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April 13, 2009

**Sent via e-mail to: [Donald.Conrad@az.gov](mailto:Donald.Conrad@az.gov) and U.S. Mail**

Donald E. Conrad  
Criminal Division Chief Counsel  
**Arizona Attorney General's Office**  
1275 West Washington Street  
Phoenix, AZ 85007

Dear Mr. Conrad:

My client, the Pima County Democratic Party, fully understands that it is the duty of your office to prosecute crimes and, therefore, to control your investigations. You are paid for that job by the people of the State of Arizona. Our political party also has important public functions that we perform. Our duties regarding elections are prescribed by statute, by the Secretary of State's procedures and common practice.

We have been requesting the cooperation of your office concerning public records that are in the same boxes as the RTA ballots. Your office's refusal to cooperate on that simple matter not only causes us specific harm, but frustrates our party's ability to carry out its oversight role.

The procedures that your office has created for the RTA hand count, such as not allowing our observers to write down any numbers or, indeed, to be made aware of any numbers, means that our observation role is quite limited. Nonetheless, we are doing the best we can with your system of handcuffing our observer and keeping public records from our view or inspection.

Our observers are greatly concerned that many thousand of ballots may be "missing." Your office has in its possession 105 boxes from the RTA that include all of the ballots from that election as well as additional records such as the poll tapes, yellow sheets and miscellaneous election documents such as the test ballots used in the logic and accuracy tests for that election. Those additional records are contained in 19 boxes that do not have ballots in them.

Of the 86 remaining boxes that contain the RTA ballots, 31 boxes contain the "early ballots" and provisional ballots from that election. On average those boxes should contain 1,152 ballots per box. Your office should have the precise count for each box, as our number is simply an arithmetic average. Our experience and our visual observation suggests that the 31 boxes were fully packed for storage.

The problem that we see, and of which we have alerted your personnel starting with the first day of counting last Monday, is that the remaining 55 boxes are not likely to contain an average of 1,547 ballots per box to arrive at the total of 85,100 ballots reportedly cast at the various voting areas. The boxes simply cannot hold that many ballots, as your office must know.

We have roughly estimated that many thousands of ballots that should be in the ballot boxes in your possession don't exist. If we are correct, the question arises as to what happened to those ballots. The answer to that question concerns your office regarding possible criminal charges pursuant to A.R.S. § 16-1003, 1004, 1011 and 1016, among other statutes, and also our political party which is struggling with its duty to ensure accurate counting under the circumstance of Pima County's use of computerized systems that are easy to cheat with.

For us to do our job, we need to see the poll tapes and the yellow sheets and other public record election documents. Those same documents would seem to be useful to your office. Our observer has informed us, however, that your office does not examine those documents, does not record any information from them, and does not make copies of them. Instead, you place those important records back into boxes that you then securely seal, where they remain unseen and unrecorded.

Your letter of April 10, 2009 to Pima County Democratic Party Chairman Jeffrey Rogers states that you "know of no better way to keep "your" commitment to guard the integrity of the evidence" than by sealing back up the poll tapes and yellow sheets in the boxes. Let me suggest a "better way." Our suggestion is for your office to inspect those documents and to copy them. They contain information that would be useful to your office, just as they are useful to our political party.

Your April 10 letter contains a paragraph concerning examination of the ballots that I do not understand. It appears that we may not have made ourselves clear. You state that "several people have brought to our attention their concerns that false ballots were printed and included in the final count of votes in the RTA election." You then conclude that your office won't examine the ballots unless proof is first provided that such a fraud did occur. In other words, you won't ask the questions unless the answer is first assured. That approach is backward to any investigative technique that I am familiar with.

More importantly, your answer relates to an allegation that we did not make. No one, to our knowledge, has suggested that false ballots were printed and included in the final count of the RTA election. As your office has learned, it is very easy for Pima County to cheat using either the GEMS computer system or the "cropscanner" memory card programming device that they purchased. If those easy methods were used for the RTA, the questions arises as to the validity of the contents of the ballot boxes.

We know the Pima County Elections Department owns a ballot printing machine. We do not know the security of those ballots at Iron Mountain. Therefore, we made the elemental suggestion that a non-invasive and non-destructive examination of a sample of the ballots could be done using a



microscope. Jim March, the Libertarian Party's named observer, had such a microscope at your facility all last week. From our viewpoint, such an examination would have been both simple and elemental. Of course, the importance of that request is greatly diminished in view of the many thousands of "phantom ballots."

What happened to those ballots or whether those ballots ever existed has now been placed on our agenda. Electronic ballot boxes can be electronically stuffed. We don't know the answer, but it is our political party's duty to find out.

The phantom or "missing" ballots may well explain the post-election erasure of original memory card data from 93 precincts during the three days after election day and the "substitution" of new numbers for poll results that should not change.

We have repeatedly tried to make two points clear to the Attorney General's Office. The first point is that the Democratic Party endorsed and supported the RTA. The second point is that our interest in election integrity lies at the heart of the democratic process. This is what we do. We participate in all elections and we want an honest count whether we win or lose.

We specifically request that your office share the data that you have accumulated on the ballot count with our election experts. We believe we have expertise and information that you could use as well.

We remain available to assist your office in any way in your investigation. For some reason unknown to us, the Attorney General has chosen to ally himself with the suspects and treat us like we are the suspects. Individuals working with our party have put in untold thousands of hours with only the goal of honest elections as our reward. We are patriots and we resent deeply that we must struggle with your office to achieve what should be a joint goal.

Sincerely,

**Risner & Graham**



William J. Risner

WJR/mek