



KATIE HOBBS
SECRETARY OF STATE

May 5, 2021

Via Email

Ken Bennett
Senate Audit Liaison
info@arizonaaudit.com
kjbennettaz@gmail.com

Mr. Bennett,

I write today to express my ongoing concerns regarding the Senate’s “audit” and to bring to your attention several specific concerns about activity that is occurring at the Coliseum. Had my Office been given prior access to “audit” procedures being used and to the current “audit” site, I may have been able to provide you with this information sooner. As you know, I originally wrote to President Fann on March 3rd, requesting observer access for my Office and outlining a number of minimum procedures necessary to protect ballots and election equipment.¹ This letter also offered to connect President Fann with experts in post-election audits. I received no response to the letter, and it appears that many of the recommended procedures were ignored.² My Office later discussed observer access with you, only to be denied. Despite the best efforts of the Senate and the Cyber Ninjas, litigation provided an opportunity for my Office to review the “audit” procedures and to send expert observers to the Coliseum. What we’ve found thus far has not been reassuring.

Concerns based on disclosed procedures

1. The procedures are vague and insufficient to ensure accuracy and consistency

In response to a court order, the Senate and Cyber Ninjas produced 199 pages of documents related to the “audit.” Unfortunately, the majority of pages were logs detailing the equipment and ballots that Maricopa County transferred to the Senate. The remaining pages fail to provide a sufficient level of detail to maintain accuracy and consistency among those performing a hand count of ballots, or otherwise leave out crucial information entirely.

For example, the hand count procedures total only 18 pages. And the procedures offer no specifications on the standards that will be used in determining voter intent. Voters don’t always mark their ballots cleanly or consistently. If a voter fills in two bubbles and circles one of the names,

¹ Hobbs, Katie. (March 3, 2021). Letter to Karen Fann and Warren Petersen. Available at https://www.documentcloud.org/documents/20499460-fann-letter-3_3_2021

² Fifield, Jen. (@JenAFifield) Twitter. (April 23, 2021, 10:26 AM) (“I noticed the counters had blue pens. Supposed to only have red when you’re around ballots since ballots can read black and blue ink.”) available at <https://twitter.com/JenAFifield/status/1385646177664724995>

how do you count that vote? When you have a counting operation of this scale, clear and consistent guidelines for determining voter intent and confirming those determinations in these circumstances is crucial. It's for this reason that my Office issued a detailed voter intent guidance document to all 15 Counties ahead of the 2020 election. Consistency is important, including consistency among the Counties. Elections workers employed by Counties received substantial training—including on the issue of voter intent—ahead of the election. Unfortunately, the only evidence of training for audit counters is a sparse Powerpoint presentation that offers little guidance beyond the procedures documents.

2. The counting process incorporated the use of untested, uncertified systems

The audit procedures describe a counting process whereby each ballot is scanned and an image of the ballot is displayed on a monitor above each counter's seat. During the days in which this method was used, prior to the screens being removed for uncertain reasons (and prior to my Office gaining access to the Coliseum), it appeared in the livestream that counters were conducting their count based the displayed images, as the carousel holding the paper ballots were being spun too fast to allow counters to confirm that the projected image matched the paper ballot.

While Arizona law requires that voting systems, including components that capture ballot images, must be tested by a federal Voting System Testing Laboratory (VSTL), including for accuracy, reliability, and security, and certified by the federal Election Assistance Commission (EAC) and my Office, the hardware and software supplied by Cyber Ninjas to capture and display the ballot images in this counting process are untested and uncertified. This fact raises serious concerns because it means the systems used have not been tested or certified to ensure, for example, that the system is not preloaded with inaccurate ballot images or that the system's software is not written to manipulate specific images of scanned ballots. Testing and certification by federal and state authorities is designed specifically to protect against such risks, including through a thorough source code review to ensure these risks cannot occur.

3. The counting process departs from best practices for accurate hand tallying of ballots

The hand counting process being used is a significant departure from standard best practices utilized by jurisdictions and experts across the county, including here in Arizona, and raise serious doubt about the accuracy and reliability of any result of this process. Indeed, the hand counting of ballots is already fraught with error, even in small quantities. The process being used in the Coliseum, to count over 2.1 million ballots in an absurdly unrealistic timeframe, only exacerbates the concerns.

The process being used involves creating at least three separate tallies for each batch of 100 ballots. Each of the three counters may have reached different totals due to counting multiple different ballots in different ways. The tally is accepted as long as at least two counters' totals match, and the third counter's totals are not off by 3 or more of 100 ballots. This acceptable error rate is significantly larger than the margin of victory in the presidential race. And although the aggregate totals of at least two tally sheets must match, there is no guarantee that the counters counted all 100 ballots the same way nor is there a reliable process for ensuring consistency and resolving discrepancies. For example, any discrepancy among the three counters could be resolved by a trained and experienced adjudication board tasked with the resolution of ballots with unclear marks. In fact, our observers witnessed much confusion around identifying the correct sub-batch of ballots that need recounting when the acceptable error rate is exceeded.

The failure to resolve any counting discrepancies on a ballot-by-ballot basis will result in some sort of estimate or range, at best, of the results, rather than a single final tally, making the lack of clear, accurate, and transparent aggregation procedures, discussed below, even more concerning.

4. *The procedures do not detail a clear process for aggregation*

Perhaps most concerning, almost no detail is offered regarding aggregation. Even if one were to assume that the rest of the procedures were adequate to ensure an accurate counting process, those procedures are meaningless without a secure and transparent aggregation process. When asked by my Office about the process that will be used to aggregate the tens of thousands of individual tally sheets that will be generated, we received no real explanation other than that an accounting firm will handle it later. This is not transparency. Further, it appears that a single person enters the totals from the tally sheets into an electronic spreadsheet, leaving wide open the opportunity for error, inadvertent or otherwise. At minimum, a bipartisan team of at least two individuals should aggregate the tally sheets or otherwise confirm that data is entered accurately for aggregation.

5. *The procedures fail to adequately protect and document chain of custody of ballots*

The audit procedures, including Counting Floor Procedures, raise many questions regarding the adequacy of chain of custody control over ballots. Several sections suggest that ballot batches may be separated from boxes³ and individual ballots may be separated from their batches. If this is happening, it raises significant chain of custody concerns, and there's no indication of how these separated batches and ballots are being tracked and logged. Nor is there any indication of what process exists, if any, for returning separated ballots to their original batch.

6. *The “forensic audit” of ballots lacks any credibility or basis in actual election operations*

A number of items detailed in the Counting Floor Procedures appear better suited for chasing conspiracy theories than as a part of a professional audit. For example, using UV lights to search for watermarks,⁴ measuring the thickness of ballots,⁵ searching for folds in ballots,⁶ and looking at ballots under a microscope⁷ are completely unnecessary steps if the goal of the audit is to validate the election results. Though conspiracy theorists are undoubtedly cheering on these types of inspections—and perhaps providing financial support because of their use—they do little other than further marginalize the professionalism and intent of this “audit.”

7. *There were no procedures for hiring qualified, unbiased counters*

As has been widely reported, former State Representative Anthony Kern has been among those hired to count ballots.⁸ Mr. Kern's name is on the ballot, not only as a candidate for State Representative but as a Presidential Elector—the exact race for which he is counting. While these facts would be disqualifying in any professional recount or audit, unfortunately, there are additional reasons why Mr. Kern is not trustworthy to fulfill this role. He was a leader of the “Stop the Steal” movement in Arizona and was actually present at the attempted insurrection in Washington, DC on

³ Wake TSI “Floor Counting Policies” 13(1)(C) available at <https://www.cyberninjas.com/static/20210429155650/Wake-TSI-Counting-Floor-Policies.pdf>.

⁴ Wake TSI “Floor Counting Policies” 12(5)(G).

⁵ Wake TSI “Floor Counting Policies” 12(5)(B).

⁶ Wake TSI “Floor Counting Policies” 12(5)(C-E).

⁷ Wake TSI “Floor Counting Policies” 12(4).

⁸ Randazzo, R. (2021, April 30). “Former Rep. Anthony Kern, a Stop the Steal backer, now counting your ballots.” Available at <https://www.azcentral.com/story/news/politics/arizona/2021/04/30/anthony-kern-former-lawmaker-and-november-candidate-helps-recount-arizona-ballots/4895531001/>

January 6th.⁹ Moreover, he is also on the Brady List on account of his dishonesty during his time as a code enforcement officer.¹⁰

Given what was known about Mr. Kern before this “audit,” and his inclusion regardless, one must wonder what procedures are truly being used to recruit and screen others involved in the counting of ballots. This is of particular concern as the operation attempts to quickly increase the size of its staff. Ordinarily, a true and reliable hand count would utilize bipartisan boards for this process to protect against human bias (such as that exhibited by Mr. Kern). Unfortunately, the procedures here do not require counting teams to be bipartisan.

Concerns based on observation

The observers sent by my Office have frequently encountered issues when trying to access the “audit.” They’ve also encountered changing rules regarding what they are and are not allowed to bring with them. Perhaps more troubling, I have heard reports that the observers associated with the audit are now instructed not to speak with the SOS observers, and that counters are instructed to not to talk when an SOS observer is near their table. While the Senate’s hiring decisions have made clear its intention to exclude actual experts from this process, efforts to prevent my observers from accessing information are inexcusable. Notably, Ryan Macias, a national expert in election equipment, was denied access to the area where Maricopa County’s machines were being “audited,” despite reports that Doug Logan of Cyber Ninjas has personally escorted others to view the process. The following day, a large portion of those machines were returned to the County. Despite all of this, we’ve quickly been able to identify a number of problems inside the Coliseum.

1. There is inadequate physical security of ballots

In addition to the significant security lapses documented at the start of the “audit,”¹¹ it appears that boxes containing ballots were stored on the counting floor in fenced-off areas. This chain-link fencing, however, appears to be only about 8 feet tall, and there is no “ceiling” or top fencing to prevent an unauthorized person from climbing the exterior fencing to gain access to the ballots. The risk to the physical security of the ballots, and any remaining election equipment, is heightened now that the Crazy Times Carnival is operating alongside the Senate and Cyber Ninjas at the Coliseum, and you have stated ballots may remain stored at the Coliseum while various high school graduation ceremonies are conducted in the same facilities. I continue to urge you to take every available measure to ensure the security of the ballots and election equipment in your custody, especially given the prior security lapses and heightened security risks.

2. There was no livestreaming or observer access to the forensic processing of Maricopa County’s election equipment.

Though the “Modifications to Standard CyFIR Evidence Handling Procedures for AZ Audit” document, which was among the policies and procedures the court ordered Cyber Ninjas to make public, indicated that there would be “24/7 live video monitoring...on both the evidence storage area

⁹ Anglen, R. (2021, January 14). “Arizona lawmakers who pushed 'stop The Steal' face scrutiny for presence at U.S. Capitol riot.” Available at <https://www.azcentral.com/story/news/local/arizona-investigations/2021/01/14/arizona-lawmakers-pushed-stop-steal-rally-appeared-u-s-capitol-mark-finchem-anthony-kern/4147370001/>

¹⁰ Roberts, L. (2019, March 08). “Rep. Anthony Kern secretly tried to change the law to get his name off a list of liars.” Available at <https://www.azcentral.com/story/opinion/op-ed/laurieroberts/2019/03/08/rep-anthony-kern-quietly-tried-change-law-get-off-list-liars/3104706002/>

¹¹ Loew, M. (2021, April 23). “Security lapses Plague Arizona senate's election audit at State Fairgrounds.” Available at https://www.azfamily.com/news/investigations/cbs_5_investigates/security-lapses-plague-arizona-senates-election-audit-at-state-fairgrounds/article_b499aee8-a3ed-11eb-8f94-bfc2918c6cc9.html

and the forensic imaging area,” which will be “live streamed to the internet for transparency,” there has been no live streaming of, and the observers were not permitted to observe in, any forensic imaging area or where the Maricopa County election equipment was otherwise handled. This is a violation of your own requirements and means that neither election officials, experts, nor the public had any transparency into how the election equipment was handled.

3. *Computers at “forensic analysis” tables were left on and unattended*

On multiple occasions, it has been noted that the computers used by the forensics teams have been left unlocked and unattended, sometimes with files still open. Failing to adequately secure these workstations when not in use could allow anyone on the floor to access them and alter dates, files, or programs. This is even more concerning given the open questions about hiring practices that have allowed those with clear political bias—and a desire to overturn the results of the 2020 election—to be present and participating on the floor. Even the most elementary security protocols and training would prevent this practice from occurring.

4. *There is risk of commingling counted and uncounted ballots in a batch, leading to some ballots being double-counted and others not being counted at all*

Table leads and table assistants appear to be applying different methods for keeping track of counted versus uncounted ballots in the stack of 100 ballots that is being counted. Some table leads and assistants are placing the stack of counted ballots right next to, and, in some cases, overlapping with, the stack of uncounted ballots, creating a significant risk of commingling the counted versus uncounted ballots and throwing off the count.

5. *The constantly changing rules cause confusion and counting errors, and undermine the reliability of the results*

There doesn’t appear to be any plan or consistency in the audit procedures and it appears the procedures have been changed multiple times since this exercise started. Your recent comments on the Mike Broomhead Show seem to confirm that procedures may change every day.¹² Indeed, those counting teams that have been working at the Coliseum the longest may be encountering the most confusion because they have counted under several different iterations of procedures.

6. *Frequent violations of the limited procedures that do exist, and a disregard for best practices or basic security*

“Audit” workers appear to be violating the procedures and there is an inexplicable disregard for best security practices. A partial list of incidents observed includes ballots left unattended on tables,¹³ ballots being tallied using scrap paper rather than official tally sheets,¹⁴ errors being corrected in the same color pen,¹⁵ counters receiving training on the fly at counting tables,¹⁶ table leads correcting the tally sheets of counters,¹⁷ table assistants intermixing ballots from separate stacks,¹⁸ forensics team computers left unlocked and unattended,¹⁹ the use of cell phones on the counting

¹² Bennett, Ken. The Mike Broomhead Show. (April 29, 2021). Available at <https://ktar.com/story/4364867/ken-bennett-expects-audit-of-maricopa-county-ballots-to-meet-deadline/>

¹³ April 30, 2021.

¹⁴ April 30, 2021.

¹⁵ April 30, 2021.

¹⁶ May 1, 2021.

¹⁷ May 1, 2021.

¹⁸ May 1, 2021.

¹⁹ April 30; May 1, 2021.

floor,²⁰ tally sheets filled after a batch is completed,²¹ counting teams conferring on how to attribute a vote,²² table leads directing counting teams on how to attribute a vote,²³ and loss of ballot images due to software issues.²⁴

* * *

Mr. Bennett, as a former Secretary of State, you know that our elections are governed by a complex framework of laws and procedures designed to ensure accuracy, security, and transparency. You also must therefore know that the procedures governing this audit ensure none of those things. I'm not sure what compelled you to oversee this audit, but I'd like to assume you took this role with the best of intentions. It is those intentions I appeal to now: either do it right, or don't do it at all.

Sincerely,

A handwritten signature in black ink, appearing to read 'KH', followed by a long horizontal flourish.

Katie Hobbs
Arizona Secretary of State

²⁰ May 1, 2021.

²¹ April 30, 2021.

²² April 30; May 1, 2021.

²³ April 30, 2021.

²⁴ May 1, 2021.