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VIA E-MAIL

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Dear Attorney General Brnovich and County Attorney McIntyre,

We respectfully request that your offices investigate whether Cochise County Supervisors Tom Crosby and Peggy Judd violated Arizona criminal law by willfully refusing to certify the results of the 2022 election in spite of their legal duty to do so. Their votes against certification resulted in the three-member Board failing to perform its legal duty to certify the election. As the former Attorney General of Arizona and the former County Attorney of Maricopa County, we take no pleasure in making this prosecution recommendation, but we believe deeply that the rule of law dictates that public officials be held accountable when they refuse to comply with their legal obligations—all the more so where those officials’ actions threaten to undo the proper administration and integrity of elections, disenfranchise thousands of voters, and potentially even alter the results of some races.

I. The Cochise County Board of Supervisors Has a Non-Discretionary Duty to Certify the Election Results, and There Is No Legal Basis for Refusing to Certify

Arizona’s election law sets forth clear, non-discretionary duties for county boards of supervisors with respect to the certification of election results. Each county board “*shall* meet and canvass

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the election not less than six days nor more than twenty days following the election.” A.R.S. § 16-642 (emphasis added). For the November 2022 election, the deadline for county canvasses was Monday, November 28. Arizona law further provides that, once the official canvass is completed, “the board of supervisors shall deliver a copy of the official canvass [...] to the secretary of state.” A.R.S. § 16-646(C). As further evidence of the non-discretionary nature of the Board’s canvassing duties, the election code consistently uses the words “shall” in specifying when and how the Board is to conduct the canvass. *See, e.g.*, A.R.S. §§ 16-642, 16-644, 16-644, 16-645 16-646.

Arizona law provides no applicable legal grounds for County Supervisors to refuse to comply with their legal duty to certify results by the statutory deadline. For example, the Arizona Elections Procedures Manual explicitly provides that “the 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.” *See* 2019 Arizona Election Procedures Manual at p. 240; *see also Arizona Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 63, 475 P.3d 303, 308 (2020) (the EPM has “has the force of law”). Indeed, the Board of Supervisors is not even authorized to set aside precinct returns for want of form or failure to be “strictly in accordance with the explicit provisions of this [election code].” *See* A.R.S. § 16-644; *accord Hunsaker v. Deal*, 135 Ariz. 616, 618, 663 P.2d 608, 610 (Ct. App. 1983).

There is a sole exception to the canvassing deadline prescribed by A.R.S. § 16-642: the Board may postpone the canvass “from day to day until all the returns are received or until six postponements have been had” if “at the time of the [Board] meeting” the returns from any polling place are missing. A.R.S. § 16-642(C). That single exception to the statutory deadline for the county canvass has no applicability here.

II. Cochise County Supervisors Crosby and Judd Refused to Certify the Results by the November 28 Statutory Deadline in Violation of their Legal Duty to Do So

In spite of these explicit legal duties to certify, Cochise County Supervisors Crosby and Judd both voted against certifying the election results before the November 28 statutory deadline.

On November 18, the Cochise County Board of Supervisors conducted a meeting to canvass and certify the election results. At that meeting, the Board heard public testimony claiming—falsely—that the election equipment used by the County had not been tested by a lab properly accredited by the U.S. Election Assistance Commission (EAC). At that same meeting, the Board heard testimony from the state elections director debunking that false claim and affirming that equipment had been inspected by an accredited lab. Nevertheless, Supervisors Crosby and Judd voted to delay certification until November 28—the statutory deadline—in

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order to obtain more evidence regarding the false claims that election equipment had not been properly certified.

On November 21, the Secretary of State sent a [letter](#) to the Cochise County Board of Supervisors detailing its legal duties to certify.¹ That letter also provided detailed information definitively refuting the false claim that the County's election equipment had not been properly certified.

Nevertheless, at the November 28 meeting, Supervisors Crosby and Judd again voted against moving forward with the certification of the county's election results. Both Supervisors cited the need to hear more evidence concerning the false and thoroughly discredited claims regarding the certification of the county's election equipment, despite those claims having no bearing on the Board's legal duty to certify the results. Although the Board intends to meet again on December 2, the Board has failed to meet the November 28 statutory deadline to canvass the results, and Cochise County is now the only Arizona county that has not complied with its certification duties.

There is a legal framework in Arizona to challenge election results when there is a good faith basis to doubt the integrity of the process. Specifically, under A.R.S. § 16-672, an action can be filed after the canvass to contest the results—and at that time litigate the integrity of the election. Despite the availability of that legal mechanism, Supervisors Crosby and Judd chose to take another path, unauthorized by Arizona law, with potential criminal consequences.

III. Supervisors Crosby and Judd's Failure to Abide by their Duties Likely Violates Various Arizona Criminal Laws

Supervisors Crosby and Judd's willful refusal to certify the election results by the statutory deadline likely violates at least three different Arizona criminal laws.

First, Arizona law provides that “[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.” A.R.S. § 16-1010. As explained above, Arizona law imposes a non-discretionary legal duty on county supervisors to certify election results by the statutory deadline. Supervisors Crosby and Judd had knowledge of this legal duty but willfully refused to comply, citing discredited and demonstrably false conspiracy theories in support of their refusal. Moreover, even if there were some merit to their claims about the certification of the voting equipment—and, again, there is no merit to those

¹Letter from Secretary of State Katie Hobbs to Cochise County Board of Supervisors (Nov. 21, 2022), <https://www.democracymonitor.com/wp-content/uploads/2022/11/HobbsLetter.pdf>.

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claims—that would still not provide a legal justification for Supervisors Crosby and Judd to ignore their non-discretionary duty to certify the election results.

Second, for the same reasons, Supervisors Crosby and Judd conduct also likely violates A.R.S. § 16-1009, which provides that “[a] public officer upon 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.” Third and finally, Supervisors Crosby and Judd’s conduct also likely violates A.R.S. § 16-452, which makes it a class 2 misdemeanor to violate a rule prescribed by the Election Procedures Manual.

* * *

Under these circumstances, both the Attorney General and County Attorney are authorized to open investigations and bring criminal actions against Supervisors Crosby and Judd for violating these laws. *See* A.R.S. § 16-1021 (setting forth Attorney General and County Attorney authority to enforce election code through criminal and civil actions).

Such action is necessary to protect not only the integrity of the 2022 election but also future elections in our state. Failing to hold Supervisors Crosby and Judd accountable for their violations of law could embolden other public officials to abandon their legal duties in future elections. This would pose a substantial threat to election administration in Arizona. Accordingly, we respectfully urge that your offices use your authority to investigate and, if the evidence warrants, to prosecute Supervisors Crosby and Judd for any violations of law. The preservation of free and fair elections in our state depends on it.

Sincerely,

Terry Goddard
Former Arizona Attorney General, 2001-2011

Richard M. Romley
Former Maricopa County Attorney, 1989-2004, 2010