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**STATE OF ARIZONA**

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***SENT VIA EMAIL TO***

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Re: Counting ballots manually instead of by automatic tabulating equipment

Dear Colleagues:

It has come to my attention that a group of current and former legislators has contacted several county boards of supervisors and asked them to count ballots manually instead of by automatic tabulating equipment in future elections. I write to advise you that Arizona statutes do

not give counties this authority. I hope you find this information helpful and that you will share it with your boards of supervisors if they are considering this issue.

Title 16 of the Arizona Revised Statutes provides that ballots shall be counted by “automatic tabulating equipment.” *See, e.g.*, A.R.S. §§ 16-449, 16-602, 16-621, 16-622. The officer in charge of elections may direct that ballots “be counted manually” only if “it becomes impracticable to count all or a part of the ballots with tabulating equipment.” A.R.S. § 16-621(C). The evidence would not support a general finding that counting ballots with tabulating equipment is impracticable. Rather, as a recent analysis from Mohave County shows, manually counting all ballots would be impracticable in several independent ways. *See, e.g.*, Mohave County, [Ballot Hand Tally Analysis, https://portal.mohavecounty.us/bos/0/doc/2038269/Page1.aspx](https://portal.mohavecounty.us/bos/0/doc/2038269/Page1.aspx) (explaining that a full manual count may compromise confidentiality, hurt the timeliness and accuracy of results, and significantly increase costs); Allen Tempert, Mohave County Elections Director, Remarks to Board of Supervisors Special Meeting, 21:14-17 (Aug. 1, 2023), <https://www.youtube.com/watch?v=B26KaFJLMKw> (explaining to the Board of Supervisors that it would “be astronomical to try to put together all these people” [to manually the general election ballots]). Outside of a scenario in which counting ballots with tabulating equipment is impracticable, the Legislature has not provided counties with authority to count ballots by hand instead of via tabulating equipment, and counties may not independently choose to do so. *See State v. Stapley*, 227 Ariz. 61, 64–65, ¶ 15 (App. 2011) (“[T]he Board can exercise only those powers specifically granted to it by the legislature.”)

The group advocating manual counting has cited Senate Concurrent Resolution 1037 as a basis for their request. Resolution 1037 expresses a desire to limit the use of machines to cast and count ballots unless certain requirements are met. But Resolution 1037 is merely a resolution, not a bill, and it was not presented to or signed by the Governor. Accordingly, it is not binding authority on your county and has no force of law. *See* Ariz. Const. art. 4, § 12 (“Every measure when finally passed shall be presented to the governor for his approval or disapproval.”); Ariz. Const. art. 5, § 7 (“Every bill passed by the legislature, before it becomes a law, shall be presented to the governor. If he approves, he shall sign it, and it shall become a law as provided in this constitution. But if he disapproves, he shall return it . . .”). Any suggestion that Resolution 1037 is binding upon counties because of Legislative “plenary authority” or Article I, Section 4, Clause 1 of the U.S. Constitution (the Elections Clause) is flat wrong. Indeed, the U.S. Supreme Court rejected this “independent state legislature” theory earlier this year. *See Moore v. Harper*, 143 S. Ct. 2065, 2083 (2023) (the Elections Clause does not authorize state legislatures to act “independently of requirements imposed by the state constitution with respect to the enactment of laws”) (citation and quotation marks omitted).

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If the Attorney General's Office can provide you with any further assistance regarding this matter, please do not hesitate to contact us.

Sincerely,

KRIS MAYES

*Arizona Attorney General*

A handwritten signature in blue ink, appearing to read "K. Mayes", is positioned below the typed name and title.