



Maricopa County Attorney

RACHEL MITCHELL

June 20, 2023

VIA EMAIL AND U.S. MAIL

Mr. Dennie K. Kawahara
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R.e.: Your May 1, 2023 letter presenting Oki's position concerning the McGregor Report

Dear Mr. Kawahara,

Thank you for your letter, dated May 1, 2023 ["Oki Letter"], in which you expressed some disagreements your company, Oki Data Americas ("Oki"), has with the investigation of problems experienced with some of the ballot-on-demand printers that the County used on election day, as well as with the report that was issued describing that investigation (the "McGregor Report"). My office has considered your letter, and I write now in response.

BACKGROUND AND GENERAL REMARKS

By way of background, on election day, November 8, 2022, "some print flaked off" *some* of the ballots printed by *some* Oki B432 printers, "leaving the timing marks needed for the tabulator to record the ballot too faint to serve their purpose." [McGregor Report at 11.] It is important to put this into perspective. There were 1,562,758 ballots cast in the 2022 general election. Of those, 248,070 were cast on election day, when the printer issues occurred. And of those, a total of 16,724 could not be read by the tabulators in the vote centers and so had to be deposited into "Door 3," the secure ballot box, to be counted by the Central Count Tabulators at "election headquarters" at the Maricopa County Tabulation and Elections Center (*i.e.*, MCTEC). *Every one of these 16,724 ballots was counted.*

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[McGregor Report at 2 n.1; *Lake v. Hobbs*, No. CV2022-095403, Under Advisement Ruling at 6 (Maricopa Cty. Super. Ct., Dec. 24, 2022), *affirmed*, 525 P.3d 664 (Ariz. Ct. App. 2023), *review denied*, CV-23-0046-PR (March 22, 2023). However, not all of these 16,724 ballots were misread because of the Oki B432 print issues; some were misread for other reasons. Thus, fewer than 16,724 of the 1.5 million voters who voted in the 2022 general election cast ballots that could not be read by the tabulators in the vote centers because of printer problems. And when considering just the voters who voted in a vote center on election day, fewer than 16,724 of the 248,070 total ballots cast could not be tabulated by the vote center tabulators and so had to be transported to MCTEC to be tabulated by the Central Count Tabulators.

To be clear, it is regrettable anytime a voter is inconvenienced, and voters were certainly inconvenienced in some Maricopa County vote centers on election day. But it is incorrect to suggest, as some have, that there was a massive failure of printers at vote centers. The majority of the Oki B432 printers experienced no difficulties. A minority of the printers, in a minority of Maricopa County's vote centers, experienced the problems described in the McGregor Report, and most voters were unaffected at all. And even those voters who were affected had their votes counted.

Nevertheless, my client, the Maricopa County Board of Supervisors, recognized the inconvenience that the printer problems caused some voters and wanted to determine *why* the problems occurred so as to avoid them ever occurring again in the future. At the request of the Board, I commissioned an independent investigation to determine *why* these difficulties occurred. I then retained Justice McGregor to conduct the investigation and authorized her to conduct her investigation without any interference from me or my Office. This was necessary to ensure the independence of the investigation and eliminate any concerns that the County or my Office improperly influenced the investigation or dictated its conclusions. Justice McGregor conducted her investigation as she saw fit, and in the way that she believes was most likely to arrive at the truth. To do so, Justice McGregor retained several people with expertise in election administration or printer technology to assist her. [McGregor Report at 3-4.] Justice McGregor and her team conducted numerous interviews with Maricopa County Election Department personnel to learn about what was experienced on election day, as well as with the County and third-party personnel who were responsible for preparing, testing, deploying, and operating the County's printers and tabulators on election day. [*Id.* at 2-3.] She and her team consulted with other election-administration experts, reviewed thousands of pages of documents, and conducted multiple tests of the County's printers. [*Id.* at 3.]

Justice McGregor's investigation led to two important conclusions. First, there was no malfeasance on the part of the County or any of its elected officials, election directors, or personnel. Justice McGregor concluded that "[a]ny failure in process or human error

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relates to a failure to anticipate and prepare for the printer failures experienced. But nothing we learned in our interviews or document reviews gave any clear indication that problems should have been anticipated.” [*Id.* at 26.] Second, “the combined effect of using 100-pound ballot paper and a 20-inch ballot during the 2022 general election was to require that the Oki B432 printers perform at the extreme edge of their capability, a level that could not be reliably sustained by a substantial number of printers.” [*Id.* at 3.]

You characterize this second conclusion, and the findings that led Justice McGregor to it, as placing blame on the Oki B432 printers. [Oki Letter at 1.] I see it very differently. Justice McGregor explained in her Report that the Election Department unwittingly pushed its Oki B432 printers to the limits of their ability, and so naturally some of the Oki B432 printers experienced intermittent printing problems. It is important to note, however, that not all Oki B432 printers experienced these problems, and even those that did experience printing problems did not experience those problems every time they attempted to print. [McGregor Report at 12 (noting that approximately 60 of the County’s 223 vote centers experienced printing problems); 13 (noting that some vote centers using Oki B432 printers had no known printing problems); *id.* (noting that there were two Oki B432 printers in each vote center, and Maricopa County could not determine whether both printers—or just one—had problems printing at each site).]

Justice McGregor underscored this reality when she wrote that “it is important to keep in mind the fact that, on general election day, the large majority of Oki B432 printers performed well and produced few faulty ballots.” [*Id.* at 21.] Indeed, “[t]wo-thirds of the general election vote centers reported no issues with misprinted ballots; approximately 94 percent of election day ballots were not faulty.” [*Id.*] That finding, coupled with the finding that the Elections Department’s choice to use 100 pound paper and 20 inch ballots unwittingly pushed the Oki B432 printers to the very limit of their abilities (a limit that few, if any other, voting jurisdictions would ever need to approach), seems to me to put the Oki printers in a very good light under ordinary circumstances. Your concern, that the McGregor Report may “be used by OKI’s competitors to discredit and create doubt in the minds of other election officials that rely on OKI printers,” [Oki Letter at 3], seems to me to be unlikely. The Elections Department chose Oki as one of the two manufacturers to supply its printers because Oki produces quality printers, and nothing in the McGregor Report says differently.

RESPONSE TO OKI’S SPECIFIC CRITICISMS

Your letter to me raised four specific criticisms of the McGregor Report. I will address each in turn.

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First, you criticized Justice McGregor for not interviewing Oki as part of her investigation. [Oki Letter at 1-2.] The Board of Supervisors had requested, however, that the investigation be conducted independently of those who might have reason to influence it. Put in everyday terms, the Board did not want anyone “grading his or her own homework.” As a result, Justice McGregor chose not to interview numerous people who *might* have been interviewed, including members of the Board of Supervisors (who are ultimately responsible for the printing and tabulation of ballots). Because Justice McGregor could learn what she needed to learn about the Oki printers from other sources, including Oki manuals and the printing experts she selected, she declined to interview anyone from your company.

Second, you suggested that the McGregor report was in error when it stated that the fusers in Oki B432 printers cannot be replaced. [Oki Letter at 2.] You stated that “[t]he fuser for the B432 is in fact available for purchase as a spare part and may be changed onsite by a printer technician.” [*Id.*] True as that may be, the McGregor Report’s statement that the Oki B432 fuser “cannot be separately replaced[,]” [McGregor Report at 24], must be read in the context of the problems that occurred on election day. As Justice McGregor explained, *some* (not all) of the Oki B432 printers were “pressed to the edge of or past their capability” by the use of 100 pound, 20 inch paper, experienced misprints on election day that were attributed to the fusers. [*Id.*] If those printers were going to be able to serve Maricopa County voters in the manner that the Board of Supervisors and Elections Department wanted, their fusers would have to be able to be replaced very quickly. But that is not possible for the Oki B432. According to Oki’s B432 help forum:

Due to the length and complexity that comes with replacing a fuser in one of these units, proper troubleshooting and determining that the fuser has failed, is necessary, before recommending the fuser be replaced. A typical fuser replacement can take upwards of 2 hours or more! In the process, many parts need to be removed, such as the Scanner Unit, Top Cover, CUPU Board, Power supply and other components.¹

For that reason, the Elections Department considers the Oki B432 printer fuser to be unable to be replaced for purposes of its election day needs. An example of a fuser that the

¹ Oki Data Americas, *Troubleshooting Fusing Issues - Mono MFP's and Mono Desktop Models* (Nov. 8, 2022), available at https://okiprinting-en-us.custhelp.com/app/answers/detail/a_id/25722/kw/Fuser/p/5086/session/L3RpbWUvMTY4NjMyOTk5OC9nZW4vMTY4NjMyOTk5OC9zaWQvZlVURWk0MGt0azRNa1pxUVdweWRQN0s3djBPMXZBUUZHTExkX2tyd1dnbWlzbm4yQmtPUHF0TXdLdG9ORGRtAFNjZTJwcHdxRUo3MEVVRGg1TmU4ZDd6RDd3R252aGlsczVWSzBzb2IMUGNIQ3RYN1NURiU3RUlmlmNWclMjEIMjE=.

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Elections Department considers to be replaceable is one that can be replaced within minutes (or seconds) by our poll workers, without the need of any tools, by simply swapping it out much as one would swap out a toner cartridge.

Third, you stated that Oki “will continue to supply consumables and parts for [the B432 printer] through at least March 31, 2028[,]” while the McGregor Report stated that December 31, 2025 would be the end-of-life date. [Oki Letter at 2.] We are very glad to hear this. Perhaps the confusion on this subject arose in part from a letter from Oki Data Americas, Inc. Marketing, dated April 1, 2021 and attached as Exhibit 1, which stated that Oki would no longer distribute printer hardware under the Oki brand to the North American market, of which we are part. The letter then stated that Oki would continue to provide support for its current customers “as required” by various states, and further stated that *for California customers* Oki’s support would continue through March 31, 2028. As Maricopa County is not in California, but rather Arizona, Justice McGregor may not have realized that we also could expect to continue to receive Oki support through that date. Regardless, we are pleased to hear this update, which is good news for your customers, and we applaud you for this decision.

Fourth, you objected to the McGregor Report’s statement that the “manufacturer” made “assurances” (in context, that the Oki B432 printers would be able to print ballots on twenty inch, one hundred pound paper on election day). [Oki Letter at 3.] In response, you wrote that one hundred pound paper, while supported by Oki B432 multi-purpose trays, is not specified for use in the paper cassettes. [*Id.*] An explanation is in order.

First, it is important to note that the Oki B432 comes “standard” from Oki with a paper cassette that can accept a maximum paper size of 8.5 by 14 inches (*i.e.*, “legal” size paper). In order to use these printers to print ballots, the Elections Department contracts with Runbeck Election Services to provide an extension that will enable it to accept longer paper.

Second, because the Elections Department uses the extension, the appropriate paper size selection for the Oki B432 printer is the “Custom” size selection.

Third, there are different specifications listed in the Oki Manual for the “standard” paper setting and “custom” settings. These different specifications led the Elections Department to conclude that one hundred pound paper could be utilized in the paper cassette extensions.² In the section of the Manual titled, “About Paper Types That Can be Loaded

² The Manual consulted by the Elections Department is available for download at https://urldefense.com/v3/_https://www.oki.com/us/printing/download/45822012EE07_B432_EN_308754.zip?id=45822012EE_ ;!!KLEI7LSNBzLtGRk!aNbfBqcfo89b_hgoP6

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and Storage Methods,” there is a table in which Oki lists various paper options and the permissible specifications for each. I have attached a copy of that page as Exhibit 2 to this letter. In the plain paper category of the table, the Manual lists the maximum paper weight that can be safely used for printing, then provides a disclaimer related to duplexing, which states: “For duplex printing: Paper Weight 60 to 120 g/m²[.]” This indicates that, when using the standard settings to duplex print, paper weight cannot exceed 120 g/m², which is approximately eighty-pound paper.

In the same table, however, there is a separate section for printing using the “custom” paper setting. There is a dividing line that separates that section of the table from the portion devoted to the plain paper category just described. As already explained, the Elections Department uses the “custom” paper settings. In the “custom” section, the Manual states that paper up to 163 g/m², which is approximately one hundred ten pounds, may be used. There is no disclaimer on paper weight limitations for duplex printing in this section, as there is in the “standard” section. Rather, the “custom” section only describes the maximum paper sizes that can be used, and it states that paper weight up to approximately one hundred ten pounds is acceptable. The paper that the Elections Department used—one hundred pound, twenty-inch paper—fits within the specifications listed there.

Importantly, the Elections Department conducted its own stress testing prior to election day to determine whether twenty-inch, one hundred pound paper could be utilized in the Oki B432 printers. [McGregor Report at 7-8 and 26.] This stress testing was not required by law; however, the Elections Department thought it prudent to conduct it as part of its efforts to ensure that its selection of one hundred pound paper weight, to prevent ink “bleeding through” to the reverse side of the ballot, would not cause any concerns on election day. [*Id.* at 9-10].³ Those tests did not identify any problems that were recognized as constituting a possible impact on tabulation.⁴ [*Id.*] Because one hundred pound paper

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³ The McGregor Report explained that, “[b]ecause voting bubbles are offset on the front and back of ballots, any bleed-through cannot actually affect the correct tabulation of votes, and all votes can be counted even if bleed-through occurs.” [McGregor Report at 9-10.] Nonetheless, because of a widespread theory that bleed-through caused ballots cast in the 2020 general election to be unable to be tabulated, the Elections Department sought to prevent bleed-through, and so alleviate voter concerns, by using one hundred pound paper. [*Id.* at 10.]

⁴ As explained in the McGregor Report, in hindsight there was a flaw in this testing. The test ballots were only tabulated on the Central Count Tabulators at MCTEC, and were not

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was successfully used in the August, 2022 primary election,⁵ and because the stress testing did not identify any potential problems, the Elections Department reasonably believed that it could successfully use one hundred pound paper in the November, 2022 general election.

Now, to address your specific concern, which was the statement in the McGregor Report that the “manufacturer” had assured the Elections Department that the Oki B432 printers could use one hundred pound paper: the “manufacturer” to whom the Report referred may have been Runbeck Election Services, which manufactured the paper cassette extensions and assured the Elections Department that the extensions could handle twenty-inch, one hundred pound paper, *which they did*, just as *all* of the Oki B432 printers successfully printed ballots using that paper some of the time, and most of the printers were successful every time.

Although in hindsight it is easy to see that the Elections Department’s decision to use one hundred pound paper, coupled with the necessary twenty-inch ballot, pushed the Oki B432 printers to the limits of their capability, Justice McGregor noted that “nothing we learned in our interviews or document reviews gave any clear indication that the problems should have been anticipated.” [McGregor Report at 26]. Rather, the Elections Department “leadership and staff were uniformly confident that the general election would run smoothly, and there was reason for their confidence: the Oki B432 printers had performed reliably in the past, both in Maricopa County and elsewhere; the County’s experience with 100-pound paper had been positive in the primary election; and the printer stress tests with 20-inch ballots on 100-pound paper revealed no problems.” [*Id.*] As a result, Justice McGregor concluded that the printer problems experienced on election day were the result of some of the Oki B432 printers being pushed beyond their limits by the combination of twenty-inch, one hundred pound paper and the intermittent-type printing that occurs on election day—not human error or malfeasance. [*Id.*]

CONCLUSION

In concluding this letter, I want to underscore what I have tried to say throughout. The Oki B432 printer is a quality printer; if it were not so, it would not have been selected for use by the Maricopa County Elections Department. The printing failures, which occurred in Maricopa County on election day in some (not all) of the Oki B432 printers were the result of the printers being pushed to the limits of their capacity. That is not a reflection on Oki or its printers, and nothing in the McGregor Report suggests otherwise.

tabulated on the precinct-based tabulators that were used in vote centers on election day. [McGregor Report at 8.]

⁵ The August, 2022 primary election used a nineteen inch ballot. [McGregor Report at 10.] The general election ballot’s extra inch of length turned out to be significant.

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To alleviate your concerns, however, I will ask the County to post your letter, along with this letter, on its website, next to the McGregor Report, so that your response and my response to you will be available to anyone who would like to read them.

Sincerely,



RACHEL H. MITCHELL
MARICOPA COUNTY ATTORNEY