iButtons for use with the ICC.
- Patented functionality known as the AuditMark. For each ballot scanned and accepted into the unit, a

corresponding ballot image is created and stored for audit purposes. The image consists of two parts described below.

- The top portion of the image contains a scanned image of the ballot.
- The bottom portion consists of a machine-generated text showing each mark that the unit interpreted for that particular ballot, known as the AuditMark.

Dominion is responsible for providing all components of the Democracy Suite platform, including both hardware and software.

Life Expectancy

Dominion mitigates the risk concerning proprietary hardware with our partnerships with our manufacturers. Our partnership allows us to provide product availability for 10+ years. Our manufacturers along with our development staff continuously identify any end of life concerns and recertifies any parts with State and Federal certification authorities.

Per the County's license agreement, all certified improvements, enhancements, bug fixes and/or updates are available as detailed in the Standard License Agreement.

Per the County's license agreement, all certified improvements, enhancements, bug fixes and/or updates are available as detailed in the Standard License Agreement.

The County will have ongoing visibility as to which future version of Democracy Suite will include any Arizona-specific upgrades or updates; Dominion will devise an upgrade plan as required by the County.

The proposed voting system is supported by Dominion for the duration of the agreement with the County. The modalities depend on County-selected options, such as optional extended warranties.

Dominion is constantly working with Commercial off the Shelf equipment providers, such as Canon, Avale and Dell, to ensure visibility regarding end-of-life components and available replacements. This is done in conjunction with managing ongoing state and federal certification campaigns, to ensure that Democracy Suite remains fully operational and available to customers. Where possible Dominion strives to integrate any new product offerings and enhancements to the currently certified system version to prevent having to replace certain infrastructure components.

Dominion understands that election officials need to ensure that the significant investment required to upgrade a voting system is made with confidence and peace of mind that the technology will keep up with changing requirements and public expectations. Dominion's development team is continually working on refining existing products and functionality, leading to annual federal certification campaigns with the EAC, as well as state certifications where required.

Maintenance and Parts

Dominion will address on-going support, repair, and preventative maintenance in a comprehensive and effective manner as characterized by the following:

- **Engineering** – Key components are designed with redundancy.
- **Manufacture** – All components are manufactured using ISO 9001 practices.
- **Design** – The solution architecture is redundant (redundant servers, redundant storage, etc.)
- **Warranty** – We provide hardware and software warranty to meet customer specification.
- **Preventative Maintenance** – Dominion will provide technical training to Maricopa County in order to ensure proper functioning of voting equipment
- **Repair** – Dominion maintains a warehouse in McKinney, Texas with an inventory of all parts and supplies needed for the Tabulator Solution and can respond quickly should a need arise.
- **Readiness** – During the identified pre-election period, Dominion will comply with requirements for enhanced response time to warranty requests.
- **Tracking and Reporting** – Dominion and its subcontractors utilize its Customer Relations Management system (CRM) to oversee repair and maintenance issues. This is the same ticket tracking system that is used for problem escalation.

Dominion and its team use a Customer Relations Management system (CRM) database to capture service calls to ensure all issues are resolved effectively. Once a call/email is received, a work ticket is created, and the initiating party will be contacted by a member of the service team.

Initial contact will be established after notification. At that time, additional troubleshooting instructions may be provided to help the service team better respond to the failure or defect. If the defect or failure cannot be addressed in this manner, a service representative will make the appropriate arrangements for resolution. The diagram on the previous page summarizes this process.

If a failed component is under warranty, a Dominion technician will schedule an onsite visit to repair / rectify the defective or failed component. Where a failed or defective component is not covered by warranty, a request for an on-site visit to assess and repair the failed / defective component may be made.

The County will be trained on maintenance tasks to best upkeep the ImageCast Central system running efficiently during the ballot tabulation process. Dominion recommends at approximately 2,000 to 3,000 ballots scanned either wiping the ballot path with a supplied microfiber cloth, a dust clearing brush, or vacuuming of key locations on hardware. Additionally, Dominion will train the County to remove and clean all uptake rollers to manufacturer specifications.

Dominion will provide Preventative Maintenance training to the County. Preventative maintenance consists of standard steps and checklists for each type of ImageCast Ballot Marking Devices and accessible voting system component. Preventative maintenance for Dominion's Democracy Suite is designed to minimize all maintenance and is primarily focused on the mechanical components. Compliance with the requirements set out in the product maintenance guides and warehousing specifications is mandatory.

We will coordinate all repair and maintenance actions with the County or Authorized User. Dominion will track and retain documentation on maintenance and repair activities. The County will be given paperwork stating completion of work performed and status of the Voting System. Warranty and repair parts shall be new. At the conclusion of the warranty period and at the discretion of Maricopa County officials, responsibility for this function can be transferred to County staff (or a suggested third party), who have completed a Dominion technician training course. Dominion can also be contracted to continue to provide preventative maintenance support at our standard service rates. Dominion also offers different, optional extended warranty agreements, which allow the customer to select a plan which meets their specific needs.

END OF DOMINION TECHNOLOGY DELINEATION (FROM PROPOSAL):

The original Request for Proposal (RFP) asked vendors to delineate which of these technology components will be provided by the vendor and which are to be provided by the County. The proposal notes that all hardware (proprietary and COTS) will be provided by Dominion for the prices noted. This is acceptable but the **County will look to negotiate certain elements prior to entering into a full award for consumable supplies and COTS hardware such as the Oki "Mobile Ballot Printing" printers, if there are other avenues to attain those items through current County procurement contracts, if confirmed by Dominion to be viable for use.**

Additionally, for each election Maricopa County will conduct a full security review of the configuration and setup for an intended election. When there is equipment and technology that interacts or integrates with the system that is not already security tested or certified through the EAC Certification, then those components will be part of the security audit. **Dominion must fully participate in and support the County's final election readiness security audit.**

SUPPORT SERVICES:

The County also requires support for the entire pilot election process from early voting through tabulation and canvassing. These services are outlined as follows:

System Support Services – Dominion is responsible for all aspects of the initial implementation of the voting system.

Dominion shall provide all "Project Management" and "Implementation Activities" onsite with "*experienced Customer Relations Manager and the technical resources that are familiar with the unique requirements, processes*

and procedures applicable to Maricopa County”. The process will begin with a “Kick-Off Meeting” between the County team and the Dominion Project Manager and the Dominion Technical Lead assigned.

The agenda for this initial Kick-Off Meeting” meeting shall be as follows and the County agrees with this plan:

1. Review project governance structure, project roles and responsibilities
2. Project Management Artifacts Review
 - a. Review and adjust the following with a view to finalize immediately following contract signing:
 - i. Project plan activities, schedule and milestones
 - ii. Issue tracking & escalation plan
 - iii. Risk mitigation plan
 - iv. Communication plan
 - v. Conflict resolution plan
3. Training Plan finalization
 - a. Review and adjust training sessions and schedule
4. Review Architectural & Technical Specifications deliverables

Additionally, the below deployment steps are as noted by Dominion in the proposal. The County concurs with the proposed structure for deployment as follows:

- **Requirements Gathering, Gap Analysis & Application Configuration** - A key phase in the initial stages of the project implementation will be a gap analysis performed by the Dominion team, and subsequent configuration will be developed and implemented.
 - Create Election Data Import Bridge - in this series of steps, Dominion works with the IT professional responsible for the creation and maintenance of the EMS database to create a bridge that allows the direct import of geopolitical data into Democracy Suite EMS. In this way, election divisions, contests, candidate names, propositions and other essential data need not be input twice, reducing the likelihood of user error.
 - Customization of Configurable Options - the County will provide final input and approval on ballot layouts, reports content, and the configuration of the options of the ImageCast voting terminals.
 - End-to-End Test - all systems undergo a rigorous operational test prior to release to the customer. This end-to-end test simulates real-election conditions and utilizes Election Day configurations.
 - Procurement and Delivery - Procurement will be conducted in a manner that allows the coordination of supplies and consumables to be shipped directly to the County. During the procurement phase of the project, all of the commercial off the shelf components used in our election system are purchased. Dominion will deliver all required equipment to the County based on the timeline outlined in the project plan. Provision in the project plan has been made to allow incremental orders to be placed following change management processes. Maricopa County always has the opportunity to work with the Dominion Project Manager to place additional orders.
- **Installation & Acceptance Testing** - Maricopa County is responsible for User Acceptance Testing, and Dominion will provide an onsite presence to support acceptance testing performed by the County. Acceptance testing involves a visual inspection of the voting platforms, successfully completing a series of internal diagnostics, and successfully tabulating ballots from a sample test election. Dominion provides documentation and training for client technicians, as well as warehouse set-up guidelines for inbound acceptance testing.
 - Preparation for Acceptance Testing - Dominion will provide guidelines & checklists to the County for acceptance testing and coordinate dates with the staff for software installation. This includes assessing suitability and identifying any modifications required, identifying areas for each process including a secure area for inventory control, preparing necessary acceptance documentation, and ensuring all necessary supplies are available.
 - Installation - Dominion will configure and install all software including the operating system and application software and set up the solution including all hardware and connections provided as part of the system.
 - Acceptance Testing - The County’s Acceptance Team, with support from Dominion staff, will conduct detailed acceptance testing of the voting equipment. This acceptance testing provides assurance of full product functionality and accuracy. Acceptance testing is an essential part of the Dominion quality assurance process and takes place on-site at the customer location.

- **Training** - Dominion will work closely with Maricopa County to ensure that the training program is customized to meet your specific needs. Dominion will prepare and provide all needed training material, which includes training manuals, quick reference guides, website instructional courses, and technical reference manuals when necessary. Training and curriculum particular to the resources, staff, and needs of Maricopa County will be developed as part of the implementation meetings and materials will be provided before implementation for both hardware and software functions. In addition to formal training, our specialists will work to transfer the required knowledge and skills to relevant Maricopa County staff, with the objective of ensuring that your staff is empowered to manage all aspects of the system's availability and functionality. Dominion takes pride in our ability to transfer to local officials the skills necessary to conduct even complex elections with autonomy.
- **Election Programming** - The creation of the election database is a critical step in the election implementation. Given the very limited time available between the certification of the final ballot and the distribution of UOCAVA / Mail ballots, it is very important that timelines are appropriately managed. Dominion employs an iterative approach to ballot and report creation, where successive rounds of proofs are provided to election officials as more information becomes available. Using this approach, in many cases ballots have already been approved by the time they are certified, maximizing the time available for pre-election testing and logistics.
- **Logic and Accuracy Testing** - Maricopa County officials and their staff will conduct logic and accuracy testing of voting equipment, using processes, procedures, and support provided by Dominion. The Dominion project team will be available throughout the L&A process available to assist on an as required basis. Training for Maricopa County officials on the L&A process will take place prior to Logic and Accuracy testing.
- **Election Support** - The Dominion project team will reach an agreement with Maricopa County on their specific roles during ballot scanning and Election Night. Dominion's on-site support resource will have the necessary skills to assist Maricopa County to ensure the polling location opens in a timely fashion and that the equipment functions properly. In addition, a key role for the on-site support resource is to assist Maricopa County with tabulation and results reporting. Dominion's active voting support strategy can be customized to meet Maricopa County's specific needs.
- **Post-Election Debrief Meeting** - Within 30 days following election event, Dominion will coordinate a post-election debrief meeting to discuss post-election events and activities with Maricopa County. The debrief meeting is an opportunity to review lessons learned from both Dominion and Maricopa County, evaluate success factors and areas for improvement for process enhancement in future election cycles. On completion of these reviews, project documentation and the project plan will be revised to reflect learning from the first election.

Training and Instruction – Dominion shall *“provide all training and instructional activities onsite with an experienced Customer Relations Manager and the technical resources that are familiar with the unique requirements, processes and procedures applicable to Maricopa County”*.

Dominion shall also provide documentation that is specific to individual roles and situations for County Staff. In addition, Dominion shall supply guides and documentation for *“Acceptance Check Lists, Unit Tracking Procedures, and Troubleshooting Guides are examples of items used in Preventative Maintenance and Hardware Acceptance Training. User Guides and Quick Reference Guides are examples of items used in Election Poll Worker Training.”*

Dominion shall also provide User Guides that will cover all aspects of various topics such as *“Vote Tabulators and Accessible Components”* along with Quick Reference Guides that are *“brief, focused and image-oriented; they are designed for reference-at-a-glance in practical election situations.”*

Dominion shall effectively work with the County towards creating custom training materials as it relates to these new system components using **“Dominion Training Focus and Approach”** in detail and the County accepts and welcomes this comprehensive and customizable platforms as it relates to the Instructional Design, Delivery Methodology, Hardware Operations Training, Democracy Suite Training, Election Day Rover Training, and Train-the-Trainer Poll Worker Training.

In regards to training for future system updates, when updates or system changes occur over the life of the contract that effect the County, Dominion “will work with the County to implement updated training programs using the same methodology detailed above. This includes working closely with the County to schedule training activities in advance of any live election event to ensure County staff has the knowledge and understanding of the system updates and changes.”

Election-Specific Support – Dominion agrees to develop customized Election-Specific Support plan that meets the needs of the County. This plan will include assigning support for the County in the following areas:

- Operation and maintenance of the system to staff a phone bank on Election Day at the MCTEC facility
- Technicians to support the County on Election Day to ensure proposed technology is operating appropriately at all polling locations and in County offices
- Voting system repair technician during the election cycle, during ballots tabulation period, or at timeframes determined by the County
- Training personnel for County Staff, to support the use of the EMS
- Maintain an inventory of parts to reduce downtime risk and ensure equipment can be readily repaired
- Personnel to assist the County in performing maintenance and repairs based on a maintenance plan

Specifically, “**Standard Remote Service Availability and Response**” includes the following for which Dominion is responsible for:

- a. Standard hours of all support staff availability are from 8:00 a.m. to 5:30 p.m. EST, Monday to Friday excluding public holidays.
- b. Support staff is available outside standard hours by mutual agreement of the parties. The County will be given mobile phone numbers for members of the implementation team.

Phase	Type of Support	Initial Response	Estimation Response	Resolution
Outside an Election period	On-site, telephone, and video	Up to one business day	Up to 2 business days	Up to 10 to 15 business days
During creation of the Election database and ballots	On-site and telephone	Up to next business day	Up to 2 business days	Up to 3 business days
From ballot mailing to Election Day	On-site and telephone	Up to 12 hours	Up to next business day	Up to 2 business days
On Election Day	On-site	Immediate	60 minutes	Within 1 hour
From Election Day until Election certification	Telephone and video	Up to 12 hours.	Up to next business day	Up to 2 business days
During a recount	If required, on-site	Up to 6 hours	Up to next business day	Up to 1 business day

OPTIONAL PREFERENCES:

The County verifies hash codes of all software and firmware that is in escrow at the Secretary of State’s (SOS) Office and on file with National Institute of Standards and Technology (NIST). Dominion agrees to the following:

Data generated by the Democracy Suite platform, including results reporting, is protected by the deployment of FIPS-approved symmetric AES and asymmetric RSA encryption. The Democracy Suite Election Management System uses these techniques to encrypt election files prior to their use on ImageCast tabulators. Once the polls have been closed, the ImageCast tabulators encrypt all of the results files prior to transmitting them back to EMS.

SHA-256 hashes are used for all data integrity and verification. Should an intrusive process or altering of any file occur, hash values will be, in turn, altered as well. With that said, any presence of an intrusive process will be detected, as the hashes of any altered data will not match the value initially determined.

Although Arizona does not currently use ranked-choice voting (RCV), with legislative changes possible from session to session the County has an interest in a system that can support RCV. Dominion notes in their proposal that “Democracy Suite system supports the ability for Ranked Choice or Instant Runoff Voting on all voting devices, including the ImageCast Precinct, ImageCast X Ballot Marking Device and ImageCast Central.”

In further detail, Dominion clarifies that their Ranked Choice Voting functionality supports the following:

- Various ballot layout options with flexibility to include ranked choice contests on the same ballot as first-past-the-post contests.
- Supports instant runoff voting (IRV) as well as single transferable vote (STV).
- Tabulation of qualified write-in candidates
- Option to include warnings to voters if they have made an error voting their ballot (such as over-voting a ranking).
- System automatically captures images of all votes cast and each digital ballot image is appended with an AuditMark, showing a record of how the voter’s marks were interpreted by the tabulator.
- RCV CVRs can be exported using the CVR report in JSON report.

The County conducts “Hand Count Audits” and the County requested that the Proposers to describe how their voting systems support the application of risk-limiting post-election audits and manual hand count audits. Accordingly, Dominion confirms their ability to comply with all types of audits and specifically the following:

Dominion’s Democracy Suite solution can facilitate recounts, manual hand counts, and risk limiting audits. The system can identify and automate the removal of selected ballots from a batch for recount purposes. Dominion has developed a Ballot Audit and Review System to assist election officials in performing election canvasses and risk-limiting audits. This tool will be capable of sorting and filtering images of ballots by ballot style, precinct, polling location, contest, and candidate, for the purposes of a recount or post-election audit. Officials can review all the digital ballot images in an election, or a subset of ballots based on the chosen filtering conditions. This tool will provide an efficient and user-friendly interface for reviewing ballot images and associated results, as well as providing a framework to support a variety of auditing methodologies.

This tool allows multiple officials to access digital ballot images with their Digital Ballot AuditMark marks, digital Cast Vote Records, and related review notes. Filtering options enables the creation of ballot review subsets for specific audit reviews. This tool resides in a secure post-election environment that is separate from EMS

For the digital adjudication, there is a preference to allow for both digital adjudication that writes directly to the ballots cast record (tabulation) along with a “print queue” feature as well as an option to print the adjudicated ballot as a hard copy version. The ImageCast Adjudication module provided by Dominion shall allow for the County to resolve over votes, under votes, write-ins, ballots with damaged voting targets, interprets voter intent marks, and allows for the scanning of redacted provisional ballots. Dominion verifies that the adjudicated ballot, with the adjudicated AuditMark, is a multi-page “.tiff” image file that can be printed upon request.

While not an element included in the minimum qualifications for proposals, the County preferred an imaged-based voting system that will facilitate the format and issuance of ballots to voters through a remote accessible option (e.g. UOCAVA Voters). Dominion shall provide a “ImageCast Remote” offering (RAVBM/UOCAVA) where a ballot can be provided to a voter remotely. Upon authentication of the voter, the ballot can make selections, review, confirm selections and generate a PDF for return to the County. That PDF can be emailed or printed, and returned to election officials for processing.

This process is denoted as not requiring an internet connection, and therefore the voter selection data is protected and remains private. The summary of what is sent to the voter is a coversheet, ballot with the 2D barcode and human-readable summary of selections, and a return envelope.

The County preferred the voting system to have the ability to identify a digitally adjudicated ballot should the gathering of the physical ballot be required. This is possible through Dominion’s system and “Each image/CVR combination is correlated to a given tabulator and batch of ballots scanned making it easy to find the specific ballot paper for further investigation if needed.”

Disposition of Current System and Equipment - The County encouraged Proposers to provide

solutions regarding the disposition of the County's current voting system. Dominion's proposal did not address this optional disposition of the current system and equipment. The County, however, reserves the right to discuss and negotiate some assistance from Dominion with disposal of the current system following the EAC and the Department of Defense (DoD) recommendations for disposal of voting equipment.

MISCELLANEOUS:

Warranty – The County requested that for the duration of any final agreement, the selected voting system will be under full warranty. That the warranty cover all aspects of the voting system, including all equipment, technology and all components attached to or necessary for functionality of the equipment to conduct elections in the County. The warranty must also cover any software or firmware patches, fixes, and updates, including any associated installation, testing, the necessary support to implement the changes, as well as the approval by the SOS.

Dominion's terms for the warranty are noted as follows and the County reserve the right to review and negotiate these terms to get to a warranty and maintenance plan that fulfils the County's needs:

Dominion shall include a warranty of the included ImageCast tabulators and Democracy Suite products (voting equipment hardware and EMS software, excluding consumables) for the first year upon formal acceptance of the equipment. This is a full warranty of any defects or failures on the ImageCast or Democracy Suites products.

Beyond the first year of ownership, Dominion offers a broad range of warranty and maintenance services which can easily be tailored to fit the County's needs. These options range from an extended warranty package, and/or annual onsite preventative maintenance, or customers can choose to have items repaired under our time and material repair service.

Additionally, Dominion can also provide tier-1 technician training, to cover basic repairs and maintenance. Dominion's Extended Warranty Agreements can be for one, two or more years, allowing for coverage adjustments over the lifetime of the voting system.

Dominion warranties exclude warranties for COTS equipment. Those warranties are provided by the Original Equipment Manufacturer.

For the first year, the Dominion warranty is a full warranty of any defects or failures on the ImageCast or Democracy Suites products. After the first year, Dominion shall provide extended warranty services or provide repairs on a time and materials basis.

Under the warranty, and on non-election day, Dominion endeavors to repair the equipment first. If the problem cannot be reasonably repaired, Dominion shall replace the affected equipment. On Election Day, equipment is replaced.

For clarity, the County defines “reasonably repaired” to mean a repair that can be done within a half hour timeframe. Because this is Election Day, recovery and response is time sensitive and we must take into consideration possible logistical and delivery timeframes for the piece of equipment, so this “half hour” repair for Election Day equipment is what we will look to. To formalize then, if a piece of equipment needs repair and the repair cannot be done within a half hour timeframe on Election Day, then the equipment must be replaced.

Adjudication of Ballot Markings - The County may opt to post all ballot images on its website to increase the transparency of vote tallying and election results. All proposals were required to state how the related voting systems will facilitate adjudications and the posting of the ballot-specific adjudication records for each marked vote and related data sets on the County's website. Dominions response meet this County request and are as follows:

Ballots do not include any voter-identifying information, therefore the County can post all ballots in order to increase the transparency of vote tallying and election results. Posted ballots will include Dominion' patented AuditMark technology, along with any outstaked adjudicated ballots where voter intent has been established. Dominion will work with Maricopa County officials to ensure that adjudications and ballot-specific adjudication records for all data sets are in conformance with the County's guidelines in order to be posted.

Additionally, Dominion is currently working with several jurisdictions to support this capability, including the City and County of San Francisco. As we develop best practices and procedures with San Francisco, we will be able to share information with Maricopa County.

PROPOSAL EXCEPTIONS

In section 5.6 of the RFP there is an allowance for “EXCEPTIONS TO THE SOLICITATION” where the Respondents may identify and list all exceptions taken to all sections of 190265-RFP. In this proposal Dominion indicates its “*right to negotiate the final terms and conditions as part of the overall contract discussion with the County of Maricopa*”. With that, Dominion submitted the following exception or suggestions regarding the draft agreement or RFP legal requirements. **The County, upon review, agrees to the “Exception” requests made by Dominion as noted below:**

SECTION 3.8 SOURCE CODE ESCROW REQUIREMENT

Dominion suggest using the escrow terms from the current agreement between the parties. – “CONTRACTOR agrees to enter into a Third Party Escrow Services Agreement naming the Arizona Secretary of State as beneficiary. All application source code for the software used in the Vote Tabulation System, and all upgrades thereto shall be held in escrow under said Agreement. If CONTRACTOR ceases operations or becomes unable to support the software while under an obligation to do so, CONTRACTOR shall grant the Arizona Secretary of State authority to release the source code to the County, and the County shall have a limited license to use the source code to perform CONTRACTOR’s obligations hereunder. The source code will remain CONTRACTOR’s property and may not be otherwise used by the County.”

SECTION 6.1

Per current agreement between the parties, addition of a section for limitation of liability – “Except for the indemnification obligations contained in this agreement, CONTRACTOR’s total aggregate liability for any loss, damage, costs or expenses under or in connection with this agreement, howsoever arising, including without limitation, loss, damage, costs or expenses caused by breach of contract, negligence, strict liability, breach of statutory or any other duty shall in no circumstances exceed the total dollar amount of the agreement. Neither party shall be liable for any loss of profits, loss of business, loss of data, loss of use or any other indirect, incidental, punitive, special or consequential loss or damage whatsoever, howsoever arising, incurred by the other party or any third party, whether in an action in contract, negligence or other tort, even if the parties or their representatives have been advised of the possibility of such damages.”

SECTION 6.13

Per current agreement between the parties, addition of a last sentence to this section – “The CONTRACTOR shall be entitled to receive just and equitable compensation for work in progress and all amounts owing to the CONTRACTOR for work completed and materials accepted before the effective date of the termination.”

EXHIBIT C

VOTING SYSTEM MANAGED SERVICES TERMS, LICENSES AND WARRANTIES

1. **Composition of Exhibit C.** This Exhibit consists of the terms and conditions contained in the following sections and the listed Schedules:

Schedule 1:	Software License Terms and Conditions
Schedule 2:	Print Copyright License Terms and Conditions

2. **Definitions.**
 - 2.1. “Acceptance” means the successful completion of the acceptance testing performed by the Customer on the Dominion Hardware and related Dominion Software, after delivery in accordance with testing criteria developed and updated from time to time by Dominion, or the occurrence of other events defined in Section 6.
 - 2.2. “Dominion Software” means software and firmware programs licensed to the Customer by Dominion and any associated documentation as more specifically described in Exhibit A.
 - 2.3. “Dominion Hardware” means the ImageCast® system hardware as more specifically described in Exhibit A.
 - 2.4. “Election” means a single election event administered by the Customer including any absentee and early voting activity associated with the election event. Election shall not mean any follow-on events occurring after the initial election event, including without limitations, run-offs or recall replacements elections. Any other event shall be considered an Election in and of itself.
 - 2.5. “Election Management System Hardware” or “EMS Hardware” means third party hardware required for operating Dominion Software as used in conjunction with the Dominion Hardware.
 - 2.6. “Specifications” means descriptions and data regarding the features, functions and performance of the Software, as set forth in user manuals or other applicable documentation provided by Dominion.
 - 2.7. “System” means the combination of Dominion Software, Dominion Hardware and EMS Hardware.
 - 2.8. “Third Party Software” means software, other than the Dominion Software, which is owned by third parties, and which Dominion provides to Customer pursuant to sublicenses or end user license agreements with the owners of such Third Party Software. Third Party Software includes, but is not limited to, various operating systems, software drivers, and report writing subroutines.

3. **Dominion's Responsibilities.** Dominion shall:
 - 3.1. Provide the System and services as described in Exhibit A - Pricing.
 - 3.2. Provide the Customer with a Dominion Software use License as described in Schedule 1 - Software License Terms and Conditions.
 - 3.3. Appoint a Project Manager to oversee the general operations of the project. The project manager shall be responsible for arranging all meetings, visits and consultations between the Parties and for all administrative matters such as invoices, payments and amendments. The project manager shall communicate with the Customer as to the status of information, procedures and progress on the tasks set out in the Agreement and alert of any material change in such plans.
 - 3.4. Assist in the Acceptance Testing process as required by Section 6 herein.
 - 3.5. Provide Customer with one (1) reproducible electronic copy of the documentation.

- 3.6. Provide the System that Dominion designs, manufactures, and/or licenses, which is certified for use as a voting system in the Customer's jurisdiction.
- 3.7. Provide invoices to Customer pursuant to the payment schedule in Exhibit A.

4. Customer's Responsibilities. Customer shall:

- 4.1. Pay invoices in a timely manner and no later than thirty (30) calendar days from receipt of a Dominion invoice.
 - 4.1.1. Dominion shall issue invoices to Customer pursuant to the invoice schedule listed in Exhibit A.
 - 4.1.2. Payments exclusive of all excise, sale, use and other taxes imposed by any governmental authority, all of which shall be reimbursed by the Customer. If the Customer is exempt from taxes, Customer shall supply Dominion a tax exemption certificate or other similar form demonstrating its exempt status.
- 4.2. Appoint a Project Manager who shall be responsible for review, analysis and acceptance of the System and the coordination of Customer personnel, equipment, vehicles and facilities. The Project Manager shall be empowered to make decisions on behalf of the Customer with respect to the work being performed under this Agreement. The Project Manager shall also have direct access to the Customer's top management at all times for purposes of problem resolution.
- 4.3. Conduct Acceptance Testing process as required by Section 6.
- 4.4. Customer shall provide reasonable access and entry into all Customer property required by Dominion to provide the System and perform the services described in this Agreement. All such access and entry shall be provided at Customer's expense.

5. Title and Risk of Loss.

- 5.1. Title to the System. The System shall be provided by Dominion to the Customer as part of the managed services described herein. Title to the System or any portion thereof, shall not pass to the Customer and shall remain with Dominion.
- 5.2. Software. Dominion Software and Third Party Software is licensed, not sold. The original and any copies of the Dominion Software, or other software provided pursuant to this Agreement, in whole or in part, including any subsequent improvements or updates, shall remain the property of Dominion, or any third party that owns such software.
- 5.3. Risk of Loss. Dominion shall bear the responsibility for all risk of physical loss or damage to each portion of the System until such portion is delivered to the "ship to" address, except to the extent such damage is caused by Customer. Customer shall provide Dominion with a single location for shipment and Dominion shall not be responsible for shipping to more than one location. To retain the benefit of this clause, Customer shall notify Dominion of any loss or damage within ten (10) business days of the receipt of any or all portions of the System, or such shorter period as may be required to comply with the claims requirements of the shipper, and shall cooperate in the processing of any claims made by Dominion.

6. Acceptance.

- 6.1. Dominion Software or Dominion Hardware. After delivery Dominion Software or Dominion Hardware, the Customer will conduct acceptance testing of such items, in accordance with the acceptance criteria developed and updated, from time to time, by Dominion. Such acceptance testing shall occur at a time mutually agreed upon by the Parties, but no later than ten (10) business days after delivery.

- 6.2. System Acceptance Testing. To the extent not tested as part of the testing pursuant to Section 6, upon completing the installation of the System, the Customer will conduct system acceptance testing, according to the acceptance test procedures developed and updated, from time to time, by Dominion. Such acceptance testing shall occur at a time mutually agreed upon by the Parties, but no later than ten (10) business days after installation of the System.

7. Software License and Use.

- 7.1. License. Upon mutual execution of this Agreement, Dominion grants to the Customer, and the Customer accepts a non-exclusive, non-transferable, license (“License”) to use the Dominion Software subject to the terms and conditions of this Agreement and the Software License Terms and Conditions incorporated herein as Schedule 1.
- 7.2. Third Party Software. The System includes Third Party Software, the use of which is subject to the terms and conditions imposed by the owners of such Third Party Software. Customer consents to the terms and conditions of the Third Party License Agreements by Customer's first use of the System.

8. Dominion Software Warranty.

- 8.1. Dominion Software Warranty. The Dominion Software Warranty is subject to the Software License Terms and Conditions of Schedule 1.
- 8.2. Third Party Software Warranty. To the extent permitted by the licensor of Third Party Software, Dominion shall pass to Customer all warranties such licensors make available to Dominion regarding the operation of Third Party Software.
- 8.3. No Other Software Warranties. DOMINION DISCLAIMS ALL OTHER SOFTWARE WARRANTIES AND REPRESENTATIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY BASED ON A COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

9. Hardware Warranty.

- 9.1. Dominion Hardware Warranty Terms. Dominion warrants that when used with the configuration approved by Dominion, each component of Dominion Hardware will be free of defects that would prevent the Dominion Hardware from operating in conformity in all material respects with its specifications. The Dominion Hardware Warranty shall remain in effect during the Agreement Term.
- 9.2. Dominion Hardware Warranty Services. Dominion shall repair or replace the Dominion Hardware so that each item thereof operates in conformity with its specifications, so long as such Dominion Hardware is operated with its designated software and third party products (if applicable) approved by Dominion for use with the Dominion Hardware. If any Dominion Hardware item fails to operate in conformity with the specifications during the Agreement term, Dominion shall fully repair or, at Dominion’s sole option, replace the Dominion Hardware. The following conditions apply to the Dominion Hardware services:
- 9.2.1 Dominion shall bear the costs for ground-shipping Dominion Hardware parts or the repaired/replaced item to and from the Customer. Shipping costs are based on ground service rates. If faster shipping service is required, the shipping cost shall be at the Customer’s expense.
- 9.2.2 The following services are not covered by the Dominion Hardware warranty, but may be available for purchase at Dominion’s then current time and material rates:
- a. Replacement of consumable items including but not limited to batteries, pens, paper rolls, seals, printer ink, removable memory devices, etc.;
 - b. Repair or replacement of Dominion Hardware damaged by of accident, disaster, theft, vandalism, neglect, abuse, or any improper usage;

- c. Repair or replacement of Dominion Hardware modified by any person other than those expressly authorized in writing by Dominion;
 - d. Repair or replacement of Dominion Hardware products from which the serial numbers have been removed, defaced or changed.
- 9.3. EMS Hardware Warranty. To the extent permitted by the manufacturers of the EMS Hardware, Dominion shall pass to the Customer all warranties such manufacturers make available to Dominion.
- 9.4. No Other Warranties. DOMINION DISCLAIMS ALL OTHER WARRANTIES AND REPRESENTATIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY BASED ON A COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

SCHEDULE 1

SOFTWARE LICENSE TERMS AND CONDITIONS

1. License Terms.

1.1. License Limitations. Customer's use of the Dominion Software pursuant to the License granted in the Agreement is subject to the terms herein. Customer may only use the Dominion Software for its own internal business purposes and conducting elections and solely in conjunction with the EMS Hardware. The License shall only be effective during the Term and cannot be transferred or sublicensed.

1.2. Print Copyright License. Subject to the Print Copyright License terms and conditions as defined in Schedule 2 attached hereto, Dominion grants to Customer a non-exclusive, non-transferable print copyright license as defined in Schedule 2.

1.3. Third-Party Software. When applicable, Dominion hereby sublicenses any software that constitutes or is contained in Third-Party Software, in object code form only, to Customer for use during the Term.

1.4. No Other Licenses. Other than as expressly set forth herein, (a) Dominion grants no licenses, expressly or by implication, and (b) Dominion's entering into the Agreement will not be deemed to license or assign any intellectual property rights of Dominion to Customer or any third party. Customer agrees not to use the Dominion Software as a service bureau for elections outside the Customer's jurisdiction and agrees not to reverse engineer or otherwise attempt to derive the source code of the Dominion Software. The Customer shall have no power to transfer or grant sub-licenses for the Dominion Software. Any use of all or any portion of the Dominion Software not expressly permitted is strictly prohibited.

1.5. Intellectual Property Infringement Indemnification. If a third party claims that the Dominion Software or System infringes any United States patent, copyright, trade secret or similar intellectual property right, Dominion shall defend Customer against such claim at Dominion's expense and pay all damages that a court finally awards against Customer. If such a claim is made or appears possible, Dominion shall, within sixty (60) days of such claim, and at its option: (a) secure for Customer the right to continue to use the infringing portion of the Dominion Software or System; or (b) modify or replace the Dominion Software and System so that it is non-infringing but retains equivalent functionality. If neither of the foregoing options is reasonably available, Dominion shall require Customer to return the Dominion Software or System, and Dominion shall refund Customer amounts calculated pursuant to the Dominion Software License fee, on a pro-rate basis. The foregoing notwithstanding, Dominion shall have no obligation to indemnify Customer for any infringement claim based on Customer's modification or misuse of the Dominion Software, if the claim would have been avoided had the Dominion Software not been modified or misused.

2. Payment. In consideration of the grant of the license, the Customer shall pay the license fees set forth in the Agreement and Exhibit A of the Agreement.

3. Upgrades and Certification. During the Term, Dominion may provide upgrades to Customer under the following terms and conditions.

3.1. Upgrades. In the event that Dominion, at its sole discretion, certifies a Dominion Software upgrade under the applicable laws and regulations of the Customer's State, Dominion shall make the certified Dominion Software upgrade available to the Customer at no additional cost.

3.2. Certification Requirement. Notwithstanding any other terms of this Agreement, Dominion shall not provide, and shall not be obligated to provide under this Agreement any upgrade, enhancement or other Dominion Software update that has not been certified under the applicable provisions of the election laws and regulations of the Customer's State.

4. **Prohibited Acts.** The Customer shall not, without the prior written permission of Dominion:

4.1. Transfer or copy onto any other storage device or hardware or otherwise copy the Dominion Software in whole or in part except for purposes of system backup;

4.2. Reverse engineer, disassemble, decompile, decipher or analyze the Dominion Software in whole or in part;

4.3. Alter or modify the Dominion Software in any way or prepare any derivative works of the Dominion Software or any part of parts of the Dominion Software;

4.4. Alter, remove or obstruct any copyright or proprietary notices from the Dominion Software, or fail to reproduce the same on any lawful copies of the Dominion Software.

5. **Return of Dominion Software.** Upon termination or expiration of this Agreement, Customer shall forthwith return to Dominion all Dominion Software in its possession or control, or destroy all such Dominion Software from any electronic media, and certify in writing to Dominion that it has been destroyed.

6. **Warranties.** The following warranties will apply to all Dominion Software during the Term.

6.1. Dominion Software Warranty Terms. Dominion warrants that during the Term, the Software will function substantially in accordance with the Specification. If the Customer believes that the Software is not functioning substantially in accordance with the Specifications, the Customer shall provide Dominion with written notice of the material failure within thirty (30) days of discovering the material failure, provided that the Customer can reproduce the material failure to Dominion. The foregoing warranty shall be void in the event of the Software (i) having been modified by any party other than Dominion or (ii) having been used by the Customer for purposes other than those for which the Software was designed by Dominion. If Dominion and Customer are unable to agree whether the reported material failure is covered by the foregoing warranty, the issue shall be handled in accordance with the Dispute procedures in the Maricopa County Procurement Code.

6.2. Corrections. If the Customer believes that the Dominion Software is not functioning substantially in accordance with the Specifications or Requirements, the Customer shall provide Dominion with written notice of the material failure within thirty (30) days of discovering the material failure, provided that the Customer can reproduce the material failure to Dominion. Dominion shall correct the deficiencies, at no additional cost to the Customer and incorporate such corrections into the next version certified by the Customer's State.

6.3 Third-Party Software. The warranties herein do not apply to any Third-Party Software. However, to the extent permitted by the manufacturers of Third-Party Software, Dominion shall pass through to Customer all warranties such manufacturers make to Dominion regarding the operation of such Third-Party Software.

6.4. NO OTHER WARRANTIES. EXCEPT AS SET FORTH IN THE AGREEMENT AND HEREIN, DOMINION DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY BASED ON A COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

SCHEDULE 2

PRINT COPYRIGHT LICENSE TERMS AND CONDITIONS

1. Definitions.

- 1.1. “Derivative Works” means any work that is based upon or derived from Dominion’s voting systems’ ballots, including without limitation, sample ballots and voting booklets.
- 1.2. “Voting Systems’ Ballots” means any ballot created for use with any voting system owned or licensed by Dominion.

2. Print Copyright License and Use.

- 2.1. Copyright License Grant. Dominion grants to the Customer a non-exclusive, non-transferable copyright license to print, reproduce, distribute or otherwise copy Dominion’s Voting Systems’ Ballots and any Derivative Works (collectively the “Materials”) pursuant to the terms and conditions of this Schedule 2.
- 2.2. Copyright License Use. Other than as expressly set forth herein, (a) Dominion grants no other licenses, expressly or by implication, and (b) Dominion’s entering into and performing the Agreement will not be deemed to license or assign any intellectual property rights of Dominion to Customer or any third party, (c) the copyright license granted herein cannot be transferred or sublicensed and the Voting Systems’ Ballots or Derivative Works cannot be reproduced by any third party without the prior written consent of Dominion, including without limitation:
 - (i) any commercial or non-commercial printer
 - (ii) any third party vendor using ballot on demand system.
- 2.3. Rights and Interests. All right, title and interest in the Material, including without limitation, any copyright, shall remain with Dominion.

3. No Copyright Warranties. EXCEPT AS SET FORTH HEREIN, DOMINION DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY BASED ON A COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE

AMENDMENT No. 1
 To
SERIAL 190265-RFP ELECTIONS TABULATION SYSTEM
 Between
DOMINION VOTING SYSTEMS, INC.
 &
MARICOPA COUNTY, ARIZONA

WHEREAS, Maricopa County, Arizona ("County") and Dominion Voting Systems, Inc. ("Contractor") have entered into a Contract for the purchase of Elections Tabulation System dated June 26, 2019 ("Agreement") County Contract No: 190265-RFP.

WHEREAS, County and Dominion Voting Systems, Inc. have agreed to further modify the Agreement by changing certain terms and conditions:

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Based on the pilot testing period of the tabulation system, it has been determined that some of the quantities and items that are being leased need to be revised with an effective date as of the date signed by both parties.

Please see below for the revisions:

**EXHIBIT A
 PRICING**

SERIAL 190265-RFP, Elections Tabulation System	
NIGP CODE: 578-34	DOMINION VOTING SYSTEMS
Option 4A: High Speed, G1130 Scanner with ImageCast BMD & ImageCast Precinct	

3 YEAR LEASE TERM				
DESCRIPTION/SERVICE/EQUIPMENT	Enter Model# and Proposed Quantity (when applicable)	Unit Lease Price per Month		
		1st Year	2nd Year	3rd Year
1 Precinct Based Tabulators	ImageCast BMD - 553 / ImageCast Precinct - 553			
	ImageCast BMD - 553	\$61.12	\$61.12	\$61.12
	ImageCast Precinct - 553	\$75.08	\$75.08	\$75.08
2 Central Count Tabulators	G1130 - 40	\$481.25	\$481.25	\$481.25
2 Central Count Tabulators	High Speed Scanner - 2	\$3,522.75	\$3,522.75	\$3,522.75
3 Accessible Marking-or- Voting Device	ImageCast BMD Audio Tactile Interface (ATI) - 553 / ImageCast Precinct Audio Tactile Interface (ATI) - 553			
	ImageCast BMD Audio Tactile Interface (ATI) - 553	\$7.22	\$7.22	\$7.22
	ImageCast Precinct Audio Tactile Interface (ATI) - 553	\$4.62	\$4.62	\$4.62
4 Election Management Hardware	Standard Server - 2 / Client Workstation - 4 / Adjudication - 20 / UPS - 1			
	Standard Server - 2	\$327.25	\$327.25	\$327.25
	Client Workstation - 4	\$32.73	\$32.73	\$32.73

	Adjudication - 4 - 20	\$32.73	\$32.73	\$32.73
	UPS - 1	\$15.40	\$15.40	\$15.40
5 Additional Peripherals (if needed)	Voting Booth - 553 / Privacy Screens - 553 / ImageCast BMD Transport Bag - 553 / ImageCast Precinct Adapter for use with Eagle Ballot Box - 553 / ImageCast Precinct Ballot Box - 553			
	Voting Booth - 553	\$5.68	\$5.68	\$5.68
	Privacy Screens - 553	\$0.45	\$0.45	\$0.45
	ImageCast BMD Transport Bag - 553	\$2.41	\$2.41	\$2.41
	ImageCast Precinct Ballot Box - 553	\$19.25	\$19.25	\$19.25
	ImageCast Precinct Adapter for use with Eagle Ballot Box - 553	\$14.58	\$14.58	\$14.58
	UPS - 50	\$0.00	\$0.00	\$0.00
6 Consumable Supplies (if needed)	Seals, etc. - 1	\$192.50	\$192.50	\$192.50
7 Software	Democracy Suite Light / Adjudication / Automated Test Deck / Remote UOCAVA			
	Democracy Suite Light - 1	\$3,368.75	\$3,368.75	\$3,368.75
	Adjudication - 1	\$2,887.50	\$2,887.50	\$2,887.50
	Automated Test Deck - 1	\$1,010.63	\$1,010.63	\$1,010.63
	Remote UOCAVA - 1	\$962.50	\$962.50	\$962.50
8 Licenses	Software License / G1130 - 40-5 / ImageCast BMD - 553 / ImageCast Precinct - 553			
	Democracy Suite Light - 1	\$802.08	\$802.08	\$802.08
	Adjudication - 1	\$687.50	\$687.50	\$687.50
	Automated Test Deck - 1	\$240.63	\$240.63	\$240.63
	Remote UOCAVA - 1	\$229.17	\$229.17	\$229.17
	G1130 - 40-5	\$59.01	\$59.01	\$59.01
	ImageCast BMD - 553	\$3.44	\$3.44	\$3.44
	ImageCast Precinct - 553	\$5.23	\$5.23	\$5.23
ImageCast HSS - 2-4	\$236.04	\$236.04	\$236.04	
9 Warranty	G1130 - 40-5 / ImageCast BMD - 553 / ImageCast Precinct - 553			
	G1130 - 40-5	\$34.38	\$34.38	\$34.38
	ImageCast BMD - 553	\$3.55	\$3.55	\$3.55
	ImageCast Precinct - 553	\$3.09	\$3.09	\$3.09
	ImageCast HSS - 2-4	\$194.79	\$194.79	\$194.79
10 Maintenance (Acceptance Testing, PM, etc.)	Included in Warranty	-	-	-

11	Support Services (e.g. Election Cycle, Off Cycle, etc.)	Includes Implementation, Training, Election Support - 1	\$37,033.33	\$37,033.33	\$37,033.33
12	Training	Included in Support Services	-	-	-

*Freight not included above and will not exceed \$45,000

**EXHIBIT B
SCOPE OF WORK**

ELECTIONS TABULATION SYSTEM

SCOPE OF WORK:

DESCRIPTION/SERVICE/EQUIPMENT	Enter Model# and Proposed Quantity (when applicable)
1 Precinct Based Tabulators	ImageCast BMD - 553 / ImageCast Precinct - 553
2 Central Count Tabulators	G1130 - 4 5
Central Count Tabulators	High Speed Scanner - 4 4
3 Accessible Marking -or- Voting Device	ImageCast BMD Audio Tactile Interface (ATI) - 553 / ImageCast Precinct Audio Secure Interface (ATI) - 552
4 Election Management Hardware	Standard Server - 2 / Client Workstation - 4 / Adjudication - 20 10 / WPE - 1
5 Additional Peripherals (if needed)	Veering Booth - 553 / Privacy Screens - 553 / ImageCast BMD Transport Bag - 553 / ImageCast Precinct Adapter for use with Eagle Ballot Box - 553 / ImageCast Precinct Ballot Box - 552
6 Consumable Supplies (if needed)	Seals, etc.
7 Software	Democracy Suite Light -1/ Adjudication-1 / Automated Test Deck-1 / Remote UOCAVA-1
8 Licenses	Software License / G1130 - 4 5 / ImageCast BMD - 553 / ImageCast Precinct - 553
9 Warranty	Software License / G1130 - 4 5 / ImageCast BMD - 553 / ImageCast Precinct - 553
10 Maintenance (Acceptance Testing, PM, etc.)	Included in Warranty
11 Support Services (e.g. Election Cycle, Off Cycle, etc.)	Includes Implementation, Training, Election Support-1
12 Training	Included in Support Services

ALL OTHER TERMS AND CONDITION REMAIN UNCHANGED

IN WITNESS WHEREOF, this Contract Amendment is executed on the date set forth below when executed by Maricopa County Office of Procurement Services:

DOMINION VOTING SYSTEMS, INC.

Authorized Signature

John G Poulos

Printed Name and Title

1201 18th St, Suite 210 Denver, Co, 80202

Address

Dec 20 2019

Date

MARICOPA COUNTY:

Chief Procurement Officer

12/20/19
Date

AMENDMENT No. 2
To
SERIAL 190265-RFP ELECTIONS TABULATION SYSTEM
Between
DOMINION VOTING SYSTEMS, INC.
&
MARICOPA COUNTY, ARIZONA

WHEREAS, Maricopa County, Arizona ("County") and Dominion Voting Systems, Inc. ("Contractor") have entered into a Contract for the purchase of Elections Tabulation System dated June 26, 2019 ("Agreement") County Contract No: 190265-RFP.

WHEREAS, County and Dominion Voting Systems, Inc. have agreed to further modify the Agreement by changing certain terms and conditions;

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Because the current contract expiration date is July 31st, 2022, a five (5) month early renewal through December 31st, 2022 will be required. This will allow for contract end date to coincide with the agreed upon billing cycles.
2. To add a line to the contract Pricing Page stating that the billing period will start January 1st, 2020 and will run on a 3-year cycle through December 31st, 2022.

Revised section 1.0:

1.0 CONTRACT TERM:

~~1.1 This Contract is for a term of three (3) years, beginning on the 1st day of August, 2019 and ending the 31st day of July, 2022.~~

1.1 This Contract is for a term of three (3) years and five (5) months, beginning on the 1st day of August 2019 and ending the 31st day of December 2022. The contract will consist of two independent phases.

1.1.1 Phase 1 - Pilot: Over the course of the first five months of the Contract Term (August 1, 2019 through December 31, 2019) the County will conduct a pilot test of Dominion's equipment at no cost to the County.

1.1.2 Phase 2 - System Installation and Ongoing Services: Beginning January 1, 2020 through the December 31, 2022, Dominion shall provide all equipment, services and related licenses to the County at the corresponding prices as outlined in this Agreement.

1.2 The County may, at its option and with the agreement of the Contractor, renew the term of this Contract for additional terms up to a maximum of ~~three (3) additional two (2) years and seven (7) months~~, (or at the County's sole discretion, extend the contract on a month-to-month bases for a maximum of six (6) months after expiration). The County shall notify the Contractor in writing of its intent to extend the Contract term at least sixty (60) calendar days prior to the expiration of the original contract term, or any additional term thereafter.

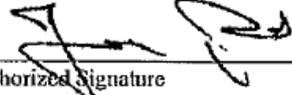
Revised Exhibit A Contractor Information / Pricing:

The billing period will start January 1st, 2020 and will run on a 3-year cycle through December 31st, 2022.

ALL OTHER TERMS AND CONDITION REMAIN UNCHANGED

IN WITNESS WHEREOF, this Contract Amendment is executed on the date set forth below when executed by Maricopa County Office of Procurement Services.

DOMINION VOTING SYSTEMS, INC.



Authorized Signature

John Poulos, President and CEO

Printed Name and Title

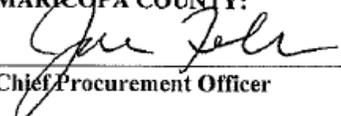
1201 18th St, Suite 210, Denver CO 80202

Address

02/06/2020

Date

MARICOPA COUNTY:



John Felt
Chief Procurement Officer

2/6/2020

Date

DOMINION VOTING SYSTEMS, INC., 1201 18TH STREET, SUITE 210, DENVER, CO 80202

PRICING SHEET: NIGP CODE 57834

Terms: NET 30

Vendor Number: VC0000002816

Certificates of Insurance Required

Contract Period: To cover the period ending ~~July~~ **December 31, 2022.**

From: [Merissa Hamilton](#)
To: [Sonny Borrelli](#)
Subject: SONNY EYES ONLY
Date: Thursday, December 10, 2020 2:34:05 PM
Attachments: [Merissa Hamilton - Briefing Note 2020 Election 12.9.20.pdf](#)
[Preliminary AZ Deceased Voter Report 11.25.20.xlsx](#)

Hi Sonny,

Attached is my team's research on deceased voters in Arizona. It's important to note that Maricopa County stated in the election review meeting with the Board of Supervisors that it's "folklore" deceased voters exist. Our research had a more comprehensive approach than the Maricopa County hand count and audit, registering as statistically significant with a 98% confidence rating.

The details of our process are included in the Briefing:

1.9 DECEASED VOTERS IN ARIZONA ANALYSIS

In mid-November 2020, over 129 people assisted in a preliminary audit using data supplied by the GOP Data Center to identify if there were ballots cast by deceased voters in the General Election. [Results](#) were submitted to the Arizona Attorney General's Election Integrity Unit (Intake Number: EIU-2020-29902-2316). The team researched registered voters against a highly regarded national database of persons, recommended by Forbes as a top comprehensive person search application. Three rounds of audits were conducted on alleged deceased voters that cast a ballot. When available, the audit team cross-checked for obituary listings. Since the Maricopa County website would not accept most State Voter ID numbers as valid, it is unknown how many ballot signatures were accepted.

The sample size is statistically significant at a confidence level of 98% with a 1.74% margin of error. The results of the audit are as follows: 3,961 voter records aged 90+ reviewed | 405 (10%) records identified as possible deceased, sent a ballot and 356 ballots not cast | Of the 405 deceased records, 43 records (10% of deceased voters), possible deceased voters with ballots cast which includes 21 confirmed as likely deceased (15 in Maricopa County), 12 possible deceased with more research needed (11 in MC), and 10 deceased after casting a ballot.

With 10% of voter records in scope identified as alleged deceased & receiving a ballot, and 1% returning a ballot, there is a statistical possibility that the Presidential election results are not valid.

If the percentages of deceased voters held across registered voters age 79+ (or 200k voters), these illegally seeded and returned ballots are capable of overturning the results of the Presidential election in Arizona.

Merissa Hamilton
(480) 374-0102

From: [Merissa Hamilton](#)
To: [Sonny Borrelli](#)
Subject: Support SB1211 - The Arizona Curriculum Transparency Bill!
Date: Wednesday, March 9, 2022 2:05:00 PM

Dear Senator Borrelli,

I urge you to immediately support SB1211, a bill to make curriculum transparent and easily accessible to parents. Parents know best how to raise their children. Parents being closely involved with their child's education is a critical element of their development. As the primary stakeholder in their children's education, parents need to know what is being taught in the classroom.

Whether a lesson is good or bad, sunshine has a positive effect. Parents should be made aware of the fantastic lessons and tools used to teach their children. If a lesson or curriculum divides students by an immutable characteristic and promotes critical race theory, it too should be exposed. Nothing done in the classroom should be done in darkness.

Parents across Arizona and the country are being denied reasonable access to view curriculum and forced to file numerous open records requests to see what their children are being taught. Arizona cannot afford to deny parents access to their children's curriculum any longer. We need your support for SB 1211 today.

Parents can already easily access schools' financial data, student performance scores, graduation and dropout rates, and enrollment processes. Why would we deny parents the same access to curriculum? SB 1211 allows teachers to teach unique and creative lessons while ensuring that parents are part of a comprehensive education effort for every child.

I urge you Senator Borrelli, to join me in supporting parental rights and transparency in Arizona by supporting SB 1211.

Regards,
Merissa Hamilton
15236 North 21st St
Phoenix, AZ 85022

From: [Merissa Hamilton](#)
To: [Karen Fann](#)
Subject: Support SB1211 - The Arizona Curriculum Transparency Bill!
Date: Wednesday, March 9, 2022 2:04:51 PM

Dear Senator Fann,

I urge you to immediately support SB1211, a bill to make curriculum transparent and easily accessible to parents. Parents know best how to raise their children. Parents being closely involved with their child's education is a critical element of their development. As the primary stakeholder in their children's education, parents need to know what is being taught in the classroom.

Whether a lesson is good or bad, sunshine has a positive effect. Parents should be made aware of the fantastic lessons and tools used to teach their children. If a lesson or curriculum divides students by an immutable characteristic and promotes critical race theory, it too should be exposed. Nothing done in the classroom should be done in darkness.

Parents across Arizona and the country are being denied reasonable access to view curriculum and forced to file numerous open records requests to see what their children are being taught. Arizona cannot afford to deny parents access to their children's curriculum any longer. We need your support for SB 1211 today.

Parents can already easily access schools' financial data, student performance scores, graduation and dropout rates, and enrollment processes. Why would we deny parents the same access to curriculum? SB 1211 allows teachers to teach unique and creative lessons while ensuring that parents are part of a comprehensive education effort for every child.

I urge you Senator Fann, to join me in supporting parental rights and transparency in Arizona by supporting SB 1211.

Regards,
Merissa Hamilton
15236 North 21st St
Phoenix, AZ 85022

From: [Mark Lewis](#)
To: [Mark Lewis](#)
Subject: Senators Don't support canceling early voting - lawsuits ?
Date: Tuesday, March 1, 2022 7:08:48 AM
Attachments: [GOP Lawsuit to cancel early voting 2022-02-25-petition.pdf](#)

Dear 2022 senators and senate candidates,

Don't go out on a limb with the GOP lawsuit to end early voting in AZ. (attached)

In the last 2020 election, MC republicans won 80% of close races, (except President) because of our VBM GOTV efforts. I called / texted 82,000 VBM ballot holders 3 times and did my GOTV effort for legislative victories. I turned out 22,031 VMB ballot holders in the last 36 hours, over objections by the Trump campaign.

1) Voter ID is much more important, and 2) cleaning up the voter rolls is much more important.

The lawsuit is attached and it makes 3 claims that are not supported by other federal lawsuits that allow voting in non polling locations.

No-excuse Mail-in (or “Early” or “Absentee”) Voting Is Unconstitutional, Either in Whole or in Part; Alternatively, It Must Be Narrowly Construed to Conform to the Arizona Constitution 19

A. Arizona Constitutional Provisions—by their Plain Meaning, History, and Initial Principles—Require In-person Voting at the Polls on a Specific Day .. 21 (People vote from jails & nursing homes every year, under federal settlements)

B. “Early Voting” is Contrary to Secure, In-person Voting at the Polls on a Specific Day and Is Therefore Unconstitutional 39 (Secure in person voting, is contrary to VMB statutes since 1998, because we use signature matching)

C. In the Alternative, “Early Voting” Must Be Construed Narrowly to Conform to the Arizona Constitution 40 (People vote from jails & nursing homes every year, under federal settlements)

Don't let slight errors in GOP judgement color your campaign comments to end VBM.

82% of voters like VBM. 9% of GOP grassroots want to end it. Do the math.

VBM = Republican victories since 1998.

Sincerely,

[Mark Lewis](#)

Mark Lewis, VP Engineering
Water Resource Institute, LLC
8485 E. McDonald Dr. Ste 55
Scottsdale, AZ 85250

602-499-3095



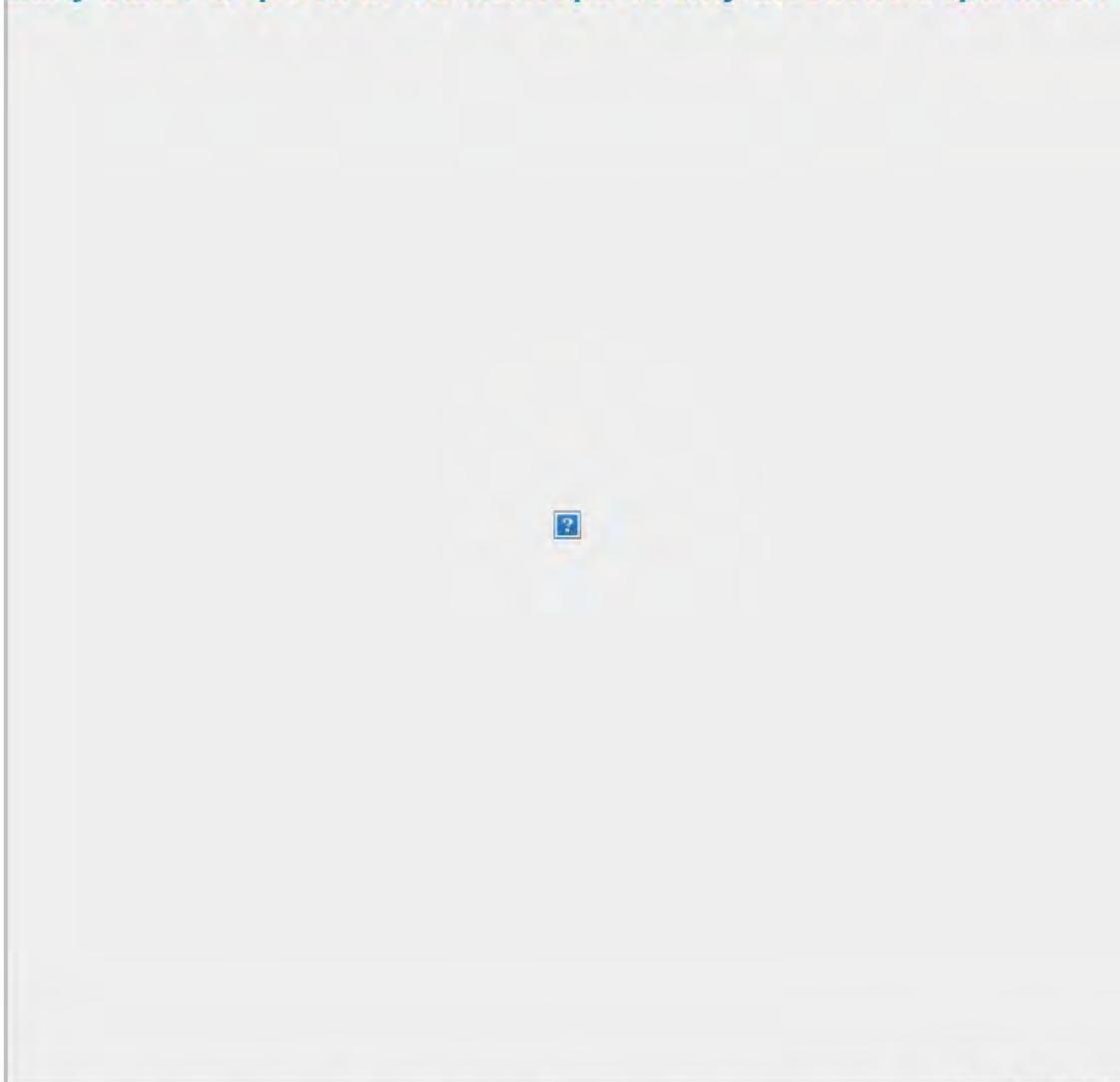
Arizona GOP files legal challenge to end Arizona's no-excuse early ballot system

By Howard Fischer/Capitol Media Services

Published: Monday, February 28, 2022 - 1:21pm

Updated: Monday, February 28, 2022 - 1:25pm

Early ballot drop box at the Maricopa County Elections Department



Tim Agne/KJZZ

Early ballot drop box at the Maricopa County Elections Department in Phoenix.

The Arizona Republican Party is trying to kill the preferred method of voting of more than 80% of state residents.

Legal papers filed Friday ask the Arizona Supreme Court to conclude that there is nothing in the state constitution to allow for early voting. Attorney Alexander Kolodin told Capitol Media Services the only form of voting specifically authorized by the framers of the constitution is in person and on Election Day.

What that means, he said, is that anything else — including the current system of no-excuse early ballots created by the Legislature in 1991 — is illegal.

If the justices don't buy that argument, Kolodin has an alternate legal theory. He argues that, at the very least, the state is required to return to the way the situation was prior to 1991.

That still allowed people to get early ballots, but also had to provide some proof they needed it, like being away from their voting precinct on Election Day or a physical disability. And Kolodin said that, at least, would provide more security over early ballots than the current system.

Secretary of State Katie Hobbs, a Democrat who is named as a defendant in the lawsuit, [tweeted a statement defending the security of Arizona's longstanding early ballot system](#). "This lawsuit filed by the Republican Party of Arizona has a single aim – to make it more difficult to vote," Hobbs wrote. "I look forward to once again defending the voters of Arizona and defeating this ridiculous attempt to undermine our elections."

The move comes amid extensive debate about early voting and whether it provides opportunities for fraud.

Some Republican lawmakers have proposed repealing early voting statutes entirely. But that has not found favor among sufficient members of the GOP to pass muster given the popularity among voters from both major parties as well as the political independents who make up about a third of registered voters.

Instead, [Republican legislators have coalesced around a plan to impose new restrictions beyond the sole existing requirement](#) to sign the exterior

of the envelope with the idea that county election officials compare the signatures with those on file. The plan, set for a final roll-call vote, would oblige early voters to provide a date of birth and information from another government document like a Social Security card or Arizona driver's license.

That issue of the legality of early voting isn't the only claim in the new lawsuit.

Kolodin also contends that if early voting is legal — a point he disputes — that still doesn't permit the use of "drop boxes" for early ballots, something Hobbs has permitted in the Election Procedures Manual. He said state law provides for only two ways for early voters to transmit ballots for tabulation: delivering or mailing "to the county recorder or other officer in charge of elections," or depositing "at any polling place in the county."

"A drop box is not an office of the county recorder, nor is it a 'polling place,'" he told the justices. And Kolodin said none of this is helped by laws that allow county supervisors to authorize "voting centers."

"Drop boxes are also not voting centers — which, like polling places, are staffed so that a voter may present identification 'to receive the appropriate ballot for that voter on election day,'" he said. By contrast, Kolodin said, drop boxes are not staffed.

Even assuming that the Arizona Constitution allows the Legislature to authorize drop boxes, Kolodin said lawmakers have never enacted such a statute.

"Thus, the secretary exceeds her legal authority by prescribing drop-box rules," he said.

Separately, Kolodin said Hobbs is violating the law by not setting up uniform rules for counties to use when verifying the signatures on early ballot envelopes. But it is the effort to quash early voting that has the potential to forever change how elections are run in the state.

Kolodin is not working from a blank slate.

In January a state court in Pennsylvania struck down that state's law, first enacted in 2019, which allows for no-excuse early voting.

Judge Mary Hannah Leavitt, a Republican, writing for the majority in the 3-2 ruling, said that voting "requires the physical presence of the elector. And she said the Legislature cannot change voting laws without first amending the state constitution.

That case, cited by Kolodin in his legal arguments here, is on appeal to the Pennsylvania Supreme Court.

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[ALERTS](#)
[LITIGATION](#)
[ARIZONA](#)

Republicans Sue Over Mail-in Voting in Arizona

February 28, 2022

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WASHINGTON, D.C. — On Friday, Feb. 25, the Arizona Republican Party and a Republican voter filed a [lawsuit](#) challenging the state’s mail-in voting laws. At the center of the lawsuit is Arizona’s extremely popular no-excuse mail-in voting system, which has been in place since 1991.

The petition alleges that the Arizona Constitution does not allow for any system of early voting, including absentee or mail-in voting, because “[i]n-person voting at the polls on a fixed date (election day) is the only constitutional manner of voting in Arizona.” Because of this, the petitioners argue that Arizona’s early voting statutes should be struck down.

If the Arizona Supreme Court does not agree with the lawsuit’s interpretation of the Arizona Constitution, the petitioners ask the court to reinstate the mail-in voting rules that were in place before 1991 and require individuals to have a “valid reason” to cast a mail-in ballot.

The lawsuit also focuses on two issues related to mail-in voting: 1) signature verification and 2) drop boxes.

The petition alleges that Arizona Secretary of State Katie Hobbs (D) did not

properly codify signature verification procedures for mail-in ballots during the 2020 election cycle, which “perpetuates inconsistent and non-uniform signature verification procedures by allowing her and the various Arizona counties to create and change their own procedures at will.”

The petition also alleges that the secretary exceeded her authority by allowing the use of drop boxes for mail-in ballot collection, arguing that they are not allowed under the Arizona Constitution.

Overall, the lawsuit asks the state Supreme Court to decide whether “the Secretary must include signature verification guidelines [in election rules], whether she may create drop-box rules without legal authority, and whether mail-in voting statutes are constitutional.”

In an unusual attempt to bypass the state trial court and avoid any lengthy appeals process, the lawsuit was filed directly in the Arizona Supreme Court. The petitioners are asking the state Supreme Court to exercise jurisdiction and decide the “purely legal” questions of the case before the next election cycle.

[Read the petition here.](#)

=====

The Arizona Republican Party is so scared of you that it's suing to outlaw early voting

Opinion: The Arizona Republican Party is suing to end the state's wildly popular early voting program. But this isn't about 'election integrity.' It's about a fear of voters.



Laurie Roberts Arizona Republic



The Arizona Republican Party, unable to get over the fact that Donald Trump lost the 2020 election, on Friday filed a lawsuit to outlaw early voting in Arizona.

Never mind that Arizona has allowed early voting for 30 years, during which time Republicans have dominated statewide and legislative elections.

Never mind that the program has worked so well for Republicans that in 2007, the GOP-controlled Legislature made it even easier to vote early, allowing voters to sign up to automatically get an early ballot in the mail.

In 2020, it backfired on them, as Democrats turned out in record numbers to vote early and well, you know the result.

Now, suddenly, the state's long-lauded early voting program is apparently a hotbed of fraud and corruption.

And unconstitutional, too, they cry.

So much corruption, the Ninjas couldn't find it

So the Arizona Republican Party is asking the Arizona Supreme Court to end the wildly popular program used by nearly 90% of voters who cast ballots in the 2020 presidential election that Trump lost.

I'd ask what state GOP Chairwoman Kelli Ward and her cohorts are afraid of. but I already know.

We watch that fear in action every day at the Capitol, as Republican legislators scheme to put up all manner of new and inventive roadblocks to make it more difficult to vote, in

the name of “election integrity.”

We see it on the campaign trail as various Republican candidates for the Senate (Jim Lamon) and governor (Kari Lake and Matt Salmon) have pledged to put an end to early voting.

“There’s so much corruption and cheating in our elections and much of it is coming from mail-in voting ... ,” Lake told me last fall, via her spokesman.

So much corruption and cheating, in fact, that the Arizona Senate’s Cyber Ninja auditors couldn’t find any actual widespread evidence of corruption or cheating – only “anomalies” that are quickly cleared up if you take the time to read Maricopa County’s rebuttal of their findings.

Senate lacks the votes to end early voting

Which matters not a hoot to the Republican Party because this isn’t really about “election integrity.” It isn’t about “restoring voter confidence” in elections that Ward, Senate President Karen Fann, Rep. Paul Gosar, Sen. Wendy Rogers and other GOP leaders have sought at every turn to undermine.

It’s about election survival for a party that has been taken over by the far-right fringe.

This, in a state that is turning a distinct shade of purple.

Just on Monday, Maricopa County Recorder Stephen Richer announced that independents now outnumber Republicans.

Meanwhile, moderate Republicans and independents in recent years have helped Democrats take both of Arizona’s U.S. Senate seats and the presidential election.

Of course, the party could respond by broadening its base. Instead, it's decided to do whatever it takes to get voters to sit elections out.

Which brings us to the plan to outlaw early voting.

Gov. Doug Ducey and the Legislature could simply end early voting. In fact, there are several bills to do just that. But it became clear last week that the votes aren’t there in the Senate.

And so comes the party’s appeal to the Supreme Court to outlaw early voting.

In a special action filed Friday, the party’s attorney Alexander Kolodin contends the only legal way to vote is in person and on Election Day.

He knows this because the state Constitution talks about providing ballots in “such manner that the electors may express at the polls their approval or disapproval of [a] measure.”

So, the Republican Party has filed a lawsuit

Apparently, the kitchen table that serves as the polling place for nearly three million

Arizona voters is downright unconstitutional.

“Because no-excuse mail-in voting is not exercised at the polls, it is unconstitutional,” he told Capitol Media Services’ Howard Fischer.

Which, I suppose, would mean that Ducey is no longer our governor. And our Legislature? That bunch of bums are all usurpers.

At least, if you go by the Republican Party’s logic.

Funny, I don’t recall ever hearing the party make the argument that early voting was illegal in all the years that Republicans dominated early balloting, giving them a leg up in every election.

I don’t recall hearing it after the 2020 primary election when 88% of voters cast early ballots and not a single one of our esteemed leaders cried fraud. (In fact, most of them won their seats that night given the way most legislative and congressional districts are gerrymandered.)

It's not about fraud. It's about fear

Now, however, the drive is underway in all fronts to end an insanely popular program that for 30 years has boosted turnout and served the state well.

All this, because one sore loser can’t accept defeat and too darned few of our so-called leaders will tell the emperor to put on some freaking clothes.

This isn’t about fraud. It’s about fear.

The Arizona Republican Party is scared stiff of Arizona voters.

And if its leaders somehow succeed in killing early voting, they’ll have reason to be.

Reach Roberts at laurie.roberts@arizonarepublic.com. Follow her on Twitter at [@LaurieRoberts](https://twitter.com/LaurieRoberts).

www.azcentral.com/story/opinion/op-ed/laurieroberts/2022/02/28/arizona-republican-party-scared-voters-suing-end-early-voting/9321257002/

ARIZONA SUPREME COURT

ARIZONA REPUBLICAN PARTY,
a recognized political party; and
YVONNE CAHILL, an officer and
member of the Arizona Republican
Party and Arizona voter and taxpayer.

Petitioners

v.

KATIE HOBBS, in her official
capacity as Arizona Secretary of
State; and STATE OF ARIZONA,
a body politic.

Respondents

No. _____

APPLICATION FOR ISSUANCE OF WRIT UNDER EXERCISE OF
ORIGINAL JURISDICTION

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Arizona Republican Party and Yvonne Cahill, hereby apply for the issuance of a writ in the exercise of this Court's original jurisdiction, as more fully set forth in the Verified Petition for Special Action filed herewith and expressly incorporated herein by reference. This application is made pursuant to Arizona Supreme Court Rule 1 and the other authorities cited therein.

DATED this 25th day of February 2022.

Davillier Law Group, LLC

By: /s/Alexander Kolodin

Attorney for Petitioners

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ARIZONA SUPREME COURT

ARIZONA REPUBLICAN PARTY,
a recognized political party; and
YVONNE CAHILL, an officer and member
of the Arizona Republican Party and
Arizona voter and taxpayer.

Petitioners

v.

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capacity as Arizona Secretary of
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Respondents

No. _____

VERIFIED PETITION FOR SPECIAL ACTION
Original Jurisdiction

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Ariz. Const. art. 5, § 917

Ariz. Const. art. 6, § 56

Ariz. Const. art. 7, § 1 *passim*

Ariz. Const. art. 7, § 229, 34

Ariz. Const. art. 7, § 436, 37

Ariz. Const. art. 7, § 537

Ky. Const. § 14721

Penn. Const. art. 7, § 129, 35

Penn. Const. art. 7, § 431

Statutes

1925 Ariz. Sess. Laws, ch. 75 § 128

1991 Ariz. Sess. Laws, vol. 1, ch. 51 § 128, 37, 41, 42

A.R.S. § 12-20216

A.R.S. § 16-10110

A.R.S. § 16-21138

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A.R.S. § 16-41118, 22

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A.R.S. § 16-51523

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Other Authorities

Antonin Scalia & Bryan A. Garner, <i>Reading Law: The Interpretation of Legal Texts</i> (2012).....	24
Ariz. Republican Party, <i>Bylaws</i> , https://azgop.com/about/bylaws	12
Ariz. Republican Party, <i>Proposal 9</i> , https://azgop.com/call/resolution	12
Ariz. Republican Party, <i>State Party, Elected Officers</i> , https://azgop.com/directory/state-party	10

Ariz. Sec’y of State, *Arizona Election Laws & Publications*,
<https://azsos.gov/elections/arizona-election-laws-publications>1, 16

Ariz. Sec’y of State, *2019 Elections Procedures Manual*,
[https://azsos.gov/sites/default/files/2019ELECTIONS
PROCEDURES_MANUAL_APPROVED.pdf](https://azsos.gov/sites/default/files/2019ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf).....*passim*

Ariz. Sec’y of State, *Elections Calendar & Upcoming Events, 2022 Elections*,
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Ariz. Sec’y of State, *Signature Verification Guide* (July 2020),
[https://azsos.gov/sites/default/files/
AZSOS_Signature_Verification_Guide.pdf](https://azsos.gov/sites/default/files/AZSOS_Signature_Verification_Guide.pdf).....*passim*

Ariz. Sec’y of State, *Signature Verification Guide* (July 2020),
[https://azsos.gov/sites/default/files/
AZSOS_Signature_Verification_Guide.pdf](https://azsos.gov/sites/default/files/AZSOS_Signature_Verification_Guide.pdf).....*passim*

Ariz. Sec’y of State, *Voter Registration Statistics – January 2022*,
<https://azsos.gov/elections/voter-registration-historical-election-data>.....13

Cambridge Dictionary,
<https://dictionary.cambridge.org/us/dictionary/english/at>.....34

Cambridge Dictionary,
<https://dictionary.cambridge.org/us/dictionary/english/thereto>36

Cambridge Dictionary,
<https://dictionary.cambridge.org/us/dictionary/english/therefrom>.....36

John C. Fortier & Norman J. Ornstein,
*The Absentee Ballot and the Secret Ballot:
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John R. Lott, *Why Do Most Countries Ban Mail-In Ballots? They Have Seen
Massive Vote Fraud Problems*, SSRN (Aug. 3, 2020),
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3666259.....3

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Introduction

As this Court has recognized, “[e]lection laws play an important role in protecting the integrity of the electoral process.” *Ariz. Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 61 ¶ 4 (2020) (citing *Burdick v. Takushi*, 504 U.S. 428, 441 (1992) (“[T]he right to vote is the right to participate in an electoral process that is necessarily structured to maintain the integrity of the democratic system.”)). In Arizona, however, ongoing abuse of election laws is jeopardizing public confidence in the electoral process.

In July 2020, Arizona Secretary of State Katie Hobbs (“Secretary”) issued a Signature Verification Guide (“2020 Guide”) outlining procedures for verifying signatures on early ballot envelopes.¹ However, the Secretary has never added these procedures to the operative Elections Procedures Manual (“EPM”),² or an addendum thereto, as required by A.R.S. § 16-452. If adopted into the EPM and approved by the Governor and Attorney General, the procedures would have the force of law, and their violation would be punishable as a misdemeanor. *Id.* at (C);

¹ Ariz. Sec’y of State, *Signature Verification Guide* (July 2020), https://azsos.gov/sites/default/files/AZSOS_Signature_Verification_Guide.pdf. The Court may take judicial notice of publicly available records “from sources whose accuracy cannot reasonably be questioned.” *Arizonans for Second Chances, Rehab., & Pub. Safety v. Hobbs*, 249 Ariz. 396, 403 n.1 (2020) (citing *Pedersen v. Bennett*, 230 Ariz. 556, 559 ¶ 15 (2012)).

² See Ariz. Sec’y of State, *Arizona Election Laws & Publications*, <https://azsos.gov/elections/arizona-election-laws-publications> (linking to EPM and noting “current EPM went into effect on December 20, 2019”).

Ariz. Pub. Integrity All., 250 Ariz. at 63 ¶ 16; *McKenna v. Soto*, 250 Ariz. 469, 473 ¶ 21 (2021).

The Secretary’s failure to execute her non-discretionary duty under A.R.S. § 16-452(B) to include the procedures in the EPM means county recorders are not required to follow them. Even if they were, the Secretary’s procedures purport to authorize counties to supplement her rules with their own *See, e.g.*, 2020 Guide at 1. Failure to include the procedures in the EPM also means the Secretary can modify them at will without the checks and balances that approval by the Governor and Attorney General provides. Thus, the Secretary’s signature verification procedures do not ensure that “the maximum degree of correctness, impartiality, uniformity and efficiency,” A.R.S. § 16-452(A), will be achieved among Arizona counties in the 2022 state general election.

On the other hand, *exceeding* her legal authority, the Secretary has prescribed rules in the EPM allowing county officials to “develop and implement procedures” for placing drop-boxes, including “unstaffed drop-box[es],” in various locations throughout the several counties.³ Neither the Secretary nor county recorders have statutory authority to implement “drop-box” voting under Arizona law. Moreover, the legislature may not delegate this authority to the Secretary, nor

³Ariz. Sec’y of State, *2019 Elections Procedures Manual*, [https://azsos.gov/sites/default/files/2019 ELECTIONS PROCEDURES MANUA
L APPROVED.pdf](https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf) at 60–62.

may the Secretary delegate a portion of this authority to county recorders, as the EPM purports to do. *See* EPM at 60–61.

These recent abuses are possible because of a longstanding deviation from Arizona’s constitutional mandates regarding the time, place, and manner of elections. Stated simply, Arizona’s “early voting” statutes—which provide for “absentee” or “no-excuse mail-in” voting—violate the Arizona Constitution, in whole or in part.

Absentee voting naturally lends itself to these and other abuses,⁴ which is why Arizona’s constitution is a product of the national movement to implement the “Australian ballot system,” a secure system quickly adopted by several states with little controversy and containing the following four essential provisions: (1) ballots printed and distributed at public expense; (2) ballots containing the names of all the candidates duly nominated by law (a “blanket ballot”); (3) ballots distributed “only by election officers *at the polling place* (‘exclusive’ or ‘official ballot’)”; and (4) detailed provisions for compartments and “other physical arrangements to ensure secrecy in casting the vote.” John C. Fortier & Norman J. Ornstein, *The Absentee Ballot and the Secret Ballot: Challenges for Election Reform*, 36 U. Mich. J. L.

⁴ Most European democracies have banned absentee voting due to security concerns. *See* John R. Lott, *Why Do Most Countries Ban Mail-In Ballots? They Have Seen Massive Vote Fraud Problems*, SSRN (Aug. 3, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3666259.

Reform 483, 488 (2003) (emphasis added).

Accordingly, the Arizona Constitution prescribes that “Official Ballot[s]” are to be provided “*at* the next regular general election”⁵ in “such manner that the electors may express *at the polls* their approval or disapproval of [a] measure.” Ariz. Const. art. 4, § 1(10). The provision that voting is to take place “at the polls” appears in three other places. *See id.* at (1), (3), & (15). Additional constitutional provisions, discussed more fully below, further support the proposition that in-person voting at the polls on a fixed date is the only constitutionally permissible manner of voting. The Court found this to be obvious in 1913, the year after the constitution was ratified: “We thus find that the people, who are the source of all power, in a proper manner, by their votes, *at a proper place, at the polls, and at a proper time, a general election*, have registered the public will....” *Allen v. State*, 14 Ariz. 458, 460 (1913) (emphasis added).

Thus, at minimum, Arizona’s no-excuse mail-in voting system, adopted in 1991, violates the Arizona Constitution. In fact, a Pennsylvania appellate court recently struck down that state’s no-excuse mail-in voting system as unconstitutional under provisions like those in Arizona’s constitution. *See McLinko v. Commonwealth*, 2022 Pa. Commw. Lexis 12, at *61 (Commw. Ct. Jan. 28,

⁵ Therefore, as discussed more fully below, this provision applies to all general election ballots.

2022) (discussing history of constitutional challenges and noting irreconcilability of absentee voting with state constitutions containing “secrecy” provisions), *prob. juris. noted*. And although the constitutionality of absentee voting has been challenged in other states, Arizona has never squarely addressed the question with either a constitutional amendment or a decision by this Court—perhaps due to the odd timing of Arizona’s entry into the union, coming as it did, between two waves of litigation on the subject. *See Fortier & Ornstein, supra* at 493–500 & 506–11.

Whether or not the Court agrees with this constitutionality argument, it should nevertheless provide a final resolution to the question and articulate what, if anything, the Arizona Constitution authorizes regarding absentee voting, the source of this authority, and any applicable limiting principles.

For these reasons, Petitioners Arizona Republican Party (“AZGOP”) and Yvonne Cahill (collectively, “Petitioners”) ask this Court to exercise its original jurisdiction over this special action and compel the Secretary to include the 2020 Guide in the EPM, prohibit her from including drop-box rules in the EPM, and enjoin the State from enforcing Arizona’s unconstitutional absentee voting laws. Petitioners also respectfully request that the Court expedite this matter so that state officials, candidates, and voters will have certainty in the upcoming general election.

Jurisdictional Statement

Jurisdiction

This Court has original jurisdiction over actions seeking mandamus, injunction, and other extraordinary writs against the state and its officers. Ariz. Const. art. 6, § 5; A.R.S. § 12-2021; *See also* Ariz. Sup. Ct. R. 1; Ariz. R. P. Special Actions R. (“RPSA”) 1, 3, & 7 (replacing prior procedures, describing questions which may be raised, and allowing such a case to be brought in this Court via “special action...initiated by the filing of a petition”).

The relief Petitioners seek in this special action falls within the traditional categories this Court considers when exercising its original jurisdiction. Petitioners seek to compel the Secretary to include uniform signature verification guidelines in the EPM—to be used by all county recorders in Arizona—as required by A.R.S. § 16-452(A). Additionally, Petitioners seek to prohibit the Secretary from including ballot drop-box provisions in the EPM because she lacks legal authority to prescribe rules that are not authorized by statute, and no Arizona statute authorizes drop-boxes in lieu of official polling places. Further, even if the legislature were to enact a statute authorizing drop-boxes, as discussed below, such legislation would violate the Arizona Constitution. Thus, Petitioners also seek to prohibit the State from enforcing unconstitutional early voting statutes and to compel it instead to abide by the constitution.

Although the Court’s original jurisdiction is discretionary, it has often exercised it in cases that (1) involve purely legal questions of first impression, (2) involve matters of substantial public impact that are likely to be appealed to this Court regardless of a lower court’s decision, or (3) require a final resolution on an expedited basis. *See, e.g., City of Surprise v. Ariz. Corp. Comm’n*, 246 Ariz. 206, 209 ¶¶ 5–7 (2019) (exercising original jurisdiction to clarify scope of commission’s authority because jurisdiction is appropriate in cases involving purely legal questions of statewide importance or requiring an immediate and final resolution, particularly when a defendant proceeds or threatens to proceed without legal authority); *Dobson v. State ex rel. Comm’n. on App. Ct. Appointments*, 233 Ariz. 119, 121 ¶¶ 5–8 (2013) (exercising original jurisdiction where petitioners sought to declare unconstitutional and enjoin a statute because petition presented purely legal questions of statewide importance that turned on interpretation of constitution and required immediate and final resolution); *Ariz. Indep. Redistricting Comm’n. v. Brewer*, 229 Ariz. 347, 348 ¶¶ 11–14 (2012) (exercising original jurisdiction because legal issues required prompt resolution and were of first impression and statewide importance); *Brewer v. Burns*, 222 Ariz. 234, 237 ¶¶ 8–9 (2009) (exercising jurisdiction because issue was of one of first impression, statewide importance, purely legal, and turned on meaning of constitution); *Citizens for Growth Mgmt. v. Groscost*, 199 Ariz. 71, 71–72 ¶¶ 1–2 (2000)

(exercising jurisdiction over challenge to description of ballot initiative); *Randolph v. Groscost*, 195 Ariz. 423, 425 ¶ 6 (1999) (exercising jurisdiction over challenge to commission’s authority); *Rios v. Symington*, 172 Ariz. 3, 4 (1992) (challenge to governor’s line item vetoes); *Adams v. Bolin*, 77 Ariz. 316, 317 (1954) (whether secretary of state was required to accept petitioner’s nomination papers for congressional election).

This petition (1) involves purely legal questions of first impression that are (2) matters of substantial public impact (and that will certainly be appealed to this Court regardless of a lower court’s decision) and that (3) require a final resolution on an expedited basis because there is no “equally plain, speedy, and adequate remedy by appeal.” RPSA 1. Whether the Secretary must include signature verification guidelines in the EPM, whether she may create drop-box rules without legal authority, and whether mail-in voting statutes are constitutional (a question that requires this Court to interpret the Arizona Constitution) are purely legal questions of first impression that Arizona courts have never addressed.

Moreover, this case involves issues of substantial public impact. “The right to vote is the right to participate in an electoral process that is necessarily structured to maintain the integrity of the democratic system.” *Burdick*, 504 U.S. at 441. “Election laws play an important role in protecting the integrity of the electoral process.” *Ariz. Pub. Integrity All.*, 250 Ariz. at 61 ¶ 4. In Arizona, the

Secretary is tasked with prescribing “rules to achieve and maintain the maximum degree of correctness, impartiality, uniformity and efficiency on the procedures for early voting and voting.” A.R.S. § 16-452(A). Because of the substantial public impact of a decision on any one of Petitioners’ claims—each of which concerns Arizona election laws—this Court should be the only court to weigh in, thus preventing the confusion and delay that would inevitably result from a lower court’s ruling.

Additionally, a ruling by a lower court simply would not suffice here because Petitioners, election officials, and voters require a speedy and final resolution of these claims, and there is no “equally plain, speedy, and adequate remedy by appeal.” RPSA 1. Because of the upcoming Arizona general election, which will occur months from now, it is in the state’s best interest for the Court to resolve on an expedited basis the serious issues Petitioners raise. Early voting begins October 12, 2022, for the State General Election to be held on November 8, 2022.⁶

If the Court grants Petitioners’ requested relief, election officials need time to adopt the uniform signature guidelines and to ensure there are sufficient polling places to replace drop-box and no-excuse mail-in voting. Commencing this action

⁶ Ariz. Sec’y of State, *Elections Calendar & Upcoming Events, 2022 Elections*, <https://azsos.gov/elections/elections-calendar-upcoming-events>.

in trial court would necessarily expand its duration and render it difficult, if not impossible, for election officials to comply with the law prior to the upcoming statewide election. Commencing this action in a lower court would also waste judicial resources by triggering an appeal—because even though a lower court could address these legal questions, only this Court can provide a final resolution. Thus, Petitioners lack an “equally plain, speedy, and adequate remedy by appeal.”

For these reasons, Petitioners respectfully request this Court to exercise its original jurisdiction over this special action and grant the expedited relief Petitioners seek.

Standing

Petitioner Cahill has standing as an Arizona citizen and voter. In *Arizona Public Integrity Alliance*, this Court held that “Arizona citizens and voters” have “sufficient beneficial interest to establish standing” in a mandamus action seeking to compel public officials to comply with state election laws. 250 Ariz. at 62 ¶ 12. Petitioner Cahill is an Arizona citizen and a registered voter⁷ seeking to compel the Secretary to perform her non-discretionary duty to include signature verification

⁷ Petitioner Cahill is a statutory officer (Secretary) of the AZGOP’s state committee. See AZGOP, *State Party, Elected Officers*, <https://azgop.com/directory/state-party>; A.R.S. § 16-827. As such, she is required by law to be a precinct committeeman (an elected party *and* public official), and being a registered Arizona voter is a statutory requirement to hold the office of precinct committeeman. See A.R.S. §§ 16-101, 16-821(A), 16-822(A), 16-825, 16-827.

guidelines in the EPM, to prohibit the Secretary and State from exceeding their legal authority by executing and enforcing invalid election laws, and to compel them to operate within the statutory and constitutional limitations of state election laws. Thus, Petitioner Cahill has standing to bring this challenge.⁸

Petitioner AZGOP has direct interests in the outcome of this litigation because state election laws establish its right and duty to monitor the early voting process against improprieties. *See, e.g.*, ARS §§ 16-621(A) & 16-552(C) & (H). Striking down as unconstitutional some or all of Arizona’s early voting statutes, and enjoining the Secretary’s unlawful acts, would affect these duties in regards to early ballots.

Petitioner AZGOP also has standing to assert the claims of its members in a representational capacity. *Armory Park Neighborhood Ass’n v. Episcopal Cmty. Servs.*, 148 Ariz. 1, 5–6 (1985). In Arizona, “cases such as this need not be determined by rigid adherence to the three-prong [standing] test of *Warth*, although those factors may be considered.” *Id.* at 6 (citing *Warth v. Seldin*, 422 U.S. 490

⁸ Petitioner Cahill also has standing as a taxpayer. As set forth below, mail-in voting is unconstitutional. Arizona funds the pre-paid postage for mail-in ballots. *See* A.R.S. § 16-542 (“The county recorder...shall mail the early ballot and the envelope for its return postage prepaid to the address provided by the requesting elector.”). Thus, the State is making illegal expenditures and will continue doing so unless compelled to follow the constitution. *See* *Rodgers v. Huckelberry*, 247 Ariz. 426, 429 ¶ 11 (App. 2019).

(1975)).⁹ “The issue in Arizona is [1] whether, given all the circumstances in the case, the association has a legitimate interest in an actual controversy involving its members and [2] whether judicial economy and administration will be promoted by allowing representational appearance.” *Id.*

Regarding the first *Armory* factor, the AZGOP has a legitimate interest in an actual controversy involving its members, which include voters and candidates. The Secretary’s failure to include signature verification procedures and her addition of drop-box procedures in the EPM (as well as her unlawful delegation of this authority to counties) compromises the uniformity of the election procedures under which the AZGOP’s candidates compete and implicates Petitioner’s ability to ensure its members are elected in a lawful process.¹⁰ Further, ensuring that Republican voters and candidates are elected pursuant to the laws and constitution of this state is germane to the AZGOP’s resolution to protect the “electoral process” by, *inter alia*, ensuring that all Arizona voters are required to prove their identities and qualifications¹¹ (e.g., via uniform signature verification procedures or by presenting identification, which voters cannot do at drop-box locations or via

⁹ The three factors are: (a) association members would have standing to sue in their own right; (b) the interests which the association seeks to protect are relevant to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members. For the reasons stated below, establishing standing under Arizona’s test, Petitioners also meet the *Warth* factors.

¹⁰ AZGOP, *Bylaws* at 1, <https://azgop.com/about/bylaws>.

¹¹ AZGOP, *Proposal 9*, <https://azgop.com/call/resolutions> (passed).

mail-in voting and which, under current election laws, they can do *only* “at the polls”).

Regarding the second factor, judicial economy and administration will be promoted by allowing representational appearance because the AZGOP is comprised of 1.5 million registered voters,¹² and it is not feasible to address their concerns through individual lawsuits. Thus, Petitioner AZGOP—like Petitioner Cahill—has standing to seek the requested special-action relief.

Statement of the Issues

1. Must the Arizona Secretary of State include uniform signature verification guidelines in the EPM pursuant to A.R.S. Title 16? RPSA 3(a).
2. Was/is the Secretary required to propound an EPM providing only statutorily and constitutionally authorized procedures for returning ballots? RPSA 3(a). Or was/is the Secretary instead without legal authority to prescribe “drop-box” rules in the EPM when those rules are not statutorily or constitutionally authorized? RPSA 3(b).
3. Was/is the State required to provide for a statutory voting system that conforms to the Arizona Constitution? RPSA 3(a). Or was/is the State instead without legal authority to enact, enforce, or facilitate unconstitutional

¹² Ariz. Sec’y of State, *Voter Registration Statistics – January 2022*, <https://azsos.gov/elections/voter-registration-historical-election-data>.

early (“absentee” or “no-excuse mail-in”) voting statutes? RPSA 3(b).

4. Alternatively, do Respondents abuse their discretion in doing any of the above? RPSA 3(c).

Statement of Facts

Because this petition asks the Court to resolve purely legal questions, there are no facts on record for the Court to review. All facts presented in the petition are derived from publicly available documents, statutes, and constitutional provisions. The essential facts of the case are these: (1) The Secretary has prescribed signature verification procedures via the 2020 Guide,¹³ which is not included in the EPM or an addendum thereto. (2) The Secretary has authorized the use of ballot drop-boxes in the EPM. *See* EPM at 60.¹⁴ (3) Arizona election laws provide for no-excuse mail-in voting.

Moreover, Petitioners do not assert any claims regarding election integrity or lack thereof. Instead, Petitioners argue that—based on the text of election materials (e.g., the EPM and the 2020 Guide), Arizona election statutes, and applicable constitutional provisions—the Secretary fails to perform a non-discretionary duty and exceeds her legal authority, and the State, without legal authority, is executing

¹³ This document also purports to authorize county recorders to supplement the Secretary’s procedures with their own. *See, e.g.*, 2020 Guide at 1.

¹⁴ Notably, the Secretary cites no statutory authority for drop-boxes as she does for other items in the EPM.

and enforcing unconstitutional election statutes rather than complying with the Arizona Constitution.

Argument

I. Signature Verification Guidelines Must Be Included in the EPM.

A.R.S. § 16-550 requires county recorders to ensure that signatures on mail-in ballot envelopes are valid by verifying that signatures on envelopes match electors' signatures on file in voter registration records. However, the statute itself does not establish procedures for such verification. Instead—“to achieve and maintain the maximum degree of correctness, impartiality, uniformity and efficiency on the procedures for early voting and voting, and of producing, distributing, collecting, counting, tabulating and storing ballots”—A.R.S.

§ 16-452(A) delegates this responsibility to the Secretary, who must include these rules “in an official instructions and procedures manual” (i.e., the EPM) no later than December 31 of each year preceding the general election. A.R.S.

§ 16-452(A)–(B). Before its issuance, “the manual shall be approved by the governor and the attorney general,” and the Secretary “shall submit the manual to the governor and the attorney general not later than October 1 of the year before each general election.” *Id.* However, addenda may be added to the EPM outside of

this timeframe.¹⁵ “Once adopted, the EPM has the force of law; any violation of an EPM rule is punishable as a class two misdemeanor.” *Ariz. Pub. Integrity All.*, 250 Ariz. at 63 ¶ 16; *McKenna*, 250 Ariz. at 473 ¶ 21.

Because invalid ballots may not be counted, A.R.S. § 16-609(A), it is imperative that election officials ensure the validity of signatures on all mail-in ballot envelopes. Thus, the Secretary’s failure to include the guidelines in the EPM is not only remiss but also perpetuates inconsistent and non-uniform signature verification procedures by allowing her and the various Arizona counties to create and change their own procedures at will, whatever those may be, without the safeguard of the Governor’s and the Attorney General’s approval.

Ensuring the validity of ballots in a uniform manner throughout Arizona is vital “to protecting the integrity of the electoral process.” *Ariz. Pub. Integrity All.*, 250 Ariz. at 61 ¶ 41. Because the Secretary has failed to perform her duty to ensure that all mail-in ballot envelopes are verified in the same manner—thus achieving the maximum degree of correctness, impartiality, *uniformity* and efficiency” as required by A.R.S. § 16-452(A)—Petitioners urge this Court to compel the

¹⁵ See *Ariz. Sec’y of State, Arizona Election Laws & Publications*, <https://azsos.gov/elections/arizona-election-laws-publications> (linking to the [Electronic Adjudication Addendum to the 2019 Elections Procedures Manual](#) (“EPM Addendum”)). Note that in their cover letters, the Secretary, the Governor, and the Attorney General all conclude that adding an addendum to the EPM is lawful.

Secretary to include the guidelines in the current EPM, or an addendum thereto, and submit them to the Governor and Attorney General for review and approval.

II. The Secretary May Not Authorize Voting Via Drop-boxes.

The Arizona Constitution provides that “the powers and duties of Secretary of State...shall be as prescribed by law.” Ariz. Const. art. 5, § 9. *See also Chavez v. Brewer*, 222 Ariz. 309, 316 ¶ 17 (App. 2009). The Secretary—in the current EPM—has prescribed rules for county officials to “develop and implement procedures” for placing “unstaffed drop-box[es]” in various locations throughout the several counties. *See* EPM at 60–62. However, unlike virtually every other portion of the EPM, the Secretary cites no authority for prescribing drop-box rules. *Id.* Indeed, the Secretary lacks statutory authority to authorize drop-box voting and should be enjoined from doing so. *Ariz. Pub. Integrity All.*, 250 Ariz. at 62 ¶ 14 (Public officials may be enjoined from acts beyond their power.).

Arizona statutes provide only two ways for early voters to transmit ballots for tabulation: (1) delivering or mailing “*to the county recorder or other officer in charge of elections*” or (2) depositing “*at any polling place in the county.*” A.R.S. § 16-548(A) (emphasis added). Thus, early voters may deliver their ballots to the county recorder (or other officer) or deposit their early ballots “at any polling place in the county.” A drop-box is not an office of the county recorder, nor is it a “polling place.” Polling places are designated by county boards of supervisors.

A.R.S. § 16-411(B). Polling places have a “sufficient number of voting booths on which voters may conveniently mark their ballots screened from the observation of others.” A.R.S. § 16-404.

Moreover, although county boards may authorize “voting centers,” A.R.S. § 16-411 (B)(4), drop-boxes are also not voting centers—which, like polling places, are staffed so that a voter may present identification “to receive the appropriate ballot for that voter on election day.” A.R.S. § 16-411(B)(4).

A “county recorder may also establish any other early voting locations.” A.R.S. § 16-542(A). However, “other early voting locations” are also not drop-boxes because the statute states that “[a]ny on-site early voting location or other early voting location shall require each elector to present identification...before receiving a ballot.” *Id.* Electors cannot present identification at unstaffed drop-boxes.

As explained below, the Arizona Constitution never contemplated and does not authorize mail-in voting, much less a system by which voters deliver ballots to unstaffed drop-boxes. But even assuming, arguendo, that the constitution allows the legislature to authorize drop-boxes, the legislature has never enacted such a law. Thus, the Secretary exceeds her legal authority by prescribing drop-box rules. *See Ariz. Pub. Integrity All.*, 250 Ariz. at 62 ¶ 14. *See also Forty-Seventh Legislature v. Napolitano*, 213 Ariz. 482, 489 ¶ 26 (2006) (Governor’s veto

exceeded her constitutional authority and was therefore invalid.).

A.R.S. § 16-452 does not grant the Secretary authority to expand the scope of statutes such as A.R.S. § 16-548(A). *Leach v. Hobbs*, 250 Ariz. 572, 576 at ¶ 21 (2021) (EPM regulation exceeding scope of its statutory authorization or contravening an election statute’s purpose does not have force of law). And even if the legislature intended A.R.S. § 16-452 to authorize the Secretary to establish additional locations for returning early ballots, this would be an illegal delegation because “[i]t is a well settled principle of law that the state legislature may not delegate its power to make laws.” *Lake Havasu City v. Mohave Cty.*, 138 Ariz. 552, 559 (App. 1983) (citations omitted). By including EPM rules allowing voters to cast ballots at unsupervised drop-boxes, the Secretary is effectively authorizing drop-boxes, but only the legislature, if constitutionally permissible, may do so.

For these reasons, Petitioners request that the Court prohibit the Secretary from exceeding her legal authority by authorizing counties to use drop-boxes in the 2022 general election and beyond.

III. No-excuse Mail-in (or “Early” or “Absentee”) Voting Is Unconstitutional, Either in Whole or in Part; Alternatively, It Must Be Narrowly Construed to Conform to the Arizona Constitution.

In-person voting at the polls on a fixed date (election day) is the only constitutional manner of voting in Arizona. The Court found this to be obvious a year after the constitution was ratified. *See Allen*, 14 Ariz. at 460. Yet Arizona has

since implemented (and repeatedly expanded) absentee voting.

Although litigants have challenged various mail-in voting statutes on other grounds, the statutory scheme itself has never been directly challenged on state constitutional grounds or directly authorized by constitutional amendment. *But see*, e.g., *Bourland v. Hildreth*, 26 Cal. 161 (1864); *Twitchell v. Blodgett*, 13 Mich. 127 (1865); *Chase v. Miller*, 41 Pa. 403 (1862); *Clark v. Nash*, 192 Ky. 594 (1921); *In re Contested Election*, 281 Pa. 131 (1924); *Thompson v. Scheier*, 57 P.2d 293 (N.M. 1936); *Baca v. Ortiz*, 61 P.2d 320 (N.M. 1936) (successful constitutional challenges to absentee voting in other states). *See also* Fortier & Ornstein, *supra* at 496–500, 506–08 (explaining that several states amended their constitutions throughout the 1800s to expressly authorize mail-in voting, first for soldiers and again during the early 1900s in response to further constitutional challenges to expansions of absentee voting).

Petitioners now respectfully ask this Court to determine whether Arizona’s no-excuse mail-in statutory scheme is constitutional—to fulfill its “duty...to say what the law is,” *Marbury v. Madison*, 5 U.S. 137 (1803)—and to clarify for those who, like Petitioners, are intimately affected by election laws and seek guidance as to what the constitution presently allows. “The responsibility of determining whether the legislature has followed constitutional mandates that expressly govern its activities is given to the courts.” *Ariz. Sch. Bds. Ass’n v. State*, No. CV-21-

0234-T/AP, 2022 Ariz. Lexis 31, at *13 (Jan. 6, 2022) (describing this as the Court’s core duty). Whether or not the Court finds Arizona’s no-excuse mail-in voting statutes constitutional, it should articulate the constitutional authority for its holding and establish whether there are any limiting principles to that authority.

However, as detailed below, the constitution is plain that no-excuse mail-in voting is unlawful and must be struck down. And while it may be “regretted that so convenient, useful and popular legislation should be found in conflict with our basic law,” as the Kentucky Supreme Court remarked when striking down that state’s mail-in voting system as unconstitutional under a similar provision of Kentucky’s constitution, “[t]he only remedy is an amendment to the Constitution, which the people can have, if they wish, allowing the passage of an absent voters act.” *Clark*, 192 Ky. at 597–98 (interpreting in-person provision¹⁶ of state constitution). Kentuckians later ratified a constitutional amendment to allow for mail-in voting, and Arizonans may do the same. That, however, is a choice for the people, and not the legislature, to make.

A. Arizona Constitutional Provisions—by their Plain Meaning, History, and Initial Principles—Require In-person Voting *at the Polls on a Specific Day.*

“[I]f the Constitutional language is clear, judicial construction is neither

¹⁶ “All elections by the people shall be by secret official ballot, furnished by public authority to the voters at the polls, and marked by each voter in private at the polls and then and there deposited.” Ky. Const. § 147.

required nor proper.” *Perini Land & Dev. Co. v. Pima Cty.*, 170 Ariz. 380, 383 (1992). The text of the Arizona Constitution is clear that voting rights are to be exercised “at the polls”:

“Official ballot. When any initiative or referendum...shall be filed...with the secretary of state, he shall cause to be printed on the official ballot **at** the next regular general election the title and number of said measure, together with the words ‘yes’ and ‘no’ **in such manner that the electors may express at the polls** their approval or disapproval of the measure.”

Ariz. Const. art. 4, § 1(10) (emphasis added). The provision that voting is exercised “at the polls” appears in three other places. *See id.* at (1) (reserving to people the “power to propose laws and amendments to the Constitution and to enact or reject such laws and amendments **at the polls**...and they also reserve...the power to approve or reject **at the polls** any” legislative act); *id.* at (3) (“Legislature, or five per cent of the qualified electors, may order the submission to the people **at the polls** of any measure...enacted by the Legislature[.]”); *id.* at (15) (“Nothing in this section shall be construed to deprive or limit the Legislature of the right to order the submission to the people **at the polls** of any measure, item, section, or part of any measure.”) (Emphasis added for all.)

The ordinary meaning of “polls” is “[o]ne of the places where the votes are cast at an election. The place of holding an election within a district, precinct, or other territorial unit.” *Polls*, Ballentine’s Law Dictionary (3rd ed. 2010). *See also* A.R.S. § 16-411(B) (polling places designated by county boards of supervisors);

id. at (J) (Secretary shall “provide for a method to reduce voter wait time *at the polls*” in primary and general elections) (emphasis added); A.R.S. § 16-404 (polling places have “sufficient number of voting booths on which voters may conveniently mark their ballots screened from the observation of others”); A.R.S. § 16-515(A) (prohibiting electioneering “inside the seventy-five foot limit while the polls are open”). Mail-in voting does not occur at a specific place designated by county boards or a place with a sufficient number of voting booths, regardless of where mail-in votes are actually tallied, and wait times and electioneering are irrelevant at one’s own home. Because no-excuse mail-in voting is not exercised at the polls, it is unconstitutional.

If the Court does not find that “at the polls” ordinarily means in-person voting at a specific polling place, it may apply principles of statutory construction. In interpreting constitutional and statutory provisions, courts give words their ordinary meaning unless it appears from the context or otherwise that a different meaning is intended; accordingly, courts interpret statutory language in view of the entire text and consider the context in which it was used. *Fann v. State*, 493 P.3d 246, 255 ¶ 25 (Ariz. 2021) (quotations and citations omitted). Courts “also avoid interpreting a statute in a way that renders portions superfluous.” *Id.* “Each word, phrase, and sentence must be given meaning so that no part will be [void], inert, redundant, or trivial.” *City of Phoenix v. Yates*, 69 Ariz. 68, 72 (1949).

“Constitutions, meant to endure, must be interpreted with an eye to syntax, *history*, *initial principle*, and *extension of fundamental purpose*.” *Saban Rent-a-Car LLC v. Ariz. Dep’t of Revenue*, 246 Ariz. 89, 95 ¶ 21 (2019) (quotations and citations omitted; emphasis added). See also *Chavez*, 222 Ariz. at 319 ¶ 32. Moreover, “[s]tatutes that are *in pari materia*—those of the same subject or general purpose—should be read together and harmonized when possible.” *David C. v. Alexis S.*, 240 Ariz. 53, 55 ¶ 9 (2016). See also Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 252 (2012) (Any word or phrase interpreted by a court “is part of a whole statute, and its meaning is therefore affected by other provisions of the same statute. It is also, however, part of an entire *corpus juris*.... Hence laws dealing with the same subject...should if possible be interpreted harmoniously.”). Keeping an eye to these principles, it becomes even more apparent the constitution not only requires in-person voting at the polls but also requires voting to be on election day.

For instance, although the “at the polls” provisions appear in article 4 (addressing the legislative department and reserving certain law-making powers to the people) of the constitution rather than in article 7 (addressing suffrage and elections), the “at the polls” language is not limited to elections on referenda and initiatives for the simple reason that referenda and initiatives are always decided “at the next regular general election.” Ariz. Const. art. 4, § 1(10). Moreover, these

provisions were adopted contemporaneously with the provisions in article 7. *See The Records of the Arizona Constitutional Convention of 1910*, 1402–05 & 1416–17 (John S. Goff ed., 1990) (documenting constitution as originally adopted in 1910). Thus, the framers intended all voting to occur at the polls. Additionally, specific provisions in article 7, discussed below, establish that *in-person* voting at the polls *on a fixed date* is the only constitutional manner of voting in Arizona.

1. Ariz. Const. art. 7, § 1

Article 7, section 1 provides: “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.**” Ariz. Const. art. 7, § 1 (emphasis added). As detailed below, the phrase “as may be prescribed by law” is not a broad and general grant of authority allowing the legislature to deviate from the Australian ballot system. Rather, the framers included the phrase “such other method” to allow the legislature to authorize voting machines in lieu of paper ballots. They included the phrase “[p]rovided, that secrecy in voting shall be preserved” to clarify that voting machines, if used, must adhere to the Australian ballot system.

A “ballot” is a printed implement of voting marked by electors to indicate their preferences. Ariz. Const. art. 4, § 1(10); A.R.S. § 16-502 (Title: “Form and contents of ballot”). *See also Ballot*, Ballentine’s Law Dictionary (3rd ed. 2010) (directing reader to also see “Australian ballot system”). An “election by ballot” is

“[n]othing less than an election by secret ballot.” *Id.* A “secret ballot” is a “method of election essential to the preservation of the integrity of the election. A secret method of voting at an election.” *Id.* “Secrecy in voting” is not limited to *privacy* in voting but, rather, is a term of art encompassing the understanding that voting by “secret ballot” is intended “to protect individual voters from coercion.” *See, e.g., McLaughlin v. Bennett*, 225 Ariz. 351, 354 ¶ 11 (2010). “Secrecy” thus refers to the “Australian ballot system.” To understand why the framers included this specific language in the constitution, it is helpful to look at the “history” and “initial principle[s],” *Saban Rent-a-Car*, 246 Ariz. at 95 ¶ 21, behind adoption of the Australian ballot system in the U.S.

In the late 1800s, the U.S. underwent a major election reform cycle inspired by a new Australian policy that allowed the government to control and standardize election procedures and ballot distribution. Prior to this reform, political parties and individuals created their own ballots, engendering a system rife with coercion and fraud and devoid of any consistent privacy or security standards. Derek T. Muller, *Ballot Speech*, 58 Ariz. L. Rev. 693, 696–697 (2016). As discussed above, the “Australian ballot system” requires that ballots: (1) be printed and distributed at public expense; (2) contain the names of all duly nominated candidates; (3) be distributed only by election officers *at the polling place*; and (4) contain detailed provisions to ensure secrecy in casting the vote. Fortier & Ornstein, *supra* at 488

(emphasis added).

Once voting by written ballot became standardized, confidential, and secure across the nation, the next major election reform cycle involved development of “absentee ballots,” which expanded the franchise to those unable to cast their ballots at their local polling places. *Id.* at 492. “The early impetus behind absentee balloting was war: making sure that soldiers on the battlefield were not disenfranchised by their military service.” *Id.* However, even advocates of absentee ballots were “cognizant of the tensions between the reforms that led to the Australian ballot and the absentee ballot, which was voted away from the polling place without its privacy protections.” *Id.* Because “absentee voting took place **away** from the voter’s home voting booth, there were serious questions about fraud and coercion, the same kind of concerns that had been the impetus behind the move to adopt the Australian ballot.” *Id.* (emphasis added). Recognizing this tension, many states in the early 1900s developed “elaborate provisions to safeguard voter privacy and the integrity of the ballot.” *Id.* at 492–493.

Notably, mail-in ballots, by their very nature, cannot be made entirely secret or free from coercion. If bad actors wish to pay for votes or coerce electors to vote a certain way, there is nothing to stop them from standing over electors as they complete their ballots. *See e.g., Miller v. Picacho Elementary Sch. Dist. No. 33*, 179 Ariz. 178, 180 (1994) (Despite statutory prohibition, “District employees with

a pecuniary interest in the override’s passage delivered [absentee] ballots to electors whom they knew. Although these electors did not ask for ballots, school employees urged them to vote and even encouraged them to vote for the override. District employees went to the homes of the electors and stood beside them as they voted.”).

In Arizona, the legislature enacted absentee voting in 1925. *See* 1925 Ariz. Sess. Laws, ch. 75, § 1. As originally enacted, absentee voting extended only to a “qualified elector” who was “absent from the county of which he or she [was] an elector” or “who furnishe[d] the County Recorder with a doctor’s certificate that” the elector “[would] not, because of a physical disability, be able to go to the polls.” *Id.* To secure an absentee ballot and vote, electors had to prove identity by appearing before a “registration officer” or “Notary Public” and signing an affidavit. *Id.* at §§ 2–6. Thus, although absentee voting took place *away from the polls*, the law at least attempted to provide enough security measures—more so than a simple signature on the back of a ballot envelope, as the law presently allows—to guard against fraud and coercion while maintaining the “secrecy” of the ballot.

In 1991, the legislature expanded absentee voting from six categories of electors to “[a]ny qualified voter.” *See* 1991 Ariz. Sess. Laws, vol. 1, ch. 51 § 1. Simultaneously, it also removed the witness requirement for the affidavit, thus

eradicating a great deal of the prior law’s protections against coercion and fraud and, throwing the baby out with the bathwater, further erasing the initial principles underlying the American ballot system (modeled on the Australian system).¹⁷

The current law, codified at A.R.S. § 16-541 *et seq.* and titled “Early Voting,” expands voting such that any elector, without excuse, may vote early, by mail, and at random voting places—none of which are constitutionally authorized—as discussed in Part B below. Indeed, a Pennsylvania appellate court recently struck down Pennsylvania’s “no-excuse mail-in voting” system, which “created the opportunity for all Pennsylvania electors to vote by mail without having to demonstrate a valid reason for absence from their polling place on Election Day, i.e., a reason provided in the Pennsylvania Constitution.” *McLinko*, 2022 Pa. Commw. Lexis 12, at *4. The court based its reasoning on three constitutional provisions like those found in Arizona’s constitution.

First, article 7, section 1 of the Pennsylvania Constitution provides that electors “shall have resided in the election district where he or she shall offer to vote.”¹⁸ *Id.* at *9 (quoting Penn. Const. art. 7, § 1). The *McLinko* court explained

¹⁷ If this Court finds that federal constitutional concerns (e.g., 14th Amendment and Supremacy Clause) make striking all absentee voting improper, Petitioners suggest below that the Court strike the 1991 and post-1991 amendments to absentee voting rather than declaring that all absentee voting is unlawful. Any such concerns should not be implicated in the system existing prior to 1991.

¹⁸ *Compare with* Ariz. Const. art. 7, § 2 (irrelevant portions omitted; emphasis added):

that the Pennsylvania Supreme Court, in striking down the state’s prior military absentee voter law in 1862, had already construed the words “offer to vote by ballot” as meaning “to present oneself, with the proper qualifications, at the time and place appointed, and to make manual delivery of the ballot to the officers appointed by law to receive it.” *Id.* at *10–11 (quoting *Chase*, 41 Pa. at 419).

The ballot cannot be sent by mail or express, nor can it be cast outside of all Pennsylvania election districts and certified into the county where the voter has his domicil. We cannot be persuaded that the Constitution ever contemplated any such mode of voting, and we have abundant reason for thinking that to permit it would break down all the safeguards of honest suffrage.

Id. at *12 (quoting *Chase*, 41 Pa. at 419). Further, the “constitution meant, rather, that the voter, *in propria persona*, should offer his vote in an appropriate election district.” *Id.* “Mail-in ballots present particular challenges with respect to ‘safeguards of honest suffrage.’” *Id.* at *13 n.12 (quoting *Chase*, 41 Pa. at 419).

Following the *Chase* court’s decision, Pennsylvania amended its constitution in 1864 to permit electors in military service to vote by absentee ballot. *Id.* at *13 (citing Penn. Const. art. 3, §4 (1864)). However, as the *McLinko* court explains, the Pennsylvania Supreme Court invalidated another iteration of absentee voting in

No person shall be entitled to vote **at any general election**... unless such person... shall have resided in the state for the period of time preceding such election as prescribed by law, provided that qualifications for voters **at a general election** for the purpose of electing presidential electors shall be as prescribed by law.

1924 because the constitution limited absentee voting to active military, “concluding that the election should be determined solely on the basis of ballots cast in person on Election Day.” *Id.* at *14 (citing *In re Contested Election of Fifth Ward of Lancaster City*, 126 A. 199 (Pa. 1924)).

Next, the *McLinko* court detailed the historical background and initial principles underlying Article 7, section 4 of the Pennsylvania Constitution, which provides that “[a]ll elections by the citizens shall be by ballot or by such other method as may be prescribed by law: Provided, That secrecy in voting be preserved.” *McLinko*, 2022 Pa. Commw. Lexis 12, at *16–24 (quoting Penn. Const. art. 7, § 4). That provision is nearly identical to article 7, section 1 of Arizona’s constitution: “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.” Ariz. Const. art. 7, § 1.

The *McLinko* court explained that the provision, adopted in 1901, derives from the Australian ballot reforms, noting that the “1901 amendment guaranteed the secrecy of the ballot, both in its casting and in counting. ‘[T]he cornerstone of honest elections is secrecy in voting. A citizen in secret is a free man; otherwise, he is subject to pressure and, perhaps, control.’” *McLinko*, 2022 Pa. Commw. Lexis 12, at *21 (quoting *In re Second Legislative District Election*, 4 Pa. D. & C. 2d 93, 95 (1956)). The court also noted that “such other method” was included to

authorize “mechanical devices” (i.e., voting machines) in lieu of paper ballots at polling places. *Id.* at *23–24. *See also* Goff, *supra* at 559–60 (documenting that Arizona’s framers similarly fashioned article 7, section 1 to preserve state’s ability to adopt voting machines).

Finally, the *McLinko* court analyzed Article 7, section 14 of the Pennsylvania Constitution, the amendment authorizing military and other absentee voting after the *Chase* court struck down absentee voting prior to the constitutional amendment. Because Arizona’s constitution has not been amended, the analysis is largely irrelevant to Petitioners’ argument here. However, importantly, the court noted that “Pennsylvania and many other states recognized that absentee voting by the military conflicted with the ‘constitutional provisions for in person voting, and undertook to amend their state constitutions in order to pass appropriate legislation.”” *McLinko*, 2022 Pa. Commw. Lexis 12, at *26. Again, Arizona has not amended the constitution to enable the legislature to create methods of voting other than by paper ballots or voting machines at the polls on election day. To the contrary, as Petitioners explain below, the constitution contains several other provisions which make it plain that voting is to be *in person* at the polls on a specific day.

Moreover, as the *McLinko* court explains, logic dictates that the phrase “such other method” cannot be read “to authorize a system of no-excuse mail-in voting to

be conducted from any location.” *Id.* at *36. “To begin, ‘such other method’ is limited to one that is ‘prescribed by law,’” including the fundamental law “that voting must be in person except where there is a specific constitutional exception” pursuant to article 7, section 4. *Id.*

The court rejected “the suggestion that ‘the law’ in Section 4 refers only to the legislature’s work product and not to the Pennsylvania Constitution.” *Id.* Further, the court explained, “the Supreme Court could have, but did not, state that ‘such other method’ included voting by mail, a system in existence and used for military absentee voting at the time *Lancaster City* was decided.” *Id.* Instead, the phrase “such other method” authorized mechanical devices at the polling place. *Id.* (citing *Lancaster City*, 126 A. at 201). The better reading is that the phrase indicates “a type of voting that takes place at the polling place, so long as it preserves secrecy.” *Id.*

Relevant to the argument here, the *McLinko* court concluded that “such other method as prescribed by law” could not be interpreted to authorize *mail-in* voting for two reasons. *Id.* at *38. “First, no-excuse mail-in voting uses a paper ballot and not some ‘other method.’” *Id.* The same is true for mail-in voting in Arizona. *See, e.g.,* A.R.S. § 16-541(A) (“Any election called pursuant to the laws of this state shall provide for early voting. Any qualified elector may vote by early ballot.”). Second, such an interpretation divorces the phrase from the remainder of article 7

“as well as its historical underpinnings,” ignoring “the in-person place requirement that was made part of [the] fundamental law” when the constitution was amended to include the “offer to vote” provision. *McLinko*, 2022 Pa. Commw. Lexis 12, at *38. The same reasoning applies here. As further discussed below, articles 7 and 4 of Arizona’s constitution also contain several other provisions establishing an “in-person place requirement,” and those provisions were adopted to maintain the integrity of elections.

2. Ariz. Const. art. 7, § 2

Article 7, section 2 is comparable to the “offer to vote” language found in the elector qualification provisions of the Pennsylvania Constitution: “No person shall be entitled to vote *at any general election*...unless such person...shall have resided in the state for the period of time preceding such election...provided that qualifications for voters *at a general election* for the purpose of electing presidential electors shall be as prescribed by law.” Ariz. Const. art. 7 § 2 (emphasis added).

The meaning of the words “at any general election” or “at a general election” is plain. The first two definitions of the word “at” are (1) a preposition “used to show an exact position or particular place”; (2) a preposition “used to show an exact or particular time.”¹⁹ The words “at a general election” thus refer to

¹⁹ *Cambridge Dictionary*, <https://dictionary.cambridge.org/us/dictionary/english/at>.

the *exact place and time of the general election* and are just as explicit as the words “where he or she shall offer to vote by ballot” as construed in *McLinko*. See *McLinko*, 2022 Pa. Commw. Lexis 12, at *10–13 (quoting Penn. Const. art. 7, § 1 and interpreting the words to mean “to present oneself, with the proper qualifications, at the time and place appointed, and to make manual delivery of the ballot to the officers appointed by law to receive it”).

To interpret the words “at a general election” to encompass mail-in voting is illogical. Nevertheless, Arizona’s legislature has continued to expand the time for both voting and counting early ballots, allowing electors to fill out their ballots at any place they choose and at any time from “twenty-seven days before the election” to election day. See A.R.S. § 16-542(A) (On-site “early voting locations...shall be open and available for use beginning the same day that a county begins to send out the early ballots.”); *id.* at (C) (“[E]arly ballot distribution shall not begin more than twenty-seven days before the election.”); A.R.S. § 16-548(A) (Early voter may deposit ballot at “any polling place in the county” on election day.). Tallying of ballots may begin immediately. A.R.S. § 16-550(B). On the other hand, under some circumstances, Arizona’s early voting statutes do not *require* election officials to even open early voting envelopes, let alone begin tabulating ballots, until five business days after election day. A.R.S. 16-550(A). There is nothing “exact” or “particular” about this timing.

3. Ariz. Const. art. 7, § 4

Article 7, section 4 provides: “Electors shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their *attendance* at any election, and in going *thereto* and returning *therefrom*.” Ariz. Const. art. 7, § 4 (emphasis added).

“Attendance” is defined as “[p]hysical presence plus freedom to perform the duties of an attendant.” *Attendance*, Ballentine’s Law Dictionary (3rd ed. 2010).

The plain meaning of “thereto” is “to the thing just mentioned.”²⁰ The plain meaning of “therefrom” is “from that or from there; from a thing or place that has been previously mentioned.”²¹ Accordingly, the words “attendance at,” “thereto,” and “therefrom” in section 4 can be read thus: “Electors shall...be privileged from arrest during their *physical presence* at any election, and in going *to any election* and returning *from any election*.”

As with article 7, section 2, it is illogical to interpret the words in section 4 to encompass mail-in voting because Arizona’s early voting statutes allow electors to fill their ballots anywhere and do not require physical presence at any election on a specific day, as discussed above. In fact, even in 1991, the mail-in statutes were entitled “absentee voting,” meaning that the elector did *not* have to be

²⁰ *Cambridge Dictionary*, <https://dictionary.cambridge.org/us/dictionary/english/thereto>.

²¹ *Cambridge Dictionary*, <https://dictionary.cambridge.org/us/dictionary/english/therefrom>.

physically present. *See* 1991 Ariz. Sess. Laws, vol. 1, ch. 51 § 1.

Because mail-in voting does not require physical attendance at the polls on election day, it is impossible for “[e]lectors...*in all cases*...[to] be privileged from arrest during their attendance at any election, and in going thereto and returning therefrom,” Ariz. Const. art. 7, § 4 (emphasis added), rendering this provision void, inert, or trivial. Yet “[e]ach word, phrase, and sentence must be given meaning so that no part will be [void], inert, redundant, or trivial.” *Yates*, 69 Ariz. at 72.

4. Ariz. Const. art. 7, § 5

Article 7, section 5 provides: “No elector shall be obliged to perform military duty *on the day of* an election, except in time of war or public danger.” Ariz. Const. art. 7, § 5 (emphasis added). The words “on the day of an election” are self-explanatory and plainly refer to an election that takes place on a particular day. Furthermore, if the constitution provided for absentee voting, it would render this provision without purpose. Courts avoid interpreting statutes and constitutional provisions “in a way that renders portions superfluous.” *Fann*, 493 P.3d at 255 ¶ 25. “Each word, phrase, and sentence must be given meaning so that no part will be [void], inert, redundant, or trivial.” *Yates*, 69 Ariz. at 72.

Importantly, Petitioners are not challenging Arizona election statutes that implement the Uniformed and Overseas Citizens Absentee Voting Act, because providing for absentee voting for soldiers is now expressly required by federal law.

See 52 U.S.C. § 20301 *et seq.* However, this provision still serves to illuminate the framers' original intent in this regard.

5. Ariz. Const. art. 7, § 11

Article 7, section 11 provides: “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.” Ariz. Const. art. 7, § 11 (emphasis added). As with article 7, section 5, this provision is self-explanatory and plainly mandates that the general election must take place on a specific day. See *Sherman v. City of Tempe*, 202 Ariz. 339, 343–44 ¶¶ 14–20 (2002).

In *Sherman*, this Court held that “the Arizona Constitution and Arizona’s election statutes employ the word ‘election’ to refer to a particular day.” *Id.* at 343 ¶ 19. The Court explained that the constitution “states that ‘there shall be a *general election*...on the first Tuesday after the first Monday in November,” and “A.R.S. section 16-211 provides for a *general election* on the first Tuesday in November.” *Id.* at 343–44 ¶ 19 (citing Ariz. Const. art. 7, § 11 and A.R.S. § 16-211 (1996)). Thus, the Court held, “according to the Constitution and Arizona election statutes, elections occur on one particular date and the term ‘election’ refers to that date.” *Id.* at 344 ¶ 19.

As explained above, Arizona’s mail-in voting statutes allow electors to cast their ballots up to twenty-seven days before election day. Thus, voting, return, and tabulation of early ballots need not occur on election day, that is, “*on the first Tuesday after the first Monday in November* of the first even numbered year....” Ariz. Const. art. 7, § 11 (emphasis added). Yet “according to the Constitution and Arizona election statutes, elections occur on one particular date and the term ‘election’ refers to that date.” *Sherman*, 202 Ariz. at 344 ¶ 19. If the constitution allows the definition of election day to be stretched so far, is there a limiting principle? Or may the legislature constitutionally authorize mailing and counting of ballots for the next general election to begin the day after the last election? The simple answer is that early voting, in its present form, violates the Arizona Constitution.

B. “Early Voting” Is Contrary to Secure, In-person Voting at the Polls on a Specific Day and Is Therefore Unconstitutional.

Article 7 of the Arizona Constitution establishes the supreme law of the state regarding suffrage and elections. Sections 1, 4, 5, and 11 of article 7—which have remained unchanged since they were first adopted in 1910—make it plain that the framers intended elections to be secure and in person at a specific voting location (at the polls) on a specific day every other year. The provisions in article 4, part 1, section 1 of the constitution, which require that voting be done “at the polls,” further support this plain-meaning construction of the constitution.

Construing together *in pari materia* all the constitutional provisions of article 4 and article 7, the constitution makes it plain that elections are to be in person at the polls on a specific day. Elections held in this manner, in conformance with the initial principles underlying the Australian ballot system (the system the state adopted in 1912 when it ratified the constitution), protect the integrity of elections by preventing the possibility of coercion and fraud and by providing consistent privacy and security standards. *Muller, supra* at 696–697.

C. In the Alternative, “Early Voting” Must Be Construed Narrowly to Conform to the Arizona Constitution.

As discussed above, the “Australian ballot system” contains four essential provisions. Fortier & Ornstein, *supra* at 488. Currently, Arizona’s early voting statutes do not incorporate the final two essential provisions: (3) ballots distributed only by election officers *at the polling place* and (4) detailed provisions to ensure secrecy in casting the vote. *Id.* (emphasis added). It would be inappropriate for this Court to consider the factual question of whether alternative safeguards would be adequate to achieve the goal of protecting the integrity of elections. Arizona’s framers have already made a determination that is conclusive on this point unless and until the constitution is amended. Accordingly, Petitioners ask this Court to declare A.R.S. § 16-541 *et seq.* unconstitutional and enjoin the State from enforcing no-excuse mail-in voting statutes.

Petitioners recognize that the Secretary might argue that, even if absentee

voting is wholly prohibited by Arizona’s constitution, the complete abolition of absentee voting would raise other issues under the U.S. Constitution. The Arizona Constitution recognizes that in certain cases its provisions might conflict with those of the U.S. Constitution, Ariz. Const. art. 2, § 3, and this Court has already addressed how such conflicts are to be handled. *See e.g., US W. Communs., Inc. v. Ariz. Corp. Comm’n*, 201 Ariz. 242, 246 ¶ 23 (2001) (“Whenever possible...we construe the Arizona Constitution to avoid conflict with the United States Constitution and federal statutes.”). Therefore, even if this Court concludes that striking all early voting would run afoul of federal constitutional requirements, it must still strike the 1991 amendment, which adopted no-excuse absentee voting, *see* 1991 Ariz. Sess., vol. 1, Laws, ch. 51 § 1, as well as subsequent expansions of the no-excuse absentee voting system, as unconstitutional.

To the extent, if any, the U.S. Constitution requires some form of absentee voting (e.g., for those who are physically unable to make it to the polls), Arizona’s pre-1991 system of absentee voting *with excuses* was sufficient to satisfy such requirements. Immediately prior to the 1991 adoption of Arizona’s current no-excuse system, “absentee voting” statutes authorized absentee voting for (1) electors expected to be absent from their precincts on election day, (2) electors physically unable to go to the polls, (3) electors 65 years of age or older, (4) electors living more than 15 miles from their polling places, (5) electors unable to

attend the polls on election day because of their religion, and (6) electors with visual defects. 1991 Ariz. Sess. Laws, ch. 51 § 1. In addition to limiting absentee voting to those with qualified excuses, the pre-1991 law required electors to validate their excuses by swearing before an “officer empowered to administer oaths” to receive a ballot. *Id.* Additionally, when filling out their ballots, electors were required to swear before an officer that they were qualified electors and personally voted their ballots. *Id.*

By requiring electors to appear before an official empowered to administer oaths and requiring electors to prove their identities and swear that they personally voted their ballots, the law maintained some of the protections of the Australian ballot system, specifically, (3) ballots distributed ***only by election officers*** at the polling place and (4) detailed ***provisions to ensure secrecy in casting the vote***. Fortier & Ornstein, *supra* at 488 (emphasis added).

If the Court does not find that Arizona’s early voting statutes (A.R.S. § 16-541 *et seq.*) are entirely unconstitutional, the Court should, at minimum, construe the statutes narrowly to conform to the Arizona Constitution. Specifically, Petitioners ask this Court to:

1. in the alternative to declaring that mail-in voting is entirely unlawful, declare that the 1991 amendment providing for no-excuse mail-in voting is unconstitutional, strike it, prohibit election officials from

enforcing the 1991 amendment, and compel election officials to enforce this constitutional restraint; and/or

2. declare that tabulation of votes may not occur prior to election day, prohibit election officials from doing so, and compel election officials to enforce this constitutional restraint; and/or
3. declare that voting on initiatives and referenda may only occur “at the polls,” prohibit election officials from allowing electors to vote on initiatives and referenda by mail, and compel election officials to enforce this constitutional restraint; and/or
4. declare that drop-boxes are unconstitutional because they are not polling places, prohibit election officials from implementing drop-boxes, and compel them to enforce this constitutional restraint; and/or
5. declare that early voting is constitutional only if voters personally cast their ballots at the polls, prohibit election officials from implementing mail-in voting, and compel election officials to abide by this constitutional restraint; and/or
6. provide such other relief as may be just and proper.

Conclusion

Petitioners request that this Court accept original and special action jurisdiction and grant them the relief they are requesting by: (1) ordering the Secretary to include the Signature Verification Guide in the current EPM or an addendum thereto and submit it to the Governor and Attorney General for their review and approval; (2) prohibiting the Secretary from authorizing drop-boxes in the 2022 general election and beyond; (3) either striking down no-excuse mail-in voting as unconstitutional or providing the alternative relief Petitioners request in Part C above. Arizona's election officials must not continue to run Arizona elections however they see fit. For when public officials "change the law based on their own perceptions of what they think it *should* be, they undermine public confidence in our democratic system and destroy the integrity of the electoral process." *Ariz. Pub. Integrity All.*, 250 Ariz. at 61.

Attorney Fees

Petitioners request attorney fees and costs pursuant to Ariz. R. Civ. App. P. 21, A.R.S. § 12-2030, the private attorney general doctrine, *see Ariz. Ctr. for Law in Pub. Interest v. Hassell*, 172 Ariz. 356, 371 (App. 1991), and other applicable law.

RESPECTFULLY SUBMITTED this 25th day of February 2022.

Davillier Law Group, LLC

By /s/ Veronica Lucero

Alexander Kolodin

Veronica Lucero

Roger Strassburg

Arno Naeckel

Attorneys for Petitioners

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VERIFICATION

A.R.S. § 12-2021 states: “A writ of mandamus may be issued by the supreme or superior court...on the **verified complaint** of the party[.]” (emphasis added). RPSA 1(a), however, states: “[A]ny reference in any statute or rule to any of these writs, unless excepted in the next subsection, shall be deemed to refer to the special action authorized under this Rule. Special forms and proceedings for these writs are replaced by the special action provided by this Rule[.]”

RPSA 7 provides: “A special action brought in any appellate court shall be initiated by the filing of a petition in the form prescribed by this rule.” RPSA 7 does not mention a complaint or verification.

The facts set forth in the petition to which this verification is attached are all readily ascertainable from sources for which this Court may take judicial notice. Further, as set forth above, it no longer appears that verification is required. However, in an abundance of caution, I verify that the facts set forth therein are true and correct to the best of my knowledge and belief.

DATE: 2/25/2022

PRINTED NAME: Yvonne Cahill

SIGNATURE:

DocuSigned by:
Yvonne Cahill
2818147F0CE74D7

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 25th day of February 2022, a copy of the foregoing Petition for Special Action was sent via email. Hand-delivery to be completed on February 28, 2022. It is addressed to the following:

Sambo (Bo) Dul
General Counsel
Arizona Secretary of State
bdul@azsos.gov
Office: 602-542-8683
1700 W Washington St.
Phoenix, AZ 85007

Jennifer Wright
Assistant Attorney General
Office of the Arizona Attorney General
Solicitor General's Office
Elections Integrity Unit
Jennifer.Wright@azag.gov
2005 North Central Ave.
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Andy Pappas
General Counsel
Arizona House of Representatives
apappas@azleg.gov
1700 W Washington St.
Phoenix, AZ 85007

/s/Yuka Bacchus
Davillier Law Group, LLC

From: [Mark Lewis](#)
To: [Karen Fann](#); [John Kavanagh](#); [Russell Bowers](#); [Michelle Ugenti-Rita](#); [Joseph Chaplik](#)
Subject: Save my right to vote by mail - Amend 2289
Date: Wednesday, June 1, 2022 7:33:22 AM
Attachments: [MC Election forecasted turnout for primary 643.000 322.000 republicans VBM.png](#)

Dear election legislators,

Please save my right to vote by mail. HB 2289 will kill my right to vote by mail.

2.3 million voters in Maricopa county will have to stand in line for hours to vote under # HB 2289.

Amend this bill, to remove the vote by mail cancellation.

Ask the governor to veto this bad bad bill.



Stop the steal of my right to vote from home. I want to study the issues, mark my ballot, and drop it off at the polling place with my voter ID card.

643,000 vote by mail ballots are going out in 33 days, dont screw up the existing election cycles for 2022.

Please dont let radicals of the party set an agenda that's just bat ship crazy.

FIRST FORECAST MODEL – 2022 AUGUST PRIMARY ELECTION			
Forecast Factor	2014 Nov. Voters (Factor)	2018 Nov. Voters (Factor)	2022 Projected Voters
Registered Voters (Active Voters Only)	1,974,428	2,229,718	2,671,260
Permanent Early Voter Registration %	44.5%	56.7%	77.6%
Turnout Percentage (Active Voters Only)	25.34%	31.38%	28.36%
Total Turnout	500,282	699,636	748,824
Election Day – Eligible Voters Only	66,552	101,482	105,809
Election Day – Provisionals Not Counted	1,974	2,178	2,271
Election Day Turnout (Includes Provisionals)	68,526	103,660	108,080
Early Ballots Turnout (By mail and in-person)	433,730	598,154	643,015

Vote no on HB 2289 without alot of amendments.

Sincerely,

Mark Lewis

Mark Lewis,

Precinct Committeeman for 32 years

8485 E. McDonald Dr. Ste 55

Scottsdale, AZ 85250

602-499-3095



Member





Reply to MarkLewisAZ@Gmail.com

From: [Mark Lewis](#)
To: [Lea Márquez Peterson](#)
Cc: [Mark Lewis](#); [Gail Griffin](#); [Russell Bowers](#); [Michelle Ugenti-Rita](#); [Karen Fann](#)
Subject: Congress proposing forced RTO control over AZ Corp Comm - please stop this
Date: Friday, July 9, 2021 6:06:12 AM
Attachments: [image.png](#)
[image.png](#)
[xcel-takes-nearly-1b-fuel-cost-hit-from-february-storms.png](#)
[image.png](#)
[image.png](#)
[former-commissioners-letter-to-ferc-c3.pdf](#)
[RTO Cost final-letter-to-congress-cost-of-electricity.pdf](#)

Dear Chairman Peterson, and Commissioners,

Having the 14 western states outside of an RTO is good for western states energy independence and it avoids massive network charges that get loaded onto wholesale bills for everyone. Im asking you to Keep AZ independent of this federal power grab.

Two liberal state legislatures have already begun the study of RTO power grids participation for the western USA. In an effort to force other westerns states into their green grid agenda.

Western states look to regional transmission organizations to boost clean energy's pathways to market

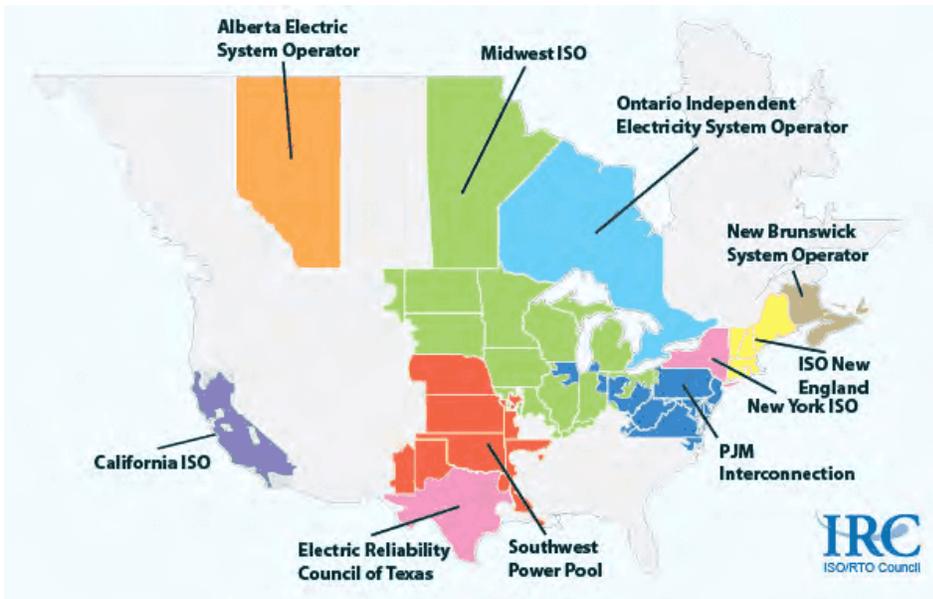
Bills in Nevada and Colorado would set a 2030 target for utilities to join regional transmission organizations.



 **Jeff St. John**
03 June 2021 · 6 min read

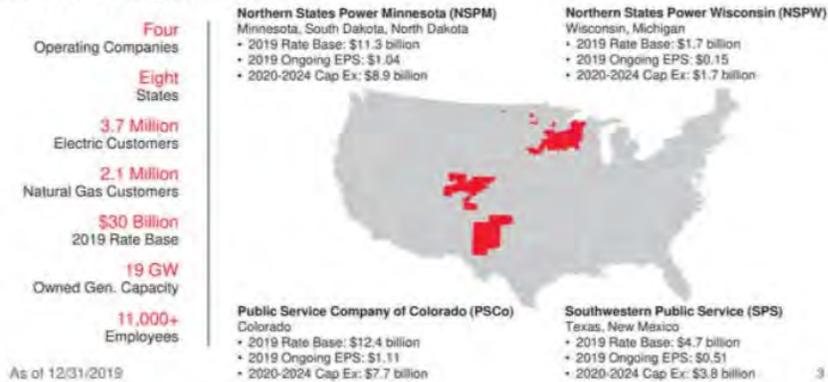


RTO Network charges are a tax on people for the benefit of grid bureaucrats, like CAISO and ERCOT.



Beyond that, if you look at the RTO on either side of AZ, ERCOT and CASIO, their record of price spikes, mismanagement and blackout is a call to action for AZ to remain independent of RTO forced federal mandates.

Xcel energy loses \$1 billion in the great Texas blackout, continues building wind & solar without stabilizing upgrades, going \$ green with much higher rates



<https://www.utilitydive.com/news/xcel-takes-nearly-1b-fuel-cost-hit-from-february-storms-but-still-sees-q1/599330/>

Please open a docket, to consider blocking federal efforts which will force western states into an RTO.

This is a 10th Amendment state rights issue, and these forced RTOs will completely decimate the AZ Corp Comm constitutional authority to regulate rates within the state.

Don't turn over the AZ Power grid, to bureaucrats in Washington, DC. Its offensive and probably fattening.

Thank you,

Mark Lewis, Director
Central Arizona Project
Representing the 4 million people of Maricopa county and not the CAP BOD.

=====

Congress for first-of-its-kind cost analysis of RTOs amid market expansion debate



Energy
Choice
Coalition



July 8, 2021

The Honorable Joe Manchin
Chairman
Committee on Energy and Natural Resources
U.S. Senate
Washington, D.C. 20515

The Honorable Frank Pallone
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20510

The Honorable John Barrasso
Ranking Member
Committee on Energy and Natural Resources
U.S. Senate
Washington, D.C. 20515

The Honorable Cathy McMorris Rodgers
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20510

Re: Independent Study of the Cost of Electricity

Dear Chairmen Manchin and Pallone and Ranking Members Barrasso and Rodgers:

The undersigned organizations respectfully request that you direct the Government Accountability Office (GAO) or other independent oversight organization¹ to undertake a detailed and objective study of the cost of electricity in the United States. Specifically, the

Dive Brief:

A coalition of consumer advocates, pro-market groups and others is calling on Congress to direct an independent agency to conduct a first-of-its-kind cost analysis on organized power markets in the U.S.

The letter, sent Thursday, was spearheaded by the Electricity Consumers Resource Council (ELCON) and includes a wide array of groups including Public Citizen, Energy Choice Coalition, R Street Institute, state-level consumer advocates and others.

It asks Congress to direct the Government Accountability Office (GAO) to conduct a detailed cost analysis of organized markets that are under the Federal Energy Regulatory Commission's jurisdiction.

The effort comes in the midst of rising debate in traditionally regulated, vertically integrated utility regions about whether forming or joining a regional transmission organization (RTO) could save customers money and accelerate the transition to clean energy.

In 1999, FERC encouraged voluntary participation in the organized markets through its Order 2000, and since then restructuring has accelerated across the U.S. Though markets were restructured in the early 2000s and some studies have pointed to benefits of that movement, a comprehensive cost analysis of the organized markets has never been done.

RTOs now govern about two-thirds of U.S. power markets, and last month nine former FERC commissioners and chairs called for the commission to expand organized markets across the country, placing the remaining traditionally regulated, vertically integrated markets — in the Southeast and West — under RTO jurisdiction. Momentum to expand organized markets has grown in Congress as well: Under the House of Representatives' Clean Future Act, all public utilities would be required to join an RTO or an independent system operator within two years of the bill's enactment.

Others are more skeptical of RTO benefits, or of mandatory expansion efforts. In a June 24 letter, former FERC Commissioner Tony Clark, four former National Association of Regulatory Utility Commissioners presidents, and 13 former state utility regulators wrote in opposition to the 9 former FERC commissioners' letter, arguing that RTO membership should continue to be voluntary. Clark and former FERC Commissioner Bernard McNamee have also both been vocal opponents of the RTO model in general.

Studies including from the Brattle Group, the RTOs themselves and FERC, have found incremental RTO benefits or potential benefits; but geographical and methodological constraints on such studies have prevented an independent cost analysis of the full RTO footprint, according to some who signed the Thursday letter. Given those limitations, the debate over whether RTOs should expand is made more complicated, groups say.

"It's still FERC policy to encourage RTO formation," said Travis Fisher, president and CEO of ELCON. "And what FERC has said in its orders is basically that RTOs benefit consumers. And I don't challenge that premise; I actually think they do. I just think

it's unfortunate that nobody has backed it up with data."

In initially studying RTO formation, FERC estimated organized markets would save billions of dollars in production costs. Other studies have found similar results on the wholesale side, but there hasn't been a study to address the retail side of the equation, said Fisher.

"If the goal really is to benefit end users, to benefit consumers, then the question becomes: What's happening to those wholesale benefits?" he said. "If they're as large as they're estimated to be, then why haven't we seen them lower retail rates over time?"

In 2010, FERC commissioned another study in order to examine the cost-benefit analysis of Entergy and Cleco Power joining the Southwest Power Pool. The study found the utilities joining the market would lead to \$1.29 billion in projected net benefits to the region. Former FERC Chair Jon Wellinghoff, who is part of the coalition advocating for RTO expansion across the country, has said that a similar study conducted across the U.S. "would be very powerful and compelling evidence."

Other groups who signed on to the letter agreed that while previous studies have been helpful, they haven't given advocates, policymakers and others the full picture.

"The evidence should always drive the policy decision, and there's a need for higher quality evidence to understand how different RTO functions and structures affect benefits and costs," said Devin Hartman, director of Energy and Environmental Policy at the R Street Institute in an email. "Better evidence will delineate a more accurate value proposition for states considering joining or forming an RTO, as well as helping regulators and stakeholders prioritize how to improve RTO performance. The most productive forums for weighing RTO expansion have been preceded by prospective net benefits studies."

Consumer advocates attempted to engage with FERC on this issue earlier this year, requesting the commission undertake a similar study.

"When members of this group asked FERC for a meeting on this issue, FERC staff replied that 'the Commission is not inclined at this time to commission that type of

broader study," a footnote of the letter reads.

Six states are examining or considering examining such a change independently, according to the letter, though efforts in at least one state — North Carolina — are facing resistance from the state's main utility, Duke Energy. The utility's opposition to studying potential RTO benefits in the state is what drove the Carolina Utility Customers Association (CUCA) to sign onto the letter.

Campaigns against conducting a study in the state have been "truly disappointing," said CUCA Executive Director Kevin Martin.

"If we can't get traction in North Carolina, we're asking FERC to step in and say, 'These conversations need to happen.' ... We would really like to see an honest study done so that we can all understand what the opportunities are, and what organized markets in the Southeast could do to benefit customers and the utility," he said.

https://www.utilitydive.com/news/groups-ask-congress-for-first-of-its-kind-cost-analysis-of-rtos-amid-market/602995/?utm_source=Sailthru&utm_medium=email&utm_campaign=Issue:%202021-07-08%20Utility%20Dive%20Newsletter%20%5Bissue:35335%5D&utm_term=Utility%20Dive

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Western states look to regional transmission organizations to boost clean energy's pathways to market

Bills in Nevada and Colorado would set a 2030 target for utilities to join regional transmission organizations.



[Jeff St. John](#)

[03 June 2021 . 6 min read](#)



The Western U.S. is a hotbed for renewable power development. What it lacks are the regional regulatory and economic structures to build the transmission lines needed to move that clean power to far-off population centers and share it across a region facing increasing grid-reliability challenges driven by climate change.

But legislation across multiple Western states is giving proponents of expanding wholesale energy markets new hope for a breakthrough on this front — even if it comes with a 2030 deadline, given the ponderous nature of regional energy policy consensus-building, not to mention the decade-long timelines for building transmission projects.

Take Senate Bill 448, approved by Nevada lawmakers this week. The sprawling energy bill has won bipartisan support and the backing of NV Energy, the state’s biggest investor-owned utility. It takes many steps to boost the state’s progress toward its goal of 100 percent carbon-free energy by 2050, from \$100 million in electric vehicle charging infrastructure to expanding roles for rooftop solar, energy storage and energy efficiency.

But the bill now awaiting Governor Steve Sisolak’s signature also puts NV Energy on a course to win state regulator approval for \$2.5 billion in new transmission grid capacity that it’s already planning to build to expand the state’s already fast-growing supply of renewable energy. In the longer term, it sets two new 2030 goals for state energy policy: to get to 80 percent renewable energy, up from [a 50 percent target today](#), and to explore the possibility of ordering the state’s utilities to join a regional transmission organization (RTO).

That RTO provision has [the support](#) of renewables developers including Enel, EDF Renewables and Pattern, as well as Google — an avid shopper for renewable energy that is working on [geothermal power](#) in Nevada — and Ceres, a nonprofit investor network that pushes companies to take action on climate change.

That's because joining a regional market could expand clean energy benefits both inside and outside the state's borders, said [Sarah Steinberg](#), a policy principal at Advanced Energy Economy, an industry group that's been leading the charge on expanding RTOs across the country.

Support for SB 448 ranges from environmental and labor groups, with amendments accepted by the state's massive gambling and hospitality industries, she noted. "They see the benefits in terms of lower [energy] rates and economic development," she said.

"Large energy users want to stay in areas that have RTOs because it offers more energy purchasing options," she added. While NV Energy has been boosting its share of renewable energy, major customers including MGM Resorts International have paid to [exit the utility's service](#) and set up shop with independent energy suppliers.

A transmission plan that utilities and renewable energy developers can support

Steinberg noted the importance of NV Energy's support for SB 448 in this context. The bill will provide key legal support to the utility's Greenlink Nevada transmission projects, two high-voltage lines that will connect the cities of Las Vegas in the south and Reno in the north, and open up about 5 GW of renewable energy projects across the state.

The Public Utilities Commission of Nevada [approved](#) most of this transmission plan in March, but it held back its final approval for portions of the project over concern for the costs they would impose on NV Energy ratepayers. SB 448 will order NV Energy to submit a new transmission plan this year as an amendment to its integrated resource plan [filed this week](#) "to propose the rest of the links in the region needed to spur economic development," Steinberg said.

NV Energy is already part of the [Energy Imbalance Market](#), a real-time energy trading market operated by California grid operator CAISO which includes more than a dozen utilities across the Western U.S. EIM has yielded [about \\$1.2 billion](#) in cumulative benefits over the past six years, largely by creating more fluid markets for trading the region's growing share of wind and solar power that would have otherwise been curtailed.

But this real-time energy trading doesn't incorporate the transmission planning and cost-sharing mechanisms that are a big part of the role played by the federally regulated RTOs and independent system operators that manage transmission grids across much of the country.

Absent such regional transmission planning constructs, the Western U.S. is largely dependent on [merchant transmission developers](#) taking on the risk of building projects and lining up power suppliers and offtakers for their energy, or on utilities winning approval from multiple state regulators to pass on the costs of building new transmission to their ratepayers.

Finding ways to expand the cost-sharing for such projects could help speed their development and expand renewables development, according to Christina Hayes, vice president of federal regulatory affairs for Berkshire Hathaway Energy, the parent company of NV Energy.

“To only allocate that [cost] to customers in Nevada is very difficult, especially as the benefits are spread more broadly,” Hayes said in an [April press conference](#) with other groups promoting a federal investment [tax credit for transmission projects](#).

Nevada's solar, wind and geothermal resources have the potential to serve markets outside the state's borders, [primarily in California](#), but also across the region, Steinberg said.

“The state sees itself as able to become a net exporter, and the transmission development that needs to happen, which will also facilitate an RTO, is going to

enable a lot more renewables to come online,” she said. “There are some pretty significant geographic constraints right now.”

Boosting the state’s 2030 clean energy targets to 80 percent also heightens pressure to expand its transmission capacity beyond its borders, said Cameron Dyer, Nevada staff attorney for clean energy advocacy group Western Resource Advocates.

“That ties into transmission really well,” he said. “If we’re part of an RTO, and we can import and export renewables relatively easily, then maybe 80 percent is a lot easier to achieve than it was before.”

More states looking to RTOs to solve transmission needs

Nevada isn’t the only state looking at these potential RTO benefits. In Colorado, Senate Bill 72 is proposing a similar path by setting up an independent transmission authority that could require all the state’s investor-owned utilities to join an RTO by 2030. (UPDATE: SB 72 passed the Colorado House on Wednesday afternoon and awaits the signature of Gov. Jared Polis.)

Colorado’s primary investor-owned utility, Xcel Energy, has [expressed opposition to SB 72](#), saying that it could undermine existing efforts set in place by a 2019 law to explore options for creating an energy market structure in the state. The study ordered by that law is set to be released later this year.

Xcel’s Colorado utility has [joined CAISO’s Energy Imbalance Market](#), and several other Colorado utilities have joined a similar real-time energy trading market [operated by Southwest Power Pool](#), the grid operator covering 17 states from the Dakotas to Oklahoma. On the transmission front, Xcel has proposed a \$1.7 billion expansion to unlock renewable energy capacity and meet its goals of 80 percent renewables by 2030. It has also said that existing planning processes will enable that build-out.

But Amisha Rai, managing director of Advanced Energy Economy, [sees Colorado's SB 72](#) as an important step to align multiple Western states on a common path to integrate their energy market and transmission plans.

“This is an issue that all states are looking at in the West,” Rai said. “We’re seeing states like Nevada and Colorado really stepping up and making a statement that creating a Western RTO is a priority for their states, and that it’s essential not only to meet their clean energy goals, but to ensure that electricity rates are affordable into the future.”

Oregon lawmakers are exploring [a bill](#) that would study the benefits of an RTO, she noted. Utah has no such legislation at present, but in 2019 it commissioned a study of its transmission system [that found](#) future renewable energy development could lead to congestion on its existing transmission system.

RTOs are not a panacea for the challenges of building the transmission systems to grow renewable energy and secure a reliable grid. Texas grid operator ERCOT was forced to call for massive power outages in February amid winter storms that [revealed the flaws](#) of its energy-only market construct for securing adequate generation capacity to withstand below-freezing temperatures.

The transmission planning and cost-allocation structures of grid operator Midcontinent Independent System Operator have [held back gigawatts'](#) worth of new wind power capacity from coming online, according to critics demanding reforms to those processes. Mid-Atlantic grid operator PJM is facing massive backlogs that have [slowed the interconnection](#) of a \$2.5 billion merchant transmission project.

To Rai, these problems with other regional transmission organizations point to the need for the Western U.S. to “think about the RTO of the future,” one that can help spur the doubling or tripling of nationwide transmission capacity that multiple studies say is needed to meet the clean energy mandates being set by a growing number of states, as well as by the Biden administration.

“We really do need to be thinking about what can serve this region best, given the climate impacts, the drought conditions, the clean energy on the books, and all of the challenges we’re grappling with,” she said. “The sooner we get moving on it, the better it will be for ratepayers and for getting this energy online as soon as possible.”

(Article image courtesy of Raivis Razgals)

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Western U.S. grid plan could remake renewables

Edward Klump, E&E News reporter Published: Friday, July 2, 2021

Stronger grid collaboration may finally be within reach for the western U.S., offering to reshape how wind and solar power is shuttled from state to state in the era of decarbonization.

But installing a regional transmission organization, or RTO, across Western states isn't a sure thing, despite signs of momentum from Oregon to Washington, D.C.

The Southwest Power Pool, a grid operator based in Arkansas, is exploring a Western expansion of its RTO as some Western states with carbon-cutting plans and Federal Energy Regulatory Commission Chairman Richard Glick float variations of the idea. A state-led market [study](#) that's backed by Department of Energy funding also is examining the potential for about \$2 billion of annual benefits from a Western grid organization by 2030.

"The West deserves and needs an RTO," said Vijay Satyal, manager of regional energy markets at Western Resource Advocates.

Positives of such a system include creating competition and cost efficiency, and it could be easier to procure and dispatch renewables, according to Satyal. For example, wind could be sent from Wyoming to California, while solar could go from California and Arizona to Oregon and Washington, he said.

However, many questions remain when it comes to a possible western RTO — of geography and governance, of costs and benefits, of renewables and reliability. Who would run it? Who would join? How might wind and solar fare? What about consumers?

An organized Western market has long been under discussion by U.S. grid planners and advocates, and experts say this is a critical time to find out what's possible. The Biden administration has endorsed the goal of a decarbonized national power sector by 2035, as well as proposed an infrastructure package that could bolster U.S. transmission. Recurring grid issues across the country, including recent extreme temperatures in the West, also have put reliability and resiliency on the minds of consumers and politicians.

Eyes are on SPP after it announced last year it was considering RTO expansion to the west of its central U.S. base. At the same time, experts point to the California Independent System Operator as a vehicle that could evolve into a more regional grid organization.

Both SPP and the California ISO already have limited offerings known as energy imbalance

markets that are testing grid coordination among some Western power providers.

Glick said during a recent [technical conference](#) on resource adequacy in the West that greater regional grid coordination will be needed. The FERC chair argued that an RTO — or maybe a couple of them in the region — could "be a big part of the solution."

He said climate change will create increased stress on the system and power plants. A group of former FERC commissioners called on the commission to further the development of organized markets to help renewable energy development ([Energywire](#), June 4).

Still, FERC raised questions with an April vote in support of a proposed rule that would reduce the financial benefits utilities receive for being part of RTOs ([Energywire](#), April 16).

For some policymakers and members of the public, sprawling grid organizations that may stretch over multiple states are difficult to digest. RTOs — and similar entities known as independent system operators, or ISOs — "match power generation instantaneously with demand" to keep electricity flowing, according to the ISO/RTO Council.

"The ultimate goal is to ensure access to affordable, reliable and sustainable power — made possible through efficient administration of independent and transparent wholesale energy markets," the council says on its website.

PJM Interconnection LLC manages the largest U.S. power market, from the mid-Atlantic to parts of the Midwest. Along with parts of the West, a prominent holdout from having an organized market is a swath of the Southeast, which has been exploring options ([Energywire](#), March 17). Texas, meanwhile, has its own primary grid operator and wholesale power market setup that remains largely isolated from the rest of the United States despite reliability concerns.

The push and pull of state and federal incentives has caused leaders in some states to rethink the need for regional grid membership as states seek to retain influence. And disappointing results of a recent PJM capacity auction prompted owners of several coal-fueled generating units to announce planned retirements, as questions linger about how various generators are incentivized or compensated for their power.

Former FERC and North Dakota Public Service Commission member Tony Clark and a group of 17 other former state regulators recently [wrote](#) to FERC to express concern about the potential to "abandon its long-standing policy of providing for voluntary RTO membership for utilities and the states that regulate them."

Incremental expansions, such as an energy imbalance market, "have proven more successful in the Pacific Northwest than all of the RTO attempts in the last 20+years," Andrea Platt, a Portland General Electric spokesperson, said in an email.

But Jon Wellinghoff, a former FERC chair who is CEO of GridPolicy Inc., said RTOs and ISOs are important because they can collectively save consumers tens of billions of dollars every year in energy costs.

"If you have individual utilities that all dispatch their own generators within their own small service areas," he said, they may not be using the "most cost-effective power, the least-expensive power" to serve customers.

Satyral said right now, clean energy developers interested in moving renewable power across Western states are limited by the location and power lines available — and can be beholden to incumbent utilities' interconnection and transmission planning processes as well as existing market rules.

Satyal said a Western RTO could expand the current organized market in California to manage and deliver power across the West in a reliable way, compared with a focus of utilities in many Western states today on bilateral transactions. He suggested there could be implications for more than 10 states, from the Pacific Northwest to Montana and Idaho to Utah, Nevada and New Mexico.

"Clean energy developers [would] have access to multiple price points, multiple options [or] avenues to sell [their] energy into a larger transmission system where different buyers could be possibly at play," Satyal said.

SPP looks to grow

As the debate continues, SPP is going down a path that could lead to a Western RTO expansion that's up and running as soon as 2024.

The grid operator currently helps manage the grid in all or parts of 14 states as an RTO, including places such as Oklahoma, South Dakota and Kansas. Its energy imbalance market pushes its footprint to at least parts of 17 states. Some possible Western RTO members are from states already in SPP's 14-state RTO region. New states that may be added include Colorado, Utah and Arizona.

The entities considering membership in a western section of SPP's RTO include Tri-State Generation and Transmission Association Inc., Basin Electric Power Cooperative, Deseret Power Electric Cooperative, Colorado Springs Utilities, the Municipal Energy Agency of Nebraska (MEAN) and certain regions within the Western Area Power Administration.

An SPP RTO in the West "may lead to operational and administrative efficiencies to serve our wholesale power members," Sarah Jones, a MEAN spokesperson, said in statement. "We continue to evaluate the opportunity of this new proposed market with the goal of bringing value to the members we serve."

Dan Walter, vice president for energy markets at Tri-State, a cooperative power supplier with members in Colorado and other states in the region, said his organization has long supported the idea of RTOs. He said he believes they can lower costs and increase reliability for member systems and consumers.

"They are even more critical, and a key component of, economically and reliably integrating high levels of renewable resources as we retire portions of our thermal baseload resources," Walter said in a statement.

Bruce Rew, senior vice president of operations at SPP, said the expanded RTO footprint could utilize several grid connections that run from the Western Interconnection to the Eastern Interconnection. The connections are in Montana, South Dakota and Nebraska. Additional connections could be considered later.

SPP's bid to tie the nation's main Eastern and Western grid networks together would be a first among existing RTOs.

"I think it's a very significant change in terms of how the electric grid is [operated] and what the potential benefits that closer operation between the Western Interconnection and Eastern Interconnection can provide," Rew said.

He said features for new members would include day-ahead and real-time markets, plus other functions such as transmission planning and congestion hedging. SPP said it has a member-driven process to evaluate facilities, look at future scenarios for the resource mix and load, and

examine potential transmission.

Satyal said any SPP RTO West plan should reflect Western needs and challenges, as well as account for state public policy goals such as decarbonizing and clean energy standards. But he expressed worry about a lack of robust engagement and transparency on the proposal with Western state regulators and public policy advocates.

"Doing it right is more important than rushing through something," Satyal said when asked about SPP's plan. "And we are a little concerned about the pace at which this proposal is coming through."

Advocates are trying to understand different parts of the proposal and its possible impact on customers and the West, he said.

SPP said implementation costs for an expanded RTO would be spread throughout the overall RTO footprint. SPP has said the Western RTO expansion plan could produce around \$49 million of savings annually.

The California factor

A wild card in any Western grid plan is California, where state regulators have **ordered** utilities to procure 11,500 megawatts of new power resources for future years.

But California will "need to reach into other parts of the Intermountain West, into Wyoming and into Nevada and ... into Idaho and other areas so that we can import renewables with different and [diverse] generating characteristics," Elliot Mainzer, president and CEO of the California ISO, said on a recent webinar sponsored by the U.S. Energy Association.

California has been juggling the effects of wildfires, power demand and a changing resource mix given a state goal for a carbon-free power system by 2045. It's not clear when or if the California ISO could act as a full RTO for the broader West as it examines potential changes.

Anne Gonzales, a spokesperson for the California ISO, said deeper collaboration in the West is needed as states and utilities pledge to meet clean energy goals.

"The ISO believes in the evolution of markets in the West, starting with the [energy imbalance market], and progressing towards a day-ahead market — and beyond, and will help to support these state actions," she said in a statement.

Satyal said there has been work on governance changes related to the California ISO's energy imbalance market.

Still, there likely is work to do in terms of accounting for other states' clean energy goals and how to incorporate more out-of-state views into the board of governors at the California ISO if its footprint were to expand. Candidates are nominated by a committee. But the California governor is the one who appoints people to the California ISO board. Its members are confirmed by the state Senate.

Wellinghoff stressed that imbalance markets help with possible shortages and excesses in energy between different areas. That's not the same as dispatching power across the region through a fully organized market.

"It doesn't give you a full, real-time and day-ahead energy market that actually dispatches the system on a daily basis across that footprint," Wellinghoff said.

To him, the best option for a broader Western grid organization includes working on governance

issues with California, changing the name from the California ISO to mention the West and operating it from the infrastructure base that already exists. Wellinghoff said board members should be selected in a way that's like other RTO boards under FERC jurisdiction, rather than being politically appointed.

Satyal said a possible Western RTO from SPP also raises governance questions, both for people to the east as well as how it might reflect Western state views and clean energy: Would an expanded SPP represent the views of parties across an even larger swath of the United States?

In a statement, Rew said SPP looks "forward to opportunities for discussion with interested parties on the benefits that SPP membership provides."

Typical market design challenges, Satyal said, include having fair cost allocation for using transmission across a large system as well as creating incentives for demand-side solutions.

It remains to be seen how utilities will proceed or react as various plans gain attention.

"We support efficient markets and generally believe that regional markets have the potential to increase benefits to our customers," said Chris Abel, a spokesperson for Southern California Edison. He cited the potential for lower costs, better reliability and improved renewable integration.

But he said "the details matter," suggesting the utility would need more information to comment on specific proposals.

Clark and the group of 17 other former state regulators said "mandatory RTOs would become a flashpoint in the state-federal relationship."

"Collectively, the public interest will be better served by state and federal regulators seeking common ground, working towards shared goals, and not fighting each other in the Courts and in Congress," they wrote.

'Nothing happens in a vacuum'

While uncertainty remains about a regional market, some Western states are taking action.

S.B. 448 in Nevada and **S.B. 72** in Colorado both have provisions calling for utilities to join an RTO or organized market by 2030.

"Those two bills send a very strong signal," said Amisha Rai, managing director of Western states at Advanced Energy Economy.

Rai said what's needed in the West "is really the RTO of the future." That means protecting state authority and states' clean energy vision — while ensuring any actions are in the best interest of ratepayers, she said.

"We do know that regulators and decisionmakers and utilities in the other [Western] states are watching," she said. "Nothing happens in a vacuum, and that's a good thing."

Xcel Energy Inc., a major power provider in Colorado and several other states, said it "considers a broader western energy market key to supporting the transformation of Colorado's electricity system."

"We continue to monitor developments in the West and are focused on studying the different options available and how each might best serve our customers and communities with affordable, reliable, and clean electricity," the company said.

Xcel applauded bill sponsors and others in Colorado for making sure "the long-term policy direction under the bill remains in alignment with the state's clean energy goals while maintaining important cost protections for our Colorado customers."

In Nevada, NV Energy said it's supportive of coordinated regional planning and markets.

"We look forward to participating in Nevada's Regional Transmission Coordination Task [Force] that was established through Senate Bill 448, which will evaluate the costs and benefits a regional transmission organization could bring to Nevadans and its potential to help our state and the region achieve clean energy goals in a cost-effective manner," Jennifer Schuricht, an NV Energy spokesperson, said via email.

NV Energy, for example, is part of the California ISO's Western energy imbalance market that Schuricht said has provided over \$14 million in benefits to NV Energy's customers since 2015.

Oregon also saw recent legislative progress via [S.B. 589](#), which calls for the state to prepare a report on the benefits, opportunities and challenges from possible RTO development or expansion in the state.

Platt, the spokesperson for Oregon-based PGE, said the company is "supportive of and leading efforts to advance resource adequacy frameworks in Oregon and more broadly across the region and is doing so through a separate effort that is not connected to an RTO/ISO."

"We are not ruling anything out, just putting resources and priorities towards efforts that are making significant, demonstrable progress," Platt said, noting that the company would offer support related to the preparation of the new report expected in Oregon on the topic.

At a July meeting, SPP's board could approve prospective terms that would be given to potential Western entities for them to evaluate. The parties could have to make a commitment to the RTO by mid-April 2022. Other entities could also look to join. FERC likely would review certain proposed changes related to SPP.

Time will tell if anticipation turns into reality for a more coordinated Western grid in some way, but states and grid operators have the idea on their radar.

"We are moving out of just the dialogue phase and moving into execution," Rai said. "And there are a lot of challenging questions ahead of us and a lot of important conversations that still need to take place."

Reporter Miranda Willson contributed.

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Why utilities and clean energy advocates are battling over a Southeast energy market

SEEM's utility backers say it will save money. Opponents say it could lock out clean energy developers and protect fossil fuel plants from competition.

Why are clean energy groups and big corporate electricity buyers so opposed to a plan to create the first regional energy-trading market in the Southeast U.S.?

Answering that question requires a bit of a dive into the esoteric world of regional energy market structures, and in particular, the differences between bilateral energy trading, an energy imbalance market and a full-scale regional transmission organization (RTO) or independent system operator (ISO). But in simple terms, it boils down to conflicting views of whether the move will help or hinder the region's shift to a cleaner and more cost-effective grid.

RTOs and ISOs manage the bulk electricity systems serving about two-thirds of the country's population. The regions without them include most of the Western U.S. outside California, where utilities are joining energy imbalance markets, and the Southeast, where transmission systems are largely controlled by the region's biggest vertically integrated utilities, Duke Energy and Southern Company, along with the massive and federally owned Tennessee Valley Authority.

Last year, these three utilities [proposed a new form of market](#) to serve their region, called the Southeast Energy Exchange Market (SEEM). The Federal Energy Regulatory Commission is reviewing the plan and is expected to make a decision in August.

SEEM proponents say it would provide a much more efficient way to trade power than the old-fashioned bilateral trading methods now in place, based on 15-minute trades across a transmission network spanning 11 states. Those incremental improvements could cut tens of millions of dollars per year for its prospective members, which at present include more than a dozen other investor-owned, public and cooperative utilities with about 160 gigawatts of generation capacity serving about 50 million people, according to proponents of the plan.

And it would do so while avoiding the complications, and potential pitfalls, of

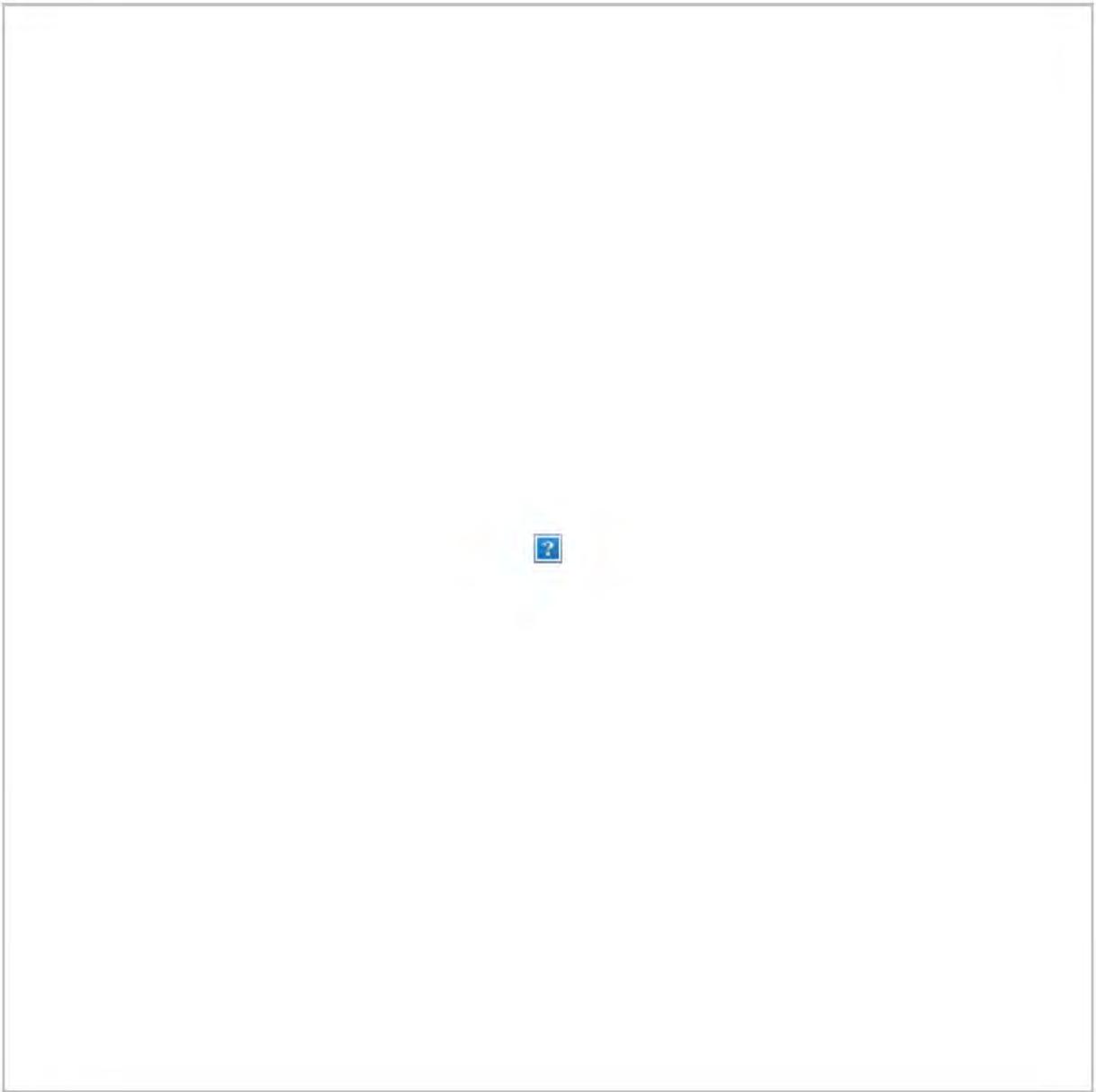
creating a full-scale RTO, they say. As Noel Black, governmental affairs vice president for Southern Co., said in a May statement, “In addition to bringing economic and environmental customer benefits, we also have worked to avoid adding significant new layers of bureaucracy to the region.”

But a panoply of renewable energy trade groups, environmental activists and corporate energy buyers’ associations fear that SEEM could forestall a broader move to open up the Southeast market to energy competition.

In fact, these groups warn, it could allow Duke, Southern and other regional utilities to secure more revenue for their fossil-fired power plants by allowing them to sell their power to one another — without facing competition from third-party solar, wind and battery projects that are cheaper as well as cleaner.

“Rather than establishing a more robust wholesale market that creates a platform for integrating and developing clean energy, SEEM’s bilateral transactions are likely to prolong the uncompetitive fossil generation that’s owned by the utilities,” said Bryn Baker, policy director for the [Renewable Energy Buyers Alliance](#), which represents large corporate energy buyers including Amazon, Google and Walmart.

According to independent analysis from these groups, a much [broader market reform](#) initiative could save the Southeast hundreds of billions of dollars per year over the next 20 years, much more than the \$100 million to \$150 million that an analysis sponsored by SEEM backers projects it could save over the next two decades. Broader reform could also spur far more clean energy development than the region’s biggest utilities are now planning for.



A map of the region that would be served by SEEM (*Image credit: SEEM*)

Achieving those greater savings would require open access to shared transmission networks and competitive energy markets open to independent power producers as well as utilities, these groups say — in other words, the features provided by RTOs and ISOs.

The proponents also say SEEM's incremental improvements to the region's existing bilateral energy-trading regimes would avoid the complications, and potential pitfalls, of creating a more integrated RTO system like those that cover most of the country outside the Western U.S.

“With 160,000 megawatts already committed to participate, it is our intent for SEEM to pass along benefits of scale to customers,” Southern Co.'s Black said in a recent statement. “In addition to bringing economic and environmental customer benefits, we also have worked to avoid adding significant new layers of bureaucracy to the region.”

SEEM critics also argue that the market has been created without significant input from non-utility stakeholders and that it lacks transparency and accountability to parties outside the utilities that would participate in it and manage it.

That’s why they’re asking the Federal Energy Regulatory Commission (FERC) to reject the SEEM proposal as it stands and instead launch a process that brings multiple stakeholders together to explore broader market reforms.

“There was a pretty strong and collective response from many groups around deficiencies in the proposal,” REBA’s Baker said. “That’s why I think we saw FERC issue a deficiency letter.”

How SEEM has reached its current impasse

Baker is referring to FERC’s [decision in May](#) to demand more information from SEEM backers before it will consider approving the plan. SEEM utilities replied last month with an [extensive filing](#) that delves into matters of independent oversight, transparency of market operations and how its 15-minute energy market would “clear” trades between participants.

But this reply to FERC’s deficiency letter hasn’t satisfied opponents, who have filed their own critiques of the utilities’ response. Here's one sample from Jeff Dennis, managing director and general counsel of Advanced Energy Economy, an industry trade group that joined the Advanced Energy Buyers Group and the Solar Energy Industries Association in [filing an opposition](#) statement to the SEEM proposal at FERC.

“We asked FERC for more process, both to make sure that SEEM won’t create new risks and to provide an opportunity for states and customers to have a voice regarding the future of wholesale markets in the region — something the SEEM sponsors didn’t do,” Dennis wrote.

Solar Energy Industries Association President Abigail Ross Hopper agreed, saying that the revised proposal “fails to create an open and competitive wholesale energy market at the expense of ratepayers and the environment.”

These concerns have been echoed by a large group of clean energy and environmental groups, including national organizations such as the Sierra Club, Vote Solar and the Natural Resources Defense Council, and regional groups such as the Southern Alliance for Clean Energy and North Carolina Sustainable Energy Association.

In their FERC filing, these and other public interest groups argued that the “minimal revisions to the SEEM proposal” filed last month “do not remedy the lack of transparency, due process, and independent monitoring in this untested market construct.”

“As proposed, the SEEM proposal is unjust, unreasonable, and prone to undue discrimination and therefore must be rejected,” the groups wrote.

What SEEM is and isn’t: A taxonomy of different market structures

To SEEM’s opponents, its flaws stem both from what it is and what it is not.

On the first point, the “loose power pool” structure that SEEM proposes, as AEE and other critics describe it, runs the risk of expanding utilities’ existing monopoly on how power is generated, traded and sold across the region. That’s because independent power producers “continue to be excluded from the platform,”

Baker said. "This is really a multiparty bilateral trading platform."

At the same time, SEEM could allow utility members to bolster the profitability of fossil-fueled power plants that might otherwise face pressure from cheaper and cleaner alternatives, she said.

One big reason for this fear is the nature of the market-clearing algorithm that SEEM proposes. RTO and ISO energy markets are aimed at dispatching power plants on a "least-cost" basis, with the cheapest sources of power winning over those that are more expensive, which is why energy markets are credited with lowering power prices.

But according to Maia Hutt, an attorney for the Southern Environmental Law Center, the SEEM algorithm would allow utilities to set their own bidding costs, without a clear and transparent way to assess whether they're based on the actual cost of the generation they're bidding.

"In theory, the bids should reflect the bidder's cost of generation, but that's not always true and the relationship between generation costs and the bids submitted could be warped through market manipulation," she said in an email.

The fact that SEEM participants can pick and choose which counterparties they accept bids from further weakens the market's ability to choose the least-cost generation available, Hutt said. A so-called "toggle" function would allow a SEEM member to exclude potential trading partners, even if those partners have the lowest-cost power available at the time. Buyers could also craft bids in ways that could exclude smaller generators that can't fill the entirety of a bid, even if they have lower-cost power that could fill part of it, she said.

Corey Sellers, Southern Company transmission policy and services general manager, replied to these critiques in an email, noting that SEEM members "designed the solving algorithm and split the difference matching approach to avoid opportunities to bias match prices towards bids or offers, ensure all are

treated fairly, and solve for maximum region-wide benefits to customers. Customers will always see lower energy costs when a transaction occurs since benefits are created when buyers and sellers are matched.”

Still, these features distinguish SEEM’s proposal from the energy imbalance markets that have extended real-time energy trading across [large parts of the U.S. West](#), the other major region of the country that lacks wholesale energy market structures.

A [new report](#) from clean energy trade groups SEIA, American Clean Power Association and the American Council on Renewable Energy (ACORE) notes that these energy imbalance markets, as extensions of existing RTOs and ISOs, include “centralized clearing prices, a transparent stakeholder process and an independent market monitor,” all features that SEEM lacks at present.

The lack of an independent market monitor — a standard feature of RTOs and ISOs — is another sticking point for SEEM opponents. While SEEM utilities have proposed sharing market information with FERC on a weekly basis and setting up an independent auditor position to examine complaints, critics say those steps aren’t a substitute for an independent office tasked with policing market operations.

Another feature of RTOs the SEEM proposal lacks is an “open access transmission tariff,” a set of rules that regulate how multiple parties share the transmission grid capacity that connects generators to where they’re delivering electricity.

A key feature of an open access transmission tariff is securing “non-discriminatory” access for all market participants to transmission owned by one utility. But as the American Council on Renewable Energy wrote in its recent paper, “There is no language in the SEEM filing that proposes to alter existing balancing practices or provide open transmission access to independent power producers.” That puts Tennessee Valley Authority, Southern Co. and Duke, the

three utilities that own most of the region's transmission capacity, in the position of dictating many aspects of how their transmission is used.

The SEEM plan does take steps to reduce the charges that transmission owners can assess on market participants using its wires — charges known as “rate pancaking,” which can add significant costs if left unaddressed.

But the environmental and public interest groups argued in their filing that this won't “mitigate potential for monopoly utilities to exercise market power.” In fact, they argue, reducing these “pancaking” costs for SEEM participants but not for others could further privilege incumbent utilities against competitors, or even lead to higher costs for power plants seeking to move power across transmission lines to sell outside the region.

Deeper changes needed to decarbonize the Southeast's power mix?

The arguments over SEEM are coming [amid broader disputes](#) over the Southeast's energy future. [Duke Energy](#), [Dominion Energy](#) and [Southern Company](#) have all pledged to reach net-zero carbon emissions by 2050. But all three have proposed building new natural-gas-fired power plants to replace coal-fired power plants they plan to close in the region that would be served by SEEM. The gas plants are being fought by many of the same groups that are opposing the SEEM proposal.

The American Council on Renewable Energy stated in its report that nearly 40 gigawatts' worth of natural gas capacity is being proposed for the Southeast, while in much of the rest of the country natural gas is being supplanted by renewable energy as the resource of choice for future energy needs. Solar and wind power are now [cheaper than new natural gas](#) power plants in much of the country, and adding batteries to those intermittent resources can allow them to serve peak grid demands formerly served by natural gas.

But SEEM opponents point out that renewables can't realize this advantage in markets that don't offer them equal access to compete on cost against incumbent generators.

They also say that integrated markets can better organize the build-out of generation and transmission that meets an entire region's needs, rather than forcing individual utilities to make these long-range investment plans in isolation from each other.

This feature of organized markets — enabling resources to be shared across regions — can yield much greater long-term cost and emissions reductions than those enabled by the 15-minute trading of electricity. A [report last year](#) from think tank Energy Innovation estimated that creating an RTO for the Southeast could allow TVA, Southern Co., Duke and other major utilities in the region to build much less redundant generation capacity, yielding an estimated \$384 billion in economic savings over 20 years, or about 19 percent compared to a business-as-usual scenario.

The same market could also expand the opportunity for low-cost solar, wind and energy storage to grow to 131 gigawatts over the next 20 years, delivering a 37 percent greater reduction in carbon emissions compared to business as usual, the report found.

To help answer these questions, SEEM opponents want FERC to mandate a technical conference — an open process that allows the participation of multiple stakeholders — to delve into the pros and cons of a broader Southeast RTO. That's a long and complex process, and it could happen with or without FERC approving SEEM in one form or another. But it's a vital next step to explore what form of market reform is best suited to the needs of the region, they say.

This call is being backed in some of the states in the region. A South Carolina law passed last year calls for a study into the pros and cons of joining an RTO, and North Carolina [has similar legislation](#) — although that bill has faced a massive

public relations attack from a Duke-backed group and has failed to move out of committee so far this year.

SEEM backers have sought to separate their proposal from this broader question of potential market reforms. "We encourage FERC to evaluate the SEEM proposal that is before them and not get distracted by a few commenters who advocate for a complete redesign of the existing Southeast market," Noel Black of Southern Co. said in a June statement.

SEEM backers have also [pointed out](#) that their region has some of the lowest electricity rates and highest customer satisfaction scores in the country. At the same time, the region's share of renewable energy stands at 6.4 percent of its total generation mix, compared to 17 percent across the parts of the country served by RTOs.

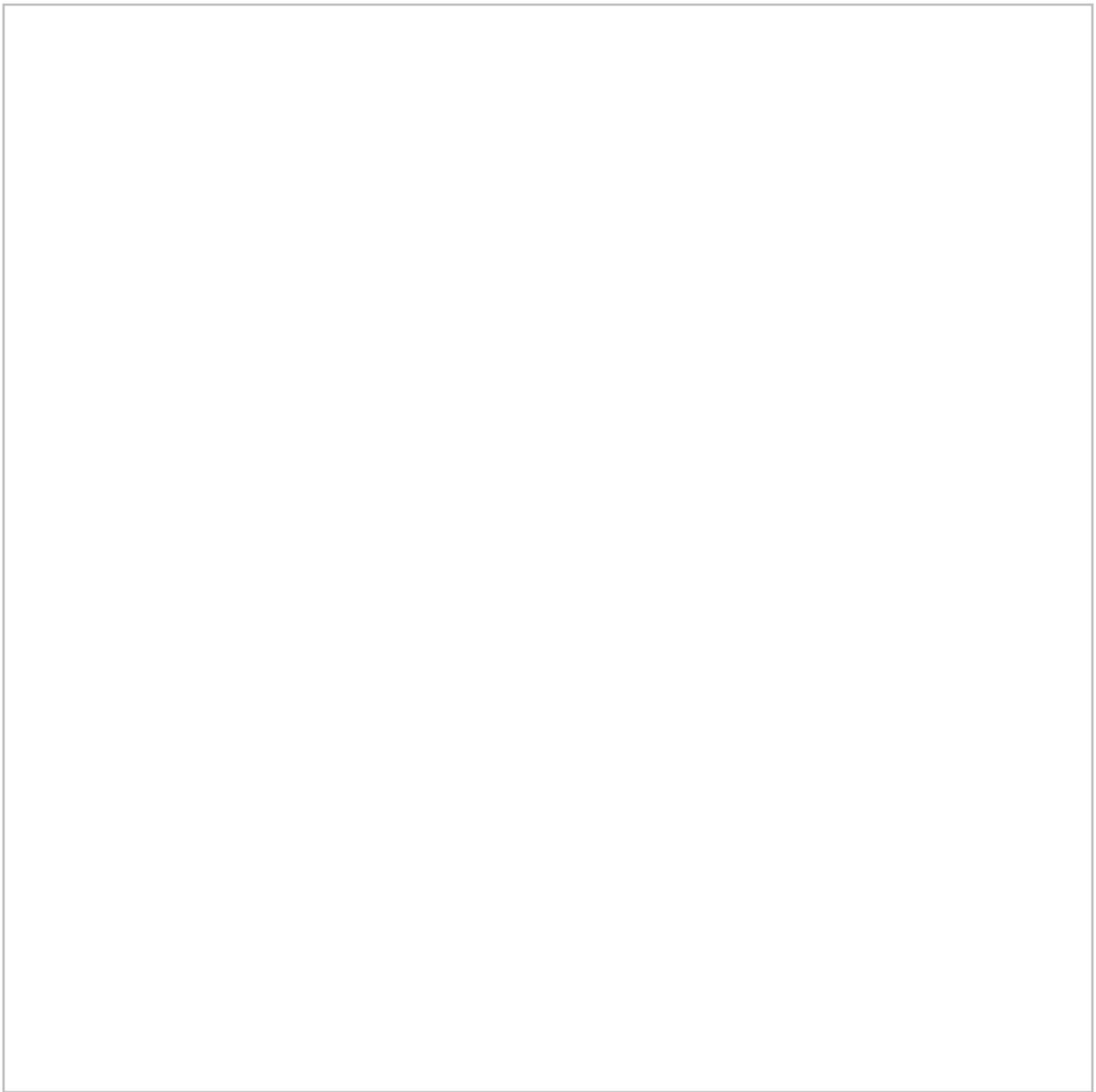


Image credit: SEEM

“Moving toward more robust...market structures is what’s going to accelerate the deployment of cleaner energy and more cost-effective resources,” REBA’s Baker said. “That’s the angle that we come to it from: representing businesses that want clean energy.”

(Article image courtesy of Andrey Metelev)

June 24, 2021

Chairman Richard Glick
Commissioner Neil Chatterjee
Commissioner James P. Danly
Commissioner Allison Clements
Commissioner Mark C. Christie

Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: Former Commissioners' Letter

Dear Mr. Chairman and Commissioners,

On June 2, 2021, you received a letter from nine former FERC Commissioners, urging the Commission to use “broad authorities and tools” to establish ubiquitous RTO wholesale markets across the country. We write you to express our concern with this suggestion, for we fear the implication is to encourage FERC to abandon its long-standing policy of providing for voluntary RTO membership for utilities and the states that regulate them.

As former state regulators, we collectively have decades of energy regulatory experience. We hail from different regions of the country. We come from different political parties. We have different experiences with wholesale market structures and we have different views regarding the operations of existing RTOs. Nonetheless, we share a common belief: FERC should continue to allow states and utilities the flexibility to participate in wholesale market structures that work best for their citizens and electricity customers. Any movement to upend this policy risks doing grave damage to the state-federal relationship, putting FERC and the states on a path towards confrontation. This would undermine both the federal-state balance of the Federal Power Act, and the historic comity between state and federal regulators. It also would threaten to impede grid transformation by unilaterally imposing an unexpected new market construct that may work at cross-purpose with clean energy investment decisions states have already made.

One of the benefits of FERC’s voluntary RTO regime is that it has allowed states the flexibility to make independent assessments about the value proposition of various wholesale market paradigms. For some states, this has meant its utilities joining an RTO, an ISO, or more than one RTO/ISO. Other states have chosen to participate in Energy Imbalance Markets or seek alternative market platforms. Others remain in bi-lateral markets for reasons arising from geography, industry structure and electric generation resource base. But in all cases, state leaders make decisions about how their utilities participate based on what they believe is in the best interests of their citizens.

Furthermore, the voluntary nature of RTOs ensures that the RTOs themselves have an incentive to establish a value proposition that encourages membership. That not all states have embraced one organized market design should be an indication that there are still alternatives that

individual states may find more attractive. We would suggest that if FERC has an institutional interest in expanding wholesale market structures, then the best method to do so is to focus its attention on fixing, and reforming existing markets in collaboration with states, while granting flexibility to those that may seek a different path for their citizens. Top-down initiatives to impose an RTO mandate everywhere may well inhibit the sort of clean energy transition that is already taking place across the country – including in those states that have chosen to remain outside of RTOs.

We are concerned that FERC moving towards a mandatory RTO membership requirement would ultimately become a distraction that neither furthers the goals of the states, nor FERC. Rather than working together to ensure that the changing grid meets the needs of consumers, mandatory RTOs would become a flashpoint in the state-federal relationship. Collectively, the public interest will be better served by state and federal regulators seeking common ground, working towards shared goals, and not fighting each other in the Courts and in Congress. We hope you will agree and maintain FERC's prudent and well-established stance towards voluntary RTO membership.

Sincerely,

Tony Clark
Former NARUC President
Former Chair/Commissioner North Dakota Public Service Commission
Former FERC Commissioner

David Coen
Former NARUC President
Former Member Vermont Public Service Board

Philip Jones
Former NARUC President
Former Commissioner Washington Utilities and Transportation Commission

Jim Sullivan
Former NARUC President
Former President Alabama Public Service Commission

Stan Wise
Former NARUC President
Former Chair/Commissioner Georgia Public Service Commission

Susan Ackerman
Former NARUC Electricity Committee Chair
Former Chair Oregon Public Utility Commission

Edward Finley
Former NARUC Electricity Committee Chair
Former Chair North Carolina Utilities Commission

James Atterholt
Former Chair Indiana Utility Regulatory Commission

Ron Brisé
Former Chair/Commissioner Florida Public Service Commission

Raymond Gifford
Former Chair Colorado Public Utilities Commission

John “Butch” Howard
Former Chair/Commissioner South Carolina Public Service Commission

Mike Huebsch
Former Commissioner Wisconsin Public Service Commission

Jon McKinney
Former Chairman/Commissioner West Virginia Public Service Commission

Ann Pongracz
Former Chair Nevada Public Utilities Commission

John Quackenbush
Former Chair Michigan Public Service Commission

Brien Sheahan
Former Chair Illinois Commerce Commission

Gregory Sopkin
Former Chair Colorado Public Utilities Commission

Bob Stump
Former Chair/Commissioner Arizona Corporation Commission



Energy
Choice
Coalition



July 8, 2021

The Honorable Joe Manchin
Chairman
Committee on Energy and Natural Resources
U.S. Senate
Washington, D.C. 20515

The Honorable Frank Pallone
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20510

The Honorable John Barrasso
Ranking Member
Committee on Energy and Natural Resources
U.S. Senate
Washington, D.C. 20515

The Honorable Cathy McMorris Rodgers
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20510

Re: Independent Study of the Cost of Electricity

Dear Chairmen Manchin and Pallone and Ranking Members Barrasso and Rodgers:

The undersigned organizations respectfully request that you direct the Government Accountability Office (GAO) or other independent oversight organization¹ to undertake a detailed and objective study of the cost of electricity in the United States. Specifically, the policies under the jurisdiction of the Federal Energy Regulatory Commission (FERC) – the federal agency responsible for regulating the nation’s wholesale electricity markets – should be evaluated on the basis of their impact on the cost and reliability of delivered power.²

We represent a number of America’s largest industrial consumers of electricity, as well as residential customers and public policy research organizations. We are concerned that federal regulators have not initiated an independent, empirical study to safeguard a basic

¹ The independence of the analysis is critical. To support an independent process, we recommend that the Independent Market Monitors for each organized market be involved in the analysis.

² As part of the Energy Policy Act of 2005, Congress directed FERC to establish a transmission incentive rule “for the purpose of benefitting consumers by ensuring reliability and reducing the cost of delivered power...” See 16 U.S.C. § 824s(a). FERC has not fully addressed this statutory obligation.

element of modern society – reliable and affordable electricity.³ In order to keep our businesses competitive in both domestic and international markets – and to simply pay our residential electricity bills – we must have reliable, low-cost electricity. To that end, we need regulators who base their policy decisions on objective data and real-world impacts rather than assumptions by advocates.

The study we request should investigate the cost impacts of federal policy regarding market structure, namely the net benefits to retail consumers resulting from the formation of Regional Transmission Organizations (RTOs) and Independent System Operators (collectively “RTOs”).⁴ At minimum, it should examine how existing RTO market structures have impacted the cost of electricity to retail consumers. We also ask that the study explore the reliability impacts of wholesale market structure and, if resources allow, develop a set of best practices regarding RTO expansion.⁵

More than two decades ago, FERC took ambitious steps to open competitive markets at the wholesale level, with the promise that FERC’s promotion of competition would “ensure that electricity consumers pay the lowest price possible for reliable service.”⁶ Many states also expanded competition at the retail level in search of consumer savings. This was a bold and unprecedented experiment in electricity regulation, but the impacts on customer bills appear to have been mixed.⁷ At the wholesale level, the electricity industry now finds itself in a state of limbo⁸ – about two-thirds of the country is served by competitive wholesale markets and the rest by traditional, regulated utility monopolies.⁹

³ We note that FERC commissioned a study of the benefits of wholesale competition in the Entergy region, which was published in a 2010 report. See <https://www.ferc.gov/sites/default/files/2020-05/spp-entergy-cba-report.pdf>. However, that work was an estimate of *future* benefits, and FERC has not undertaken a study of actual (historical) RTO costs and benefits to consumers. To our knowledge, no one has studied the impact of RTOs on customer bills.

⁴ When members of this group asked FERC for a meeting on this issue, FERC staff replied that “the Commission is not inclined at this time to commission that type of broader study.”

⁵ Nine former FERC Chairmen and Commissioners wrote to FERC recently to push for RTO expansion. See *FERC should expand organized markets across the US, former chairs and commissioners say*, June 3, 2021, available at <https://www.utilitydive.com/news/ferc-should-expand-organized-markets-across-the-us-former-chairs-and-commi/601187/>.

⁶ Order No. 2000, *Regional Transmission Organizations*, 89 FERC ¶ 61,285 (1999), p. 1.

⁷ See *The U.S. Electricity Industry After 20 Years of Restructuring*, available at https://www.nber.org/system/files/working_papers/w21113/w21113.pdf. “While electricity restructuring has brought significant efficiency improvements in generation, it has generally been viewed as a disappointment because the price-reduction promises made by some advocates were based on politically-unsustainable rent transfers. In reality, the electricity rate changes since restructuring have been driven more by exogenous factors – such as generation technology advances and natural gas price fluctuations – than by the effects of restructuring.”

⁸ Retail competition policy is also in a state of limbo; however, the impacts of retail competition are not the focus of this letter.

⁹ There are a variety of market structures in the U.S. electricity industry. For example, many wholesale markets include utilities subject to traditional monopoly regulation at the state level. Many customers are also served by not-for-profit municipal or cooperative utilities. In some parts of the U.S., federal power

With no guidance from federal regulators, states and regions are independently exploring the impacts of RTOs.¹⁰ Today, battles over wholesale competition are taking place across the country, principally between incumbent utilities and a growing chorus of consumers who want more choice, better access to new technologies, or less exposure to the ratepayer risks associated with monopoly utilities.¹¹

Some utilities have responded to consumer efforts to expand wholesale competition by launching campaigns to persuade customers that RTOs are a “Really Terrible Option” and will raise their rates.¹² The RTO debate has become controversial, yet the assertions made by both sides can and should be examined objectively using real-world data. For example, if both sides are right about the economics – that is, if there are substantial production cost savings from RTOs at the wholesale level, yet retail customer bills in RTO regions continue to climb – then Congress, FERC, and the states owe it to consumers to understand the disconnect and address it.¹³

The study we request is long overdue. As GAO reported in 2008, “there is no consensus about whether RTO markets provide benefits to consumers or how they have influenced

marketing administrations perform the wholesale market function. We think the variation among market structures in the U.S. presents a great opportunity to study the pros and cons of different arrangements.

¹⁰ For example, see the ongoing proceedings in:

North Carolina: <https://files.nc.gov/ncdeq/climate-change/clean-energy-plan/2020-NERP-Final-Report.pdf>

South Carolina: https://www.scstatehouse.gov/sess123_2019-2020/bills/4940.htm

Colorado: <https://leg.colorado.gov/bills/sb21-072>

Nevada: <https://www.leg.state.nv.us/App/NELIS/REL/81st2021/Bill/8201/Overview>

Missouri: https://psc.mo.gov/Electric/PSC_Opens_Electric_Working_Docket, and

Oregon: <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/PublicTestimonyDocument/12082>.

¹¹ See, e.g., *More Vogtle Delays; Experts Target Mid-2022 Startup at Earliest*, June 8, 2021, available at

<https://www.powermag.com/more-vogtle-delays-experts-target-mid-2022-startup-at-earliest/>. “The

[Vogtle] project already is five years beyond its originally forecast startup date of 2016, and analysts estimate its final cost – somewhere between \$25 billion and \$30 billion – will be twice the originally expected price tag.” See also *Ex-SCANA CEO pleads guilty to fraud in SC nuclear fiasco: ‘I’m sorry it’s come to this’*, June 7, 2021, available at

https://www.postandcourier.com/news/local_state_news/ex-scana-ceo-pleads-guilty-to-fraud-in-sc-nuclear-fiasco-im-sorry-its-come-to-this/article_6687ce9c-751c-11eb-8678-07d1d205c4db.html.

And *Exposing the utility playbook: Ratepayers are stuck paying the bill for utility corruption*, May 27, 2021, available at <https://www.utilitydive.com/news/exposing-the-utility-playbook-ratepayers-are-stuck-paying-the-bill-for-uti/600784/>.

¹² See *Duke-supported group launches campaign against North Carolina bill to examine wholesale market reform*,

May 24, 2021, available at <https://www.utilitydive.com/news/duke-supported-group-launches-campaign-against-north-carolina-bill-to-poten/600636/>.

¹³ This phenomenon, known as the wholesale-retail disconnect, was identified in the Department of Energy’s 2017 *Staff Report to the Secretary on Electricity Markets and Reliability*, available at

https://www.energy.gov/sites/default/files/2017/08/f36/Staff%20Report%20on%20Electricity%20Markets%20and%20Reliability_0.pdf (Section 6.2). See also Lawrence Berkeley National Laboratory,

Unpacking the Disconnect Between Wholesale and Retail Electric Rates (2019), available at

<https://emp.lbl.gov/publications/unpacking-disconnect-between>.

consumer electricity prices.”¹⁴ Despite the facts that (1) there is substantial evidence that RTOs reduce production costs¹⁵ and (2) FERC now tracks “performance metrics”¹⁶ for RTOs, these lines of analysis are incomplete and do not address the central question of the impact of RTOs on customer bills.¹⁷

Further, this is not a subject of historical trivia. Three trends make it more important than ever that policymakers investigate the impacts of wholesale market policies on retail customers now:

- 1) RTO expansion (both voluntary and mandatory) is under consideration at the state, regional, and federal level,
- 2) State and federal policies (as well as private sector demand from individuals and corporations) are driving changes in the resource mix that will require large increases in spending on transmission infrastructure, and
- 3) Increased electrification of the economy places increasing pressure on the electricity system to satisfy new demand while keeping rates affordable.

With these trends in mind, we respectfully request that you direct the GAO or other independent organization to examine the cost and reliability impacts of wholesale markets. Regulators at FERC and the states cannot fulfill their statutory duties without understanding the fundamental relationship between market structure and the cost and reliability of electricity.

This is not a partisan issue – it is a matter of good governance, regulatory oversight, and, ultimately, the economic health of the nation. America’s families and businesses cannot thrive without reliable, low-cost electricity.

Thank you for your consideration.

Most Respectfully,

¹⁴ See GAO, *Electricity Restructuring: FERC Could Take Additional Steps to Analyze Regional Transmission Organizations’ Benefits and Performance* (2008), available at <https://www.gao.gov/assets/gao-08-987.pdf>. A Department of Justice discussion paper, also released in 2008, concluded, “As market institutions develop there is reason to believe that investment decisions will be made efficiently and that consumers will benefit in the form of lower prices in the long run.” See *Electricity Restructuring: What Has Worked, What Has Not, and What is Next* (2008), available at <https://www.justice.gov/atr/electricity-restructuring-what-has-worked-what-has-not-and-what-next>.

¹⁵ See, e.g., *Imperfect Markets versus Imperfect Regulation in U.S. Electricity Generation* (2017), available at https://www.nber.org/system/files/working_papers/w23053/w23053.pdf.

¹⁶ See *RTO/ISO Performance Metrics*, available at <https://www.ferc.gov/industries-data/electric/electric-power-markets/rtoiso-performance-metrics>. The most recent Common Metrics report was issued in 2016 using data available for a period ending in 2014.

¹⁷ *As 9 Ex-FERC commissioners tout organized markets, we need facts, not propaganda on the benefits*, June 2021, available at <https://www.utilitydive.com/news/as-9-ex-ferc-commissioners-tout-organized-markets-we-need-facts-not-propa/601890/>.

Electricity Consumers Resource Council
Energy Choice Coalition
Public Citizen
Association of Businesses Advocating for Tariff Equity
Carolina Utility Customers Association
Conservative Coalition for Climate Solutions
Conservative Energy Network
Heritage Action for America
Industrial Energy Consumers of Pennsylvania
Louisiana Energy Users Group
R Street Institute

Cc:

The Honorable Richard Glick, Chairman
The Honorable Neil Chatterjee, Commissioner
The Honorable James Danly, Commissioner
The Honorable Allison Clements, Commissioner
The Honorable Mark Christie, Commissioner
Federal Energy Regulatory Commission
888 First Street N.E.
Washington, D.C. 20426

From: johnrlott.crimeresearch.org
To: [Jonathan David Mooers](mailto:Jonathan.David.Mooers)
Cc: [Lawrence Sellin](mailto:Lawrence.Sellin); [Jb Williams](mailto:Jb.Williams); donjr@email.donjr.com; Info@jaesonjones.com; [Bill Marshall](mailto:Bill.Marshall); [True The Vote](mailto:True.The.Vote); [Allan Wall](mailto:Allan.Wall); authorvdh@gmail.com; [Gary Wilmott](mailto:Gary.Wilmott); [kathleen mooers](mailto:kathleen.mooers); [Orly Taitz](mailto:Orly.Taitz); [The Obama Timeline author](mailto:The.Obama.Timeline.author); [The Epoch Times](mailto:The.Epoch.Times); [Linda Jordan](mailto:Linda.Jordan); [Thomas W. Arnold III](mailto:Thomas.W.Arnold.III); [Ed Sunderland](mailto:Ed.Sunderland); [Sharon Rondeau](mailto:Sharon.Rondeau); [Wendy Rogers](mailto:Wendy.Rogers); [Linda Goudsmit](mailto:Linda.Goudsmit); [Robert Laity](mailto:Robert.Laity); SIDNEY@licensedtolie.com; [Brigitte Gabriel](mailto:Brigitte.Gabriel); wayneroot@gmail.com; Sald555; [Brian Caron](mailto:Brian.Caron); [Jeff Crouere](mailto:Jeff.Crouere); [Helge Larsen](mailto:Helge.Larsen); ednoonan7_; [Joan Swirsky](mailto:Joan.Swirsky); [Dinesh D'Souza](mailto:Dinesh.D.Souza); rochelleschweizer@gmail.com; [Annie Black](mailto:Annie.Black); AGInfo@azag.gov; [Andrew Mooers](mailto:Andrew.Mooers); imprimis@hillsdale.edu; [CDR Kerchner \(Ret\)'s Blog](mailto:CDR.Kerchner.(Ret)'s.Blog); info@greene2020.com; info@rogerstonelegaldefensefund.com; [Donald J. Trump](mailto:Donald.J.Trump); [Rand Paul](mailto:Rand.Paul)
Subject: Re: Biden's lies about crime in the SOTU, the media rewriting the history of Trayvon Martin's shooting, how the media doesn't accurately cover defensive gun uses, and much more
Date: Saturday, March 5, 2022 1:41:29 PM
Attachments: [image.png](#)
[image.png](#)
[image.png](#)
[image.png](#)

Thank you very much.

John R Lott, Jr., Ph.D.
President
Crime Prevention Research Center
johnrlott@crimeresearch.org
(484) 802-5373

Sent from my iPhone

On Mar 5, 2022, at 6:30 AM, Jonathan David Mooers <jmooers49@gmail.com> wrote:

"Many parts of the country are in dire need of basic law enforcement. But despite nice rhetoric, Biden is refusing to face the crime problem seriously."

Thank you, John Lott, and all the folks on this email who champion *objectivity* over politically correct "thinking".

Politically correct thinking [PC] ensures that being honest is an

honest mistake. - JD Mooers

The primary ingredients in any PC concoction are dishonesty, insincerity and fear. - JD Mooers

PC is like a mind's probation officer who monitors freedom of thought and freedom of expression for violations of parole. - J Mooers

Science conducted without conscience is con science. - JD Mooers

John Lott, you are big on law enforcement, and so am I, and likely so is everyone on this email.

What I, at 73 (this Easter Sunday), see happening in US since **08-28-08**, when criminal Barry "Osama" Obama-Soetoro

was allowed criminal passage into the White House by **Crime Bosses**, "Nanny" Pelosi, "China" Joe Biden and Hillary "RICO" Clinton, et al, is **mass fingerprinting**, instead of, **mass fingerprinting** *via basic law enforcement.*

So, John, has anyone studied how much of America's gross national product (GNP) is derived by aiding and

abetting criminals and criminal activities by U.S. Citizens?

Seems like an ideal study and book writing
for **Peter Schweitzer**, I surmise; or for you,
John Lott.

I believe America has transitioned
considerably from a legal "**service-based
economy**", since 08-28-08, to today's
illegal "**crime-based economy**".

For example, the illegal invasion of millions
of foreign nationals over our faithfully
neglected southern border now

employs/incriminates many U.S. Citizens in
teaching those illegals how to read and write
in English and how to

apply for and move into subsidized housing
and how to apply for jobs and daycare and
how to apply for and use all sorts of tax-paid-
for illegal "benefits" as *criminal non-citizens*.

**How much of our present economy services
the "crime industry" in USA, which, if law
enforcement was not in deliberate national
stand-down mode, might cause the mass
lay offs of many U.S. Citizen *crime-assisting*
"crime service employees"?**

Another example: how many U.S. Citizens were/are employed cleaning up the \$2B and 20 murders of "Nanny" Pelosi's deliberated hands-off stand-down "black privilege" **BurnLootMurder (BLM) rampage in 2020 in USA, or in "solving" Chicago's never-ending **brown killing fields**?**

<https://www.foxnews.com/politics/pelosi-on-christopher-columbus-statue-destruction-people-will-do-what-they-do> >>> *STREET LOOTERS tear down statues while ELITE LOOTERS tear down statues!* - JD Mooers

Any idea, who and where such "crime-based economy" study or book might be found?

Thank you, for responding,

JD Mooers, LT (Ret.)- US Army Corps of Engineers, PE (Structural engineer- MA,ME,NH,NY), MBA, Fellow and Life Member- American Society of Civil Engineers, **MADE IN USA**

<https://founders.archives.gov/documents/Madison/03-07-02-0331>

https://www.waymarking.com/waymarks/WM12VFT_Benjamin_John_Mooers_Plattsburgh_NY

<https://nutfieldgenealogy.blogspot.com/2012/07/surname-saturday-mooers-of-newbury.html>

<https://www.facebook.com/ClintonCountyHistoricalAssociation/photos/october-2-1780-general-benjamin-mooers-as-adjutant-was-present-and-saw-the-execu/10157545145705594/>

Mooers have worked for America since 1638, and America has worked for Mooers for 384 years.

Today's U.S. Government's "crime boss

leadership" is PUBLIC ENEMY NO.1 since it only intends to pretend to end any national problems with programs that will only use the ploy of employment/deployment to "solve", and thus continue, all national problems. End the criminal problem = end the criminal employment program. American runs on crime . - JD Mooers

<https://www.youtube.com/watch?v=hCedOOQJ0ZEA>





shutterstock.com · 666960904

On Sat, Mar 5, 2022 at 6:02 AM Dr. John R. Lott, Jr. PhD <johnrlott@crimeresearch.org> wrote:

Crime Prevention Research Center

Logo



Dear Jonathan:

From [Biden's false claims about crime during his State of the Union](#) to the [media rewriting the history of George Zimmerman's shooting of Trayvon Martin on the anniversary of Martin's death](#), the media sure hasn't done its job in setting facts straight.

The CPRC got a [very nice mention on Fox & Friends](#), and Fox News [extensively quoted me in a very long news article about how the media doesn't accurately cover defensive gun uses](#). Our research was

also [important in testimony in Ohio on the Constitutional Carry bill](#), which I believe will soon become law. (By the way, within the next week or two, at least three more states and possibly five will enact Constitutional Carry -- Alabama, Georgia, and Ohio look like sure bets. So that means there will soon be between 24 and 26 Constitutional Carry states.)

On a very different example of us getting the word out, [our YouTube account has been shut down for almost three weeks](#) this year because we supposedly posted two videos that violated YouTube's Community Guidelines. YouTube has now admitted that they have made mistakes striking three of our videos. Our appeals got nowhere, but I have to thank my friend Grover Norquist for providing a contact at Google. I will be publishing a piece on this, but the bottom line is that if I didn't know Grover, we would probably soon be banned from posting on YouTube.

I did a series of interviews about the national gun registry Biden is putting together: [Sebastian Gorka's national radio show](#), [Jim Bohannon's national radio show](#), and [Vicki McKenna's show covering Wisconsin](#). That is a big issue, and people need to be alerted to what Biden is doing. Other interviews covered Biden blaming the increase in violent on guns even though the number of violent crimes with guns has fallen at the same time that violent crime has gone up ([the Michigan Talk Network](#) and [The Power Hour](#)), the errors in background check system ([Michigan's Bob Dutko's show](#) and [the Mike Opelka Show](#)), [our research on Constitutional Carry](#), and the [inaccuracies in media coverage of police shootings](#).

I also talked to One America News' Tipping Point about the partial [settlement of Remington's \\$73 million lawsuit](#) from the Sandy Hook shooting.

There is [a dramatic case where armed civilians in Bellingham, Washington, saved the lives of two wounded sheriff's deputies](#). We have collected [22 examples during October 2021 where civilians legally carrying guns in public have stopped crimes](#).

For information on activities at the Crime Prevention Research Center, here is a link to our ["info deck"](#). Please view in full-screen mode and scroll using the arrow buttons at the bottom of the screen.

But we need help getting this message out. If you have any friends who you think might find our emails of interest, *please encourage them to sign up by sending them the [link here](#)*.

Thank you **very much** for [all your support](#). We have some tough battles

ahead, and I just want you to know how much your support has been greatly appreciated.

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Op-eds

[**At The Federalist: Biden’s State of the Union Promise to “Fund Police” was Pure Lip Service**](#)

[**At Real Clear Politics: Media Continue Rewriting History on Trayvon Martin Anniversary**](#)

[**At Townhall: Canada Isn’t Alone in Using Debanking As a Weapon Against Political Opponents**](#)

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Television/Podcasts

[**On One America News’ Tipping Point: Discussing Remington’s \\$73 million settlement**](#)

[**On Freedom’s Pep Rally: Nikki Goeser discusses being Stalked and Defenseless**](#)

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Radio interviews/Podcasts

[**UPDATE: On Sebastian Gorka’s National Radio Show: Biden’s National Gun Registry**](#)

[**On the Jim Bohannon National Radio Show: Biden's National Gun Registry and his focus on only gun crimes**](#)

[**On The Vicki McKenna Show: Biden wants to ban all semi-auto guns, His creation of a National Gun Registry**](#)

[**On the Mike Opelka Show: What do the background check bills passed by the U.S. House mean for gun ownership?**](#)

[**On the Michigan Talk Network: Biden's Rhetoric on Guns is Far From 'Reasonable'**](#)

[**On Armed American Radio: On the coming battle over Biden's Supreme Court Nominee and our latest research on Constitutional Carry**](#)

[**On the Bob Dutko Show to talk about mass public shootings and background checks**](#)

[**On The Bill Martinez Live Show to discuss whether the media is accurately reporting on shootings by police**](#)

[**On WATR's Talk Of The Town: Nikki Goeser Discusses The Real Dangers of Stalking And The Importance Of Self Defense.**](#)

[**On The Power Hour with David Krieger: Biden's**](#)

[“Guns First” approach to violent crime ignores basic facts](#)

Television Show Bias on Guns

[Yet more examples from CBS and NBC of Television police shows having criminals use machine guns](#)

Defensive Gun Use

[Defensive Gun Uses By People Legally Carrying Guns: 22 Cases During October 2021](#)

[Armed Civilians save two sheriff’s deputies who were shot in Bellingham, Washington](#)

Media Coverage

[Fox & Friends discusses the CPRC’s work on Defensive Gun Uses and Media Bias](#)

[CPRC discussed extensively at Fox News: Gun crimes grab most media attention, while gun use in self-defense gets merely a fraction: experts](#)

[Our Research used in Testimony on](#)

[Constitutional Carry in the Ohio state House](#)

[Arbitrary Social Media Censorship, again by YouTube](#)

Recent C-SPAN Appearances

[Gun Control Myths](#)

[Washington Journal John Lott on Gun Violence in the U.S.](#)

Other

[Ukraine gave out 18,000 assault rifles to civilians in Kyiv in one day](#)

[This may be obvious to others: “Harry Potter’s real lesson is guns and libertarianism”](#)

[UPDATE: Alabama, Ohio, Indiana, and Georgia moving to pass Constitutional Carry](#)

[A Gallup survey on gun ownership shows that asking if people own a gun in their home is not the same as if they own a gun](#)

John R. Lott, Jr.

President
Crime Prevention Research Center

<http://crimeresearch.org>

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(484) 802-5373



<http://crimepreventionresearchcenter.nationbuilder.com/>

Crime Prevention Research Center · 3682 KING St, P.O. Box 3243, Alexandria, VA 22302-9998,
United States

This email was sent to jnnoors49@gmail.com. To stop receiving emails, [click here](#).

You can also keep up with Dr. John R. Lott, Jr. PhD on [Twitter](#).

Created with [NationBuilder](#), software for leaders.

From: johnrlott@crimeresearch.org
To: Jonathan David Mooers
Cc: john.durham@usdoj.gov; merrick.garland@usdoj.gov; michael.horowitz@usdoj.gov; christopher.wray@usdoj.gov; senator@hawley.senate.gov; senator@blackburn.senate.gov; senator@cotton.senate.gov; senator@rubio.senate.gov; senator@cruz.senate.gov; speakernp@mail.house.gov; repgreene@mail8.housecommunications.gov; info@mail.house.gov; contact@email.donaldtrump.com; info@judicialwatch.org; info@freedomwatch.org; me@glennbeck.com; suzanne.scott@foxnews.com; tucker.carlson@foxnews.com; tucker.carlson@foxnews.com; hannity@foxnews.com; Laura.Ingraham@foxnews.com; dan.bongino@foxnews.com; newsmax@reply.newsmax.com; christopher.ruddy@newsmax.com; greg.kelly@newsmax.com; chris.salcedo@newsmax.com; sean.spicer@newsmax.com; eric.bolling@newsmax.com; CNNTips@cnn.com; wolf.blitzer@cnn.com; anderson.cooper@cnn.com; jake.tapper@cnn.com; don.lemon@cnn.com; nightly@nbc.com; nac@abc.com; evening@cbsnews.com; letters@msnbc.com; morningjoe@msnbc.com; letters@thehill.com; THeditor@townhallmail.com; editor@gatewaypundit.com; editor@dailycaller.com; editor@thepostemail.com; editor@nypost.com; editor@washingtontimes.com; newstips@arizonarepublic.com; editor@chicagotribune.com; info@obama.org; press@obama.org; lara.trump@foxnews.com; eric.trump@trumporg.com; wsj.ltrs@wsj.com; editor@washpost.com; editor@nytimes.com; EDITOR@latimes.com; GWBI@bushcenter.org; info@fec.gov; orly.taitz@hushmail.com; oiq@fec.gov; jim.jordan@mail.house.gov; loren.bobert@mail.house.gov; robert637@suddenlink.net; robertlaity@roadrunner.com; mike@wheresobamasbirthcertificate.com; e2e@wnd.com; jfarah@wnd.com; editor@nationalenquirer.com; apuzzo@rcn.com; Andrew.Mooers; kathleen.mooers; Andrew.Mooers; Jennifer; Joshua.mooers; MI@mooers.net; Lawrence.Sellin; donjr@email.donjr.com; Info@jaesonjones.com; Bill.Marshall; True.The.Vote; Allan.Wall; authorvdh@gmail.com; Gary.Wilmott; Orly.Taitz; The.Obama.Timeline.author; The.Epoch.Times; Linda.Jordan; Thomas.W.Arnold.III; Ed.Sunderland; Wendy.Rogers; Linda.Goudsmit; SIDNEY@licensedtolie.com; Brigitte.Gabriel; wayneroot@gmail.com; Sald555; Brian.Caron; Ulrich.Piepel; Jeff.Crouere; Helge.Larsen; ednoonan7; Joan.Swirsky; Dinesh.D.Souza; rochelleschweizer@gmail.com; Annie.Black; AGInfo@azag.gov; imprimis@hillsdale.edu; [CDR.Kerchner.\(Ret\)'s.Blog](mailto:CDR.Kerchner.(Ret)'s.Blog); info@greene2020.com; info@rogerstonelegaldefensefund.com; Rand.Paul; Patricia.Duffey; Jane.Harburger; Joan.Fournier; Dershowitz.Alan; Aaron.Wright; Gabe.Zolna; JoAnn.DeBartolo; Tom.Ravana; unaabuella; Sherry.Ballard.Johnson; Vickie.McClead; info@rondesantis.com; Lt.Col.Terry.Lakin.MD; Lt.Col.Wendy.Rogers; Priscilla.M.Gray; ed@phyllisschiatly.com; JIMMY.WILLIAMS; Jb.Williams; Jim.Hoover; mbraun@news-press.com; daniel.glaun@naplesnews.com; Jenna.Ellis.Esq; dt@digenovatoensing.com; lwood@fightback.law
Subject: Re: Research Measuring Vote Fraud in the 2020 Presidential Election gets coverage, Judge Jackson's illogical statements on criminal sentencing, testimony in Pennsylvania, Constitutional Carry Continues to Spread, and more
Date: Saturday, April 2, 2022 2:42:29 PM
Attachments: [image.png](#)
[image.png](#)
[image.png](#)
[image.png](#)
[image.png](#)

Thank you very much, Jon. Your support is greatly appreciated and it is very important for all the work that we need to do.

John R Lott, Jr., Ph.D.
President
Crime Prevention Research Center
johnrlott@crimeresearch.org
(484) 802-5373

Sent from my iPhone

On Apr 2, 2022, at 1:32 PM, Jonathan David Mooers <jmooers49@gmail.com> wrote:

Thank you, John Lott, for dedicating your limited natural heartbeats to get others to focus their natural eyeballs on a glaring observation of reality, being, national electoral fraud throughout USA. No question, **a uniform forensic audit of 2020 election results needs to be conducted**, subordinating who actually won in 2020, to form an objective reality *to reference for the remaining*

39 national elections 2020- 2100. Haven't done this national audit since 1789, so this national audit is just plain "good housekeeping" for any corporation, including our venerable corporation called, "The United States of America, Incorporated".

Ukraine is being attacked by Kremlin bullies while the USA is being attacked by Washington bullies and their media-boardroom-bully-puppets.

Attacked. That's right, "attacked".

The first armaments to arrive on any battlefield are opposing points of view. - JD Mooers

The Kremlin uses artillery pieces to rain down death onto innocent residents in the Ukraine, while Washington attacks its own citizens with a constant barrage of broadcast lies and **idiotologies** to rain down into every living room in the USA.

Kremlin "hard war" and Washington "soft war":



Kremlin attacks Ukraine: "**Little Putin the Lilliputian**" and his "**hard war**" use of explosive-barrage **artillery**



Washington attacks America: "**Nanny Pelosi**" and her "**soft war**" use of complicit "black privilege" **BurnLootMurder** broadcast-barrage **imagery**

Both use "**divisiveness and conquer**" to bust-up their captive audiences within Ukraine and the USA.

And now, I introduce these simple weapons to arm every single legal U.S. Citizen to

defeat Washington's divisive invasion into our nation's traditional benevolent homeland and psyche:

1. **Recognize and emphasize U.S. Citizen commonalities; avoid divisive "people labels"**
2. **Only act on natural human observations of reality; avoid acting on subjective corporate-boardroom-media presentations**
3. **Use the laws and forces of Nature to overrule the criminally-ignorable laws of man**

1. Undermine Washington's "**planned divisiveness**" by removing stated differences like "Democrat and Republican" and "liberal and conservative" libel labels, et al, and replace those divisive labels with one common label, being, "legal U.S. Citizen". Every single legal U.S. Citizen would naturally want his/her U.S. borders completely controlled and secure from any outside foreign invasion, and every single legal U.S. Citizen would naturally want his/her vote in national elections to be just as controlled and secure as any personal monetary deposit in any U.S. bank.

Therefore, all legal U.S. Citizens, of some 330,000,000 legal U.S. Citizens, who passively or actively oppose fully controlled and secure U.S. borders and elections, are U.S.-Citizen-criminals worthy of punishment, if not banishment under existing prescribed laws, or worthy of natural shunning.
Are YOU a LEGAL U.S. Citizen?

Laws are the jail cells of our minds, and when we bust-out of those mental cells we risk residency inside the metal cells downtown! - JD Mooers

Are Hunter Biden and Whoopi Goldberg and Don Lemon and Hilary "RICO" Clinton "legal U.S. Citizens" or punishable "U.S. Citizen-criminals" who remain fugitives of U.S. laws with the aid and assistance of state-licensed "U.S. Citizen-attorney-criminals" who are also fugitives of U.S. laws? Isn't Arizona's Attorney General, Mark Brnovich, a state-licensed "U.S. Citizen-attorney-criminal" for refusing to prosecute Arizona's documented election fraudsters?

2. Undermine Washington's "**planned divisiveness**", as enforced by **BurnLootMurder** street soldiers and corporate-media-boardroom elite soldiers, with natural **Critical Brain Thinking**; by using natural human observations of reality to see-hear-smell-taste-touch right as those observations naturally play out.

*Politically correct [PC] "thinking" is a form of subjective believing-is-seeing, and oftentimes ensures that being honest is an honest mistake.
Conversely, natural "Critical Brain Thinking" [CBT] seeks to secure an*

objective seeing-is-believing frame of mind. - JD Mooers



3. Undermine Washington's "planned divisiveness" of unnatural sodomy family vs male-female family units and unnatural "transgenderism", et al, by deifying Nature *instead of defying Nature*, wherever possible. Only accept, as legal and enforceable, the non-negotiable forever nature-based laws of gravity, male XY-female XX, et al, and refuse to accept and enforce any unnatural contemporary criminally-ignorable make-them-believe make-believe laws of man. **Let natural science overrule political science** *since any science conducted without conscience is likely just con science.*

Nature Rules! and human nature follows. - JD Mooers

Thank you, for being naturally honest,

JD Mooers, LT (Ret.)- US Army Corps of Engineers, PE (Structural engineer- MA,ME,NH,NY), MBA, Fellow and Life Member- American Society of Civil Engineers, MADE IN USA, legal "natural born [U.S.] Citizen" on Easter Sunday 1949 and 73 on Easter Sunday 2022

<https://founders.archives.gov/documents/Madison/03-07-02-0331>

https://www.waymarking.com/waymarks/WM12VFT_Benjamin_John_Mooers_Plattsburgh_NY

<https://nutfieldgenealogy.blogspot.com/2012/07/surname-saturday-mooers-of-newbury.html>

<https://www.facebook.com/ClintonCountyHistoricalAssociation/photos/october-2-1780-general-benjamin-mooers-as-adjutant-was-present-and-saw-the-execu/10157545145705594/>

Mooers have worked for America since 1638, and America has worked for Mooers.

DIVISIVENESS SELLS - for example, look at the salaries of CNN's "Theft Left" **Don Lemon** and Newsmax's "Righteous Right" **Eric Bolling**.

<https://www.celebritynetworth.com/richest-businessmen/producers/don-lemon-net-worth/>

<https://www.celebritynetworth.com/richest-businessmen/wall-street/eric-bolling-net-worth/>

Those two, like hundreds of other national tunnel vision television broadcasters, handsomely employ themselves expressing different competing narratives and images into millions of living rooms *worldwide*. An endless aggressive barrage

of divisive narratives and images. For years; for decades.

"LIVE EVIL" predators around planet Earth, such as **"SATAN-SANTA SOROS"**, pay off humans in high places, like Pelosi, Obama, Biden, Hillary, et al, to **"FUND A MENTAL TRANSFORMATION"** for a worldwide demolition of natural family units and other wholesome traditional structures = **"divisiveness and conquer"**.

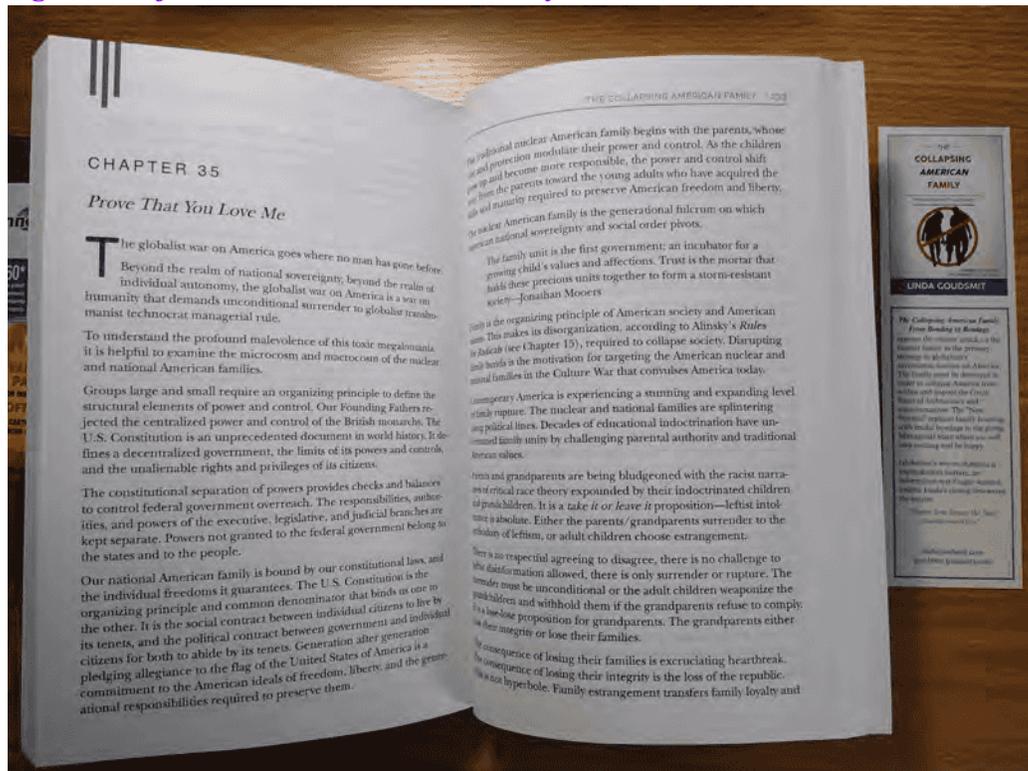
And yet, not one of these broadcasting profiteers and LIVE EVIL billionaires offers a step-by-step plan to solve, as in terminate forever, any vexing national problems, like our faithfully neglected southern border (neglected all my life!) and hocus-pocus-focused fraud-filled national elections.

So, therefore, We the People on Main Street USA, simply as legal U.S. Citizens, using the three above-listed natural weapons, must end these two national problems ourselves. Our can-kicking no-can-do con men Congressmen only intend to pretend to end any national problems with the ploy of its never-ending federal employment programs!

<https://www.thegatewaypundit.com/2022/04/lawrence-sellin-exclusive-ukrainian-biolabs-another-us-military-industrial-complex-money-scam-involving-bidens-biowarfare-facilities/>

Going forward, will YOU be a legal U.S. Citizen "constitutionalist" or a fugitive U.S. Citizen-criminal "prostitutionist"? - JD Mooers

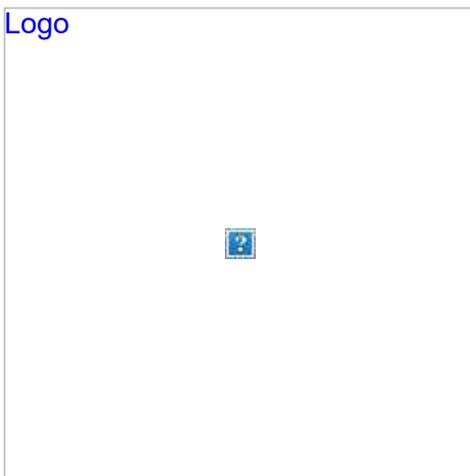
The family unit is the first government; an incubator for a growing child's values and affections. TRUST is the mortar that holds these precious units together to form a storm-resistant society. - JD Mooers



On Sat, Apr 2, 2022 at 6:03 AM Dr. John R. Lott, Jr. PhD <johnrlott@crimeresearch.org> wrote:

Crime Prevention Research Center

Logo



Dear Jonathan:

[My forthcoming research in the journal of Public Choice on vote fraud](#) in the November 2020 presidential election started getting attention on Monday this past week. It has been [downloaded from the Social Science Research Network now more than 61,000 times](#), and the more it is downloaded, the more it will force other academics to grapple with the results I provided. While I couldn't break into the mainstream media, which continually keeps editorializing that there is no evidence of vote fraud in the election, [my op-ed on my findings at Real Clear Politics](#) did some news coverage. It produced over 30 different interviews this week. The [Washington Times, Washington Examiner, NewsMax, and more](#) provided coverage. I thought that the interview on [Vince Coglianese's show on DC's WMAL](#) went quite well, but I also did interviews on [Lars Larson's](#) and [Sebastian Gorka's](#) national radio shows. Also, on [Andrew Wilkow's television show](#). I will post more television and radio show interviews over the next couple of weeks.

This past Thursday, I also testified before the Pennsylvania state Senate committee on Intergovernmental Affairs about this new research, but I haven't

had a chance yet to post it.

I wrote op-eds [for Townhall](#) and [some Montana newspapers](#) about the very illogical comments regarding criminal sentencing that Biden's Supreme Court nominee Judge Jackson made during her confirmation hearing. I also did [some radio interviews](#) about her testimony.

The [Atlanta Journal-Constitution just published an op-ed](#) that I wrote on Constitutional Carry. And on Friday, the Georgia Senate passed the bill and forwarded it to Governor Kemp, who has promised to sign it. Georgia will be the 25th Constitutional Carry state ([Indiana was the 24th state](#)). I have also done many radio interviews on the growing Constitutional Carry movement: from the [Michigan Talk Network](#) to the [national Armed American Radio Show](#).

There has also been a spate television crime shows on CBS and NBC pushing absurd myths about guns. They covered topics such as the [dangerous gun lobby bombing a gun control headquarters](#), [how anyone can go and legally buy a gun in one day in New York City](#), and yet [more scenes of criminals using machine guns](#).

Other links point out how applications for [concealed handgun permits soared by 600% in Philadelphia](#), there is [massive evidence of illegal ballot harvesting in Georgia and Wisconsin](#), and [Chicago Mayor Lori Lightfoot assigned 85 police officers to protect her and her family at the same time she was cutting the Chicago police force by 400 officers](#).

For information on activities at the Crime Prevention Research Center, here is a link to our ["info deck"](#). Please view in full-screen mode and scroll using the arrow buttons at the bottom of the screen.

But we need help getting this message out. If you have any friends who you think might find our emails of interest, ***please encourage them to sign up by sending them the [link here](#).***

Thank you **very much** for [all your support](#). We have some tough battles ahead, and I just want you to know how much your support has been greatly appreciated.

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Research

[Forthcoming research in Public Choice: Simple tests for the extent of vote fraud with absentee and provisional ballots in the 2020 US presidential election](#)

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Op-eds

[At Real Clear Politics: New Peer-Reviewed Research Finds Evidence of 2020 Voter Fraud](#)

[At the Townhall: Democrats Nominate a Soft on Crime Person for the Supreme Court](#)

[In the Atlanta Journal-Constitution: 'Constitutional' gun carry helps law-abiding people defend themselves](#)

[At the Montana Standard and the Missoula Current: Judge Jackson too soft on crime](#)

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Television/Podcasts

[On Wilkow!: The Latest Peer-Reviewed Study Shows 'Excess' Biden Votes in the Swing States](#)

[On America's Voice Live: How "devastating" are Biden's sanctions on Russia](#)

Radio interviews/Podcasts

[Worth Listening to: With Vince Coglianesse on WMAL: To Discuss Evidence of 2020 Voter Fraud](#)

[On Sebastian Gorka's National Radio Show: Discussing New Research Measuring Vote Fraud in the 2020 Presidential Election](#)

[On the Lars Larson Radio Show: Talking about the Forthcoming Research in Public Choice on Voter Fraud](#)

[On The Statewide Montana Talks Network: Discussing the Supreme Court Nomination of Ketanji Brown Jackson](#)

[On the Michigan Talk Network: Neighboring states and many other ones enacting Constitutional Carry](#)

[On Armed American Radio: What will Russia's invasion of Ukraine going to do for gun ownership in Eastern Europe and the CPRC's research on Constitutional Carry](#)

[On Business, Politics, and Lifestyle: Discussing why crime is increasing as well as the ineffectiveness of Biden's gun control policies](#)

[On Armed American Radio: Discussing what would happen if Justice Thomas were to leave the Supreme Court, what can we expect in the New York Concealed Carry Case](#)

[On Armed American Radio's Daily Defense: What has been happening in the states on Constitutional Carry](#)

Television Show Bias on Guns

[CBS' FBI on the Dangerous Gun Lobby](#)

[CBS' FBI: Gun Control advocate driven to despair holds a hostage with a gun she bought "in one day" in NYC](#)

[Lots of criminals using machine gun scenes in the first episode of NBC's new The Endgame](#)

Media Coverage

[UPDATED: CPRC's Research on Vote Fraud in the News: Washington Times, Washington Examiner, NewsMax, and more](#)

[CPRC in the News: The Cleveland Plain Dealer,](#)

[South Florida Sun-Sentinel, Pittsburgh Tribune, Ohio Public Radio, The Week, Law Officer, and much more](#)

Recent C-SPAN Appearances

[Gun Control Myths](#)

[Washington Journal John Lott on Gun Violence in the U.S.](#)

Other

[Concealed Handgun Permit Applications Soar in Philadelphia, up 600% from recent years](#)

[As violent crime soared in Chicago in 2020 and 2021, Mayor Lori Lightfoot assigned around 85 police officers to provide security for her, her home, and her family](#)

[Evidence of large scale ballot harvesting in Georgia and Wisconsin 2020 Presidential Election](#)

[Indiana is now the 24th Constitutional Carry State](#)

[Ukrainian Civilians get basic military training with machine guns](#)

[New Survey on the Impact of Russia's Invasion of Ukraine on American's support for gun ownership](#)

John R. Lott, Jr.
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<http://crimepreventionresearchcenter.nationbuilder.com/>

Crime Prevention Research Center · 3682 KING St, P.O. Box 3243, Alexandria, VA 22302-9998, United States

This email was sent to jmoors49@gmail.com. To stop receiving emails, [click here](#).

You can also keep up with Dr. John R. Lott, Jr. PhD on [Twitter](#).

Created with [NationBuilder](#), software for leaders.

From: [Merissa Hamilton](#)
To: [Wendy Rogers](#)
Subject: Support SB1211 - The Arizona Curriculum Transparency Bill!
Date: Wednesday, March 9, 2022 2:05:03 PM

Dear Senator Rogers,

I urge you to immediately support SB1211, a bill to make curriculum transparent and easily accessible to parents. Parents know best how to raise their children. Parents being closely involved with their child's education is a critical element of their development. As the primary stakeholder in their children's education, parents need to know what is being taught in the classroom.

Whether a lesson is good or bad, sunshine has a positive effect. Parents should be made aware of the fantastic lessons and tools used to teach their children. If a lesson or curriculum divides students by an immutable characteristic and promotes critical race theory, it too should be exposed. Nothing done in the classroom should be done in darkness.

Parents across Arizona and the country are being denied reasonable access to view curriculum and forced to file numerous open records requests to see what their children are being taught. Arizona cannot afford to deny parents access to their children's curriculum any longer. We need your support for SB 1211 today.

Parents can already easily access schools' financial data, student performance scores, graduation and dropout rates, and enrollment processes. Why would we deny parents the same access to curriculum? SB 1211 allows teachers to teach unique and creative lessons while ensuring that parents are part of a comprehensive education effort for every child.

I urge you Senator Rogers, to join me in supporting parental rights and transparency in Arizona by supporting SB 1211.

Regards,
Merissa Hamilton
15236 North 21st St
Phoenix, AZ 85022

From: [Mark Lewis](#)
To: [Marks iPhone Lew](#)
Subject: Apportionment and Redistricting Following the 2020 Census
Date: Saturday, January 16, 2021 10:52:32 PM
Attachments: [image.png](#)
[Census processing timeline Court Order from Wilber Ross.pdf](#)
[apportionment timeline.pdf](#)

Dear legislators,

The US Commerce department was supposed to deliver the House Re apportionment plan this past week. They are behind, and now it looks like Biden will submit it to congress.

WHEREAS, Defendants state that the Census Bureau will not be in position to finalize or provide apportionment data until many weeks after January 20, 2021, the date on which the incoming Administration will take responsibility for supervision of the Census Bureau;

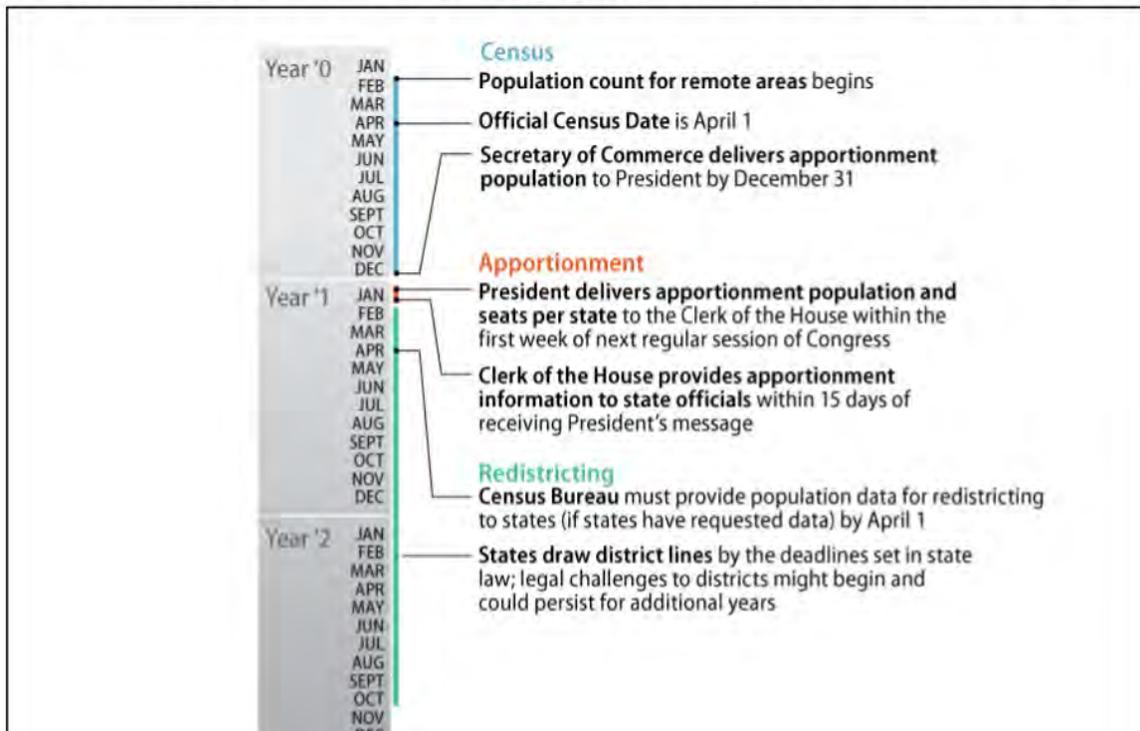
We need to track this for the AZ Redistricting Commission, but we are now looking at February 5th to get apportionment to the congress and the states. See the court stay approved Friday.

Mark Lewis

=====

Within the first week of the first regular session of the next Congress, the President transmits a statement to Congress that provides information on how to apportion House seats.

Figure I. Typical Timeline of Census, Apportionment, and Redistricting Process



The President's message to Congress contains the apportionment population and resulting number of Representatives for each state, based on the total number of Representatives (435) and using the method of equal proportions.

The Clerk of the House sends each governor a certificate indicating the number of Representatives for their state within 15 calendar days of receiving the President's apportionment message. Each state receives the number of Representatives noted in the President's statement, beginning at the start of the next session of Congress (typically, early January of a year ending in "3").

States may then engage in their own redistricting processes before the start of that Congress, and the timing of redistricting varies based on state laws.

<https://crsreports.congress.gov/product/pdf/IN/IN11360>

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Pursuant to Civil Local Rules 6-2 and 7-12, the parties to this action, by their respective counsel, respectfully submit the following Joint Stipulation:

WHEREAS, for the reasons set forth below, in light of the current depositions, motions and discovery deadlines on calendar and the pending transition to a new Administration, Defendants have requested a 21-day stay of the case in order to provide for an orderly transition and to let the new Administration assess this case;

WHEREAS, Defendants state that the Census Bureau will not be in position to finalize or provide apportionment data until many weeks after January 20, 2021, the date on which the incoming Administration will take responsibility for supervision of the Census Bureau;

WHEREAS, Defendants state that the Census Bureau will not be in position to finalize or provide reports, estimates, or data relating to (i) the July 21, 2020 Presidential Memorandum on Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census or (ii) Executive Order 13880, entitled Collecting Information About Citizenship Status in Connection with the Decennial Census (July 11, 2019), until many weeks after January 20, 2021;

WHEREAS, this ongoing litigation has required Defendants to expend substantial resources, including for preparation of many depositions scheduled for next week and the production of numerous documents and materials;

WHEREAS, Defendants believe that the public interest would be served by staying all proceedings in this litigation for 21 days, in that such a stay would permit the incoming Administration to evaluate the Census Bureau’s and the Department of Commerce’s operations and assess, among other things, the interests of the United States and its litigating positions in light of Plaintiffs’ claims in this case;

WHEREAS, Plaintiffs are amenable to a 21-day stay, based on Defendants’ express acknowledgments and representations below, provided to ensure that Plaintiffs are not prejudiced in any way by a stay.

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NOW, THEREFORE, DEFENDANTS HEREBY STIPULATE AS FOLLOWS:

- 1) Reports, estimates, or data relating to the July 21, 2020 Presidential Memorandum on Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census will not be finalized, reported or publicly disclosed prior to the change of Administration on January 20, 2021. Should such information be finalized after the change of Administration but prior to the end of the proposed stay, Defendants would provide Plaintiffs with 7 days’ detailed notice prior to reporting or publicly disclosing it.
- 2) Reports, estimates, or data relating to Executive Order 13880, entitled Collecting Information About Citizenship Status in Connection with the Decennial Census (July 11, 2019), will not be finalized, reported or publicly disclosed prior to the change of Administration on January 20, 2021. Should such information be finalized after the change of Administration but prior to the end of the stay, Defendants would provide Plaintiffs with 7 days’ detailed notice prior to reporting or publicly disclosing it.
- 3) Neither the Census Bureau nor the Department of Commerce will report or publicly disclose any population counts or estimates relating to the population as of April 1, 2020, including counts or estimates of the illegal alien/undocumented immigrant population, prior to the change of Administration on January 20, 2021. To the extent such population counts or estimates are developed after the change of Administration but prior to the end of the stay, Defendants would provide Plaintiffs with 7 days’ detailed notice prior to reporting or publicly disclosing them.
- 4) That the restrictions contained in (1) – (3) above shall not apply to Defendants’ obligations to respond to information requests from Congress or the Office of the Inspector General.

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FURTHER, THE PARTIES JOINTLY STIPULATE AS FOLLOWS:

a) That the Court enter a 21-day stay of this case, effective beginning on January 15, 2021 and lifting on February 5, 2021, with any deadlines currently due January 15, 2021 becoming due on February 5, 2021, and all other deadlines commensurately shifted;

b) That the Court resolve Plaintiffs’ Renewed Motion to Compel and for Sanctions, ECF No. 433, except that Plaintiffs ask the Court to hold their request for sanctions contained therein in abeyance and not resolve it at this time, subject to Plaintiffs renewing such request in the future if warranted given the parties’ ongoing discussions on these matters. If the Magistrate Judge Panel issues a decision on Plaintiffs’ Motion to Compel, the parties reserve their right to appeal that decision to the District Court and the appellate courts, and to seek a stay pending any appeal of any adverse decision;

c) That the parties file a Joint Case Management Statement on February 3, 2021, for a Further Case Management Conference on February 5, 2021 at 10:00 a.m. PT;

d) That, should the parties not reach earlier resolution, the case shall restart on February 5, 2021 under the exact same schedule currently in place, and Defendants will not resist or challenge Plaintiffs taking any of the depositions currently noticed or producing any of the documents and materials Defendants currently are obligated to produce, but Defendants may assert the objections that they would have had in the normal course.

Dated: January 16, 2021

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ATTESTATION

I, Sadik Huseny, am the ECF user whose user ID and password authorized the filing of this document. Under Civil L.R. 5-1(i)(3), I attest that all signatories to this document have concurred in this filing.

Dated: January 16, 2021

LATHAM & WATKINS LLP

By: /s/ Sadik Huseny
Sadik Huseny

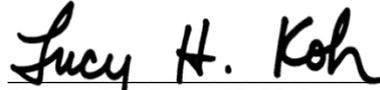
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PROPOSED ORDER

The stipulation is GRANTED.

PURSUANT TO THE PARTIES' STIPULATION, IT IS SO ORDERED.

DATED: January 15, 2021



Honorable Lucy H. Koh
United States District Judge

From: [Mark Lewis](#)
To: [Mark Lewis](#)
Subject: Census Tiger line files released Friday - data delayed until Sept 2021
Date: Sunday, February 14, 2021 11:07:22 PM
Attachments: [2021_2_11_State_of_Redistricting.pdf](#)
[A New Delay for Census Numbers Could Scramble Congressional Elections - The New York Times.pdf](#)

Dear redistricting legislators,

The Census numbers are delayed until Sept 2021, tossing the city elections into trouble.

The AZ IRC will have little time to get maps out for public comment and litigation.

The Tiger line files were released on Friday, and I have a copy.

Start your draft mapping programs now.

Support for the States

In the meantime, I am happy to say, we have delivered the [2020 Census Redistricting Data Geographic Support Products](#) to all 50 states, the District of Columbia, and Puerto Rico. As of this morning, Feb. 12, 2021, we published the final sets of geographic data to [census.gov](#) for the public as well.

State and local governments use these products in their redistricting efforts. The products contain newly created 2020 Census blocks and updated block groups, census tracts, voting districts, and current boundaries for legal governments and school districts referenced to Jan. 1, 2020.

The law (Public Law 94-171) that governs our work on producing redistricting data directs us to allow the states the opportunity to identify the small area geography and tabulations they need to do their redistricting work.

Over the past few years, we worked through non-partisan liaisons in each state to identify these geographic areas by:

- Providing customized open source software for exchanging geographic data.
- Allowing states to suggest updates to multiple types of geography.

- Creating prototype census blocks to help them visualize how the 2020 Census blocks would appear if the geography for their state was left unchanged.
- Providing an additional review period of several months in which they could finalize their geographic updates.

Using the information that each state provided, we have now delivered geographic information in formats that will help them plug in the actual 2020 Census data and do their work of redrawing district boundaries. And as we announced today, we will provide those quality data to the states by Sept. 30, 2021.

Mark Lewis

=====

Sincerely,

Mark Lewis

Mark Lewis, VP Engineering
Water Resource Institute
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Member





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The Redistricting Landscape, 2021-22

By Michael C. Li PUBLISHED FEBRUARY 11, 2021

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Overview

Under the best of circumstances, the redrawing of legislative and congressional districts every 10 years is a fraught and abuse-prone process. But the next round of redistricting in 2021 and 2022 will be the most challenging in recent history. Even before the Covid-19 pandemic, intense fights over representation and fair maps were all but certain in many states due to rapid demographic change and a weakening of the legal framework governing redistricting. Invariably, communities of color would bear much of the brunt, facing outright discrimination in some places and being used as a convenient tool for achieving unfair partisan advantage in others.

Covid-19, however, has further upended the redistricting cycle by delaying the release of data needed by states to draw maps, and in turn delaying redistricting.

This report looks at the upcoming redistricting cycle through the lens of four factors that will influence outcomes in each state: who controls map drawing; changes in the legal rules governing redistricting over the last decade; pressures from population and demographic shifts over the same period; and the potential impact of the Covid-19 pandemic on the 2020 Census. In each state, the confluence of these factors will determine the risk of manipulated maps or whether, conversely, the redistricting process will produce maps that reflect what voters want, respond to shifts in public opinion, and protect the rights of communities of color.

Expect a tale of two countries. In much of the country, newly enacted reforms and divided government will make it harder to force through partisan gerrymanders or racially discriminatory maps. In other states, however, there may be even greater room for unfair processes and results than in 2011, when the nation saw some of the most gerrymandered and racially discriminatory maps in its history.

Highlights: What's New in 2021–22?

- **Political changes and reforms:** Single-party control of map drawing is by far the biggest predictor of redistricting abuses. For the next round of redistricting, the good news is that single-party control has decreased due to a combination of reforms and elections that have resulted in divided government. In total, six states have adopted redistricting reforms that will be used in the upcoming redistricting cycle, including Virginia in November 2020. Meanwhile, several other states where maps are still drawn by legislatures and that saw egregious gerrymandering last cycle now have divided governments. Lawmakers in these states must now compromise or forfeit their map drawing authority to the courts — where the likelihood of fair maps is much higher. The impact of these changes is especially notable at the congressional level: in the upcoming cycle, Republicans will have sole control over the drawing of just 181 congressional districts, compared with 213 districts after the 2010 elections. (The exact number of seats could change slightly depending on the results of the 2020 Census.)
- **Legal changes:** The legal landscape, by contrast, is more ominous this time around. Map drawing in 2021–22 will take place with a legal framework weakened by two major Supreme Court rulings. In 2013, the Supreme Court gutted core protections of the Voting Rights Act in *Shelby County v. Holder*. Then, in 2019, the Court closed the door to federal court challenges to partisan gerrymanders in *Rucho v. Common Cause*. But there is also hopeful news. The last decade saw new jurisprudential fronts open with wins against partisan gerrymandering in two state courts, suggesting that state constitutions could emerge as an alternative route to challenge gerrymandering in the 2021–22 cycle.
- **Demographic and population changes:** As has always been the case, population changes will be a crucial driver of redistricting abuses. The South in particular has grown rapidly and become both much more racially and politically diverse since 2011, threatening the long-standing political status quo. Similarly, some regions have seen population decreases or significant demographic changes and could also see battles over adjustments to maps. But while some parts of the country experienced major changes, large parts of the country were remarkably stable both in terms of demographics and population change, lowering the redistricting stakes and in turn reducing the gerrymandering risk.
- **Census delays:** As with so many areas of American life, Covid-19 has also roiled the next round of redistricting, creating uncertainty about when states will

Factor 1: Who Will Draw the Maps?

By far, the biggest predictor of whether a state will draw fair maps is whether a single party controls the map drawing process. Single-party control, whether by Democrats or Republicans, creates an almost irresistible temptation for the party in charge to make decisions behind closed doors with predetermined partisan or other discriminatory objectives driving the outcome. And with better data and map drawing technology increasingly available, the danger posed by single-party control has only increased since maps were last redrawn in 2011.

By contrast, maps drawn by commissions — even imperfect ones — have tended to be both more responsive to voter preferences and better at protecting communities of color. Maps drawn by divided governments and courts have also done much better at avoiding excessive partisanship and racial discrimination.¹

The 2011 redistricting cycle vividly illustrated the impact of single-party control. After the 2010 Tea Party elections, Republicans had full control of the redistricting process in states like Florida, Michigan, North Carolina, Ohio, Pennsylvania, and Wisconsin, which have large numbers of congressional districts. With this control, Republicans were able to lock in a 10-to-3 advantage for congressional seats in North Carolina and a 13-to-5 advantage in Pennsylvania, even though voters in both states tend to split their votes almost evenly. Nationwide, the Brennan Center found that in 2016, gerrymandering in Michigan, Ohio, and Pennsylvania alone gave Republicans 16 to 17 more seats in the U.S. House of Representatives than would have been expected with unbiased maps.² In the South, this gerrymandering had a racial dimension.

Democrats, likewise, gerrymandered maps in states they controlled. In Maryland, for example, they radically redrew the congressional map to gain an additional seat. But because Republicans dominated in the 2010 election, Democrats controlled far fewer states than Republicans. And where they were in charge, Democrats were generally somewhat less aggressive than Republicans in their gerrymandering efforts. One reason for this dynamic was that in states like Illinois, internal party politics led to pressure on Democrats to concentrate nonwhite voters in districts that elected candidates preferred by communities of color. As a result, they had fewer opportunities to make white-majority districts more politically competitive by strategically adding in Democratic-leaning people of color.

By contrast, states like California and Arizona that used independent commissions to draw their maps — or like Minnesota, whose maps were drawn by a court — had maps with much less partisan bias and that were far more responsive to shifts in voter sentiment. States with divided governments also generally saw much less biased maps. There were notable exceptions, however: in

Virginia, for example, an insider deal resulted in the Democratic-controlled state senate opting not to block Republicans' racially gerrymandered map for the state house in exchange for Democrats being able to draw the state senate map.

The 2021–22 Landscape

For the 2021–22 redistricting cycle, both reforms and a decrease in single-party control of the map drawing process have significantly improved the prospects for fairer maps.

Reforms

Since maps were last redrawn, voters in six states — Colorado, Michigan, New York, Ohio, Utah, and Virginia — have passed redistricting reforms that will take effect this decade. In every instance, reforms won at the ballot box with bipartisan margins, carrying both red counties and blue counties.³

The Colorado and Michigan reforms were particularly robust, creating strong independent commissions to take over map drawing. Michigan's reforms are especially noteworthy because the state's independent commission will have a chance to redraw maps that currently are among the country's most gerrymandered.

New York, Ohio, Utah, and Virginia adopted other variants of reforms that, while falling short of creating independent commissions, also promise better balance in the next round of redistricting. These reforms include a bipartisan commission in Virginia and advisory commissions in New York and Utah that will draw maps for legislative consideration.

But there were also misses on the reform front. When 2020 began, it looked like voters would have the chance to vote on reforms in several other states, including ballot initiatives in Nebraska, Oklahoma, and Oregon. Unfortunately, the Covid-19 pandemic upended efforts to get measures on the ballot. Meanwhile, reformers in Missouri suffered a loss when reforms approved by voters in 2018 were gutted by a subsequent constitutional amendment proposed by Republican lawmakers and approved by

FIGURE 2

States Where Redistricting Will Be Done by Commissions or Divided Governments This Decade

STATE	CONGRESSIONAL REDISTRICTING	LEGISLATIVE REDISTRICTING
Alaska	n/a*	Commission
Arizona	Independent commission	Independent commission
California	Independent commission	Independent commission
Colorado	Independent commission	Independent commission
Hawaii	Commission	Commission
Idaho	Commission	Commission
Iowa	Advisory commission	Advisory commission
Louisiana	Divided government	Divided government
Maine	Advisory commission	Advisory commission
Michigan	Independent commission	Independent commission
Minnesota	Divided government	Divided government
Missouri	n/a	Commission
Montana	Commission	Commission
New Jersey	Commission	Commission
New York	Advisory commission	Advisory commission
Pennsylvania	Divided government	Commission
Utah	Advisory commission	Advisory commission
Vermont	n/a*	Divided government
Virginia	Advisory commission	Advisory commission
Washington	Commission	Commission
Wisconsin	Divided government	Divided government

*Alaska and Vermont are expected to continue to each have only one congressional district after reapportionment.

voters in 2020. As a result, Missouri will return to using a variant of a deadlock- and abuse-prone system for map drawing in 2021–22.

And even in states that passed reforms, challenges remain. Republicans in Michigan have brought several (thus far unsuccessful) legal challenges to its new system and may yet attempt to undermine it in other ways. It also remains to be seen whether the Democrats who control government in New York and the Republicans who control government in Utah will respect or ignore the nonbinding maps drawn by advisory commissions, especially in light of likely pressures in both national parties to eke out additional congressional seats wherever possible.

Changes in Political Control

The prospects for fairer maps have also improved in several states because, unlike last decade, they will no longer be drawn under single-party control. Although divided government does not prevent insider deals to protect incumbents, it does give each party a veto on maps, providing a strong check on maps that discriminate wildly against one party. If the parties do not compromise, the deadlock will send map drawing to the courts.

States that will have divided governments for the next round of redistricting notably include Louisiana, Pennsylvania, and Wisconsin, where Republicans drew gerrymandered or racially discriminatory maps in 2011, but where the election of Democratic governors with veto power

now balances out legislatures that remain Republican.

On the other hand, single-party control of the redistricting process will continue in much of the country. All told, Republicans will have sole control over drawing congressional maps in 18 states and legislative maps in 20 states, while Democrats will have sole control of congressional maps in 7 states and legislative maps in 9 states. These single-party-controlled states include Florida, Georgia, North Carolina, and Texas, four battleground

states where Democrats fell short in efforts to win legislative chambers in the 2020 elections. By contrast, since 2011, Democrats have gained a political trifecta only in Nevada. (They also won trifectas in New York and Virginia, but reforms in those states mean that advisory commissions will have the first shot at crafting new maps. Additionally, in Virginia, rejection of the commission's maps would send map drawing to the courts rather than give the Democratic legislature free rein to enact its own plan.)

FIGURE 3

States with Single-Party Control of Redistricting in 2021–22

STATE	CONGRESSIONAL REDISTRICTING	LEGISLATIVE REDISTRICTING
Alabama	GOP	GOP
Arkansas	GOP	GOP
Connecticut	Dem	Dem
Delaware*	n/a	Dem
Florida	GOP	GOP
Georgia	GOP	GOP
Illinois	Dem	Dem
Indiana	GOP	GOP
Kansas†	GOP	GOP
Kentucky‡	GOP	GOP
Maryland††	Dem	Dem
Massachusetts	Dem	Dem
Mississippi	GOP	GOP
Missouri	GOP	n/a
Nebraska#	GOP	GOP
Nevada	Dem	Dem
New Hampshire	GOP	GOP
New Mexico	Dem	Dem
North Carolina§	GOP	GOP
North Dakota*	n/a	GOP
Ohio¶	GOP	GOP
Oklahoma	GOP	GOP
Oregon	Dem	Dem
Rhode Island*	n/a	Dem
South Carolina	GOP	GOP
South Dakota*	n/a	GOP

FIGURE 3 *Continued*

S A E	CONGRESSIONAL REDISTR CTING	LEGISLATIVE RED STRICTING
Tennessee		
Texas	GOP	GOP
West Virginia	GOP	GOP
Wyoming*	n/a	GOP

*De aware North Dakota, South Dakota, and Wyoming are expected to continue to each have one congressional district after reapportionment, while Rhode Island is expected to lose one of its two seats.

†Republicans have a veto proof majority.

‡Veto override requires only a simple majority.

††Democrats have a veto proof majority for congressional redistricting. Governor cannot veto legislative plans.

#Nebraska’s legislators are elected on a nonpartisan basis, but Republicans have effective control.

§Governor cannot veto maps.

¶Republicans will control redistricting, but reforms will help limit abuses.

Factor 2: A More Fraught Legal Framework

If the political landscape looks somewhat better than the last time maps were drawn, the legal landscape, by contrast, has worsened (although there are some bright spots, primarily at the state level). Communities of color in particular will enter the next cycle of map drawing with fewer protections than at any time since the 1960s.

The Supreme Court's Green Light for Partisan Gerrymandering

One of the most important changes to the legal landscape since the last redistricting cycle was the Supreme Court's ruling that federal courts could not police partisan gerrymanders.

Before 2016, federal courts had struggled unsuccessfully for decades to come up with a judicially workable standard to use when gauging whether a map had been drawn with too much partisan consideration.⁴ By 2011, many map drawers assumed that the inability to find a workable standard meant that there were effectively no limits, helping to fuel some of the most aggressive gerrymandering in the nation's history when maps were redrawn that year.

Then in 2016, a seeming breakthrough happened, with a number of trial courts striking down several of the last decade's most aggressive gerrymanders in quick succession. However, hopes for a constitutional check on gerrymandering were short-lived: before any maps could be redrawn, the Supreme Court's 2019 opinion in *Rucho v. Common Cause* reversed the trial courts and held that although partisan gerrymandering is harmful and anti-democratic, it is a political issue that federal courts lack the authority to address.⁵

With federal courts now definitively out of the picture for the 2021–22 redistricting cycle, extreme gerrymanders could further proliferate in states with single-party control of the process (see Factor 1). The risk could be especially great in states where major demographic or political shifts also threaten the political status quo (see Factor 3). But even some demographically and politically stable states could see gerrymandering of congressional districts, given the high-stakes battle for control of the U.S. House of Representatives.

A burst of partisan gerrymandering would be a replay of what happened in 2011, when the Supreme Court's deadlock on partisan gerrymanders emboldened map drawers. The consequences could be worse this time, however, because map drawers will have access to more powerful mapping tools and more granular data about voter behavior and propensities. Together, these tools will

let map drawers pick voters with extreme precision and create maps that perform as designed, even in wave elections.

The Loss of Section 5

Communities of color will face a difficult redistricting cycle because, for the first time in five decades of map drawing, they will lack the protection of Section 5 of the Voting Rights Act — unless Congress acts to restore it before map drawing happens.

Section 5 mandated that jurisdictions with a history of racial discrimination in voting obtain preclearance for any changes to redistricting plans or other voting rules — either from the U.S. Department of Justice (DOJ) or a federal court in Washington, DC.⁶ When maps were last redrawn in 2011, 16 states, mostly in the South, were required to submit new maps to the federal government for approval.

Section 5 was extremely effective at protecting communities of color during the redistricting process. To win approval for any changes, states had to show that they did not intend to discriminate and that maps would not result in *retrogression* — that is, that the changes would not make it harder for racial and ethnic minorities to elect their preferred candidates, regardless of the map drawers' intent. Critically, the burden of proof was on the states: if preclearance was denied, states would be forced to start over or to use a court-drawn interim map, as happened in Texas in 2012. Moreover, fear of a preclearance denial often deterred states from drawing maps that hurt communities of color, and even helped spur them to create new electoral opportunities for minority communities to avoid charges of discrimination or retrogression.

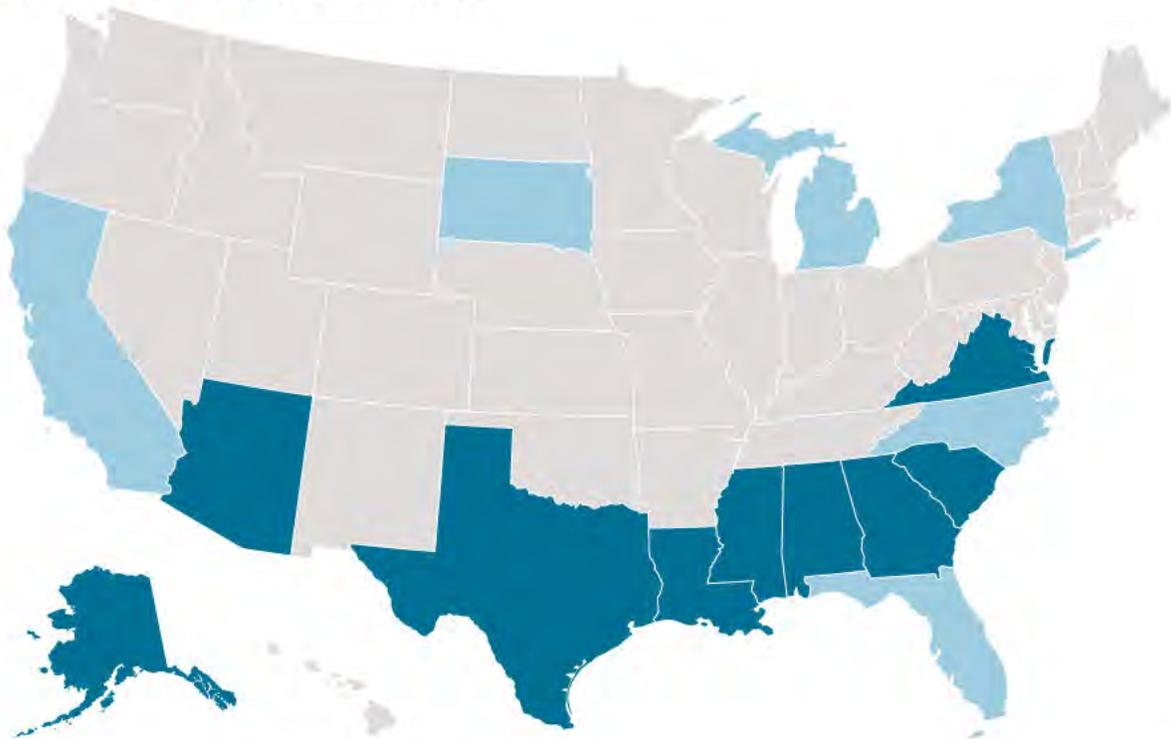
But in its 2013 *Shelby County v. Holder* decision, the Supreme Court ruled that the formula used to determine the parts of the country covered by Section 5 was out of date, despite a wealth of evidence that it still played a vital role in stopping racial discrimination in voting.⁷ While the Court held that Congress could enact a new, updated coverage formula, efforts to do so have been stalled in the Republican-controlled U.S. Senate.

Without Section 5, some states could be tempted in the

FIGURE 4

States Covered by Section 5 of the Voting Rights Act Prior to June 2013

● Whole state covered ● Parts of state covered



upcoming round of redistricting to draw maps that split up voters of color in ways that make it harder for them to elect their preferred candidates. The absence of Section 5 will also increase the risk of discriminatory maps by letting states potentially game the timing of redistricting. In the past, states had an incentive to complete redistricting expeditiously to allow enough time for the back-and-forth of preclearance review. Now, states previously subject to Section 5 may choose to delay completing redistricting to limit time for litigating any challenges brought under other laws. That risk could be even higher this cycle, given that likely delays in the delivery of census data will push back the redistricting process and cause map drawing in many states to take place in special sessions (see Factor 4).

But these dire outcomes are not yet settled, as Congress can still act to restore Section 5. In 2019, the House passed the Voting Rights Advancement Act (H.R. 4), adopting a new Section 5 formula that would place 11 states — Alabama, California, Florida, Georgia, Louisiana, Mississippi, New York, North Carolina, South Carolina, Texas, and Virginia — under preclearance coverage. The bill

stalled in the Senate. However, with Democrats taking control of the chamber, the bill could get new life in the 117th Congress — possibly in time to affect the upcoming redistricting cycle.

The Narrowing of Section 2

Compounding the loss of Section 5, the Supreme Court has gradually undermined Section 2 of the Voting Rights Act, another provision that protected communities of color.

For decades, Section 2 helped communities of color overcome a legacy of discrimination in voting.⁸ In contrast to Section 5, which applied only in states with a history of discrimination, Section 2 applies nationwide and allows communities of color to argue for the creation of additional electorally favorable districts as long as certain preconditions are met. Section 2 had an especially great impact during the 1990 redistricting round, when vigor-

ous enforcement helped more than double the number of congressional districts in the South in which Black or Latino Americans made up a majority of the voting population.⁹

But in 2009, the Supreme Court stiffened the requirements for winning Section 2 relief with its decision in *Bartlett v. Strickland*.¹⁰ Post-*Bartlett*, voters seeking to create a Section 2 district have to show that the minority group could make up a majority of the citizen voting age population in a district.¹¹ Before the ruling, they were only required to show that the district was effective in electing the preferred candidates of a community of color, even if less than half of the district's adult citizens were members of that racial or ethnic community.

This additional requirement has often proved difficult to meet in practice while at the same time keeping districts compact, another requirement for Section 2 districts. In particular, Asian and Latino Americans, the nation's two fastest-growing ethnic groups, tend to be spread out geographically and are often interspersed within white and Black communities, making it hard to meet the "50 percent plus one" requirement for Section 2 liability.¹²

This difficulty is compounded by the unresolved question of whether coalition districts are protected under the Voting Rights Act. Some federal appeals courts have ruled that two or more nonwhite groups can be considered together when gauging whether it is possible to draw a minority opportunity district under Section 2, as long as there is political cohesion among the minority groups. Other courts, however, have said that Section 2 does not require the drawing of coalition districts.¹³ The Supreme Court has not yet resolved this issue.

Potential Efforts to Change the Apportionment Base

The upcoming redistricting cycle could bring a fight over efforts of questionable legality by some states or localities to draw legislative or local government districts on the basis of adult citizen population rather than total population, the long-standing practice in all 50 states. (This risk does not apply to congressional districts.)

The effect of this switch would be to devastate representation for growing Latino and Asian American communities, mainly because those communities are younger and have more children than do non-Hispanic white communities. But the harm would not be limited to Latino and Asian American communities. Cities and suburbs, by virtue of having more children relative to voting age adults, would also lose representation to more

rural parts of states, hurting both Democrats and Republicans in those regions. Black communities would also be hit hard by adult citizen apportionment because a higher percentage of their populations is under age 18.

If a state or local government tries to change the population base it uses to draw districts, a host of legal challenges would follow. One fight would be over whether redistricting based on adult citizen populations violates the Constitution's population equality requirements. In its 2016 *Evenwel v. Abbott* decision, the Supreme Court rejected a challenge by conservative activists seeking to compel states to draw maps based on the number of adult citizens rather than on total population.¹⁴ However, the Court left unresolved the question of whether it is constitutional for states to voluntarily use adult citizen populations as the basis for drawing districts.¹⁵ Maps drawn on the basis of adult citizens rather than total population would also probably be challenged as racially discriminatory. In either case, the fight would likely be one of the decade's landmark redistricting fights at the Supreme Court.

State Court Wins Against Partisan Gerrymandering

Wins in two state courts against partisan gerrymandering are rare bright spots in the redistricting legal landscape. While federal courts will no longer be policing partisan gerrymandering, these state-level victories may offer a model for other states' efforts to ensure fair maps.

In early 2018, the Pennsylvania Supreme Court struck down the state's congressional map, an extreme gerrymander drawn to give Republicans a 13-to-5 advantage in the state's congressional delegation, on the grounds that it violated the Pennsylvania Constitution's free and equal elections clause.¹⁶ That decision led to the adoption of a court-drawn map that produced a much fairer split between the parties.

Then in 2019, state courts in North Carolina struck down the state's legislative and congressional maps as partisan gerrymanders in violation of the state constitution's guarantee that "all elections shall be free," ordering that they be redrawn.¹⁷

The Pennsylvania and North Carolina wins, coupled with the Supreme Court's *Rucho* decision, likely portend more partisan gerrymandering claims in state courts during the 2021–22 redistricting cycle. But state constitutions differ, as do state supreme court makeups (North Carolina's own state supreme court has since become more conservative). So it remains to be seen whether and to what extent this approach will prove effective in countering gerrymandering writ large.

Stronger Protections Against Racial Gerrymandering

Another positive development in the last decade is a series of Supreme Court rulings on racial gerrymandering that could help block partisan gerrymandering as well.

In 2011, Republican lawmakers in several southern states aggressively redrew maps to cram large percentages of the states' Black voters into just two districts.¹⁸ That strategy, known as *packing*, helped lock in the first Republican majorities since Reconstruction in states like North Carolina and Alabama by reducing the number of Democrats in surrounding majority-white districts.¹⁹ Black voters in several states challenged the maps as unconstitutional racial gerrymanders, saying that the districts had been drawn with too much consideration of race, deploying a claim that historically had been used by white voters to defeat creation of new minority opportunity districts.

In *Alabama Legislative Black Caucus v. Alabama* (2015), the Supreme Court struck down that state's legislative maps, rejecting Alabama's argument that Section 5 of the Voting Rights Act — which was in force when the maps were drawn — required the changes.²⁰ And in *Cooper v. Harris* (2016), the justices likewise rejected North Carolina's defense that, in packing Black voters into a small number of districts, they had been driven only by partisan aims, not racial ones.²¹ "The sorting of voters on the grounds of their race remains suspect even if race is meant to function as a proxy for other (including political)

characteristics," Justice Elena Kagan wrote for the majority.²² In addition to being a significant victory against racial discrimination, *Cooper* could also help stop partisan gerrymanders that are accomplished using race.

Despite these rulings, racial gerrymandering remains a serious threat. The risk is especially great in Republican-controlled states where packing nonwhite voters into a handful of minority-majority districts can be an efficient and effective way to offset growing support for Democrats from white voters in nearby districts. This decade in particular could see a proliferation of racial gerrymandering in the increasingly diverse and politically competitive suburbs of states like Georgia and Texas.

The Prospect of Federal Redistricting Reform

One other piece of good news for the upcoming redistricting cycle could come in the form of federal legislation. In March 2019, the House passed the For the People Act (H.R. 1), a sweeping package of democracy reforms that would ban gerrymandering, set uniform national rules for map drawing, and create independent commissions to draw all congressional districts.²³ The Republican-controlled Senate had refused to take up the legislation. But with control of the Senate having switched parties in January 2021, passage of similar legislation in the new Congress could strengthen the legal tools available to ensure fair maps nationwide.

Factor 3: Population and Demographic Changes

Population and demographic changes will also affect where redistricting battles take place during the 2021–22 cycle. Fast-growing areas, especially where nonwhite populations have seen rapid increases, are likely to see particularly fraught conflicts over map drawing. Areas with population declines or changing demographics could also see fights over the reallocation of political power. By contrast, many parts of the country are stable both in terms of overall population and demographics. These areas may see some redistricting fights or abuses, but generally nothing on the level of faster-changing areas.

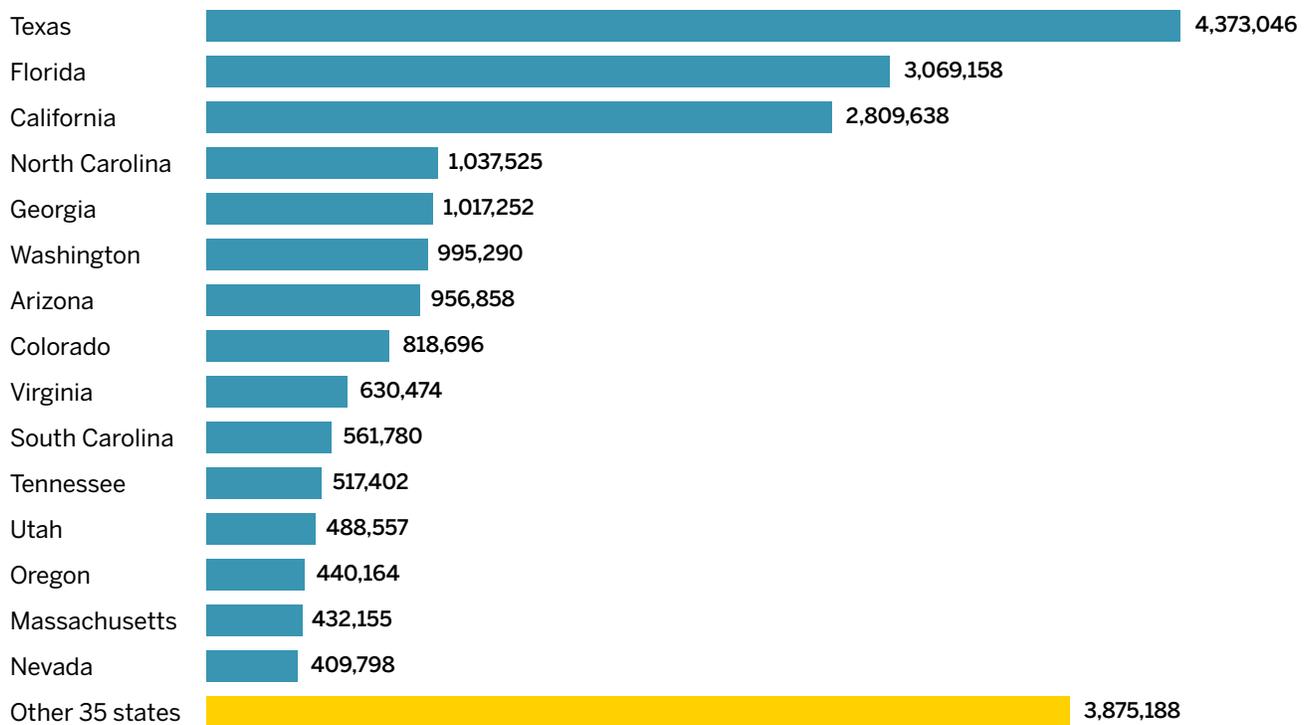
Where Big Changes in Population Have Occurred

While 2020 Census data is not yet available, the Brennan Center projects — assuming a robust count — that it will show the U.S. population at around 330 million, an increase of about 21 million since 2010 (the country’s

slowest growth rate in decades). This growth has been far from even across the country. Just 15 states, all but one in the South or West, are projected to account for 82 percent of this population growth, with just three states — Texas, Florida, and California — accounting for 45 percent of it. By contrast, states in the Midwest and Northeast grew slowly, and Illinois, Connecticut, and Rhode Island have all likely experienced small population declines.

FIGURE 5

Projected Growth in Total Population, 2010–20



Source: Brennan Center for Justice estimate based on data from the U.S. Census Bureau’s American Community Survey

The first and most direct impact of these changes will be shifts in congressional representation. The Constitution requires the reallocation of congressional districts among the states once per decade based on total population figures reported by the census — a process known as *reapportionment*. These fastest-growing states are projected to be the big winners when congressional seats are reapportioned. Texas once again will likely be the biggest gainer, picking up three additional congressional seats in reapportionment after gaining four seats following the 2010 Census.²⁴ By contrast, reapportionment will be another hit for northeastern and midwestern states, which lost seats after the 2010 Census and will again see significant losses in representation this decade.²⁵

Population shifts are often a big driver of redistricting battles, especially when combined with gains or losses in congressional seats, as incumbents and political parties try to preserve or gain advantages. This decade’s population growth suggests that some of the big fights will be in the South, Midwest, and Northeast.

Where There Have Been Demographic Shifts

The increasing diversity of the American electorate is another major factor that will drive redistricting battles in 2021–22.

Since 2011, the number of eligible Black, Latino, and Asian American voters has grown at an extraordinary rate, with Latino Americans alone responsible for 40 percent of the increase in the country’s eligible voters.²⁶ Collectively, Latino, Black, and Asian American voters will account for a remarkable 80 percent of the increase in eligible voters between 2010 and 2020, according to Brennan Center projections.²⁷

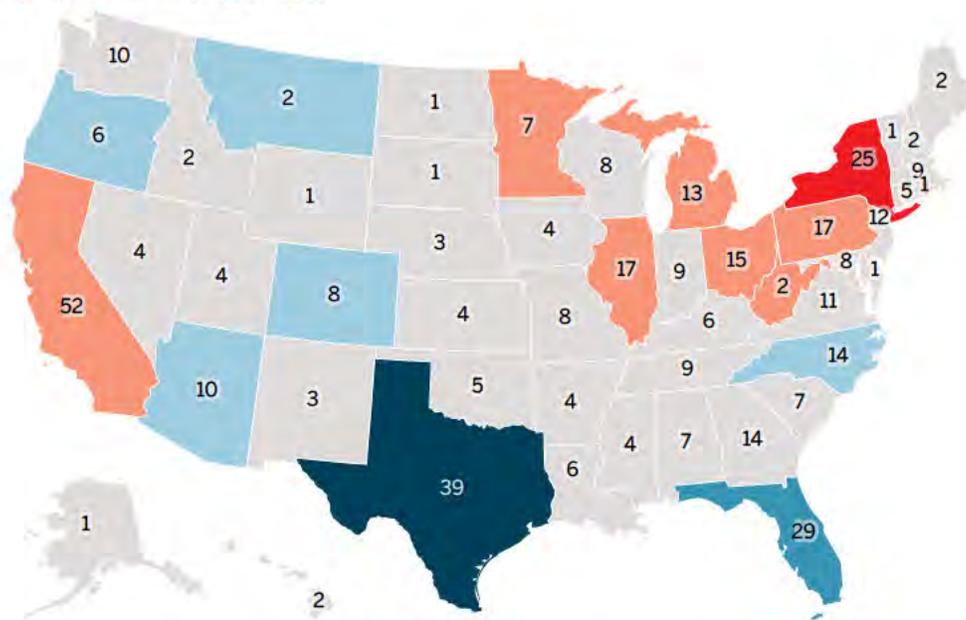
These demographic shifts are especially pronounced in the 21 states where nonwhite Americans are projected to make up at least three-quarters of the increase in eligible voters.²⁸ In 10 of those states, nonwhite Americans are estimated to represent an astonishing 100 percent of the increase in citizen voting age population.

FIGURE 6

Projected Gains and Losses in Congressional Districts After 2020 Census Results

Change in number of districts

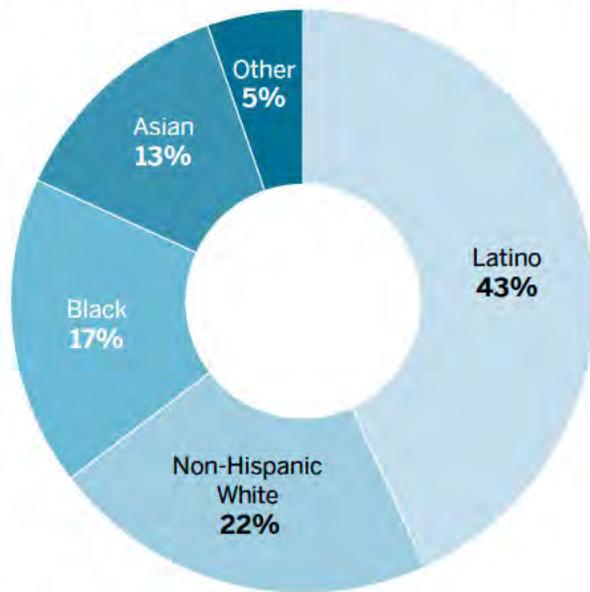
● No change ● -2 ● -1 ● 1 ● 2 ● 3



Source: Brennan Center calculation based on the U.S. Census Bureau’s Annual Estimates of the Resident Population of the United States, Regions, States, and the District of Columbia, April 1, 2010 to July 1, 2020

FIGURE 7

Estimated Makeup of Increase in Eligible U.S. Voters, 2010–20



Source: Brennan Center for Justice estimate based on data from the U.S. Census Bureau's American Community Survey

However, even within states, the increase in eligible voters is not evenly spread out. Nearly 62 percent of the increase in Black voters, 71 percent of the increase in Latino voters, and 80 percent of the increase in Asian American voters has been in the country's 150 largest counties (home to roughly half the U.S. population). By contrast, just 38 percent of the increase in white voters occurred in those counties.²⁹

The increase in voter diversity in the last decade was especially pronounced in the nation's suburbs, where a majority of Black, Asian, and Latino Americans in metro areas now live.³⁰

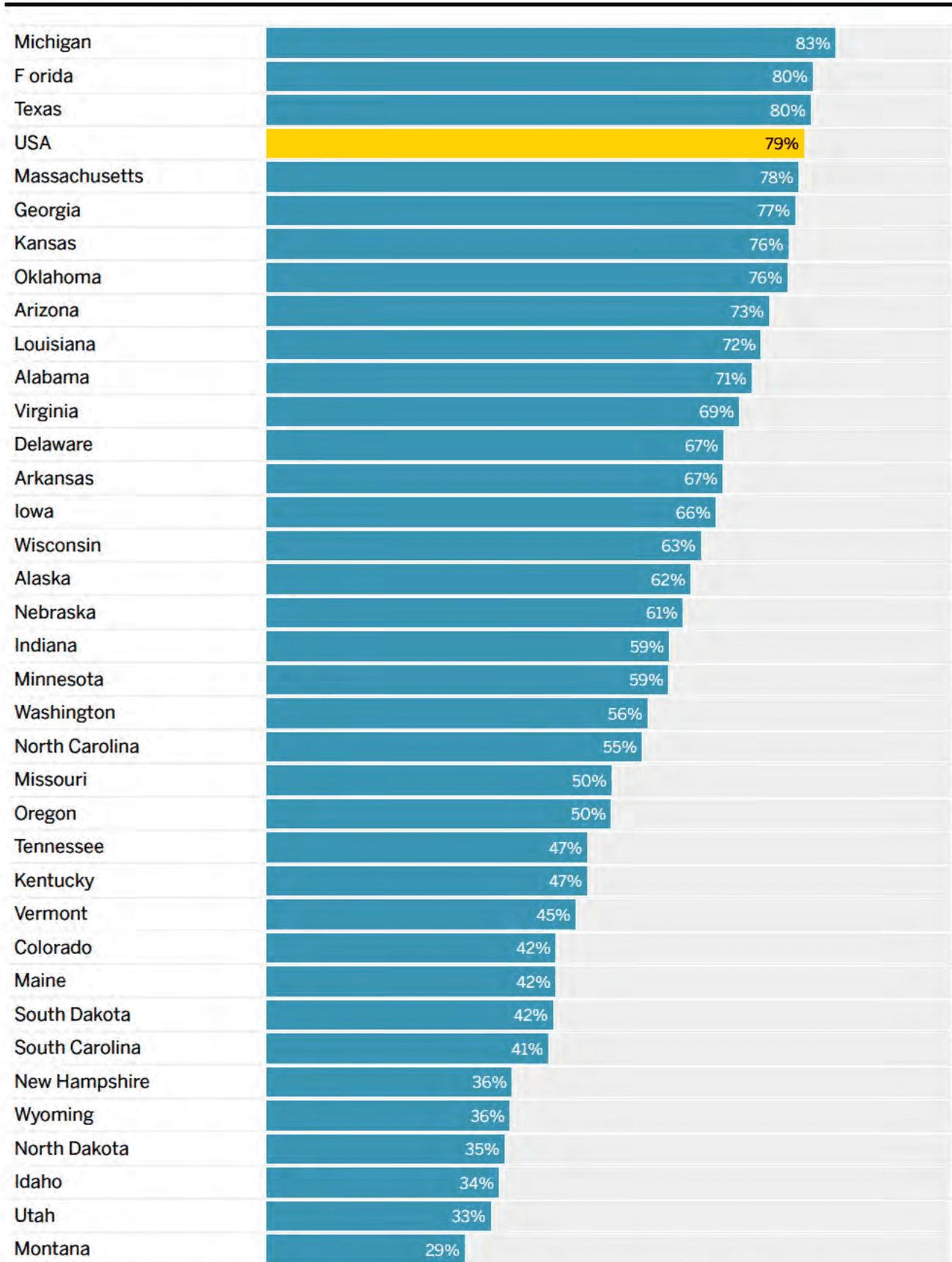
These demographic shifts will fuel redistricting fights, especially when they have occurred in tandem with political shifts. For example, in many of the same suburbs where the number of nonwhite voters has rapidly increased, college-educated women have increasingly voted for Democratic candidates since 2016. Together, these trends are making a growing number of previously safe Republican districts competitive.³¹ In places where Republicans control map drawing, these conditions are ripe for gerrymandering, with communities at risk of being sliced and diced to keep the share of nonwhite voters down. Similarly, in areas where they control map drawing, Democrats might seek to strategically redraw maps to further increase nonwhite voters' share in districts to create advantages for their party.

FIGURE 8

Black, Latino, and Asian Americans as Share of Increase in States' Eligible Voters

STATE	% OF INCREASE IN ELIGIBLE VOTERS ATTRIBUTABLE TO BLACK, LATINO, AND ASIAN VOTERS
New Mexico	100%
California	100%
Connecticut	100%
Illinois	100%
Mississippi	100%
New Jersey	100%
New York	100%
Pennsylvania	100%
Rhode Island	100%
Maryland	98%
Nevada	90%
Hawaii	87%
Ohio	86%

FIGURE 8 *Continued*



Source: Brennan Center for Justice projection based on data from the Census Bureau's American Community Survey

In- and Out-Migration

Another type of demographic change that can upset the delicate political status quo and create an incentive to manipulate maps is movement of a large number of voting age people in or out of a state or region. Fourteen states in particular should be watched for potential redistricting abuses, having experienced in the last decade a high rate of in-migration (as opposed to states where growth came mostly from births or immigration from outside the United States).³²

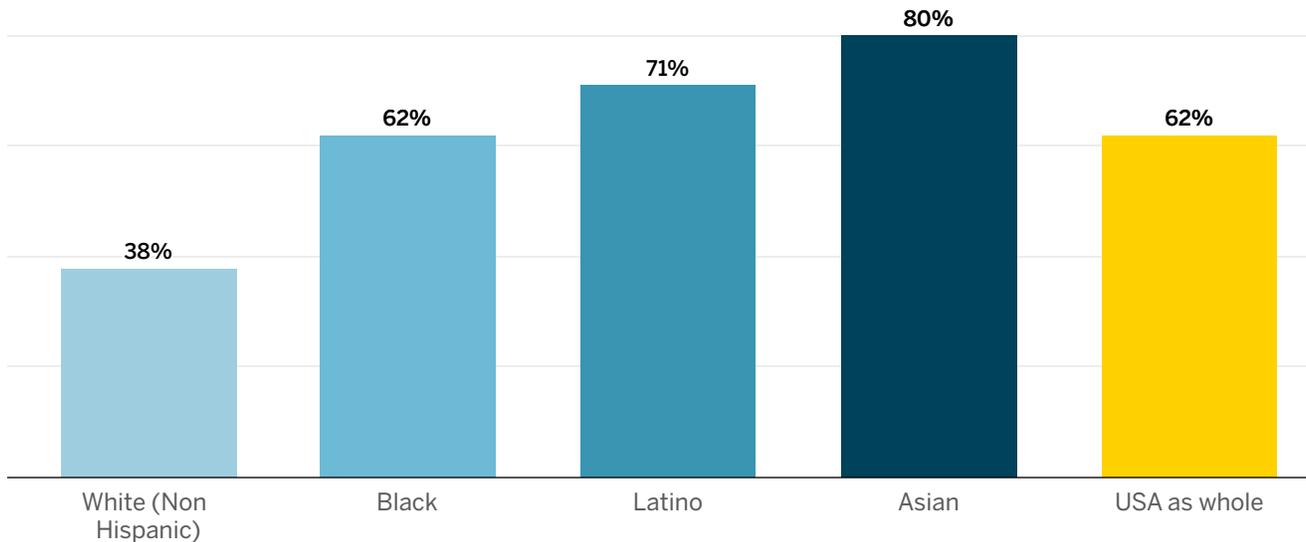
Other states could experience redistricting pressures for the opposite reason: significant out-migration of voting age residents to other states. Since 2010, New York has been the biggest loser, seeing the loss of 1.4 million

residents to other states. Indeed, New York continued to grow modestly last decade only because of immigration from outside the United States. California, Illinois, New Jersey, Michigan, Pennsylvania, Ohio, Connecticut, Maryland, and Massachusetts also have experienced sizable population outflows to other states.

High rates of out-migration can result in loss of representation in regions of a state with significant population declines, upsetting the political balance in other ways. New York City, for example, has seen significant out-migration of native-born white and Black Americans, and could see divisive battles over representation as fast-growing Latino and Asian American populations make new demands for their share of political power.

FIGURE 9

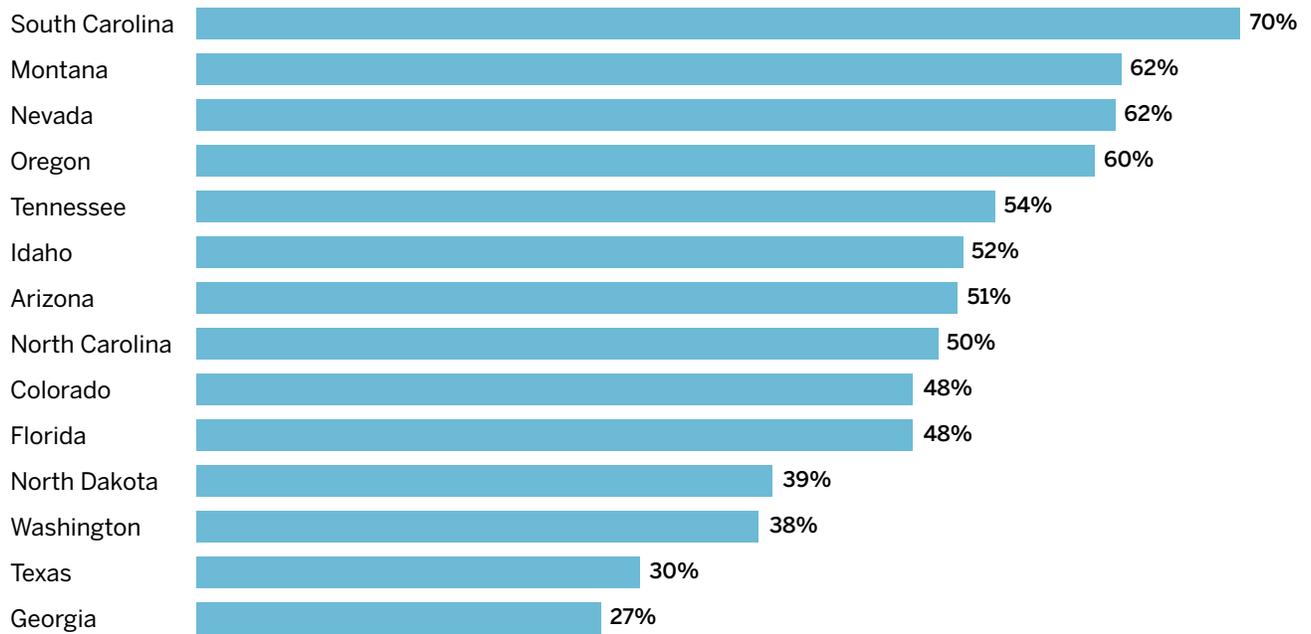
Share of Increase in Eligible Voters Since 2010 Concentrated in 150 Most Populous U.S. Counties



Source: Brennan Center for Justice projection using data from the American Community Survey

FIGURE 10

States with Significant In-Migration from Other States



● Domestic in migration as a percentage of estimated population growth from 2010 to 2019

Source: U.S. Census Bureau, Cumulative Estimates of the Components of Resident Population Change for the United States, Regions, and States, and Puerto Rico, April 1, 2010 to July 1, 2019

Factor 4: Potential Delays to the Redistricting Process

In March 2020, census operations largely ground to a halt because of the Covid-19 pandemic, throwing the Census Bureau months off schedule. This in turn has delayed the delivery of the block-level redistricting data needed to draw districts and will push redistricting off schedule in many states. (As of the time of writing, the expectation is that redistricting data will be delivered to states in late summer 2021.)

Data delay will create timing challenges in a number of states and, in Virginia, will make it virtually impossible to draw new maps before scheduled elections. In other states, the timing issues are not as severe, but a delay in receiving data could push redistricting into special legislative sessions, where there are fewer procedural protections and more opportunities to manipulate the process.

Timing Challenges

Data delays will create challenges and timing issues in several states:

- **Virginia** will face an especially hard choice because of its odd-numbered-year legislative elections. Delays in getting redistricting data, if significant, will make it impossible for Virginia to draw new legislative maps and then hold primary elections ahead of the November 2021 general elections.³³ (New Jersey also holds off-year legislative elections, but voters approved a constitutional amendment in 2020 allowing the state to use its existing maps for 2021 elections if census data is delayed.)
- Five other states also will need to take steps to avoid the automatic default of map drawing to a backup process. Without changes to deadlines, state supreme courts in **Iowa** and **Maine** will draw maps, and in **Connecticut, Illinois, and Oklahoma**, a backup commission will take over map drawing.³⁴ Generally, these backup processes are less optimal than the states' normal processes. In Illinois, for example, the process for selecting the commission's tiebreaking member could result in single-party control of the redistricting process, with Democrats being completely shut out despite controlling both houses of the legislature and the governor's mansion. (California also is in this category of states, but its state supreme court has already issued an order adjusting deadlines to give the state's redistricting commission time to complete its work.)

- Sixteen other states will also likely miss various deadlines associated with redistricting. These states, too, would benefit from executive or judicial action to extend or clarify deadlines in order to ensure adequate time to complete the redistricting process in a robust and transparent fashion.³⁵ These include **Michigan**, where a new independent commission will draw maps for the first time in 2021–22.³⁶

Depending on how late the redistricting process is, some states might also need to consider changes to their candidate filing deadlines or even primary dates to allow redistricting to take place on a reasonable timeline.

The Risk of Special Sessions

Even if states do not run into legal barriers that prevent completion of the redistricting process, census delays will force map drawing in many states into special legislative sessions. This significantly increases the risk of abuses. Special sessions are often short and fixed in duration, reducing the opportunity for hearings and effective public oversight.

The timing of special sessions also is frequently controlled by governors or legislative leadership, offering them an opportunity to game the timing of map drawing, particularly in states with single-party control of government. Late-timed special sessions could leave courts with much less time than usual to adjudicate map challenges before the next election cycle starts.

This risk of redistricting timeline gaming will be exacerbated in states that are no longer required to seek preclearance of new maps under Section 5 of the Voting Rights Act. Without Section 5, states will no longer need to complete maps in time to allow for sometimes-lengthy federal review.

Appendix: Redistricting Risk Assessments

Highest-Risk States

These states — all previously covered by Section 5 of the Voting Rights Act — are likely to see fraught redistricting processes and could be at serious risk of gerrymandering and racially discriminatory maps.

- **Florida:** The country's second-fastest-growing state and one of its most rapidly diversifying, Florida is one of the states at highest risk for discriminatory maps. As was the case last decade, Republicans again will have sole control of the map drawing process. Last decade, Republicans used that control to draw maps that gave them safe majorities in both the state's congressional delegation and in the Florida legislature. A 2010 constitutional amendment banning partisan gerrymandering and state supreme court decisions from the last cycle have created some guardrails that could help constrain the most blatant abuses. However, the appointment of new justices has made the Florida Supreme Court considerably more conservative since the last round of map drawing. How vigorously the court will enforce those limits on gerrymandering in state law should Republicans decide again to aggressively gerrymander remains to be seen.
- **Georgia:** Fast-growing and demographically changing Georgia also faces significant risk for discriminatory maps. The nonwhite share of Georgia's electorate grew rapidly over the last decade, especially in the suburbs of Atlanta, where white voters now are also increasingly voting for Democratic candidates. These two trends in tandem threaten Republicans' hold on power, making it tempting for Republicans to use their single-party control of the process to gerrymander maps to safeguard against change. And as in southern states in general, the existence of racially polarized voting means that the most efficient way to gerrymander is often to target communities of color.
- **North Carolina:** Republicans will again control the redistricting process in North Carolina. (The state's governor, a Democrat, plays no role in redistricting under North Carolina law.) State court decisions in 2019 struck down last decade's extreme gerrymanders, ruling that they violated the state constitution's free elections guarantee. This time around, those decisions will not stop Republicans from again passing gerrymandered maps but will provide voters with an avenue for redress. An important caveat, however, is that the 2020 elections produced a more conservative North Carolina Supreme Court. It remains to be seen how vigorously the court will apply last decade's precedents.

- **Texas:** In 2011, Texas redistricting resulted in nearly decade-long litigation over racially discriminatory maps, including two trips to the U.S. Supreme Court. Heading into the 2021–22 round of redistricting, fast growth and rapid diversification again point to a fraught redistricting cycle. First, Texas has grown faster by far than any other state, with more than half of the state's population gain coming from Latinos and almost 90 percent from people of color. As in Georgia, the suburban areas where the nonwhite voting population has increased the fastest have also seen significant shifts of white voters away from Republicans and toward Democrats, creating political risk for Republicans. And once again, Republicans will have sole control over the process, having staved off Democratic efforts to win the state house in 2020. But Republican gerrymandering in Texas in both of the last two decades broke down toward the end of the 2010s given the rapidity of the state's growth and demographic change. A crucial question this decade will be whether Republicans try to aggressively maximize seats — at the risk of losing some of them by decade's end due to political and demographic changes — or try to draw a smaller number of safe seats.

Other High-Risk States

These states — though they are not growing or changing demographically as fast as the highest-risk states — were also formerly covered by Section 5 of the Voting Rights Act. This decade, all will draw maps under single-party control.

- **Alabama:** In 2011, Republicans in Alabama controlled redistricting for the first time since Reconstruction, and they used that power to aggressively racially gerrymander the state's Black population, a move later struck down by the courts. Republicans will again have unified control of the process this decade. Although Alabama has not experienced the fast population growth and demographic change of other southern states, this decade once again could bring fights over treatment of Black voters, including a renewal of claims by Black voters that Alabama is obligated under the Voting Rights Act to create a second Black-majority congressional district.
- **Mississippi:** This decade, Republicans will control redistricting in Mississippi for the first time since Reconstruction. The state has grown only modestly since 2010, but the treatment of the state's sizable Black population in redistricting has historically been contentious regardless of the party in control. This decade

could see renewed fights to increase the number of Black-majority legislative districts as well as to possibly add a second Black-majority congressional district.

- **South Carolina:** As in 2011, Republicans will again control redistricting in South Carolina. Although gerrymandering is not essential to preserving Republican majorities in the heavily Republican state, South Carolina saw significant in-migration last decade from other parts of the country, which brings increased gerrymandering risks in parts of the state. South Carolina also could see fights over increased representation for the state's large Black population, including possible demands to create a second Black-majority congressional district.

Likely Improved States

These states drew maps under single-party control last decade but are likely to draw fairer maps this time because of reforms or the end of single-party control.

- **Colorado:** In 2011, Colorado's commission-drawn legislative plans and court-drawn congressional plan were generally fair from both racial and partisan perspectives. However, the prospects for fair maps has increased this decade because of an independent redistricting commission established in 2018.
- **Louisiana:** Democratic Gov. John Bel Edwards was reelected in 2019, which means that Louisiana will draw maps this decade with a divided state government. Deadlock would force map drawing into the courts, where claims likely would include a demand to create an additional Black-majority congressional district in the state.
- **Michigan:** Michigan is one of the biggest success stories in the fight against gerrymandering. During the last cycle, Republicans used their full control of state government to produce some of the most extreme gerrymanders in the country. In response, a grassroots movement launched a campaign for reform, and in 2018, voters overwhelmingly approved a ballot measure to create a strong independent commission to draw both legislative and congressional maps. Republicans sued to block the commission from going into effect but have thus far been unsuccessful. Even if the commission were somehow invalidated, the state now has a Democratic governor who could veto legislatively passed maps and send the map drawing process to the courts.
- **New York and Utah** passed measures to reform redistricting but bear watching to see how new reforms are

implemented. In New York, responsibility for drawing both legislative and congressional maps will move from lawmakers to a newly created advisory commission.³⁷ However, the legislature can reject the commission's maps and pass an alternative. With the New York legislature under unified Democratic control in a redistricting year for the first time in decades, it remains to be seen how deferential lawmakers will be to the advisory commission's work, or whether they will try to gerrymander to help shore up Democrats' prospects of retaining control of the U.S. House. Utah will have a similar advisory commission and could face similar gerrymandering pressures, particularly at the congressional level.

- **Pennsylvania:** Pennsylvania saw aggressive gerrymanders last cycle, but the prospect for fair maps this decade is much brighter. On the congressional front, the 2018 election of a Democratic governor means that Democrats now have the ability to block bad maps and send map drawing to the courts. In addition, also in 2018, the Pennsylvania Supreme Court struck down the state's congressional maps, ruling that they violated the state constitution's free and equal elections clause. In doing so, the court put in place new limits on partisan gerrymandering that will help ensure fairer maps this time around. For legislative maps, Democrats are likely to have a 3–2 majority on the apportionment board that draws legislative maps, creating the possibility that they could try to enact their own gerrymander to replace the current Republican gerrymander. However, here too, the limits on partisan gerrymandering recognized by state courts could stymie any such efforts and help ensure that one extreme gerrymander is not replaced with another.
- **Ohio:** Gerrymandering in Ohio in 2011 spurred a push for reform. In 2015, voters overwhelmingly approved a constitutional amendment to adopt a new process for legislative maps, and in 2019 they did the same for congressional maps. (Both measures had the support of both parties and passed the Ohio legislature almost unanimously.) The reforms, though complicated, are designed to incentivize but not mandate bipartisanship in map drawing. Any maps passed without sufficient bipartisan support would remain in effect only for two election cycles, after which they would have to be redrawn — when a different party might be in charge.³⁸ In addition, congressional maps passed on a party line basis would be subject to stricter rules on partisan fairness, creating a new way to challenge gerrymandered maps in court.³⁹ In the end, however, much may depend on the Ohio Supreme Court if Republicans decide to be aggressive.

- **Virginia:** In the last round of redistricting, both Virginia legislative and congressional maps were struck down by the courts as racial gerrymanders. In 2021, however, the state's maps will be drawn by a new bipartisan commission approved by voters in November 2020. The new commission will require bipartisan support to send maps for consideration by the legislature. If the maps fail to garner the required bipartisan support, the Virginia Supreme Court will draw the maps. In either case, the maps are unlikely to be racially discriminatory or have the same high levels of partisan bias as last decade's initial set of maps.
- **Wisconsin:** During the 2011 redistricting cycle, one of the worst gerrymanders in the country happened in Wisconsin. Republicans retain control of the legislature, but unlike last redistricting cycle, the governor is a Democrat who can veto any maps that provide too much of a Republican advantage. A veto would lead to the courts redrawing the maps, which should lead to fairer results. However, at the time of writing, Repub-

licans are trying to force adoption of procedural changes that would require the conservative Wisconsin Supreme Court to draw the maps in the event of a political deadlock.

Other States to Watch

- **Arizona, California, Illinois, and Washington** are not major statewide redistricting hotspots but could see pointed battles over representation for fast-growing communities of color. In some cases, as in eastern Washington, demands for increased electoral opportunities could result in friction with white voters who have long held power. In other cases, the tensions will be with other minority groups. For example, Los Angeles County has gained almost 800,000 Latino eligible voters since 2010, with much of the growth occurring in Black opportunity districts. In Arizona, changes to the composition of the judicial selection body that vets commissioner applicants also has raised concerns in some quarters.

Endnotes

- 1 Laura Royden, Michael Li, and Yurij Rudensky, *Extreme Gerrymandering and the 2018 Midterm*, Brennan Center for Justice, March 23, 2018, 13–19, https://www.brennancenter.org/sites/default/files/2019-08/Report_Extreme_Gerrymandering_Midterm_2018.pdf.
- 2 Laura Royden and Michael Li, *Extreme Maps*, Brennan Center for Justice, May 9, 2017, 1–5, https://www.brennancenter.org/sites/default/files/2019-08/Report_Extreme%20Maps%205.16_0.pdf. (This report discusses partisan bias in this decade’s congressional maps.)
- 3 New York voters approved an advisory commission in 2014. Ohio voters approved an expansion of the state’s political appointee commission in 2015 and new rules for congressional redistricting in 2019.
- 4 In *Vieth v. Jubelirer*, 541 U.S. 267 (2004), the Supreme Court deadlocked on whether partisan gerrymandering claims were justiciable, with a plurality holding that they were not, four justices asserting that they were, and Justice Anthony Kennedy punting the issue to another day. However, the Supreme Court failed again two years later to resolve the issue in *League of United Latin American Citizens v. Perry*, 548 U.S. 399 (2006).
- 5 *Rucho v. Common Cause*, 588 U.S. ___, 139 S.Ct. 2484, 2506–7 (2019).
- 6 Prior to 2013, nine states were covered in their entirety by Section 5 of the Voting Rights Act: Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia. In addition, parts but not all of six states were also covered: California, Florida, New York, North Carolina, South Dakota, and Michigan.
- 7 *Shelby County v. Holder*, 570 U.S. 529 (2013).
- 8 The Supreme Court laid out the basic three-part test for establishing Section 2 liability in *Thornburg v. Gingles*, 478 U.S. 30 (1986).
- 9 Michael Li and Laura Royden, “Does the Anti-Gerrymandering Campaign Threaten Minority Voting Rights?,” Brennan Center for Justice, October 10, 2017, <https://www.brennancenter.org/our-work/analysis-opinion/does-anti-gerrymandering-campaign-threaten-minority-voting-rights>.
- 10 *Bartlett v. Strickland*, 556 U.S. 1 (2009).
- 11 Under the Supreme Court’s ruling in *Bartlett*, a Section 2 plaintiff must be able to show through a demonstration map that it is possible to draw a reasonably compact district in which the minority group in question makes up more than 50 percent of the voting age population. This has been subsequently interpreted to mean citizen voting age population.
- 12 For example, in 2017, a three-judge panel in Texas rejected a Section 2 claim seeking creation of a Latino majority district in the Dallas-Fort Worth region, finding that the plaintiffs’ proposed district, which had a bare Latino citizen voting age population, was not geographically compact under *Gingles*. *Perez v. Perry*, No. 5:11-cv-00360 (W.D. Tex. Mar. 10, 2017).
- 13 Some circuit courts have held that two or more minority groups can be aggregated for Section 2 if there is evidence of political cohesion between the groups. See *Campos v. City of Baytown*, 840 F.2d 1240, 1244 (5th Cir. 1988), which held that “there is nothing in the law that prevents the plaintiffs from identifying the protected aggrieved minority to include both blacks and Hispanics”; and *Concerned Citizens of Hardee County v. Hardee County Board of Commissioners*, 906 F.2d 524, 526 (11th Cir. 1990), which held that “two minority groups (in this case blacks and Hispanics) may be a single Section 2 minority if they can establish that they behave in a politically cohesive manner.” Other circuits have disagreed. See *Nixon v. Kent County*, 76 F.3d 1381, 1386–87 (6th Cir. 1996), which rejected coalition districts because the plain language of Section 2 “does not mention minority coalitions, either expressly or conceptually.” The Supreme Court has not yet weighed in on the issue.
- 14 *Evenwel v. Abbott*, ___ U.S. ___, 136 S. Ct. 1120, 1126–27 (2016).
- 15 *Evenwel*, 136 S. Ct. at 1132–33.
- 16 *League of Women Voters of Pennsylvania v. Commonwealth of Pennsylvania*, 18 A.3d. 737 (Pa. 2018).
- 17 See *Common Cause v. Lewis*, Case no. 18 CVS 014001 (Wake County Superior Court, filed September 3, 2019) (ruling on legislative maps); and *Harper v. Lewis*, Case no. 19 CVS 012667 (Wake County Superior Court, filed October 29, 2019) (ruling on congressional plan).
- 18 Justin Levitt, “Quick and Dirty: The New Misreading of the Voting Rights Act,” *Florida State University Law Review* 43, no. 2 (Winter 2016): 573–610.
- 19 Subsequent suits have contended that map drawers in Alabama, Georgia, and Louisiana failed to create a sufficient number of Section 2 congressional districts.
- 20 *Alabama Legislative Black Caucus v. Alabama*, 575 U.S. 254, 275–76 (2015).
- 21 *Cooper v. Harris*, 581 U.S. ___, 137 S. Ct. 1455, 1474n7 (2016).
- 22 *Cooper*, 137 S. Ct. at 1474.
- 23 Kate Ackley, “House Passes HR 1 Government Overhaul, Sending It Back to Campaign Trail,” *Roll Call*, March 8, 2019, <https://www.rollcall.com/news/congress/house-passes-hr-1-government-overhaul-sending-it-back-to-campaign-trail>.
- 24 “2018 Population Estimates—2018 Apportionment,” Election Data Services, accessed January 24, 2020, <https://www.election-dataservices.com/wp-content/uploads/2018/12/Appor18Tables-Maps.pdf>.
- 25 See note 24.
- 26 Brennan Center projection based on data from the U.S. Census Bureau’s American Community Survey (ACS).
- 27 See note 24.
- 28 See note 24.
- 29 See note 24.
- 30 William H. Frey, “The Suburbs: Not Just for White People Anymore,” *New Republic*, November 24, 2014, <https://newrepublic.com/article/120372/white-suburbs-are-more-and-more-things-past>.
- 31 Democrats also would have an incentive to bolster their electoral prospects in the South through racial gerrymandering that takes advantage of communities of color. However, Democrats will not have sole control of the redistricting process in any southern states in 2021–22.
- 32 U.S. Census Bureau, *Cumulative Estimates of the Components of Resident Population Changes for the United States, Regions, States, and Puerto Rico*, April 1, 2010 to July 1, 2019.
- 33 Yurij Rudensky, Michael Li, and Annie Lo, *How Changes to the 2020 Census Timeline Will Impact Redistricting*, Brennan Center for Justice, May 4, 2020, <https://www.brennancenter.org/our-work/research-reports/how-changes-2020-census-timeline-will-impact-redistricting>.
- 34 Rudensky et al., *Changes to the 2020 Census*, 5–18.
- 35 New York, South Dakota, and Washington have fixed-date deadlines for completing redistricting in their constitutions that will be difficult to meet and will need to be adjusted through executive or judicial action to allow enough time for redistricting. Delaware, Hawaii, and Utah also have fixed-date deadlines for completing redistricting that will be hard to meet, but because these deadlines

are statutory rather than constitutional, they can be changed by the states' legislatures. Alabama, Arkansas, Connecticut, Indiana, Massachusetts, Michigan, Nevada, New Hampshire, Oregon, and Vermont have deadlines for legislative and/or congressional redistricting that are tied to the "census year" that may create timing issues depending on how they are interpreted.

36 Rudensky et al., *Changes to the 2020 Census*, 10–11.

37 *50 State Guide to Redistricting*, Brennan Center for Justice, last modified June 7, 2019, <https://www.brennancenter.org/our-work/research-reports/50-state-guide-redistricting>.

38 Ohio Const. art. XI, § 8 (procedure for legislative redistricting); and Ohio Const. art. XIX, § 1 (procedure for congressional redistricting).

39 Ohio Const. art. XIX, § 1(F)(3).

ABOUT THE AUTHORS

► **Michael C. Li** serves as senior counsel for the Brennan Center’s Democracy Program, where he heads work on redistricting. He is a regular contributor and commentator on redistricting and election law issues in numerous national outlets. Before joining the Brennan Center, Li practiced law in Dallas for more than 10 years and previously served as executive director of Be One Texas, a donor alliance that oversaw strategic and targeted investments in nonprofit organizations working to increase voter participation and engagement in historically disadvantaged African American and Hispanic communities in Texas. Li received his JD with honors from Tulane University School of Law and his undergraduate degree in history from the University of Texas at Austin.

ABOUT THE BRENNAN CENTER’S DEMOCRACY PROGRAM

The Brennan Center’s Democracy Program encourages broad citizen participation by promoting voting and campaign finance reform. We work to secure fair courts and to advance a First Amendment jurisprudence that puts the rights of citizens — not special interests — at the center of our democracy. We collaborate with grassroots groups, advocacy organizations, and government officials to eliminate the obstacles to an effective democracy.

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A New Delay for Census Numbers Could Scramble Congressional Elections

Census data needed for legislative districts won't be ready until September. Could that alter the balance of power in the House?

By Michael Wines and Emily Bazelon

Feb. 11, 2021

WASHINGTON — The delivery date for the 2020 census data used in redistricting, delayed first by the coronavirus pandemic and then by the Trump administration's interference, now is so late that it threatens to scramble the 2022 elections, including races for Congress.

The Census Bureau announced on Friday that it has pushed back its deadline for releasing the population figures needed for drawing new districts for state legislatures and the House of Representatives until Sept. 30. That is six months beyond the usual March 31 deadline and two months beyond the July 31 date that the agency announced last month.

The holdup, which is already cause for consternation in some states, could influence the future of key districts. And with Democrats holding a slim 10-seat House majority, it even has the potential to change the balance of power in the House and some state legislatures, according to Michael Li, the senior counsel at the Brennan Center for Justice at New York University School of Law. States need the figures this year to redraw district lines for the 435 seats in the House of Representatives and for thousands of seats in state legislatures

The delay means there will be less time for the public hearings and outside comment required in many states, and less time once maps are drawn to contest new district lines in court, as often happens after redistricting.

"The concern in some of those states is that the legislators will simply use a special session to secretly pass maps with zero public scrutiny, and then count on a tight timetable to eke out at least one election cycle" before a court could require new maps to be drawn, said Kathy Feng, the redistricting and representation director at Common Cause.

The challenges extend beyond just drawing up districts. State and local election officials need time after new political maps are approved to redraw voting precincts and overhaul voter rolls to ensure that everyone is directed to the proper place to vote. And prospective candidates generally cannot file for office until they know whether they live within the new boundaries of the districts they are seeking to represent.

"States are literally sitting on their hands, asking, 'When will the data come?'" said Jeffrey M. Wice, an adjunct professor at New York Law School and a longtime expert on census and redistricting law.

The Census Bureau's delay stems mostly from problems the pandemic caused in last year's counts of certain places, including college dorms and housing for agricultural workers. College students, for example, should be counted in dormitories and apartments near their schools, but the pandemic sent most students home last spring just as the census was starting. Now experts must find and locate them properly — and also ensure they are not double-counted as living with their parents.

Such problems can be fixed, Census Bureau officials say, but doing so takes time. The location of millions of people is in play, and allotting or placing seats during reapportionment and redistricting can turn on the location of hundreds.

It remains unclear how serious the political repercussions of the delay will be, but early indications are that Democrats have more reason to worry.

By Mr. Li's calculation in [a report issued on Thursday](#), Republicans will most likely draw the maps for 181 House seats and Democrats for 49 seats, possibly rising to 74 if the New York Legislature (which is controlled by Democrats) chooses to override the state's new independent redistricting commission.

The map for the rest of the seats in the House will be drawn either in states where power is split between the parties or in states with nonpartisan redistricting commissions, which have [mostly proliferated](#) in blue states like California and Virginia and purple states like Michigan.

That means Republicans, who have already shown an appetite for extreme gerrymandering in states like North Carolina and Wisconsin, could benefit disproportionately if too little time exists to contest maps drawn by legislatures for 2022 and the rest of the decade.

The biggest targets for increasing one party's share of Congress are the fast-growing Southern states of Texas, Florida, Georgia and North Carolina, where Republicans oversee the drawing of maps through control of both houses of the legislature.

In Texas, Mr. Li expects Republicans to draw maps that would ensure Republican control of three new House seats that the state is expected to add because of population growth, and two existing seats now held by Democrats. The delay in receiving census data "could be used in some states to game the redistricting process, by leaving less time for legal challenge," Mr. Li said.

“It used to be, for example, that Texas finished redistricting in June, which gave affected parties six months to litigate,” he said. “Now a map might not be approved until November, which gives you less time to gather evidence and expert testimony.”



Students outside a coronavirus testing site at the University of Wisconsin-Madison this month. The pandemic complicated census counts on campuses across the country. Lauren Justice for The New York Times

Suits that challenge redistricting often involve complicated fact-finding about whether a state has engaged in racial gerrymandering (either packing Black and Latino voters into a small number of districts to limit the scope of their political power, or spreading them thinly so they cannot easily elect a candidate).

Democrats could try to squeeze out a few more seats in states they control through gerrymandering. But outside of New York, where the Democratic-controlled Legislature has the power to reject maps drawn by an independent commission, the party has slimmer pickings, Mr. Li said.

Some Democrats are more sanguine. Population shifts in fast-growing states like Texas are concentrated in Democratic-leaning cities and suburbs, making it harder to draw districts that dilute the party’s power, said Patrick Rodenbush, a spokesman for the party’s National Democratic Redistricting Committee.

In North Carolina and Pennsylvania — which both have elected Democratic governors — state supreme courts have ruled that the Republican gerrymanders of the last redistricting cycle violate state constitutions, raising a barrier to future distorted maps.

And in other big states that Republicans controlled and gerrymandered a decade ago — Wisconsin, Michigan and Ohio among them — either Democratic governors or nonpartisan redistricting commissions place limits on overly skewed legislative maps.

For other reasons, the delay in census totals has the potential to upend map drawing in Illinois and Ohio.

Democrats control 13 of the 18 House seats in Illinois, in part because of gerrymandering. (The state’s total number could drop to 17 after the House is reapportioned this year.) But if final maps cannot be approved by Sept. 1, [the Illinois Constitution](#) shifts mapmaking power from the Democratic-controlled Legislature to a panel of four Democrats, four Republicans and one person randomly chosen from the two parties. Giving Republicans a say in map drawing would probably increase the share of seats they are likely to win.

The same could be true in the State Senate, where Democrats now control 70 percent of the chamber's seats, and in the State House, where they hold 60 percent of them. The Legislature is aware of the Constitution's redistricting provision, and Democrats could try to address the issue, although how is unclear.

"Illinois is an example of where the Legislature is talking about using old data to produce maps that are largely the same as they currently have — and letting people sue," Ms. Feng, of Common Cause, said.

The reverse applies in Ohio, where a 2018 referendum amended [the State Constitution](#) to hand congressional and state legislative map duties to a bipartisan commission. The same amendment returns redistricting duties to the Republican-dominated Legislature if the commission fails to approve political maps by Oct. 31, barely a month after the Census Bureau's current estimate for finishing population calculations.

Some experts said legal challenges to redistricting based on the Census Bureau's delay seemed likely, from voters or candidates who would want to extend the period for drawing maps.

"If the necessary data aren't available at the time the law says the state redistricting must be done, then a court could relax the deadline," said Nathaniel Persily, a Stanford law professor and co-director of the Stanford M I T Healthy Elections Project. In some states, courts granted similar pandemic-related extensions for deadlines related to balloting procedures in the November election, like voting by mail.

The rationale is that "given extraordinary circumstances, we're doing something different this time," Mr. Persily said.

The delay in receiving the census data could also cause the completion of map drawing to bump up against candidates' filing deadlines in states like Virginia and New Jersey, which will hold elections for the State Legislature in November, as well as states with early 2022 filing deadlines for later primary elections.

In Virginia, officials said, the delay raises the prospect of holding state legislative elections three years in a row — using old maps this year if the new ones are not finished, using new maps in 2022 and conducting scheduled legislative elections in 2023.

"Whenever this crazy process ends, election administrators have to deal with all these lines," said Kimball W. Brace, a Washington-based redistricting consultant who usually works with Democratic politicians. "Precincts, voter registration systems — all of that is now in a shorter timetable."

Come Election Day, he said, "Either you're ready, or you're not."

Correction: Feb. 12, 2021

An earlier version of this article misstated the year in which census data delay raised the prospect of Virginia holding state legislative elections three years in a row. They are 2021, 2022 and 2023, not 2022, 2023 and 2024.

Michael Wines writes about voting and other election-related issues. Since joining The Times in 1988, he has covered the Justice Department, the White House, Congress, Russia, southern Africa, China and various other topics. [@miwine](#)

A version of this article appears in print on , Section A, Page 16 of the New York edition with the headline: Delay in Census Data Could Affect Elections For Congress in 2022

From: [Mark Lewis](#)
 To: [Mark Lewis](#)
 Subject: Democrats are training for Re Districting fights
 Date: Sunday, January 31, 2021 4:36:13 AM
 Attachments: [LUPF-Citizenship-Data-Sept-13-2019-Complaint.pdf](#)

Dear legislators,

The Democrats are training their troops on Re Districting fights for March and April.

We need to be doing the same thing, please get your LD chairman to post a Redistricting Training Program for your Feb district meetings.

Please set up zoom calls for training, we need the help right now. Please start zoom meeting at the district levels, we need congressional staff to lead these meetings.

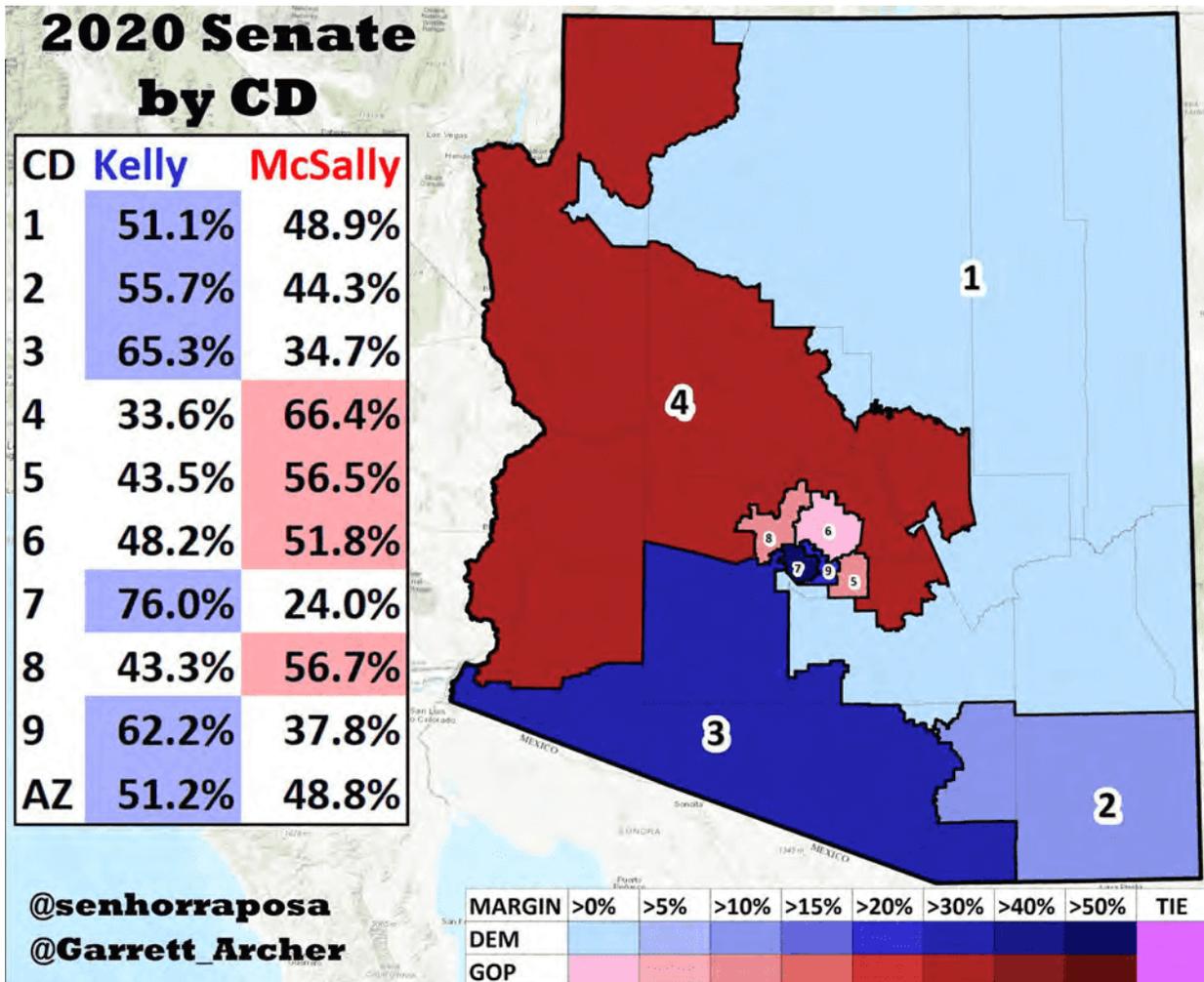
The State Census and re apportionment numbers will not be released to the states until a Feb 5th court hearing and probably well into March or April.

The IRC commission who will draw the maps is controlled 3 to 5 by democrats again, so we failed at filling the commission with a fair group of commissioners again.

The mapping I have seen from the liberals shows 2 republican congressional districts and 8 democrat districts in AZ, a net loss of 2 republicans. (net loss for control of the house also)

The IRC looks like they are going to force Biggs, Lesko and Schweikert to run against each other in 1 district that favors democrat candidates like Sheriff Paul Penzone.

Thats not good guys.



Mark Lewis

Sincerely,

[Mark Lewis](#)

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Phoenix, AZ 85016 -9764

DEMOCRATS OF ORO VALLEY ON REDISTRICTING

Jan 22, 2021

HOW AZ STAYS BLUE: REDISTRICTING

Sign up for an upcoming training sponsored by the AZDEMS:

https://www.mobilize.us/az_dems/event/364952/

Arizona voters passed Proposition 106 in 2000, which amended the Arizona Constitution to establish an Independent Redistricting Commission (AIRC). The AIRC is responsible for drawing the congressional and legislative districts that Arizona will use through the 2030 election. The commission is composed of five members and the required independent chair, Erka Neuberg, has been unanimously agreed upon.

The commissions mission is as follows: "...to redraw Arizona's congressional and legislative districts to reflect the results of the most recent census. The concept of one-person, one-vote dictates that districts should be roughly equal in population. Other factors to be considered are the federal Voting Rights Act, district shape, geographical features, respect for communities of interest and potential competitiveness..."

CURRENT DISTRICT MAPS



<https://azredistricting.org/Maps/Final-Maps/default.asp> M.boli, CC BY-SA 4.0 , via Wikimedia Commons

WHY IT MATTERS:

Political and racial gerrymandering distorts and undermines representative democracy by allowing officials to select their voters rather than voters to elect their officials.

WHAT'S AT STAKE

A truly blue Arizona. AZ's population has gone up about 871,000 since 2010. And as the districts become more representative, Finchem, Leach, Gosar and their fellow secessionists could be history. Just think of what could be accomplished if our state legislature turned blue!

WHAT CAN WE DO?

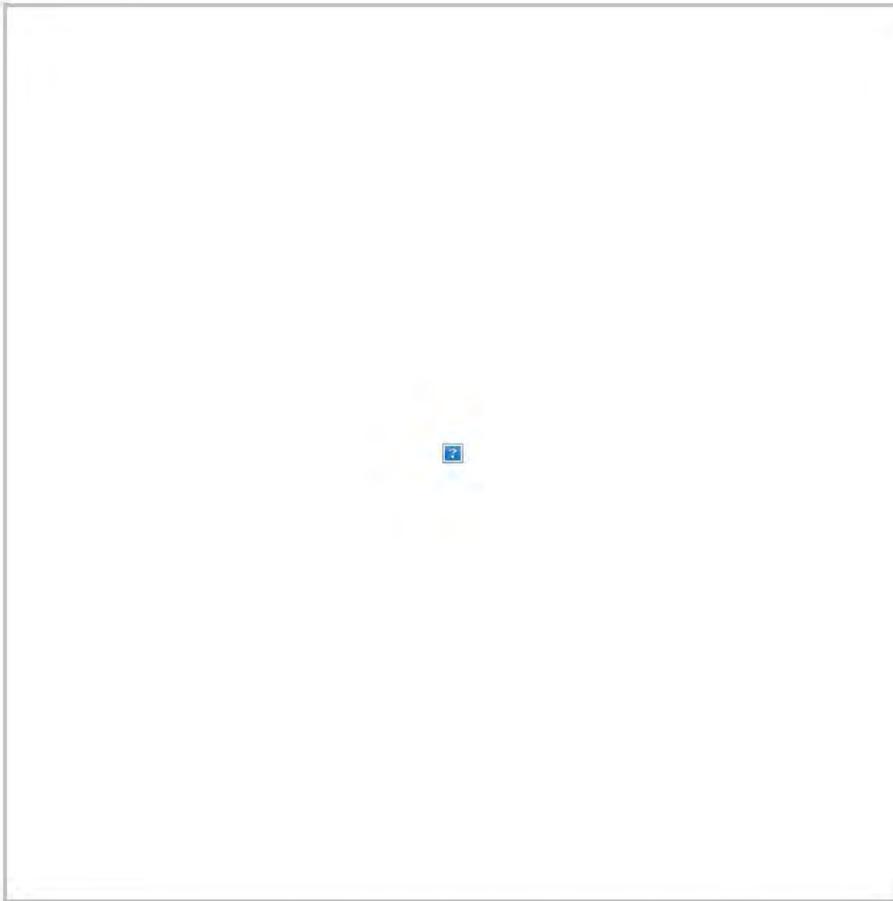
Provide comments and testimony in the public hearings which provides oversight that the district boundaries are drawn fairly and legally. Sign up for the training. The training is quick, informative and easy to follow.

Sign up for training

At the end of the training, you will be able to sign up for redistricting updates. AZ Independent Redistricting Commission
1100 W. Washington St.
Phoenix, AZ 85007

The AIRC has held two meetings in January and although no upcoming meetings are scheduled, you can check the AZ public meetings website:

<https://publicmeetings.az.gov/arizona-public-meetingsDOV> will be hosting a speaker at an upcoming meeting to provide more information about redistricting and how to stay involved.



==== Liberals have a map drawing tool that favors liberal congressional districts. You can draw your own maps here but its time consuming =====

[The Arizona Mirror Congressional Redistricting Tool](#) gives every Arizonan the ability to divide the state into new districts.

HOW DOES IT WORK?

When the blue voting precinct lines appear on the map, click on "Redistricting" in the left sidebar. Then click "Load Existing Districts".

When the congressional districts show in color, you are ready to begin redistricting. Zoom in a bit and get busy!

For further instruction and useful hints, click on "Open PDF Welcome Guide". Consider printing the guide for easy reference.

The "Toggle Instructions" button lists the tool's operational steps. You can open and close those instructions at will.

Try The Tool Now

=====
Meanwhile Trump failed to get the numbers out the door and left the whole legal mess up to Biden and the Courts
=====

Biden Ends Trump Census Policy, Ensuring All Persons Living In

U.S. Are Counted

Biden's executive action, however, does not address [standing directives issued by now-former Commerce Secretary Wilbur Ross](#), who [ordered the bureau to use the records](#) to generate anonymized, block-level data about the U.S. citizenship status of every adult living in the country. It is not clear what will happen to the records the bureau has compiled and any data it has produced.

[A GOP strategist concluded](#) that data "would be advantageous to Republicans and Non-Hispanic Whites" when political mapmakers redraw state and local voting districts, [a process that is set to begin again this year](#). The Census Bureau's public information office did not immediately respond to NPR's questions about the current status of the citizenship data project.

The project is currently facing [an ongoing federal lawsuit](#) led by attorneys with the Mexican American Legal Defense and Educational Fund and Asian Americans Advancing Justice - AAJC.

Trump's push to exclude unauthorized immigrants from numbers for reapportioning Congress [sparked multiple lawsuits](#) after it was issued in July 2020. That plan "violates the Constitution and the Census Act and is inconsistent with our nation's history and our commitment to representative democracy," Susan Rice, Biden's domestic policy adviser, said during a press briefing on Tuesday.

Biden had been expected to rescind Trump's presidential memo on the census apportionment counts, which [Biden condemned](#) shortly after it was announced.

Last month, [the Supreme Court ruled](#) that it would be "premature" to decide whether Trump could legally subtract unauthorized immigrants from those numbers. The high court's conservative majority noted in their opinion that the case was "riddled with contingencies and speculation."

From the beginning, Trump's effort had been hampered by the practical challenge of coming up with a state-by-state count of unauthorized immigrants given the lack of a question about immigration status on the 2020 census forms.

Days before Justice Department attorneys confirmed last week that the administration had officially given up on Trump's bid, [career officials at the Census Bureau stopped trying to use government records](#) to produce those figures, which were likely to be incomplete and inaccurate.

New state numbers from the 2020 census, which were legally due at the end of last year, have not been released yet because of delays caused by the [Trump administration's last-minute schedule changes](#) and the coronavirus pandemic. After uncovering irregularities in the information collected for the count, the Census Bureau is continuing to run quality checks and is not expected to put out results until March 6 at the earliest.

Census advocates have been urging Biden to support extensions to the reporting deadlines that the bureau requested back in April after COVID-19 forced the agency to postpone in-person counting efforts. Sen. Brian Schatz, a Democrat from Hawaii who has been serving on the Senate appropriations subcommittee for the bureau, is [expected to reintroduce legislation](#) that would formally give the bureau more time.

"President Biden will ensure that the Census Bureau has time to complete an accurate population count for each state," Rice told reporters Tuesday.

=====

Gerrymandering – the ‘Efficiency Gap’ is too unstable a measure

By: [Guest Opinion](#) August 23, 2018

opinion-WEB



Much in the news lately, the U. S. Supreme Court is having a difficult time determining how much is too much partisan gerrymandering. When does a redistricting map favor a political party to an unfair degree? How do you measure unfairness?



Just looking at a map, you really can't be sure. Some might say it's just like pornography – you know it when you see it. But, the accepted definition of a gerrymander is: a practice intended to establish a political advantage for a particular party or group by manipulating district boundaries. Notice there is no mention of “shape.”

So, what's a court to do? In 1986, the U. S. Supreme Court ruled that partisan gerrymandering is judiciable, but in the 32 years since, the court has not struck down a single plan on that basis.

In a movement away from geometry and geography, Nicholas O. Stephanopoulos, assistant professor of law at the University of Chicago Law School, and Eric M. McGhee, research fellow at the Public Policy Institute of California, proposed a method that measures the relative success of the major

political parties in a district plan by comparing the numbers of votes “wasted” by each party. The measure is called the Efficiency Gap, and is expressed in terms of the numerical difference between both party's wasted votes, taken as a percentage of total votes cast.

In this calculation, all the votes for the losing candidate in a district are considered wasted, as are the votes for the winning candidate in excess of the votes needed to win. Both categories of wasted votes for each party are summed for all of the districts in the plan, and then the difference between those party totals is taken as a percentage of the total number of votes cast by both parties. The party wasting the least number of votes is considered to have the advantage

(for that plan for that election).

The clause in parentheses triggers my concern. I created a spreadsheet model to simplify measuring the Efficiency Gap for Arizona congressional districts since 2002. Here are the Efficiency Gaps and who they favor:

2002:	17.73 percent Republican
2004:	16.78 percent Republican
2006:	1.41 percent Republican
2008:	4.30 percent Democrat
2010:	6.70 percent Republican
2012:	11.34 percent Democrat
2014:	0.20 percent Republican
2016:	4.54 percent Republican

The figures from five elections (2002 through 2010) are two-party results on the congressional map created by the first Arizona Independent Redistricting Commission. On that map, the Efficiency Gap ranges from a 17 percent Republican advantage to a 4 percent Democratic advantage. On the same district shapes! Likewise, in districts drawn by the second redistricting commission, figures from three elections (2012 through 2016) swing from a 4 percent Republican advantage to an 11 percent Democratic advantage. Which Efficiency Gap figure is the correct one for each decade's plan?

There is one other circumstance that casts an even greater cloud on the measure's credibility. The results from a single highly competitive contest can really mess up the measurement. Consider: In 2014, Republican Martha McSally beat Democrat Ron Barber by 161 votes out of 219,247 votes cast between them. On the basis of that result, the Efficiency Gap for Arizona's nine congressional districts was a 0.2 percent advantage for Republicans. But, if McSally had received 81 fewer votes and Barber 81 votes more, the Efficiency Gap on that same map would come in with a 15.5 percent Democratic advantage.

With such measurement instability, I don't think the Efficiency Gap measurement can be considered a reliable indicator of the extent of partisan gerrymandering of Arizona election districts.

—Tony Sissons is president of Research Advisory Services, Inc., in Phoenix.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

LA UNIÓN DEL PUEBLO ENTERO,
PROMISE ARIZONA, LYDIA
CAMARILLO, and JUANITA VALDEZ-
COX,

Plaintiffs,

v.

WILBUR L. ROSS, sued in his official
capacity as U.S. Secretary of Commerce,

STEVEN DILLINGHAM, sued in his
official capacity as Director of the U.S.
Census Bureau,

U.S. DEPARTMENT OF COMMERCE,
and

U.S. CENSUS BUREAU,

Defendants.

Civil Action No.

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

COMPLAINT

INTRODUCTION

1. On July 11, 2019, President Trump issued Executive Order 13880, Collecting Information about Citizenship Status in Connection with the Decennial Census (“EO 13880”), that directs: (1) Secretary Ross to instruct the Census Bureau to create an inter-agency working group to collect citizenship data in connection with the 2020 decennial census for redistricting; (2) the Department of Commerce to “strengthen its efforts, consistent with law, to obtain State administrative records concerning citizenship”; and (3) all federal agencies to provide citizenship data via administrative records to the Census Bureau. On July 12, 2019, the Census Bureau

published a notice dated July 3, 2019, stating that Secretary Ross had directed the Census Bureau to collect and produce Citizenship Voting Age Population (“CVAP”) information prior to April 1, 2021 that states may use in redistricting.

2. The President’s order and Secretary Ross’s directive that the Department of Commerce provide states with CVAP information for redistricting is motivated by a racially discriminatory scheme to reduce Latino political representation and increase the over-representation of non-Latino Whites, thereby advantaging White voters at Latino voters’ expense. As the Department of Commerce and the Census Bureau comply with Secretary Ross’s directive and EO 13880 to collect citizenship data and when they produce population tabulations that purport to exclude non-citizens for purposes of drawing state and local districting plans, voters will be denied their constitutionally guaranteed rights to equitable political representation based on actual population.

3. The Court should enjoin Defendants’ actions as violative of the Administrative Procedure Act (“APA”) for a number of reasons. First, Defendants failed to articulate an adequate rationale for making the decision to collect and produce citizenship data from administrative records. Second, for discriminatory reasons, EO 13880 and Secretary Ross’s directive instructs the Census Bureau to perform an impossible task contrary to law: to determine the total number of non-U.S. citizens without an actual enumeration of the non-U.S. citizen population. Administrative records cannot provide citizenship data to the states without the use of statistical sampling and estimation, and therefore cannot provide a total enumeration of the citizen and non-citizen population. Third, Secretary Ross’s compliance with EO 13880 is in excess of the statutory authority that the Secretary has to conduct the decennial census. By deciding to collect citizenship data in response to EO 13880, Secretary Ross is improperly

allowing the President’s judgment to displace his own discretion over the census. The Constitution vests Congress, not the President, with discretion over the conduct of the census. Congress delegated this responsibility to the Secretary, not the President. Fourth, Defendants failed to comply with the mandated procedures and requirements for making a substantive change to the data collected and reported by the Census Bureau in connection with the 2020 decennial census, in violation of the requirements of federal laws and regulations.

4. Defendants’ actions should also be enjoined because they are motivated by racial animus, are discriminatory toward Latinos and non-citizens, and are the result of a partisan conspiracy intended to dilute the representation of non-citizens and Latinos, in violation of the equal protection guarantee of the Fifth Amendment of the U.S. Constitution, and 42 U.S.C. § 1985(3).

5. Plaintiffs seek declaratory and injunctive relief to prevent Defendants from violating the APA, the equal protection guarantee of the Fifth Amendment of the U.S. Constitution, and 42 U.S.C. § 1985(3).

PARTIES

Plaintiffs

6. Plaintiff La Unión del Pueblo Entero (“LUPE”) is a nonprofit membership organization founded by labor rights activists César Chávez and Dolores Huerta. LUPE’s mission is to build strong, healthy communities in the Texas Rio Grande Valley through community organizing and civic engagement. To promote civic engagement in the communities it serves, LUPE conducts know-your-rights discussions and membership meetings, participates in issue-focused advocacy, connects its members to social services, conducts census outreach, and conducts voter registration, education, and non-partisan get-out-the-vote campaigns.

7. LUPE is headquartered in San Juan, Texas, and its members primarily reside in Hidalgo, Cameron, Willacy, and Starr Counties, Texas. LUPE has over 8,000 members, including Latinos, U.S. citizens, and non-U.S. citizens. Some LUPE members are immigrants not authorized to be present in the United States. LUPE has members that live in neighborhoods, cities, counties, and voting districts with relatively larger Latino and non-U.S. citizen populations when compared to Texas and the United States.

8. Plaintiff Promise Arizona (“PAZ”) is a nonprofit, faith-based membership organization founded in 2010 in response to the passage of Arizona Senate Bill 1070. It is headquartered in Phoenix, Arizona. PAZ’s mission is to build Latino and immigrant political power to ensure family unity, a path to citizenship, worker protections, and a path to equitable educational opportunities for all immigrants. To achieve its mission, PAZ promotes civic engagement, provides scholarships to members and other individuals for immigration-related expenses, partners with community colleges to conduct educational and job training programs, conducts youth leadership programs, and provides assistance with applications for immigration relief. To promote civic engagement, PAZ registers members and individuals to vote, educates members about important voting issues, conducts get-out-the-vote campaigns, and participates in various issue-focused advocacy.

9. PAZ has members and serves individuals who primarily reside in Maricopa, Yuma, and Pinal Counties, Arizona. PAZ has hundreds of members, including Latinos, U.S. citizens, non-U.S. citizens, and members of mixed-status families (in which some members are citizens or non-U.S. citizens with legal status and others are not). Some PAZ members and some of the individuals PAZ serves are immigrants not authorized to be present in the United States. PAZ has members and serves individuals who live in neighborhoods, cities, counties, and voting

districts with relatively larger Latino and non-U.S. citizen populations when compared to Arizona and the United States.

10. Plaintiff Juanita Valdez-Cox is a member and the Executive Director of LUPE, and has held that position since approximately 2007. She identifies as Latina, is a registered voter, and lives in Donna, Texas. According to American Community Survey (“ACS”) data, the total population of Donna, Texas, is 16,507 and Latinos constitute approximately 92.3 percent of the total population.

11. Plaintiff Lydia Camarillo is the President of Southwest Voter Registration Education Project (“SVREP”) and has worked with SVREP for approximately twenty years. Ms. Camarillo identifies as a Latina, is a registered voter, and lives in San Antonio, Texas. According to ACS data, the total population of San Antonio, where Plaintiff Lydia Camarillo resides, is 1,461,623, and Latinos constitute approximately 64 percent of the total population.

Defendants

12. Defendant Wilbur L. Ross is Secretary of the U.S. Department of Commerce. The Secretary of Commerce carries out the functions and duties imposed on him by the Census Act, issues rules and regulations to carry out his responsibilities, and delegates functions and duties as necessary. 13 U.S.C. § 4. The Secretary of Commerce prepares questionnaires, determines inquiries, and determines the number and form of statistics, surveys, and censuses. 13 U.S.C. § 5. Congress delegated the duty to conduct the census to the Secretary of Commerce, who must take a census on April 1 every 10 years “in such form and content as he may determine [.]” 13 U.S.C. § 141 (a); *see also* 13 U.S.C. § 5. In that capacity, Defendant Ross directed the Census Bureau to produce CVAP information as part of the redistricting dataset

provided to States prior to April 1, 2021, for the purpose of affording states the option of using a voter-eligible population base for redistricting. Defendant Ross is sued in his official capacity.

13. Defendant Steven Dillingham is the Director of the U.S. Census Bureau. The Director of the U.S. Census Bureau oversees the 2020 decennial census operations and is responsible for ensuring the accuracy of the 2020 decennial census count. Defendant Dillingham directs the Census Bureau and performs census-related duties assigned by law, regulation, or the Secretary of Commerce. 13 U.S.C. § 21. He is sued in his official capacity.

14. Defendant U.S. Department of Commerce is an agency of the U.S. government which oversees the U.S. Census Bureau and its conduct of the decennial census and other census programs.

15. Defendant U.S. Census Bureau is an agency within the U.S. Department of Commerce. 13 U.S.C. § 2. The Census Bureau is responsible for conducting all census programs, including the development and implementation of the 2020 decennial census and the collection of information for and formulation of the P.L. 94-171 population tabulations used by states for redistricting.

JURISDICTION AND VENUE

16. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343 over Plaintiffs' causes of action under the United States Constitution and federal statutes. This Court has jurisdiction under 5 U.S.C. §§ 702 and 704 over Plaintiffs' claims under the APA. This Court may grant Plaintiffs' request for declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202.

17. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e)(1), because: (1) Defendants Dillingham (in his official capacity) and United States Census Bureau

reside in Prince George’s County within this District, and (2) a substantial part of the events or omissions giving rise to Plaintiffs’ claims occurred in this District.

FACTUAL ALLEGATIONS

A. Background on the U.S. Census and P.L. 94-171 Redistricting Data File

1. The Census Act and the Census Bureau

18. The U.S. Constitution requires an “actual Enumeration” of every person living in the United States to take place every ten years. U.S. Const. art. I, § 2, cl. 3.

19. The Constitution gives Congress authority to conduct the census “in such a Manner as [Congress] shall by Law direct,” U.S. Const. art. I, § 2, and “vests Congress with wide discretion over . . . the conduct of the census,” *Wisconsin v. City of N.Y.*, 517 U.S. 1, 15 (1996). Pursuant to this authority, Congress delegated the duty of conducting the census to the Secretary of Commerce, subject to the provisions of the Census Act of 1976, 13 U.S.C. § 141, *et seq.* (the “Census Act”), and other applicable federal statutes and regulations promulgated thereunder.

20. Section 141(f) of Title 13, requires that the Secretary report his “determination[s]” as to the content of the next census within certain deadlines in advance of the Census Date. 13 U.S.C. § 141(f); 90 Stat. 2462.

21. The Census Act authorizes the Secretary to collect information “other” than total population only “as necessary.” 13 U.S.C. § 141(a). The Secretary may not modify the “subjects” for the decennial census report to Congress under § 141(f)(1), without finding that “new circumstances exist under which necessitate” such a modification and reporting that finding to Congress. *Id.* § 141(f)(3).

22. Section 6 of Title 13 addresses the methods that the Secretary is authorized to use in collecting data other than the enumeration of total population for apportionment purposes. In particular, Section 6 provides:

(a) The Secretary, whenever he considers it advisable, may call upon any other department, agency, or establishment of the Federal Government, or of the government of the District of Columbia, for information pertinent to the work provided for in this title.

(b) The Secretary may acquire, by purchase or otherwise, from States, counties, cities, or other units of government, or their instrumentalities, or from private persons and agencies, such copies of records, reports, and other material as may be required for the efficient and economical conduct of the censuses and surveys provided for in this title.

(c) To the maximum extent possible and consistent with the kind, timeliness, quality and scope of the statistics required, the Secretary shall acquire and use information available from any source referred to in subsection (a) or (b) of this section instead of conducting direct inquiries.

13 U.S.C. § 6.

23. The Census Bureau is a statistical agency subject to the standards and directives of the Office of Management and Budget (“OMB”) under the Paperwork Reduction Act (“PRA”), 44 U.S.C. §§ 3501-21, and the federal Information Quality Act (“IQA”), *see* consolidated Appropriations Act of 2001, Pub. L. No. 106-554, 114 Stat. 2763 (2000) (amending PRA).

24. The PRA sets forth standards that federal agencies must meet before the OMB can approve a proposed data collection, and requires the OMB to “coordinate the activities of Federal statistical system to ensure the efficiency and effectiveness of the system[] and the integrity, objectivity, impartiality, utility, and confidentiality of information collected for statistical purposes.” 44 U.S.C. § 3504(e)(1).

25. Under the OMB’s Policy Directive No. 1, federal statistical agencies must: (1) provide objective, accurate, and timely information; (2) have credibility with data users; (3) have the trust of the individuals whose information is collected; and (4) be independent from political and other undue external influence in the development, production, and dissemination of statistics.¹

26. Policy Directive No. 1 states that the Census Bureau is a federal statistical agency. The Directive also states that federal statistical agencies must “seek input regularly from the broadest range of private-and public-sector data users” in any plans for information collection or dissemination and must “apply sound statistical methods to ensure statistical products are accurate.”²

27. The Census Bureau must also “conduct objective statistical activities,” which means that they must “produce data that are impartial, clear, and complete” and make information available on an “equitable, policy-neutral, transparent, timely, and punctual basis.”³ The agency “must seek to avoid even the appearance that agency design, collection, processing, editing, compilation, storage, analysis, release, and dissemination processes may be manipulated.”⁴ To guarantee such impartiality, statistical agencies including the Census Bureau “must function in an environment that is clearly separate and autonomous from the other administrative, regulatory, law enforcement, or policy-making activities within their respective

¹ Statistical Policy Directive No. 1: Fundamental Responsibilities of Federal Statistical Agencies and Recognized Statistical Units (“Policy Directive No.1”), 79 Fed. Reg. 71611-12 (Dec. 2, 2014), *available at* <https://www.govinfo.gov/content/pkg/FR-2014-12-02/pdf/2014-28326.pdf>.

² *Id.* at 71615.

³ *Id.*

⁴ *Id.*

Departments” and “must be able to conduct statistical activities autonomously when determining information to collect and process.”⁵

28. Pursuant to the IQA, the Census Bureau’s Information and Quality Guidelines state that the Census Bureau must “provide information that is accurate, reliable, and unbiased.”⁶

2. **Apportionment, the Bureau’s Apportionment Tabulation, State Redistricting, and the P.L. 94-171 Redistricting Data File**

29. The decennial count of the national population is used to allocate seats in the U.S. House of Representatives to states based on the “whole number of persons in each State.” U.S. Const. amend. XIV, § 2.

30. Federal law requires the Secretary of Commerce to deliver the “tabulation of total population of states . . . for the apportionment of Representatives in Congress among the several States” to the President by the end of the census year, who must report them to Congress within a week after the start of Congress’s new session. 13 U.S.C. § 141(a)-(b); 2 U.S.C. § 2a.

31. After the Secretary of Commerce takes the census in a form and content determined by the Secretary of Commerce, he reports the population tabulations to the President. 13 U.S.C. § 141(b). “After receiving the Secretary’s report, the President ‘shall transmit to the Congress a statement showing the whole number of persons in each State . . . as ascertained under the . . . decennial census of the population, and the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives by the method known as the method of equal proportions[.]’” *Franklin v. Massachusetts*, 505 U.S. 788, 792 (1992) (quoting 2 U.S.C. § 2a(a)).

⁵ *Id.* at 71615.

⁶ Information Quality Guidelines Objectivity, U.S. Census Bureau, <https://www.census.gov/about/policies/quality/guidelines/objectivity.html> (last visited Aug. 28, 2019).

32. Decennial census data are also used for state legislative redistricting. *See, e.g.*, 13 U.S.C. § 141(c) (“tabulations of population of each State . . . shall . . . be completed, reported, and transmitted to each respective State within one year after the decennial census date” by the Secretary of Commerce).

33. Public Law (P.L.) 94-171, enacted in 1975, “directs the Census Bureau to make special preparations to provide redistricting data needed by the fifty states. Within a year following Census Day, the Census Bureau must send the data agreed upon to redraw districts for the state legislature to each state’s governor and majority and minority legislative leaders.”⁷

34. To fulfill this obligation, the Census Bureau is also required to conduct the program in a non-partisan manner. 13 U.S.C. § 141(c).

35. To comply with the requirements of P.L. 94-171, “the Census Bureau set up a voluntary program that enables participating states to receive data for voting districts (e.g., election precincts, wards, state house and senate districts) in addition to standard census geographic areas such as counties, cities, census tracts, and blocks.”⁸

36. While P.L. 94-171 only requires the Census Bureau to furnish counts of the total population, additional data items are also included. For example, since 1990 the Census Bureau has included summaries for the major race groups specified by the Statistical Programs and Standards Office of the OMB in Directive 15 (as issued in 1977 and revised in 1997).⁹

⁷ *Public Law 94-171 (P.L. 94-171)*, U.S. Census Bureau, Fact Finder, https://factfinder.census.gov/help/en/public_law_94_171_p_1_94_171.htm (last visited Aug. 15, 2019).

⁸ *Id.*

⁹ *Decennial Census P.L. 94-171 Redistricting Data*, U.S. Census Bureau (Mar. 8, 2017), available at <https://www.census.gov/programs-surveys/decennial-census/about/rdo/summary-files.html>.

37. The 2020 Census Redistricting Data Program (“2020 CRDP”) provides states the opportunity to delineate voting districts and to suggest census block boundaries for use in the 2020 census redistricting data tabulations (“P.L. 94-171 Redistricting Data File”). The CRDP is also “responsible for the effective delivery of the 2020 Census P.L. 94-171 Redistricting Data prior to April 1st, 2021, one year from census day.”¹⁰

38. On July 15, 2014, the Census Bureau announced and sought public comments on the establishment of the 2020 CDRP.¹¹

39. As part of its process, the Census Bureau issued a “prototype product to illustrate what the states can expect from the decennial census.”¹² The “prototype data product [is used] to illustrate and solicit feedback on what the 2020 Census P.L. 94-171 Redistricting Data File will look like and how it addresses the needs of the states for their legislative redistricting requirements. This prototype is used to build and test systems in advance of the official data release so that states can begin work immediately, as many have short statutory deadlines that begin with the receipt of their data.”¹³

40. The Census Bureau’s standard procedure is “[i]f substantive changes are needed to the 2020 Census P.L. 94-171 Redistricting Data File design based on comments received

¹⁰ Redistricting & Voting Rights Data Office, *Redistricting Data Program Management*, U.S. Census Bureau (last revised Dec. 27, 2018), <https://www.census.gov/programs-surveys/decennial-census/about/rdo/program-management.html?>

¹¹ Establishment of the 2020 Census Redistricting Data Program, 79 Fed. Reg. 41258 (Jul. 15, 2015), available at <https://www.govinfo.gov/content/pkg/FR-2014-07-15/pdf/2014-16532.pdf>.

¹² Redistricting & Voting Rights Data Office, *Redistricting Data Program Management*, U.S. Census Bureau (last revised Dec. 27, 2018), <https://www.census.gov/programs-surveys/decennial-census/about/rdo/program-management.html?>

¹³ *Id.*

regarding this prototype, then an additional Federal Register Notice explaining those differences will be issued.”¹⁴

41. On November 8, 2017, the Census Bureau published a notice in the Federal Register asking for public comment on the “Proposed Content for the Prototype 2020 Census Redistricting Data File.”¹⁵ The prototype did not include citizenship population tabulation data as substantive content to be included in the P.L. 94-171 file. The Census Bureau received three public comments. None of the public comments requested that the Census Bureau include citizenship data in the 2020 Census Redistricting File.¹⁶

42. The final Prototype 2020 Census Redistricting Data File published in the Federal Register on May 1, 2018, did not include citizenship population tabulation data as substantive content to be included in the P.L. 94-171 file.¹⁷

43. On December 28, 2018, in connection with the Census Bureau’s submission to OMB for clearance, the Census Bureau submitted a proposal for collection of information under the provisions of the PRA.¹⁸ The proposal posted to the Federal Register, included the following notice:

¹⁴ *Id.*

¹⁵ Ron Jarmin, *Final Content Design for the Prototype 2020 Census Redistricting Data File* (Apr. 24, 2018), available at <https://www.federalregister.gov/documents/2018/05/01/2018-09189/final-content-design-for-the-prototype-2020-census-redistricting-data-file>.

¹⁶ *Id.*

¹⁷ *2020 Census Prototype Redistricting Data (Public Law 94-171) Summary File from the End-to-End Census Test*, U.S. Census Bureau, https://www2.census.gov/programs-surveys/decennial/rdo/about/2020-census-program/Phase3/Phase3_prototype_schematic_final.pdf?# (last visited Aug. 27, 2019).

¹⁸ *OMB Information Collection Request, 2020 Census, OMB Control Number 0607-1006*, Department of Commerce and U.S. Census Bureau, available at <https://www.reginfo.gov/public/do/DownloadDocument?objectID=88197702> (last visited Sep. 13, 2019).

The purpose of the 2020 Census Redistricting Data Program (RDP) is to provide to each state the legally required redistricting data tabulations by the mandated deadline of one year from Census Day: April 1, 2021. In compliance with Public Law (Pub. L.) 94-171, the Census Bureau will tabulate for each state the total population counts by race and Hispanic origin. The Census Bureau will tabulate these counts for the total population and for the population age 18 and over in a prototype redistricting data file released as part of the 2018 End-to-End Census Test. The Census Bureau intends to work with stakeholders, specifically “the officers or public bodies having initial responsibility for the legislative apportionment of each state,” to solicit feedback on the content of the prototype redistricting data file. If those stakeholders indicate a need for tabulations of citizenship data on the 2020 Census Public Law 94-171 Redistricting Data File, the Census Bureau will make a design change to include citizenship as part of that data.¹⁹

44. The December 28, 2018 notice was issued in connection with a prior proposal that included a citizenship question on the 2020 decennial census for the pretextual reason of using the data for VRA enforcement.

45. Since its creation, citizenship population data has not been included in any of the tabulations contained within the P.L. 94-171 Redistricting Data File.

46. In February 2019, the Department of Commerce released the final version of the OMB request.²⁰ The request noted that the issue of whether a citizenship question would be included in the 2020 census was still being litigated.²¹ The document also provides that if “stakeholders indicate a need for tabulations of citizenship data on the 2020 Census P.L. 94-171 Redistricting Data File, the Census Bureau will make a design change to include citizenship as part of that data, *if collected*. That new design would then be published in the Federal Register after it is completed in the summer of 2019.”²²

¹⁹ *Id.* at 38-39.

²⁰ *Information Collection Request 2020 Census – Enumeration Operations OMB Control Number 0607-1006*, U.S. Census Bureau, available at <https://t.co/j0FuZmgUKf?amp=1>

²¹ *Id.* at 38-42.

²² *Id.* at 30-31 (emphasis added).

47. On March 29, 2019, the Census Bureau published the prototype redistricting data file to states based on the test enumeration of Providence County, Rhode Island, that took place in 2018.²³ The Providence County, Rhode Island test did not collect citizenship data, and the prototype redistricting data file did not contain citizenship data.

3. Citizenship Data From the Census Bureau’s American Community Survey

48. There will not be a question on the 2020 decennial census regarding the citizenship of respondents and their households. Therefore, the decennial census hard count will not include a count of the total population divided into citizen and non-citizen categories.

49. The ACS is an ongoing, yearly survey by the Census Bureau that collects demographic information including ancestry, citizenship, educational attainment, income, language proficiency, migration, disability, employment, and housing characteristics from approximately 2.5 percent of U.S. households.

50. ACS data are an estimate of population characteristics, including citizenship, are based on sample data, and are not a count of citizens and non-citizens. ACS data are not used to determine whether voting districts are equipopulous and comply with the “one person, one vote” constitutional requirement. Rather, “in the overwhelming majority of cases, jurisdictions have equalized total population, as measured by the decennial census” total population enumeration. *Evenwel v. Abbott*, 136 S. Ct. 1120, 1124 (2016).

B. Defendants’ Collection of Citizenship Data For Apportionment and Redistricting Purposes

51. On March 26, 2018, Defendant Ross directed the Census Bureau to add a citizenship question to the 2020 census and to use federal and state administrative records to

²³ See U.S. Census Bureau Press Release, *2018 Census Test Complete, Prototype Redistricting File Sent to States* (Mar. 29, 2019), available at <https://www.census.gov/newsroom/press-releases/2019/prototype-redistricting-file.html>.

validate census responses to the citizenship question. Defendant Ross falsely claimed that the reason for adding the citizenship question was to collect citizenship data to assist the Department of Justice (“DOJ”) in its enforcement of the VRA.

52. Several lawsuits successfully challenged the addition of the citizenship question as unlawful and three federal courts permanently enjoined Defendants from adding a citizenship question to the 2020 census.²⁴

53. On June 27, 2019, the United States Supreme Court determined that the “VRA enforcement rationale—the sole stated reason [for adding a citizenship question]—seems to have been contrived.” *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2575 (2019).

54. Defendants were also permanently enjoined from “delaying the process of printing the 2020 decennial census questionnaire after June 30, 2019 for the purposes of including a citizenship question; and from asking persons about citizenship status on the 2020 Census questionnaire or otherwise asking a citizenship question as part of the 2020 decennial Census.” *Kravitz v. Dep’t of Comm.*, No. 18-cv-1041, ECF No. 203; *see also California*, 358 F. Supp. 3d at 1050 (permanently enjoining defendants from including citizenship question on 2020 census); *New York*, 351 F. Supp. 3d 502 at 679 (same).

55. On July 11, 2019, President Trump issued EO 13880 requiring that, among other things, all executive departments and agencies provide the Department of Commerce “the maximum assistance permissible, consistent with law, in determining the number of citizens and non-citizens in the country, including by providing any access that the Department may request to administrative records that may be useful in accomplishing” the objective of collecting

²⁴ *See Kravitz v. Dep’t of Commerce*, 366 F. Supp. 3d 681, 755 (D. Md. 2019); *California v. Ross*, 358 F. Supp. 3d 965, 1050 (N.D. Cal. 2019); *New York v. Dep’t of Commerce*, 351 F. Supp. 3d 502, 679 (S.D.N.Y.), *aff’d in part, rev’d in part and remanded sub nom. Dep’t of Commerce v. New York*, 139 S. Ct. 2551 (2019).

citizenship data.²⁵ EO 13880 also directs Secretary Ross to instruct the Census Bureau to create an inter-agency working group to collect citizenship data in connection with the 2020 decennial census for redistricting, directs the Department of Commerce to “strengthen its efforts, consistent with law, to obtain State administrative records concerning citizenship,” and later directs that the Department “shall strengthen its efforts, consistent with law, to gain access to relevant State administrative records.”²⁶

56. EO 13880 states several pretextual reasons for collecting robust citizenship data from all federal agencies and states, including: (1) “data on the number of citizens and aliens in the country is needed to help us understand the effects of immigration on our country and to inform policymakers considering basic decisions about immigration policy”; (2) “the lack of complete data on numbers of citizens and aliens hinders the Federal Government’s ability to implement specific programs and to evaluate policy proposals for changes in those programs”; and (3) “data identifying citizens will help the Federal Government generate a more reliable count of the unauthorized alien population in the country,” which is necessary “evaluat[e] many policy proposals.”²⁷

57. The executive order also lists, at least in part, the true reason for the order and for Secretary Ross’s prior decision to add a citizenship question to the 2020 census: so that “State and local legislative districts [can redistrict] based on the population of voter-eligible citizens.”²⁸ EO 13880 further states that “because eligibility to vote depends in part on citizenship, States

²⁵ *Executive Order on Collecting Information about Citizenship Status in Connection with the Decennial Census* at § 1 (July 11, 2019), available at <https://www.whitehouse.gov/presidential-actions/executive-order-collecting-information-citizenship-status-connection-decennial-census/>.

²⁶ *Id.* at §§ 1, 3(b), and 3(d).

²⁷ *Id.* at § 1.

²⁸ *Id.*

could more effectively exercise this option with a more accurate and complete count of the citizen population.”²⁹

58. To that end, EO 13880 instructs the Census Bureau to continue its efforts to “make a design change to make [tabulations of citizenship data] available” for interested states to use for state and local redistricting purposes.³⁰

59. That same day during a press conference, President Trump stated that his intention in issuing EO 13880 is so that “[t]he Census Bureau can use [citizenship] information, along with information collected through the questionnaire, to create the official census. In other words, as a result of today’s executive order, we will be able to ensure the 2020 Census generates an accurate count of how many citizens, non-citizens, and illegal aliens are in the United States of America.”³¹

60. The President further stated that, “[t]his information is also relevant to administering our elections” because “[s]ome states may want to draw state and local legislative districts based upon the voter-eligible population,” and that the Supreme Court “would not review certain types of districting decisions, which could encourage states to make such decisions based on voter eligibility.”³²

61. Attorney General William Barr added that “there is a current dispute over whether illegal aliens can be included for apportionment purposes. Depending on the resolution of that

²⁹ *Id.*

³⁰ *Id.*

³¹ *Remarks by President Trump on Citizenship and the Census*, The White House (July 11, 2019, 5:37 p.m.), available at <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census/>.

³² *Id.*

dispute, this data may be relevant to those considerations,” and that the DOJ “will be studying this issue.”³³

62. On July 12, 2019, the Census Bureau published a revision of the February 2019 OMB request, reportedly backdated to July 3, 2019, that stated that Defendant Ross “directed the Census Bureau to proceed with the 2020 Census without a citizenship question on the questionnaire, and rather to produce Citizen Voting Age Population (CVAP) information prior to April 1, 2021 that states may use in redistricting.”³⁴

C. Shortcomings of Citizenship Data Derived From Administrative Records

63. “[T]he Census Numident is the most complete and reliable administrative record source of citizenship data currently available to the Census Bureau. The Numident file is a record of individual applications for Social Security cards and certain subsequent transactions for those individuals.”³⁵

64. On March 1, 2018, Chief Scientist and Associate Director for Research and Methodology, John M. Abowd, prepared a memorandum for Defendant Ross that set forth the various reasons why collecting citizenship data from administrative records does not produce 100 percent accurate data on citizenship.³⁶

³³ *Id.*

³⁴ *Paperwork Reduction Act Program, Information Collection Request 2020 Census - Enumeration Operations OMB Control Number 0607-1006*, Department of Commerce and U.S. Census Bureau at 18 (July 3, 2019), available at <https://www.documentcloud.org/documents/6192581-2020-Census-Supporting-Statement-A-Revised-July.html#document/p18/a512146>.

³⁵ J. David Brown, *et al.*, *Understanding the Quality of Alternative Citizenship Data Sources for the 2020 Census*, U.S. Census Bureau, Center for Economic Studies (August, 2018), available at <https://www2.census.gov/ces/wp/2018/CES-WP-18-38.pdf>.

³⁶ Memorandum from John M. Abowd, Chief Scientist & Assoc. Dir. for Research & Methodology, U.S. Census Bureau, to Wilbur L. Ross, Sec’y, U.S. Dep’t of Commerce (Mar. 1, 2018) (hereinafter “Abowd Memo.”).

65. For example, “[i]n the 2017 Numident . . . , 6.6 million persons born outside the U.S. have blank citizenship among those born in 1920 or later with no year of death. The evidence suggests that citizenship is not missing at random. Of those missing citizenship in the Numident, a much higher share appears to be U.S. citizens than compared to those for whom citizenship data are not missing . . . some of the blanks may be noncitizens.”³⁷

66. Dr. Abowd further stated that another weakness in administrative records is that there are questions about how complete the Numident citizenship data are and how timely it updates naturalization. Although naturalized citizens are instructed to apply for a social security number, “we do not know what fraction of naturalized citizens actually notify the [Social Security Administration], and how soon after being naturalized they do so.”³⁸

67. Additionally, “[a] third potential weakness of Numident citizenship is that some people are not required to have a Social Security Number (SSN), whether they are a U.S. citizen or not.” According to Dr. Abowd, although U.S. Citizenship and Immigration Services (“USCIS”) and State Department memoranda of understanding could provide some context for gaps in citizenship data, USCIS data on naturalizations, lawful permanent residents, and I-539 non-immigrant visa extensions can only partially address the weakness of the Numident. “The data do not cover naturalizations occurring before 1988, as well as not covering and some between 1988-2000. USCIS data do not always cover children under 18 at the time a parent became a naturalized U.S. citizen” and some of the data for children may not be in electronic form.³⁹

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

68. Other data gaps in administrative records includes the following categories: (1) U.S. citizens from birth with no SSN or U.S. passport; (2) U.S. citizens from birth born outside the U.S., who do not have a U.S. passport and either applied for an SSN prior to 1974 and were 18 years or older, or applied before the age of 18 prior to 1978; (3) U.S. citizens who were naturalized prior to 2001 and did not inform SSA of their naturalization because they originally applied for an SSN after they were naturalized, and it was prior to when citizenship verification was required for those born outside the U.S. (1974); (4) U.S. citizens who were automatically naturalized if they were under the age of 18 when their parents became naturalized in 2000 or later, and did not inform USCIS or receive a U.S. passport; (5) Lawful permanent residents (“LPR”) who received that status prior to 2001 and either do not have an SSN or applied for an SSN prior to when citizenship verification was required for those born outside the U.S. (1974); (6) noncitizen, non-LPR residents who do not have SSN or ITIN and who did not apply for a visa extension; and (7) persons with citizenship information in administrative data, but the administrative and decennial census data cannot be linked due to missing or discrepant Protected Identification Key.⁴⁰

69. Because of the gaps in administrative data, the Census Bureau “will most likely never possess a fully adequate truth deck to benchmark [citizenship] to.”⁴¹

D. Defendants’ Decision to Produce Citizenship Data For Use With the P.L. 94-171 File is Motivated By Racially Discriminatory Intent

70. Throughout the litigation challenging the addition of a citizenship question to the decennial census, including before the U.S. Supreme Court, Defendant Ross maintained that he decided to add the citizenship question to the 2020 decennial census so that the DOJ could better

⁴⁰ *Id.*

⁴¹ *Id.*

enforce the VRA. The documents produced during that litigation revealed instead that Defendant Ross, members of the Trump Administration, A. Mark Neuman, then-Kansas Secretary of State Kris Kobach, members of the DOJ, including then-Attorney General Jefferson Sessions (“AG Sessions”) and head of the DOJ’s Civil Rights Division John Gore, and Republican strategist Dr. Thomas Hofeller conspired to add a citizenship question to the 2020 census to reduce the response rates of people of color and immigrants, and exclude them from congressional apportionment and redistricting to achieve the objective of reducing their political power.

71. After consulting with the White House and Mr. Kobach, Defendant Ross used the Department of Commerce to facilitate the conspiracy by directing staff to research the exclusion of immigrants from apportionment and to create an alternative justification for the addition of the citizenship question to the census. Defendant Ross and the Department of Commerce then solicited the assistance first of the DOJ and then of the Department of Homeland Security (“DHS”), before finally securing the participation of the DOJ, including AG Sessions.

72. Defendant Ross, through the Department of Commerce, coordinated with AG Sessions, other members of the DOJ, and the White House to fabricate a “need” for the citizenship question that resulted in a letter from the DOJ requesting the addition of the question to the 2020 census (the “DOJ Letter”).

73. Without their knowledge, Defendant Ross used the Census Bureau to continue to facilitate the conspiracy and directed the Census Bureau to look into the DOJ request. In a March 28, 2018 memorandum, Defendant Ross ignored the findings and recommendation of the Census Bureau and reached the conspiracy’s predetermined conclusion to add a citizenship question on the 2020 census questionnaire.

74. After Defendant Ross issued the March 28 memorandum, the Trump Administration publicly admitted its role in the conspiracy in campaign emails to supporters. Defendant Ross has continued to facilitate the conspiracy to exclude non-citizens from congressional apportionment and redistricting to achieve the objective of reducing the political power of non-citizens and Latinos.

75. Following the Supreme Court’s rejection of the contrived rationale in *Department of Commerce v. New York*, Defendants continued to pursue the collection of data that would allow non-citizens to be excluded from apportionment and redistricting, as evidenced by EO 13880 and Defendant Ross’s July 2019 directive.

76. On June 3, 2019, plaintiffs in *LUPE v. Ross*, filed a motion for relief from final judgment and request for indicative ruling that included documents belonging to the late Dr. Hofeller, a leading Republican redistricting strategist and map-drawing expert for the Republican National Committee. *La Unión Del Pueblo Entero, et al. v. Secretary Ross, et al.*, No. 18-CV-1570 (D. MD.) (hereinafter, “*LUPE v. Ross*”), ECF No. 136.

77. The Hofeller documents demonstrate that the addition of the citizenship question, and now the directives that the Census Bureau to collect citizenship data to be produced for use with the P.L. 94-171 Redistricting Data File, was motivated by a racially discriminatory scheme to reduce Latino representation and increase over-representation of non-Latino Whites, thereby serving Republican political ends at Latinos’ expense.

78. Dr. Hofeller acknowledged that the shift from redistricting based on total population to CVAP was a “radical departure”—one that would alienate Latino voters. But, he concluded, “[a] switch to the use of citizen voting age population as the redistricting population base for redistricting would be advantageous to Republicans and Non-Hispanic Whites.” To

generate the necessary CVAP data and achieve this goal of diluting Latino representation while increasing over-representation of non-Latino Whites, Dr. Hofeller concluded that a citizenship question must be added to the 2020 census.

79. The Hofeller documents show that Dr. Hofeller drafted and gave to Commerce and DOJ officials, including Mr. Neuman, part of President Trump's transition team, and Mr. Gore, the substantive content of the December 2017 DOJ letter requesting the addition of the citizenship question.

80. The Hofeller documents demonstrate a partisan and discriminatory purpose behind the addition of the citizenship question.

81. The same discriminatory motivation behind adding the citizenship question motivated Defendants to continue their unlawful course of action to collect citizenship data and produce citizenship population tabulation data for use with the P.L. 94-171 Redistricting Data File so that states can exclude non-U.S. citizens from apportionment to the advantage of non-Latino White Republican voters and at the expense of the Latino community.

E. The Production of Citizenship Data For Use With The P.L. 94-171 Redistricting Data File Population Tabulations Harms Latinos and Non-U.S. Citizens and Increases the Chances of Malapportioned State Legislative and Local Districts

82. Plaintiffs and members of organizational plaintiffs live in states where there is a higher population of non-citizens.

83. Under Article I, Section 2, Clause 3 of the U.S. Constitution, as amended by the Fourteenth Amendment, the decennial population counts are used to determine the number of congressional representatives apportioned to each state. Exclusion of non-citizens from the population count used for apportionment creates a significant risk that states in which large

numbers of non-citizens reside, including Texas and Arizona, will suffer a reduction in the number of congressional seats that would otherwise be apportioned to them.

84. Plaintiffs and members of organizational plaintiffs also live in states where lawmakers have expressed an interest and desire to use CVAP as a population base for drawing congressional and state legislative redistricting plans in 2021.⁴² Plaintiffs and members of organizational plaintiffs reside in areas in which, according to recent ACS data, the population has a higher percentage of non-citizens than the population of their states as a whole. Latinos and non-U.S. citizens, including individual Plaintiffs and members of Plaintiff organizations will be injured when the Census Bureau provides those states with citizenship data to be used along with the total population tabulations in the P.L. 94-171 Redistricting Data File, resulting in the exclusion of non-citizens from the population base used for redistricting congressional, state legislative and local districts. As a result, Plaintiffs will suffer vote dilution and loss of representation in unconstitutionally overpopulated districts.

CAUSES OF ACTION

COUNT I

(Administrative Procedure Act, 5 U.S.C. § 706 (2)(A))

(Inadequate Rationale)

85. Plaintiffs incorporate by reference the allegations in all preceding paragraphs.

86. The APA prohibits final agency action that is “arbitrary, capricious, an abuse of discretion, or not otherwise in accordance with law[.]” 5 U.S.C. § 706(2)(A).

⁴² See, e.g., Nick Brown, *Republicans want census data on citizenship for redistricting*, Reuters (Apr. 8, 2019), available at <https://www.reuters.com/article/us-usa-census-redistricting-insight/republicans-want-census-data-on-citizenship-for-redistricting-idUSKCN1RK18D>.

87. Defendants represent or are agencies subject to the requirements of the APA. 5 U.S.C. § 701 (b)(1).

88. Defendants failed to provide any independent analysis or support to justify collecting citizenship data to produce this data for use with the population tabulations provided to states in the 2020 Census P.L. 94-171 Redistricting Data File. Defendants' decision to collect citizenship data and produce citizenship population tabulations for use alongside the 2020 Census P.L. 94-171 Redistricting Data File is thus arbitrary and capricious, discriminatory, an abuse of discretion, and otherwise not in accordance with law, and therefore violates the APA and must be set aside.

89. Plaintiffs suffered and will suffer permanent and irreparable injury unless Defendants are enjoined from collecting citizenship data and producing tabulations of citizenship population for use along with the 2020 Census P.L. 94-171 Redistricting Data File.

COUNT II

(Administrative Procedure Act, 5 U.S.C. § 706 (2)(B))

(Contrary to Law)

90. Plaintiffs incorporate by reference the allegations in all preceding paragraphs.

91. The APA prohibits final agency action that is “contrary to constitutional right, power, privilege or immunity[.]” 5 U.S.C. § 706(2)(B).

92. Defendants represent or are agencies subject to the requirements of the APA. 5 U.S.C. § 701 (b)(1).

93. Defendants seek to collect and produce tabulations of citizenship population for use along with the 2020 Census P.L. 94-171 Redistricting Data File to discriminate against Plaintiffs and organizational Plaintiffs' members because of their race, national origin, or

alienage. Exclusion of non-citizens from the population base used for redistricting without a hard count of citizens and non-citizens will result in unconstitutionally malapportioned congressional and state legislative districts. Defendants' decision to collect citizenship data and produce citizenship population tabulations for use along with the 2020 Census P.L. 94-171 Redistricting Data File is contrary to constitutional right, power, privilege or immunity, and therefore violates the APA and must be set aside.

94. Plaintiffs suffered and will suffer permanent and irreparable injury unless Defendants are enjoined from collecting citizenship data and producing tabulations of citizenship population for use along with the 2020 Census P.L. 94-171 Redistricting Data File.

COUNT III

(Administrative Procedure Act, 5 U.S.C. § 706 (2)(C))

(Excess of Lawful Authority)

95. Plaintiffs incorporate by reference the allegations in all preceding paragraphs.

96. The APA prohibits final agency action that is “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right[.]” 5 U.S.C. § 706(2)(C).

97. Defendants represent or are agencies subject to the requirements of the APA. 5 U.S.C. § 701 (b)(1).

98. Presidential power is limited to the authority conferred on the President by acts of Congress or by the Constitution itself. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952). The Constitution gives Congress authority to conduct the census “in such a Manner as [Congress] shall by Law direct,” U.S. Const. art. I, § 2, and “vests Congress with wide discretion over . . . the conduct of the census,” *Wisconsin*, 517 U.S. at 15. Under to this authority, Congress delegated the duty of conducting the census to the Secretary of Commerce,

subject to the provisions of the Census Act. Neither the Census Act nor the Constitution vests the President with authority over the *conduct* of the census.

99. Defendant Ross has exceeded his statutory authority over the conduct of the decennial census by following EO 13880, thus improperly allowing President Trump to usurp the discretion delegated to the Secretary by Congress. Secretary Ross has directed the Census Bureau to collect citizenship data not because he finds that it is necessary to collect this data, but because President Trump, as a co-conspirator in the continuing scheme to deprive Plaintiffs of political representation, finds that it is necessary for the Census Bureau to collect this data.

100. For the foregoing reasons, Defendant Ross's decision to follow EO 13380 and direct the Census Bureau to, among other things, collect citizenship data and produce citizenship population tabulations for use along with the 2020 Census P.L. 94-171 Redistricting Data File is in excess of the Secretary's statutory jurisdiction, authority, or limitations, or short of statutory right, and therefore violates the APA and must be set aside.

101. Plaintiffs suffered and will suffer permanent and irreparable injury unless the Secretary is enjoined from following EO 13380.

COUNT IV

(Administrative Procedure Act, 5 U.S.C. § 706 (2)(D))

(Improper Procedure)

102. Plaintiffs incorporate by reference the allegations in all preceding paragraphs.

103. The APA prohibits final agency action that is “without observance of procedure required by law[.]” 5 U.S.C. § 706(2)(D).

104. Defendants represent or are agencies subject to the requirements of the APA. 5 U.S.C. § 701 (b)(1).

105. Defendants departed from statutory and regulatory requirements under 13 U.S.C. § 141(c) and Public Law 94-171, as well as OMB and Census Bureau standards and practices, to collect and produce specific tabulations of population other than total population, race, and Hispanic/non-Hispanic origin for use along with the 2020 Census P.L. 94-171 Redistricting Data File. Defendants' decision to collect citizenship data and produce citizenship population tabulations for use along with the 2020 Census P.L. 94-171 Redistricting Data File is thus without observance of procedure required by law, and therefore violates the APA and must be set aside.

106. Plaintiffs suffered and will suffer permanent and irreparable injury unless Defendants are enjoined from collecting citizenship data and producing tabulations of citizenship population for use along with the 2020 Census P.L. 94-171 Redistricting Data File.

COUNT V

(Equal Protection Clause of the Fifth Amendment to the United States Constitution)

107. Plaintiffs incorporate by reference the allegations in all preceding paragraphs.

108. The Due Process Clause of the Fifth Amendment incorporates the equal protection guarantee of the Fourteenth Amendment.

109. The collection of citizenship data and the production of citizenship population tabulations for use along with the P.L. 94-171 Redistricting Data File violates the equal protection guarantee of the Fifth Amendment because it is motivated by racial animus towards Latinos, and animus towards non-U.S. citizens and foreign-born persons.

110. Defendants' violation caused and will cause harm to Plaintiffs.

COUNT VI

(Conspiracy to Violate Civil Rights Under 42 U.S.C. § 1985(3))

111. Plaintiffs incorporate by reference the allegations in all preceding paragraphs.

112. Motivated by their racial and class-based animus toward Latinos, President Trump, Defendant Ross, Defendant Dillingham, John Gore, Attorney General Sessions, Kris Kobach, and Stephen Bannon conspired to collect citizenship data and produce citizenship data for use along with the P.L. 94-171 Redistricting Data File so that states can use CVAP data to apportion state and local districts.

113. By taking the actions described herein, President Trump, Defendant Ross, Defendant Dillingham, John Gore, Attorney General Barr, Kris Kobach and Stephen Bannon conspired to deprive Latinos and non-U.S. citizens of their Fifth Amendment right to equal protection of the laws under the Fifth Amendment of the U.S. Constitution in violation of 42 U.S.C. § 1985(3).

114. Defendants' unlawful conduct to conspire to violate the constitutional rights of Latinos and non-U.S. citizen persons caused and will cause harm to Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that this Court:

- (a) Declare that production of citizenship data for use along with the P.L. 94-171 Redistricting Data File and population tabulations, or including citizenship data in the File, violates the Equal Protection guarantee of the Fifth Amendment;
- (b) Declare that Secretary Ross's decision to follow EO 13380 and order the Census Bureau to produce tabulations of citizenship population data for use along with the P.L. 94-171 Redistricting Data File, or to include citizenship data in the File, violates §§ 706(2)(A)-

(D) of the APA because it is arbitrary and capricious, an abuse of discretion, and not in accordance with law; contrary to constitutional power, right, privilege or immunity; and/or in excess of statutory jurisdiction and authority, and without observance of procedure required by law;

- (c) Enjoin Defendants and their agents from collecting data as dictated by EO 13380 and from producing tabulations of citizenship population for use alongside the P.L. 94-171 Redistricting Data File and population tabulations or including citizenship data in the File and from taking any irreversible steps to produce tabulations of citizenship population for use alongside with the File or including tabulations of citizenship population in the File;
- (d) Award Plaintiffs reasonable costs, expenses, and attorneys' fees pursuant to 28 U.S.C. § 2412; and
- (e) Award such additional relief as the interests of justice may require.

Dated: September 13, 2019

Respectfully submitted,

By /s/ Terry Ao Minnis

**ASIAN AMERICANS ADVANCING JUSTICE |
AAJC**

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* *Pro hac vice applications forthcoming*
** *Application for admission forthcoming*
° *Not admitted in DC.*

From: [Merissa Hamilton](#)
To: [Kelly Townsend](#)
Subject: Dominion Review in Arizona
Date: Friday, November 13, 2020 11:05:26 AM
Attachments: [MH Review of Dominion Voting Systems in Arizona.pdf](#)
[Hamilton, Merissa Resume.pdf](#)

Attached is my review of the Dominion Voting Systems and my resume attached with my background and credentials.

I can send you the reports referenced from other States if you like. Just let me know.

My Conclusion

- Arizona Secretary of State has not published a technical review document of the Dominion Voting Systems. Instead, Hobbs' committee allowed a vendor-driven sales demo as their test certification presentation.
- The Maricopa County Board of Supervisors did not present a public review and pushed through a \$6.1M allocation approval to Dominion without any public comment or discussion by the Board. It went straight to a vote.
- The Texas findings and concerns are not publicly addressed by any level of government in Arizona.
- For the sake of voter confidence and transparency, Arizona should conduct a statistically significant count of the Early and Election Day votes. Arizona should conduct an audit of the Adjudication process. Arizona should publish the technical reports on reading the ballots and instrument selection.

Merissa Hamilton
(480) 374-0102

Review of Dominion Voting Systems in Arizona

Maricopa County & Arizona Secretary
of State

Introduction

- In the May 20th, 2019 Maricopa County Elections Workgroup Study report, it was announced an RFP for a new election tabulation system was submitted for a targeted vendor selection of June 2019

- For each election, the final configuration and setup for an intended election should go through a full security review.
2. The current tabulation system is outdated. Newer technology affords the ability to have a greater flexibility with ballot styles, streamlines the adjudication process, and performs the central count activities at a much faster rate. The County should obtain new tabulation equipment as soon as possible.
 - A Request for Proposal (RFP) has been released and a vendor selection is targeted for June 2019.
 3. The VRAS database serves a critical function for both the Recorder and the Elections department. Regardless of decisions as to the reporting of the Elections department to the Recorder or the Board of Supervisors, **both offices should maintain real-time access** to the VRAS database.
 - Given that the VRAS database is custom-developed, the Recorder/Elections IT department should insure that documentation for all software, configuration, etc. is up to date and archived appropriately.
 - The database software should be secured and controlled with an appropriate code management process and quality control process. This will be very important to ensure that any software updates are fully reviewed and can demonstrate full security on the software in the event of an audit.
 4. Several of the key components of the Elections technology platform have been custom developed by the Recorder/Elections IT department. These tools have been fundamental to the execution of elections in the County. However, there is inherent risk in custom-developed software and systems and the Elections department should consider the following guidelines:
 - Ensure that all software, hardware, configurations, etc. are properly documented and archived.
 - Backup resources to the system developers should be identified and trained in the system structures, coding and platforms.
 - Commercial systems should be evaluated as a replacement any time a major upgrade to the existing customer tools is required. While commercial systems have not proven successful in the past, technology updates and advances could make them viable in the future.

Dominion Contract Award

- A month later, the RFP was completed, the contract negotiated, and an award was voted by the Board of Supervisors on June 26th 2019 not to exceed \$6.1M over three years

128. ELECTIONS TABULATION SYSTEM (190265-RFP)

Approve the contract for award to Dominion Voting Systems not to exceed \$6,100,000.00 over three years until July 31, 2022 with three, one-year renewal options for a maximum of six years. The effective date of the contract will be August 1, 2019. The purpose of the contract is to provide a source for leased equipment to supplement and/or replace the current tabulation system/Election Management System (EMS) and continue the hybrid approach of offering precinct based tabulators along with central count tabulators for early voting returns. In addition, at all in-person sites (early or Election Day), a Help America Vote Act (HAVA) compliant accessible marking or voting device will be placed. (C-73-19-034-3-00)

SERIAL 190265 RFP ELECTIONS TABULATION SYSTEM

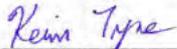
DATE OF LAST REVISION: February 10, 2010 CONTRACT END DATE: December 31, 2022

CONTRACT PERIOD THROUGH JULY DECEMBER 31, 2022

TO: All Departments
FROM: Office of Procurement Services
SUBJECT: Contract for ELECTIONS TABULATION SYSTEM

Attached to this letter is published an effective purchasing contract for products and/or services to be supplied to Maricopa County activities as awarded by Maricopa County on **June 26, 2019 (EIF 08/01/19)**.

All purchases of products and/or services listed on the attached pages of this letter are to be obtained from the vendor holding the contract. Individuals are responsible to the vendor for purchases made outside of contracts. The contract period is indicated above.



Kevin Tyne, Chief Procurement Officer
Office of Procurement Services

ES:mm
Attach

Copy to: Office of Procurement Services
Rev Valenzuela, Records Office/Elections



CONTRACT: ELECTIONS TABULATION SYSTEM (190265-RFP)

This Contract is entered into this 26th day of July 2019 by and between Maricopa County ("County"), a political subdivision of the State of Arizona, and Dominion Voting Systems, Inc., a Delaware corporation ("Contractor") for the purchase of Maricopa Election Tabulation System.

1.0 CONTRACT TERM:

~~This Contract is for a term of three (3) years, beginning on the 1st day of August 2019 and ending the 31st day of July, 2022.~~

- 1.1 **This Contract is for a term of three (3) years and five (5) months, beginning on the 1st day of August 2019 and ending the 31st day of December 2022. The contract will consist of two independent phases.**
 - 1.1.1 **Phase 1 - Pilot:** Over the course of the first five months of the Contract Term (August 1, 2019 through December 31, 2019) the County will conduct a pilot test of Dominion's equipment at no cost to the County.
 - 1.1.2 **Phase 2 - System Installation and Ongoing Services:** Beginning January 1, 2020 through the December 31, 2022, Dominion shall provide all equipment, services and related licenses to the County at the corresponding prices as outlined in this Agreement.
- 1.2 The County may, at its option and with the agreement of the Contractor, renew the term of this Contract for additional terms up to a maximum of ~~three (3)~~ **additional two (2) years and seven (7) months**, (or at the County's sole discretion, extend the contract on a month-to-month bases for a maximum of six (6) months after expiration). The County shall notify the Contractor in writing of its intent to extend the Contract term at least sixty (60) calendar days prior to the expiration of the original contract term, or any additional term thereafter.

CONCERNS

- The Board of Supervisors were not presented with any technical documents with analysis of the Dominion software in the public June 26th, 2019 meeting before approving the \$6.1M award
- The award was made without any discussion
- The meeting minutes from the June 26, 2019 meeting are not posted. The video of the meeting is available.
- The vote occurs at the 1:07:00 mark https://youtu.be/yO8mMm_e0to

Meeting Search Results

2019

Meeting Name All ▾	Meeting Type All ▾	Meeting Date ▾ All ▾	Links
Formal	Formal	6/26/2019 9:30:00 AM	Agenda  Summary  View Media

ARIZONA PUBLICLY AVAILABLE REPORTS

- The only publicly available review of the Dominion software was conducted by the Arizona Secretary of State Equipment Certification Advisory Committee
- A series of live sales demos were substituted instead of an official technical analysis like other States have conducted.
- Sales demos were conducted on:
 - October 29th, 2019 – Adjudication demo, unknown number of ballots
 - January 28th, 2020 – 16 ballots write-in demo
- No formal technical examination reports exist available to the public
- Minutes from the sales demos are available
 - <https://azsos.gov/elections/voting-election/voting-equipment>
 - No video is available
- There are no technical reviews available publicly from Maricopa County Recorder's Office or the Board of Supervisors

TECHNICAL REVIEWS BY OTHER STATES

-
- Many other States have published comprehensive technical reviews of the Dominion Voting System
 - Pennsylvania acting Secretary of the Commonwealth published a 107-page report on version 5.5A on January 17th, 2019
 - Colorado published a 30-page report conducted by VSTL on August 21st, 2019
 - Georgia published a 27-page report conducted by VSTL on August 7th, 2019
 - Texas Secretary of State published a 13-page report on February 15, 2019, a 3-page denial certification notice on June 20th, 2019, a 5-page follow-up report on November 3rd, 2019,

9 Conclusion

JANUARY

Dominion's lack of preparedness for the exam is not directly addressed as a major concern in any of the previous sections. Nevertheless, it is a concerning thread that runs throughout this report. The Dominion personnel at the exam were courteous, professional, and eager to answer our questions. However, there were too many incidents of missing or misconfigured hardware. I would expect that for a certification exam, Dominion would be very motivated to make sure everything went according to plan. I have serious concerns regarding the level of training Dominion personnel are receiving that make me question the quality of support jurisdictions would receive once a sale is made.

There was not a single component examined that I would recommend for use in elections in the State of Texas. Even devices that only had minor issues such as the ICC and ICX Classic BMDs require the use of either the EMS or ICP which did not receive my recommendation.

FINDINGS

JUNE

The following are the findings, based on written evidence submitted by the Vendor in support of its application for certification, oral evidence presented at the examination, and the findings of the voting system examiners as set out in their written reports.

The examiner reports identified multiple hardware and software issues that preclude the Office of the Texas Secretary of State from determining that the Democracy Suite 5.5 satisfies each of the voting-system requirements set forth in the Texas Election Code. Specifically, the examiner reports raise concerns about whether the Democracy Suite 5.5 preserves the secrecy of the ballot; is suitable for its intended purpose; operates efficiently and accurately; and is capable of permitting straight-party voting. Thus, the Democracy Suite 5.5 Voting System and corresponding hardware devices do not meet the standards for certification as prescribed by Section 122.001 of the Texas Election Code.

NOTED TEXAS CONCERNS

Conclusion

OCTOBER

I like the idea of using COTS components to save taxpayer money, and Dominion has done a good job of finding COTS components and minimizing the number of custom components.

Nevertheless, I cannot recommend certification. Computer systems should be designed to prevent or detect human error whenever possible and minimize the consequences of both human mistakes and equipment failure. Instead the Democracy Suite 5.5-A is fragile and error prone. In my opinion it should not be certified for use in Texas.

If certification should be granted, it should be with the condition that all open network and USB ports be sealed.





Vote Centers: An Inside Look



MARICOPA COUNTY ELECTION CONCERN

- On October 6th, 2020, Maricopa County published an “Inside Look Video” showing voter equipment had open and unsealed USB ports
- At the time of this report, no security concerns were reported for open USB ports by voters, poll workers, or poll watchers
- Video located at [Vote Centers: An Inside Look](#)

CONCLUSION

- Arizona Secretary of State has not published a technical review document of the Dominion Voting Systems.
- The Maricopa County Board of Supervisors did not present a public review and pushed through a \$6.1M allocation approval to Dominion without any public comment or discussion by the Board. It went straight to a vote.
- The Texas findings and concerns are not publicly addressed by any level of government in Arizona.
- For the sake of voter confidence and transparency, Arizona should conduct a statistically significant count of the Early and Election Day votes. Arizona should conduct an audit of the Adjudication process. Arizona should publish the technical reports on reading the ballots and instrument selection.



MERISSA HAMILTON

DATA INTEGRITY & STRATEGIES EXECUTIVE | PHOENIX, AZ
(480) 374-0102 / MERISSA@MERISSAHAMILTON.COM

INTRODUCTION

As a forward-thinking, solutions-oriented data integrity, sales and strategies professional with nearly 20 years of experience, I have the leadership and intuition to help industry partners and business teams solve challenges by working together utilizing master data management standards with an innovative approach.

I led initiatives for the largest national and international food service distributors, retailers, operators and manufacturers and supply chain companies utilizing master data management (MDM), Global Data Synchronization Network (GDSN), electronic data interchange (EDI), supply chain, quality assurance, traceability, risk management and reporting applications to accomplish my customers' objectives. By creating cross-functional teams, leveraging my experience working with government administrations, business executives, technology companies, community organizations, and trade associations, I developed and implemented solutions to create a win-win dynamic between trading partners, transforming industry communication protocols and data standards which are widely used today in North America and abroad.

EXPERIENCE

CONSULTANT, DATA MANAGEMENT INSIGHTS AND EXECUTION SERVICES ETTAIN GROUP/WELLS FARGO, TEMPE, AZ • 2019-2020

- Led teams comprised of data analysts and line of business application partners to create or recertify data dictionaries and data quality control assessment documents for Traded Products domain applications.
- Responsible for the data defect monthly domain council reporting to the Wells Fargo executive bank board utilizing Tableau, Ab Initio and other tools for the Financial Management and Reporting, Wells Fargo Admin, and Master and Data Reference domains. Created and streamlined processes from the ground up for a heavy deadline-oriented atmosphere.
- Conducted user acceptance testing for application enhancements.
- Facilitated weekly meetings to drive reconciliation of data and control defects in coordination with the control and line of business application partners.

DIRECTOR OF CONSTITUENT SERVICES, DISTRICT 6 CITY OF PHOENIX, PHOENIX, AZ • 2018 – 2019

- Direct Constituent Services for District 6 in the 5th largest city in the nation, solving complex and simple challenges at all levels of government.
- Defeated industry-crushing small business tax on medical dispensaries. Redirected \$300M funding into crumbling infrastructure without a tax increase. Analyzed financials and identified a money line transfer was hidden by city bureaucrats to shield City Council from knowing light rail lines were over budget by 39% three months after they were approved.
- Led projects on modernizing criminal justice and homelessness systems. Created a model for preventative services for family rehabilitation. Worked with State legislations on tiny home zoning, occupational licensing and child welfare reforms. Led data analysis for a county-wide partisan effort to modernize processes to facilitate accurate and efficient elections while eliminating fraud.



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MERISSA HAMILTON SCFAZ/
AZ-SEN-22-0579-A-000368



MERISSA HAMILTON

1BDATA INTEGRITY & STRATEGIES EXECUTIVE | PHOENIX, AZ
(480) 374-0102 / MERISSA@MERISSAHAMILTON.COM

CERTIFICATIONS

GS1 Package Measurement Rules & GTIN Management Certificate. 2016

Hazmat Data Certification, Food Services of America. 2010-2013

Karrass Effective Negotiating I, II Certificate. 2012-2013

FBI Citizens Academy. 2019

Phoenix Police Department Civilian Academy. 2019

HONORS & AWARDS

Thomas J. Stewart Guiding Principles Award of Excellence. SGA 2012

Quill and Scroll International Writing and Photo Contest. 1999-2000

Society of Professional Journalists, Connecticut Chapter. 1998-1999

Scholastic Press Forum's Annual Conference at American International College. 1999-2000

DIRECTOR CUSTOMER EXPERIENCE

FSENET+, REMOTE FROM PHOENIX TO BOSTON • 2014 - 2018

- Responsible for customer experience executive account management and consultative solutions selling on the recipient team for customers \$1B to \$130B revenue in size in North America. Consulting lead strategist for Mexico market launch, training internal and customer executive leadership teams.
- Spearheaded a smart-targeting campaign model utilizing CRM applications to increase manufacturer engagement, completeness, and quality of publications that promote and drive sales for distributors and retailers. Strategy led FSEnet+ in capturing 80% of the food service industry driving our industry rank from 11th to the 2nd largest data pool in the world by data volume and customer growth.
- Led company to innovate our Customer Experience model to a three-tier system, enabling a high-tech, high-touch solution utilizing Jira and CRM which resulted in top industry customer service ratings for the duration of my tenure.
- Guided customers through 3 major application platform enhancements and a private equity acquisition of five technology companies including a Salesforce implementation.
- Orchestrated the MDM, GDSN, ecommerce, and price sync campaign strategies of the largest retailers, food service distributors and operators in North America to ensure alignment with their global supply chain and business objectives by leading SME and executive committees.
- Consulted for clients on internal strategy and development of technology for PIM, supply chain, marketing and EU GDPR projects to deliver positive ROI.
- Presented at GS1 Foodservice Executive Board Meeting in 2014 to speak on data integrity industry solutions for manufacturers and distributors.

DIRECTOR IFMA AND IFDA SCORE DATA INTEGRITY PILOT PROGRAM

IFMA AND IFMA, CHICAGO IL, WASHINGTON DC • 2012 TO 2013

- Chartered and co-led a national pilot initiative, recruiting a broad spectrum of 11 large food service manufacturers, which included PepsiCo and Tyson, and eight large distributors, which included US Foods. • The pilot focused on 15 core attributes over a three-phased project to identify top industry issues and create solutions easily implemented industry-wide. The pilot resulted in the formation of the GS1 Data Quality Workgroup.



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AZ-SEN-22-0579-A-000369



MERISSA HAMILTON

1BDATA INTEGRITY & STRATEGIES EXECUTIVE | PHOENIX, AZ
(480) 374-0102 / MERISSA@MERISSAHAMILTON.COM

VOLUNTEERISM

JACOB'S MISSION

DEC 2019 – PRESENT

I work with Jacob's Mission to help facilitate their monthly foster care events to celebrate each child during their birthday month.

CHAIR OF ARIZONA LEGISLATURE SUB-COMMITTEE ON POLICE DEFLECTION

SEPT 2019 – FEBRUARY 2020

I chaired a sub-committee with the Phoenix, Tucson, Tempe and Goodyear Police Departments and other stakeholders. We developed a statewide police deflection model and legislative proposal.

BUILD US H.O.P.E.

MARCH 2019 – PRESENT

I work with Build Us H.O.P.E. on an ad hoc basis on projects to help veterans experiencing homelessness to find secure, permanent housing in tiny home communities.

SOFIA'S HOUSE

MARCH 2011 – SEPT 2011

I provided support to 3 women in crisis pregnancies that were victims of trafficking.

MANAGER OF DATA INTEGRITY AND SUPPLIER ECOMMERCE

FOOD SERVICES OF AMERICA, SCOTTSDALE, AZ • 2007 – 2014

- Headed nine-member team responsible for MDM, product information management (PIM), supplier information, hazmat, child nutrition and pricing. Coordinated work efforts on supplier/product data, EDI, e-commerce, hazmat, private label, GS1 standards, and operator applications.
- Created and drove a business growth initiative with National Accounts teams to secure new value-add services with our national chain customers by leveraging our services related to PIM, GDSN and QA.
- Collaborated with food industry lobbyist on FSMA legislation (Food Safety Modernization Act) to reduce harm while improving consumer safety.
- Founding member of food service industry GS1 Standards initiative, co-leading committees, such as the GTIN Allocation Rules sub-group. Co-authored industry standards documents for data attributes and controls guidelines. Standards were also adopted by international GS1 organizations. Led series of presentations with key national Operators' executive teams to drive adoption of traceability initiatives. Presented at GS1 Connect Conferences, 2009 to 2013, and the industry President's conference in 2013.

DIRECTOR OF EDI & NATIONAL ACCOUNTS MANAGER

KNIGHT TRANSPORTATION, PHOENIX, AZ • 2001 – 2007

- Directed a team for National Accounts Department utilizing EDI. Improved on-time service by over 10%, with service levels increased to 99%. Increased load count year over year by 38%. Also, led a five person EDI Department to increase customer adoption by 106%, securing new national accounts we previously did not qualify to bid on. Company grew by over 40% in load volume during this period.
- Designed and implemented apps to predict service failures while en route, generate new truck loads more efficiently to anticipate and provide solutions for increased downstream capacity, resolve accounts receivable issues and increase revenue per load. Led Sarbanes-Oxley initiative for department.
- Mobilized award-winning Six Sigma project to resolve root-cause issues of poor Accounts Receivables (AR) on national EDI accounts. Spearheaded project to reduce Day Sales Outstanding (DSO) by 38 days within six months, resulting in timely collections of 97% of AR invoices.



MERISSA@MERISSAHAMILTON.COM



(480) 374-0102



MERISSA-HAMILTON-SCFAZ/

AZ-SEN-22-0579-A-000370

From: [Merissa Hamilton](#)
To: kellyjtownsend@yahoo.com; [Kelly Townsend](#)
Subject: Fwd: Speaker & Attendee Schedule
Date: Tuesday, December 7, 2021 10:48:04 AM

Merissa Hamilton
(480) 374-0102

----- Forwarded message -----

From: **Merissa Hamilton** <merissa@merissahamilton.com>
Date: Tue, Dec 7, 2021 at 10:00 AM
Subject: Speaker & Attendee Schedule
To: KayRee Kubat <kkubat@azleg.gov>, Austin Smith <austin@tpaction.com>, Jeff Caldwell <jeff4liberty@me.com>

Attendees for Meeting with the Legislature (Senate Majority Caucus Room) 11 am:

Craig Harris and family
Shelly Mirabito
Joel Gandara and family
Jarret Tarver
Donald Minardi
Joshua Wells
Kimball Cody
Keith Christofferson
Martin Lain
Kevin Ahlers
Josh Kruger
Mark Schmier
Mark Rippy
Tom Priest
Cayla Melendez
Brett Melendez
Casey Grammer
Juliet Conner
Russ Trollope
Tim Hunter and family
Russ Trollope
Grady Rhodes
Lynette Leidwinger
Susan Elliott and family
Nicole Buhanan and family
Cory Gregory
Steve Backus
Kimball Cody & family

Hondo Waddell and family
Valerie Grosso
Branden Grosso
Jonathan Rhinehart
Steve Backus and family
Mike Ornowski

SPEAKERS at Meeting with the Legislature (Senate Majority Caucus Room) 11 am:

Kimball Cody
Kimball's wife
Jarrett Tarver
Donny
Cayla Melendez
Angela Harris
Shelly Mirabito
Tom Priest
Grady Rhodes
Lynette Leidwinger
Susan Elliott
Nicole Buhanan
Benjamin Buhanan
Valerie Grosso
Branden Turley
Mark Schmier
Steve Backus
Jonathan King
Mike Ornowski
Merissa Hamilton

SPEAKERS AT PRESS CONFERENCE 12:30 PM:

Elected Officials
Kimball Cody
Cayla Melendez
Mike Ornowski
Merissa Hamilton

RALLY SPEAKERS 1 PM:

Austin Smith
Rae'Lee Klein
Jake Hoffman
Sam Stone
CL Bryant
Merissa Hamilton

Merissa Hamilton
(480) 374-0102

From: [Ivan E. Raiklin](#)
To: [Kelly Townsend](#)
Cc: [Sonny Borrelli](#); [Wendy Rogers](#); [Mark Finchem](#)
Subject: Joint Resolution to Decertify the 2020 Election
Date: Sunday, January 30, 2022 2:43:14 PM

Senator Townsend and fellow Patriots!

When will the Senate Government Committee, of which you chair, exercise it's US Constitution Article 2, Section 1, Clause 2; 9th and 10th Amendment authorities to remedy the 2020 election by holding a committee vote to start the process of recalling Arizona's 11 electors?

I am hearing that Rep Finchem is proposing a bill to do this in the AZ House. The evidence is overwhelming. It is time to take the courageous step that your fellow legislator in Wisconsin, Rep Tim Ramthun has taken, and to move forward in recalling AZ's 11 electors.

Let me know how I can assist/support.

Respectfully,

Ivan Raiklin
202-288-2541

From: grhodes40@yahoo.com
To: [Kelly Townsend](#)
Subject: Mandate for election integrity
Date: Sunday, November 29, 2020 9:35:09 PM

Representative Townsend,

I live in LD9 so you are not my Representative; however, I want this email to be a record to support the Stop The Steal effort.

This is a mandate by We The People. The people have chosen Donald Trump as President, now you must confirm this fact then act accordingly to select the Republican slate of Electoral College members.

Grady Rhodes

From: [Mark Lewis](#)
To: [Kelly Townsend](#)
Cc: [Marks Iphone Lew](#); [Mark Lewis](#); [Dan Farley](#)
Subject: Meeting on PEVL bill next week
Date: Sunday, May 2, 2021 10:40:25 AM
Attachments: [PEVL removal by age and party.png](#)

Kelly,

I am an elected official representing Maricopa County on the CAP Water board.

Can you meet with Dan Farley and I on the PEVL list cleaning bill next week, or maybe next Friday?

I would like to get this bill on the going home list after your audit is done on the 14th.

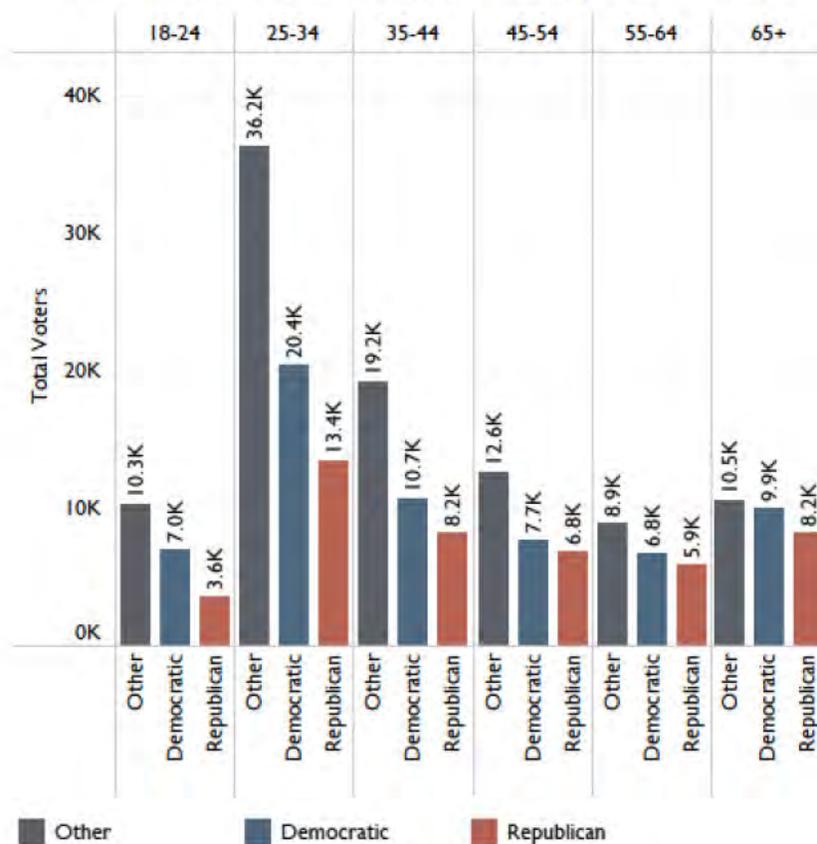
I was one of the masterminds behind the bill and presented the concept to Kavanagh and Ugenti back in Nov. 2020. Its an important bill to get done for 2020 election clean ups.

I agree with you that the bill will not fix 2022 elections, and I support your effort to increase the timeline to make this a better bill.

Take a look at the Democrat analysis of the bills PEVL list clean up. It primarily removed Independents voters who never vote. Its a giant waste of time and effort, to talk with PEVL voters who never mail in their ballot. When they hold ballots like this, its a recipe for voter fraud and selling ballots to the highest bidder.

The 2 party PEVL list is more trustworthy and better suited for voter participation, and we should concentrate on making elections trustworthy for both parties.

PEVL Removals by Age Group and Party



Can we meetup this week or on Friday?

Sincerely,

[Mark Lewis](#)

Mark Lewis, VP Engineering

Water Resource Institute

2515 E. Thomas Rd. Ste. 16-002

Phoenix, AZ 85016 -9764

602-499-3095



Member



Reply to MarkLewisAZ@Gmail.com
480-609-0444 Fax
Skype [@MarkLewisAZ](https://www.skype.com/en/contacts/MarkLewisAZ)

From: [Merissa Hamilton](#)
To: [Kelly Townsend](#)
Cc: [KayRee Kubat](#)
Subject: Re: AZ State Legislature Opening Day Ceremonies Jan 10, 2022
Date: Sunday, January 9, 2022 7:37:55 PM
Attachments: [image003.png](#)
[image003.png](#)

Fyi - Kody Kimball is not able to attend tomorrow.

On Wed, Jan 5, 2022, 5:18 PM Kelly Townsend <ktownsend@azleg.gov> wrote:

Good afternoon Ms. Hamilton,

Thank you for accepting the invitation from Senator Townsend to attend the Fifty-Fifth Legislature Second Regular Session Opening Day Ceremonies happening on Monday, January 10, 2022.

I've attached the Ceremonies schedule for you, which I will have copies of at the office, as well as a map to help with parking. The best place to park is in the Wesley Bolin Parking Lot across from 17th Avenue.

The Senate Ceremony begins at 12:00 NOON and Senator Townsend suggested arriving by 11:00 AM. Please note that guests must be in their seats in the gallery 10 minutes before the ceremony begins.

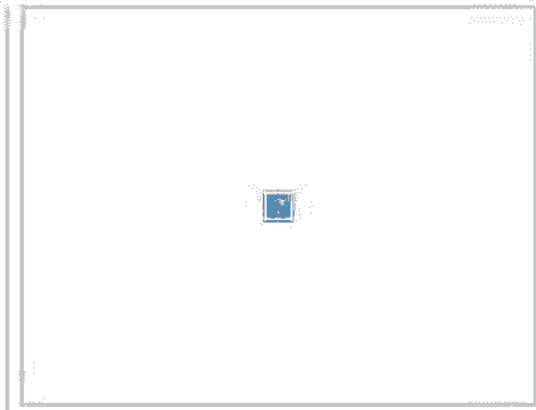
When you arrive to the Senate Building, you'll need to check in with Security and let them know that you're Senator Townsend's guest for the Opening Day Ceremonies. They'll direct you to the third floor and notify me and I will escort you from the 3rd floor lobby to Senator Townsend's office or directly to the gallery.

If you have any questions, feel free to reach out! See you next week!

Respectfully,

KayRee Kubat

Assistant to:



From: [Merissa Hamilton](#)
To: [Kelly Townsend](#)
Subject: Re: Fw: Public Records Request: Townsend_PRR_Dominion_11-17-20
Date: Saturday, November 21, 2020 11:32:34 AM
Attachments: [image002.png](#)
[image002.png](#)

A. I pulled the RFP for DOMINION. That's a lie.

On Sat, Nov 21, 2020, 8:08 AM Kelly Townsend <ktownsend@azleg.gov> wrote:

From: Valeria Howard - RISCX <vhoward@risc.maricopa.gov>
Sent: Friday, November 20, 2020 3:15 PM
To: Kelly Townsend <ktownsend@azleg.gov>; PRR - RISCX <pr@risc.maricopa.gov>
Cc: Tonia Tunnell - RISCX <ttunnell@risc.maricopa.gov>
Subject: RE: Public Records Request: Townsend_PRR_Dominion_11-17-20

Good Afternoon,

I would like to inform you there are no results for item A, item B, and item C.

For Item E please refer to the Secretary of Sates Elections Procedures Manuel.

Finally I am actively still working on item D, item E, and item F.

Valeria Howard

Custodian of Public Records



MARICOPA COUNTY RECORDER & ELECTIONS

Office of Maricopa County Recorder Adrian Fontes

111 S. 3rd Ave., Suite 103

Phoenix, AZ 85003

Office Contact: 602.506.6749 ; Mobile Contact: 602.413.0072 | Email: vhoward@risc.maricopa.gov

Are you ready for 2020? Visit [BeBallotReady.Vote](#)

Public Disclosure Notice: This message and any messages in response to the sender of this message may be subject to a public records request

From: Kelly Townsend <ktownsend@azleg.gov>
Sent: Tuesday, November 17, 2020 4:21 PM
To: Valeria Howard - RISCX <vhoward@risc.maricopa.gov>; PRR - RISCX <pr@risc.maricopa.gov>
Cc: Tonia Tunnell - RISCX <ttunnell@risc.maricopa.gov>
Subject: Public Records Request: Townsend_PRR_Dominion_11-17-20
Importance: High

November 17, 2020

Maricopa County Elections Department

Public Records Custodian

111 S. Third Ave.
Phoenix, AZ 85003

Re: Public Records Request re: Dominion Voting Systems

Dear Maricopa County Elections Department Public Records Custodian:

Pursuant to Arizona Public Records Law § 39-121 et seq., I am formally requesting to obtain the following public records:

1. Documentation relating to the following:
 - a. Maricopa County RFP for Dominion Voting Systems
 - b. Maricopa County Technical Analysis of Dominion Voting Systems
 - c. Maricopa County Security Analysis of Dominion Voting Systems
 - d. How Dominion employees were and are involved in the ballot counting and tabulation process in Maricopa County
 - e. Entity and its hierarchy that pays Dominion employees.
 - f. Residency status of Dominion employees involved in the counting process.
 - g. Rules and security measures set forth for voting machine SD cards and data.

If available, I request that the records be provided to me in electronic format. If there are any costs associated with supplying the requested records, I agree to pay reasonable copying fees of not more than \$20, but please inform me if the cost is going to be greater than this amount.

If you choose to deny or refuse to disclose any part of this request, please provide a written explanation for the denial, including the specific statutory exemption upon which you rely and a documented index of any withheld public records.

The records are not being sought for a commercial purpose. Please respond to this records request "promptly" as required by Arizona law.

I respectfully request this information be provided by Thursday, November 19, 2020 by 5:00 pm or **before Maricopa County certifies election results** to help restore voter confidence.

If you have any questions or would like to discuss the request further, please do not hesitate to contact my office at (602) 926-4467 or ktownsend@azleg.gov.

Sincerely,

Kelly Townsend

Senator-Elect, District 16

Arizona House of Representatives

From: [Kelly Townsend](#)
To: [Merissa Hamilton](#)
Cc: [Kelly Townsend](#)
Subject: RE: OSHA Workplace Retaliation Rights
Date: Wednesday, November 24, 2021 2:34:51 PM
Attachments: [image001.png](#)

Hi Merissa,

Here is the response I received from Research:

While Research Staff cannot provide legal advice as to actions that qualify as *protected activity*, below are some resources that may be helpful. Otherwise, I would recommend they reach out to the Arizona Industrial Commission (ICA) ADOSH which is the Arizona-level enforcement agency for OSHA laws or seek the advice of an attorney.

The Occupational Safety and Health Act provides that, “No person shall discharge or in any manner discriminate against any employee because such employee has filed any **complaint** or instituted or caused to be instituted any **proceeding under or related to this Act** or has testified or is about to testify in any such proceeding or because of the **exercise by such employee on behalf of himself or others of any right afforded by this Act**” ([29 U.S.C. § 660\(c\)\(1\)](#) and [A.R.S. § 23-425](#)).

The [Investigator’s Desk Aid to the Occupational Safety and Health Act \(OSH Act\) Whistleblower Protection Provision](#) (OSHA Investigator’s Aid) contains a section addressing “Protected Activity” (Sec. IV). The Aid specifies that *protected activity* includes oral or written complaints to:

- a supervisor or management personnel;
- OSHA or a State OSHA (for Arizona, ADOSH within the ICA);
- the National Institute for Occupational Safety and Health;
- or an state or local agency that deals with hazards can confront employees, such as a fire, health or police department.

I will note this Desk Aid includes a disclaimer that the resource is intended for OSHA’s use, is informational, and subject to change at any time.

I am not aware of any process a person must go through to be protected beforehand, if the activity is protected. If a person believes they have been retaliated against for a protected activity, they can file a complaint at the [federal](#) or [state](#) level.

Here are a few additional resources that may be able to provide further guidance:

- [OSHA Worker Rights and Protections](#) (federal website)
- [Arizona Division of Occupational Safety and Health](#) (ADOSH home page)
- [ADOSH - Complaints](#) (contact for the ICA’s ADOSH office and links to complaint forms)

I hope this helps! Please let me know if you need anything else.

Respectfully,

KayRee Kubat

Assistant to:



From: Merissa Hamilton <merissa@merissahamilton.com>

Sent: Wednesday, November 24, 2021 12:08 PM

To: Kelly Townsend <ktownsend@azleg.gov>

Subject: OSHA Workplace Retaliation Rights

Hello Senator Townsend,

There are a group of employers that would like to meet with you regarding unsafe working conditions that they believe may be able to be supported by new legislation. Whistleblower.gov seems to imply that the workers would be covered as whistleblowers if they meet with you and therefore their employer will be prohibited from retaliating against them for meeting with their legislators.

From Whistleblower.gov

"

Protection from Workplace Retaliation

An employer cannot take an adverse action against employees, such as: firing or laying off, demoting, denying overtime or promotion, or reducing pay or hours, for engaging in activities protected by OSHA's whistleblower laws."

Is there a process that the workers need to do before meeting with you to get whistleblower protection status? Does meeting with a legislator to address unsafe or hostile work conditions for the sake of developing new legislation qualify as a protected activity under OSHA's whistleblower laws?

Thank you so much!

Merissa Hamilton
(480) 374-0102

From: [Merissa Hamilton](#)
To: [Kelly Townsend](#)
Subject: Re: UPDATED TIME - Presentation re: Findings from Ballot Trafficking Research 12/7 at 1-3pm
Date: Tuesday, November 23, 2021 5:56:43 PM
Attachments: [image001.png](#)
[image002.png](#)

I cannot attend because we will be holding a freedom rally for Phoenix Employees including Fire & Police at the same time and we will need you to speak :)

Thank you!

Merissa Hamilton
(480) 374-0102

On Tue, Nov 23, 2021 at 5:01 PM Kelly Townsend <ktownsend@azleg.gov> wrote:

Stakeholders,

I wanted to make sure you received the update about this Presentation.

We are going to have you join the afternoon meeting with the Legislators since we could not hold a morning meeting due a conflict that arose on Senator Townsend schedule that day.

The meeting time is now **1:00-3:00 PM, same day, Tuesday, Dec. 7th**.

It will be in-person, but we will have a Zoom link in case you need it.

Please confirm if you are able to attend this new time so I can get a headcount.

I will send an updated invitation. If you can please reply on that, it would be helpful and appreciated.

Respectfully,

KayRee Kubat

Assistant to:



-----Original Appointment-----

From: Kelly Townsend

Sent: Friday, November 19, 2021 9:25 AM

To: jason@innitech.com; Merissa Hamilton; Vera Anderson (veraanderson41@gmail.com); alexander.kolodin@kolodinlaw.com; lzharrismba@gmail.com; Forest Moriarty

Cc: KayRee Kubat; James Knox Jr

Subject: Presentation re: Findings from Ballot Trafficking Research

When: Tuesday, December 7, 2021 1:00 PM-3:00 PM (UTC-07:00) Arizona.

Where: Senate Majority Caucus Room

UPDATE:

Good morning Stakeholders,

Due to a schedule conflict, Senator Townsend is going to merge the stakeholder and legislator meetings, which will be held from 1:00 - 3:00 PM.

I hope you're able to attend this new time.

Elections Stakeholders,

You're invited to attend a special presentation by Gregg Phillips of OPSEC Group and Catherine Engelbrecht of True the Vote <https://www.truethethevote.org/> where they will be presenting their findings from Ballot Trafficking research.

Please join us on Tuesday, December 7th from 1:00 PM – 3:00 PM in the Majority Caucus Room located in the State Senate Building (which is on the 1st floor). The first hour will be the presentation and second hour will be Q&A.

This will be in-person, but we can offer a Zoom option, if needed. **If you prefer to attend via Zoom, please mention “Zoom” in your RSVP reply.**

Please RSVP by accepting the invitation or emailing KayRee Kubat at kkubat@azleg.gov or call 602-926-4467. Remember to mention if you are planning to attend via Zoom or in-person.

Respectfully,

KayRee Kubat

Assistant to:

Senator Kelly J. Townsend
Chair – Government Committee
Member, Arizona State Senate
Legislative District 16
Phone: 602.926.4467
Email: ktownsend@azleg.gov

1700W. Washington Ste 301 |
Phoenix, AZ 85007



From: [Merissa Hamilton](#)
To: [Jobalena Yates](#)
Cc: [KayRee Kubat](#); [Kelly Townsend](#)
Subject: Re: URGENT - Emailing - Solicitation and Event Wesley Bolin Plaza - 1-10-22 - completed and signed.pdf
Date: Monday, January 10, 2022 5:52:24 PM

We greatly appreciate it! It was a wonderful and positive opening day event!

Thank you again so much for your help!

Merissa Hamilton
480-374-0102

On Mon, Jan 10, 2022, 4:03 PM Jobalena Yates <jobalena.yates@azdoa.gov> wrote:
No problem. I am glad it all worked out. Have a great weekend as well.

On Mon, Jan 10, 2022 at 2:44 PM KayRee Kubat <KKubat@azleg.gov> wrote:

Thank you, again, Jobalena, for all of your help to make the event happen today!!

Have a great week!

KayRee

From: Jobalena Yates <jobalena.yates@azdoa.gov>
Sent: Monday, January 10, 2022 12:48 PM
To: Merissa Hamilton <merissa@merissahamilton.com>
Cc: KayRee Kubat <KKubat@azleg.gov>; Kelly Townsend <ktownsend@azleg.gov>
Subject: Re: URGENT - Emailing - Solicitation and Event Wesley Bolin Plaza - 1-10-22 - completed and signed.pdf

Thank you. I hope you had a nice event.

On Mon, Jan 10, 2022, 12:31 PM Merissa Hamilton <merissa@merissahamilton.com> wrote:

We left the area by 11 am.

Thank you so much.

Merissa Hamilton

On Mon, Jan 10, 2022, 8:52 AM Jobalena Yates <jobalena.yates@azdoa.gov> wrote:

Okay, thank you for responding. I was just going off what they told me and wanted to ensure we did not run into any issues at 11am. Have a GREAT event.

On Mon, Jan 10, 2022 at 8:48 AM Merissa Hamilton
<merissa@merissahamilton.com> wrote:

That's not correct. Our group said we would be here until 11am and showed our paperwork saying so.

There was another group here trying to set up at 8 am but I believe they have it starting at 11 am.

Merissa Hamilton

480-374-0102

On Mon, Jan 10, 2022, 8:08 AM Jobalena Yates <jobalena.yates@azdoa.gov> wrote:

Kaye,

Your group informed someone they will be there until 2pm today. Can you please communicate with them to ensure they know they have a hard stop time at 11am?

Thank you

On Fri, Jan 7, 2022, 1:14 PM KayRee Kubat <KKubat@azleg.gov> wrote:

Hi Jobalena, per our conversation please adjust the time for this event to 7 AM through 11 AM for January 10th.

Thank you,

KayRee Kubat

From: Jobalena Yates <jobalena.yates@azdoa.gov>
Sent: Friday, January 7, 2022 12:30 PM
To: KayRee Kubat <KKubat@azleg.gov>
Cc: Kelly Townsend <ktownsend@azleg.gov>; Merissa Hamilton <merissa@merissahamilton.com>
Subject: Re: URGENT - Emailing - Solicitation and Event Wesley Bolin Plaza - 1-10-22 - completed and signed.pdf

I am waiting on one more approval - all other approvals have been received. I will email them again to try to speed it up. Thanks

On Fri, Jan 7, 2022 at 11:28 AM KayRee Kubat <KKubat@azleg.gov> wrote:

Good morning Jobalena,

Wondering how the approval is going for the event request for Monday. Is it possible to get an update on the progress and likelihood of it being approved?

Thank you!

KayRee

From: KayRee Kubat
Sent: Wednesday, January 5, 2022 5:05 PM
To: Jobalena Yates <jobalena.yates@azdoa.gov>
Cc: Kelly Townsend <ktownsend@azleg.gov>; Merissa Hamilton <merissa@merissahamilton.com>
Subject: RE: URGENT - Emailing - Solicitation and Event Wesley Bolin Plaza - 1-10-22 - completed and signed.pdf

Hi Jobalena – I forgot to add attendance to the form – they’re estimating 200. Also, they’ll only have a speaker and microphone and would like to be able to plug it in, but, if not, they have a battery for it.

Thank you, again!

KayRee

From: KayRee Kubat <KKubat@azleg.gov>
Sent: Wednesday, January 5, 2022 4:58 PM
To: Jobalena Yates <jobalena.yates@azdoa.gov>
Cc: Kelly Townsend <ktownsend@azleg.gov>; KayRee Kubat <KKubat@azleg.gov>; Merissa Hamilton <merissa@merissahamilton.com>
Subject: URGENT - Emailing - Solicitation and Event Wesley Bolin Plaza - 1-10-22 - completed and signed.pdf
Importance: High

Hi Jobalena,

Thank you so much for being willing to help get this approved in time their event on Monday, January 10th.

Please see the attached form and let me know if you need anything else from us.

By the way, the form would not allow me to add my title, but it is below for reference.

Thank you,

KayRee Kubat

Assistant to Senator KELLY TOWNSEND

Chair – Government Committee

Legislative District 16
Arizona State Senate
(602) 926-4467

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[Jobalena Yates, FMP](#)

[Operations Support Manager | Facilities, Operations and Maintenance](#)

[ADOA – General Services Division | State of Arizona](#)

[1840 W. Jackson, Suite 104, Phoenix, AZ 85007](#)

[p: 602.542.0692 | m: 602.721.9640 | \[jobalena.yates@azdoa.gov\]\(mailto:jobalena.yates@azdoa.gov\)](#)

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From: [Mark Lewis](#)
To: [Mark Lewis](#)
Subject: Redistricting commission chair ? - \$18 million for progressive mapping
Date: Sunday, January 17, 2021 1:01 54 PM
Attachments: [image.png](#)
[image.png](#)
[image.png](#)
[image.png](#)
[image.png](#)

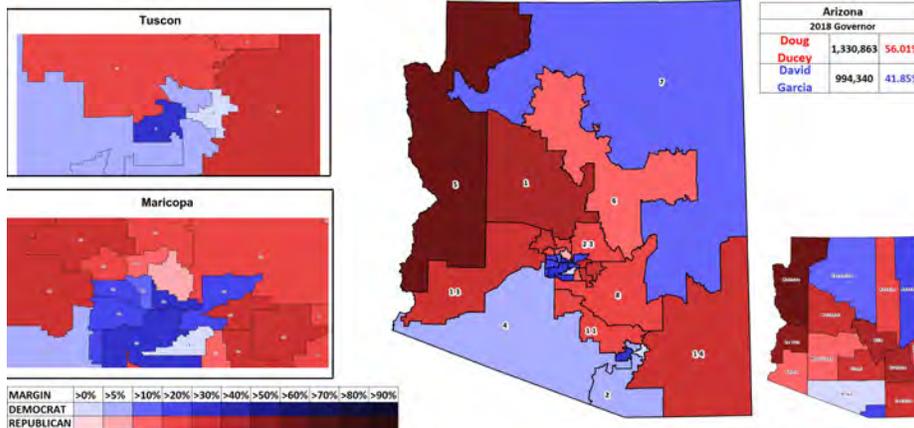
Dear republican legislators,

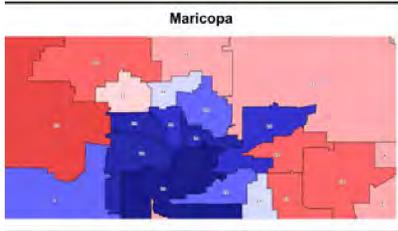
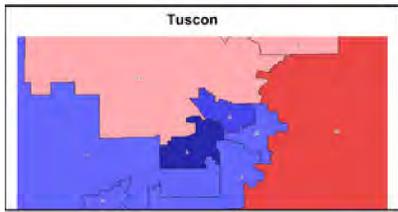
Redistricting commission chair candidates stacked 3 to 5 with undercover liberals, as \$18 million of progressive dollars line up with data and mapping tools.

These minorities plan to disrupt the mapping process with minority mapping alternative plans submitted to the IRC committee. <https://funderscommittee.org/>

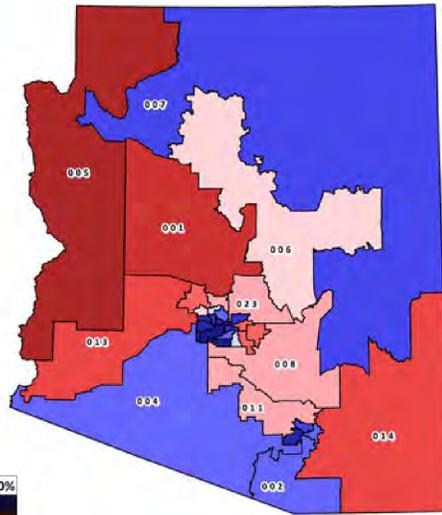
We need a mapping program training team to help us make our minority representation maps for the next 90 days as census voter data is released by Biden in the next 15 days.

We need to hold on to republican majority districts in the congress and legislature.

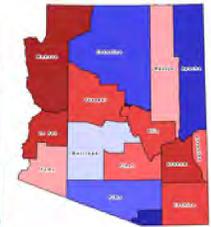




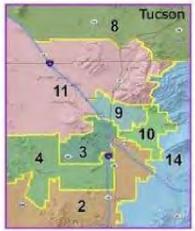
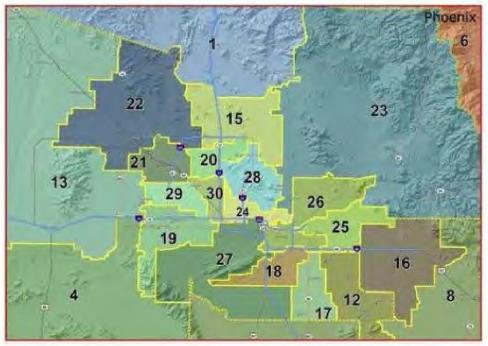
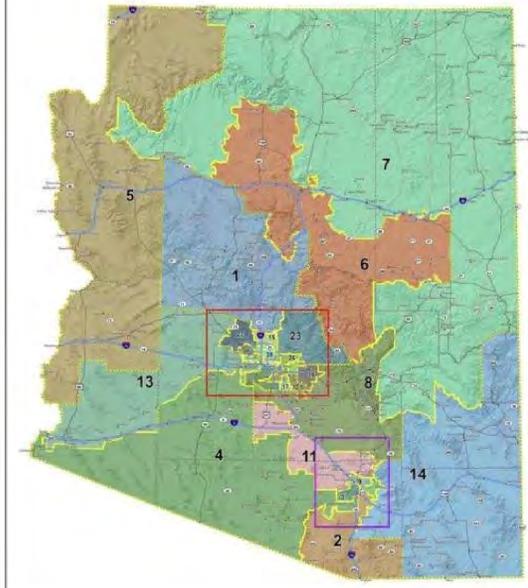
MARGIN	>0%	>5%	>10%	>20%	>30%	>40%	>50%	>60%	>70%	>80%	>90%
DEMOCRAT	Light Blue										
REPUBLICAN	Light Red										



Arizona 2018 Senate		
Martha McSally	1,135,200	47.62%
Kyrsten Sinema	1,191,100	49.97%

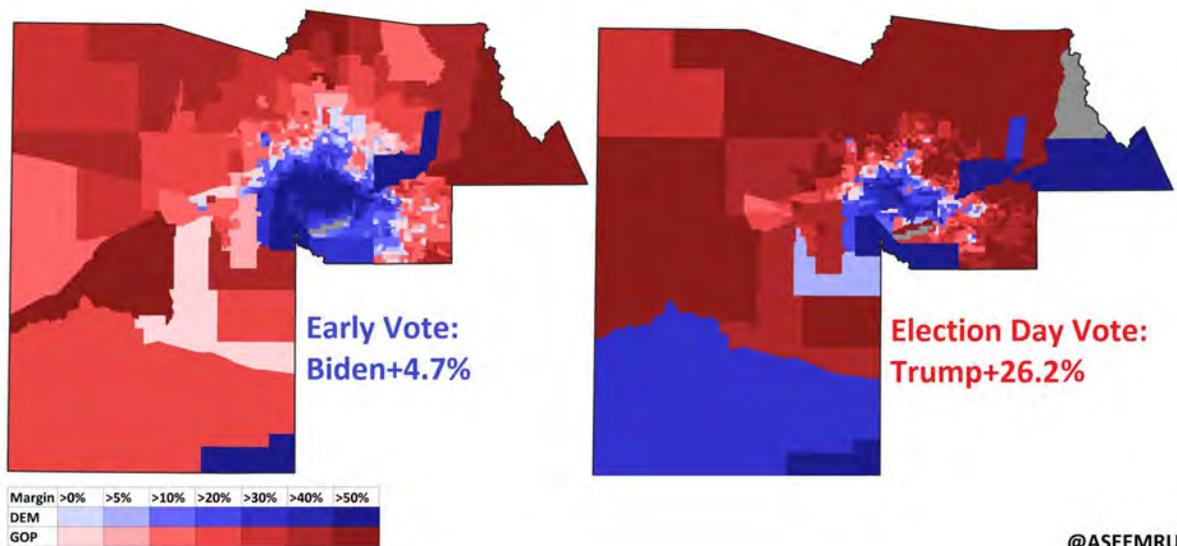


Arizona State Senate Districts 2019-2020



District	Name	District	Name
1	Karen Fann (D)	28	David Clivester Farnsworth (R)
2	Andrea Camarero (D)	17	J.D. Meisner (R)
3	Sally Kim-Gonzalez (D)	18	Sean Brown (D)
4	Lisa Chavis (D)	19	Luke Chavez-Gonzalez (D)
5	Sally Smith (R)	20	Paul Rizer (R)
6	Sybil Danna-Abram (D)	21	Rob City (R)
7	Jamacha Pugh-Leland (D)	22	David Longman (R)
8	Frank Pugh (D)	23	Marcia Lopez-Garcia (R)
9	Victoria Stiles (D)	24	Leif Aiken (D)
10	David Bradley (D)	25	Lyle Pate (R)
11	Vivian "Viv" Lewis (R)	26	Joan Mendes (D)
12	Blake Farnsworth (R)	27	Roberta Niles (D)
13	Bob Lee (R)	28	Nate Briggs-Adler (R)
14	David Swann (D)	29	Martin Quastala (D)
15	Heather Carter (R)	30	Cheryl Howerton (D)





And we need to resist liberal oppression of our republican minorities.

Who is going to lead this event for the next 4 months with maps and data analytics, and counter protestors? We need a mass social media program to roll out on the twitter universe.

Mark Lewis
602-499-3095

Redistricting commission interviews 5 chair candidates in the first meeting, with liberals hiding their true self, dems want 9 of 10 congressional seats to be liberals.

The five independent chair candidates are:

- 1) Megan Carollo, the owner of Flower Bar, a luxury floral boutique in Scottsdale, (a “numbers nerd” with extensive experience in statistics and data analysis Liberal)
Resume here: <https://www.azcourts.gov/LinkClick.aspx?fileticket=jHA9XVqLXnI%3d&portalid=75>
- 2) Thomas Loquvam, general counsel and vice president of corporate services at the utility company EPCOR (Downtown CC Republicans, sister is Jessica Pacheco)
- 3) Erika Schupak Neuberg, a psychologist with a practice in Scottsdale who serves as a national board member for the American Israel Public Affairs Committee (liberal ?)
Resume here: https://www.azcourts.gov/LinkClick.aspx?fileticket=9PF5_YyOKeg%3d&portalid=75
- 4) Gregory Teesdale, an Oro Valley resident and former executive at numerous tech startups (moderate independent, hidden liberal progressive)
Resume here: https://www.azcourts.gov/LinkClick.aspx?fileticket=fdlLpqys__Y%3d&portalid=75
- 5) Robert Wilson, who owns a business consulting practice and gun store in Flagstaff (Pro Trump person)

The AIRC is tasked with drawing the congressional and legislative districts that Arizona will use through the 2030 election

The independent chair holds the key to the redistricting process, serving as a crucial tiebreaker if the two Democratic and two Republican members can't come to an agreement That dynamic characterized the last redistricting commission that drew the current maps in 2011, with Chairwoman Colleen Mathis routinely siding with her two Democratic colleagues on 3-2 votes, to the consternation of the Republican commissioners

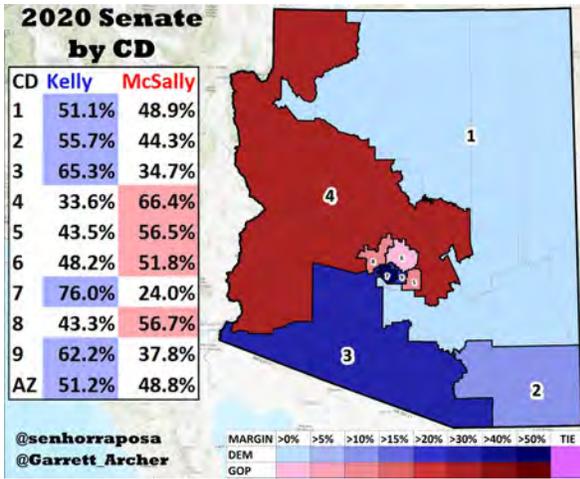
Neuberg said she wants to avoid such an outcome Asked how she would define success as chairwoman of the commission — a question asked of all five candidates — she said, among other things, that she'll consider the commission successful if it avoids “chronic 3-2 votes ”

Another major focus during the interviews was the six criteria that the Arizona Constitution mandates that the IRC use for drawing maps, especially two that often generate disagreement and conflict: competitiveness, which the constitution says must be considered, but only if it doesn't harm the other requirements, and respect for communities of interest, a broad term that can describe any grouping of people with a common backgrounds or concerns

After three 2-2 votes, with Hobbs abstaining, the four voted unanimously to have Mehl chair the commission until they name a permanent chair

<https://www.azmirror.com/2021/01/14/redistricting-commission-interviews-chair-candidates-in-first-meeting/>

#controlofCongress #liberalagenda



<https://www.azmirror.com/2021/01/14/redistricting-commission-interviews-chair-candidates-in-first-meeting/>

The first and perhaps most important decision that the Arizona Independent Redistricting Commission makes will have to wait

From: [Merissa Hamilton](#)
To: [Kelly Townsend](#)
Subject: Support SB1211 - The Arizona Curriculum Transparency Bill!
Date: Wednesday, March 9, 2022 2:05:03 PM

Dear Senator Townsend,

I urge you to immediately support SB1211, a bill to make curriculum transparent and easily accessible to parents. Parents know best how to raise their children. Parents being closely involved with their child's education is a critical element of their development. As the primary stakeholder in their children's education, parents need to know what is being taught in the classroom.

Whether a lesson is good or bad, sunshine has a positive effect. Parents should be made aware of the fantastic lessons and tools used to teach their children. If a lesson or curriculum divides students by an immutable characteristic and promotes critical race theory, it too should be exposed. Nothing done in the classroom should be done in darkness.

Parents across Arizona and the country are being denied reasonable access to view curriculum and forced to file numerous open records requests to see what their children are being taught. Arizona cannot afford to deny parents access to their children's curriculum any longer. We need your support for SB 1211 today.

Parents can already easily access schools' financial data, student performance scores, graduation and dropout rates, and enrollment processes. Why would we deny parents the same access to curriculum? SB 1211 allows teachers to teach unique and creative lessons while ensuring that parents are part of a comprehensive education effort for every child.

I urge you Senator Townsend, to join me in supporting parental rights and transparency in Arizona by supporting SB 1211.

Regards,
Merissa Hamilton
15236 North 21st St
Phoenix, AZ 85022

From: [Merissa Hamilton](#)
To: [Warren Petersen](#)
Subject: Support SB1211 - The Arizona Curriculum Transparency Bill!
Date: Wednesday, March 9, 2022 2:05:03 PM

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Regards,
Merissa Hamilton
15236 North 21st St
Phoenix, AZ 85022

From: [Ivan E. Raiklin](#)
To: [Karen Fann](#); [Nancy Barto](#); [Sonny Borrelli](#); [Paul Boyer](#); [David Gowan](#); [Rick Gray](#); [Vince Leach](#); [David Livingston](#); [J.D. Mesnard](#); [Tyler Pace](#); [Warren Petersen](#); [Wendy Rogers](#); [Thomas T.J. Shope](#); [Kelly Townsend](#); [Sine Kerr](#); [Michelle Ugenti-Rita](#); [Brenda Barton](#); [Leo Biasiucci](#); [Walter Blackman](#); [Shawna Bolick](#); [Russell Bowers](#); [Judy M. Burges](#); fcarr@azleg.gov; [Joseph Chaplik](#); [Regina Cobb](#); [David Cook](#); [Tim Dunn](#); [John Fillmore](#); [Mark Finchem](#); [Travis Grantham](#); [Gail Griffin](#); [Jake Hoffman](#); [Joel John](#); [Steve Kaiser](#); [John Kavanagh](#); [Quang Nguyen](#); [Becky Nutt](#); [Joanne Osborne](#); [Jacqueline Parker](#); [Kevin Payne](#); [Beverly Pingerelli](#); [Frank Pratt](#); [Bret Roberts](#); [Ben Toma](#); [Michelle Udall](#); [Jeff Weninger](#); [Justin Wilmeth](#)
Subject: The Nation is watching you, Adjourning would be unacceptable
Date: Thursday, May 6, 2021 4:24:46 AM

Arizona Legislators:

With the election audit currently underway, it would be highly inappropriate to adjourn the Legislative Session sine die. This is the most important audit in American history, and the results may impact the entire state of Arizona. Any irregularities uncovered by the audit must be fully addressed by the Legislature.

Many of us remember the body ending the Legislative Session Sine die last year. There was a promise to call a Special Session, but this was never done. Governor Ducey refused and not enough supported it to make the supermajority. This was unacceptable then and it would be unacceptable now.

If the session ends sine die, enacted laws will not be in effect until after the 2022 primary election. This would be a dereliction of duty.

The legislature must take an extended recess rather than sine die adjournment. The election problems must be fixed now.