



KATIE HOBBS
SECRETARY OF STATE

December 2, 2022

Via Email

Mark Brnovich
Arizona Attorney General
Mark.Brnovich@azag.gov

Brian McIntyre
Cochise County Attorney
Attorney@cochise.az.gov

Dear Attorney General Brnovich and County Attorney McIntyre:

I am writing today to urge you to investigate and take appropriate enforcement action against potential violations of Arizona law committed by Cochise County Board of Supervisors Tom Crosby and Peggy Judd for knowingly refusing to comply with Arizona's law that required them to canvass Cochise County's 2022 General Election by November 28. Only after a court ordered the Board of Supervisors to canvass this election, did Supervisor Judd comply, and even then, Supervisor Crosby continued to defy his statutory responsibility as well as the court order.

County boards of supervisors have a non-discretionary requirement to canvass an election no more than 20 days following the election. A.R.S. § 16-642(A). For the November 8, 2022 General Election, this meant the deadline for the county canvass was November 28.¹ The 2019 Elections Procedures Manual ("EPM") reiterates the timeline for county boards of supervisors to canvass. 2019 EPM at 240. Furthermore, it explains that "[t]he Board of Supervisors has a non-discretionary duty to canvass the returns as provided by the County Recorder or other officer in charge of elections and has no authority to change vote totals or reject the election results." *Id.* Upon canvassing, a certified permanent copy of the canvass "shall be mailed immediately to the secretary of state. . . ." A.R.S. § 16-646(B). The board must also deliver an electronic copy. A.R.S. § 16-646(C). This allows the Secretary to fulfill her duty to conduct the statewide canvass on the fourth Monday following the election pursuant to A.R.S. § 16-648(A).

As you know, Arizona law contains several statutes that establish criminal penalties for failing to perform an election duty. A.R.S. § 16-1009 states that "[a] public officer upon

¹ The only permissible cause for delaying a county canvass is when returns from any polling place in the county are missing, which was not the case here. A.R.S. § 16-642(C).

whom a duty is imposed by this title, who knowingly fails or refuses to perform that duty in the manner prescribed by law, is guilty of a class 3 misdemeanor.” Similarly, A.R.S. § 16-1010 provides:

A person charged with performance of any duty under any law relating to elections who knowingly refuses to perform such duty, or who, in his official capacity, knowingly acts in violation of any provision of such law, is guilty of a class 6 felony unless a different punishment for such act or omission is prescribed by law.

Additionally, any person who knowingly violates a rule adopted in the EPM is guilty of a class 2 misdemeanor. A.R.S. § 16-452(C). A county supervisor “who neglects or refuses to perform any duty imposed upon him without just cause” is also subject to a \$500 fine owed to the county. A.R.S. § 11-223.

The Cochise County Board of Supervisors initially scheduled a November 18, 2022 public meeting to canvass the election. At that meeting, Supervisors Crosby and Judd voted to table the matter, citing the need for additional information about election equipment, and rescheduled for November 28, the last day to canvass under A.R.S. § 16-642(A). Cochise Cnty. Bd. of Supervisors, Special Meeting General Election Canvass, Nov. 18, 2022, <https://www.youtube.com/watch?v=RvAxd054xoM> (2:20:42 to 2:21:50 mark). On November 28, Supervisors Crosby and Judd again chose not to canvass the election, noting they wanted a debate about the election equipment certification, and scheduled an additional meeting for December 2, 2022. Cochise Cnty. Bd. of Supervisors, Special Meeting General Election Canvass, Nov. 28, 2022, <https://www.youtube.com/watch?v=G013C4rKHGQ>.

The Board received ample notice that they had a statutory duty to canvass the county’s election results. The Secretary of State’s Office told them as much at the November 18 meeting, and the Secretary of State’s Office sent a letter on November 21 explicitly informing the Board that canvassing the election is a non-discretionary, ministerial act and advising the Board of the lawlessness of failing to canvass.² Additionally, the Secretary of State’s Office responded to extensive questions from the Board members about election equipment and the certification process.

Supervisors Crosby and Judd knew they had a statutory requirement to canvass the election by November 28, but instead chose to act in violation of the law, putting false election narratives ahead of Cochise County’s voters. Supervisor Judd even publicly acknowledged that the false claims about equipment certification were merely a pretext, saying the claims were “the only thing we have to stand on” to not certify the canvass. Charles Homans, *G.O.P.-Controlled County in Arizona Holds Up Election Results*, N.Y. Times (Nov. 28, 2022), <https://www.nytimes.com/2022/11/28/us/politics/arizona-county-election-results-cochise.html>.

² The Cochise County Attorney’s Office has also advised the Board that failing to canvass was contrary to Arizona law. *See* Cochise Cnty. Bd. of Supervisors, Emergency Meeting Selection of Outside Legal Representation, Nov. 29, 2022, <https://www.youtube.com/watch?v=QOG7Z2m6-X0> (4:47 to 5:05 mark).

Supervisors Crosby and Judd's actions not only demonstrate a complete disregard for the law but also jeopardize Arizona's democracy. Had a court not intervened, the failure of these two Supervisors to uphold their duty would have disenfranchised thousands of Cochise County voters. This blatant act of defying Arizona's election laws risks establishing a dangerous precedent that we must discourage.³ I ask that you investigate this conduct and take all necessary action to hold these public officers accountable.

Please do not hesitate to contact me with any questions or if you need additional information.

Sincerely,

A handwritten signature in cursive script that reads "Kori Lorick".

Kori Lorick
State Elections Director
Arizona Secretary of State Katie Hobbs
klorick@azsos.gov

³ Indeed, even after the Court's December 1, 2022 Order requiring the Supervisors to convene and canvass the 2022 General Election, Supervisor Crosby still failed to uphold his statutory requirement.