



KATIE HOBBS
SECRETARY OF STATE

April 23, 2021

Via Email

Mark Brnovich
Attorney General
Mark.Brnovich@azag.gov

Re: Senate Audit’s Potential Violations of Arizona Election Laws

Attorney General Brnovich,

I am writing to urge you to investigate, and, if necessary, take enforcement action against potential violations of Arizona’s election laws in connection with the Senate’s “audit” of the Maricopa County election materials. Though you have declined to provide legal advice to my Office on this issue pursuant to your role as “legal advisor of the departments of this state,”¹ you are also charged by statute to enforce the provisions of Title 16.²

As you are aware, Senate President Karen Fann and Senator Warren Petersen subpoenaed and currently maintain custody of Maricopa County election materials, including voting equipment and voted ballots, from the November 2020 General Election and intend to conduct an audit of the election results. While the court ruling clearing the way for the Senate to receive the subpoenaed materials made clear that the Senate is obligated to maintain the security and confidentiality of the materials at issue pursuant to requirements spelled out in Arizona law and the Elections Procedures Manual,³ recent developments make clear that the Senate leaders and those acting on their behalf have failed to do so. A thorough investigation and enforcement by your Office is critical to protecting election integrity and Arizona voters.

On March 31, 2021, the Senate announced that Cyber Ninjas Inc. would be conducting the “audit,” and in a press release shared that the Senate “leadership will not be directly involved [in the audit], and members do not expect to comment on any of the processes of the audit

¹ A.R.S. § 41-192.

² A.R.S. § 16-1021.

³ See *Maricopa County et al. v. Fann et al.*, Case No. CV2020-016849.

until the report is issued.”⁴ Since then, the Senate has provided zero transparency as to how the ballots or voting equipment would be secured or how the audit would be conducted.

Recent reports suggest that the Senate has failed to secure the election equipment and ballots, resulting in unauthorized and unmonitored access to both.⁵ This raises grave concern about potential violation of election laws and procedures, including but not limited to A.R.S. §§ 16-624, 16-625 regarding ballot retention and security, A.R.S. § 16-445(C) regarding security of vote tabulation devices and associated peripherals, and A.R.S. § 16-1004(B) regarding interference with voting equipment.

Further, the Statement of Work⁶ signed by President Fann indicates that these “auditors” plan to visit Maricopa County voters at their home to inquire about their registration and voting history. These tactics put Arizona’s voters’ privacy at risk and potentially violates laws intended to prevent voter intimidation. *See, e.g.*, A.R.S. § 16-1006(A)-(B).

To protect the integrity of our democracy and voters’ confidence in our election processes, it is imperative that those with custody of voting equipment and ballots abide by Arizona law and procedures adopted to ensure the security and confidentiality of those materials. I respectfully request that your office review these potential violations accordingly. If, for whatever reason, you are unable or unwilling to investigate this matter, I request that you refer it to another enforcement agency for proper action.

Thank you for your prompt attention to this important matter.

Sincerely,



Katie Hobbs
Arizona Secretary of State

Cc:

Joseph Kanefield, Chief Deputy & Chief of Staff
Joe.Kanefield@azag.gov

⁴ Arizona State Senate, “Arizona Senate hires auditor to review 2020 election in Maricopa County,” at 2, March 31, 2021. Available at <https://www.azsenaterepublicans.com/post/arizona-senate-hires-auditor-to-review-2020-election-in-maricopa-county>.

⁵ Loew, M. (2021, April 23). Security lapses plague Arizona senate's election audit at State Fairgrounds. Retrieved April 23, 2021, from 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?style=headline_with_preview. *See also* Archer, Garrett. (@Garrett_Archer). Twitter, April 22, 2021, 5:32 PM (“I’m in the Coliseum. No one was manning the metal detectors, so we just walked in.”) available at https://twitter.com/Garrett_Archer/status/1385391174114897923?s=20

⁶ Cyber Ninjas Statement of Work at ¶¶ 2.1, 5.1.