

ELECTIONS

Judge rules Maricopa County must provide 2020 ballots to Arizona Senate for audit under subpoenas

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Maricopa County will turn over ballots from the November general election to the Arizona Senate and provide the Senate access to its voting machines so it can conduct an audit, after a judge's ruling Friday.

Maricopa County Superior Court Judge Timothy Thomason said that the subpoenas issued by the Arizona Senate are valid. He said he disagreed with the county's arguments that they were unlawful and that the county legally could not hand over the ballots.

In response, Maricopa County Board of Supervisors Chairman Jack Sellers said in a statement Friday afternoon that the county "will immediately start working to provide the Arizona Senate with the ballots and other materials."

"We hope senators will show the same respect and care we have for the 2.1 million private ballots and use them in service of their legislative duties," Sellers said.

The court's decision resolved a months-long feud between the supervisors and the Senate over how the election should be audited.

The Senate wants another audit of ballots and a careful check of voter information, while the county believes its multiple audits have been sufficient and says the ballots must remain sealed under state law.

Thomason emphasized in his ruling that he did not want to wade into the politics of the issue.

He said the Senate has broad authority to issue subpoenas, and the Senate's reasoning to issue them — to see if there are changes that could be made to state law to further protect the integrity of elections — was valid.

Senate President Karen Fann said on Friday that the Senate is "thrilled" with the judge's decision, and grateful to the judge for seeing the big picture.

"It was never about overturning the election, it was about the integrity of the Arizona election system," she said. "If people have questions, they deserve answers."

Arguments on whether subpoenas override law locking up ballots

Thomason said in his ruling that he disagreed with the county's argument that the ballots could not be turned over because they had to remain locked up for a certain period after the election.

Two state laws apply, and they are contradictory. That's partly why the supervisors filed the lawsuit — to gain clarity from the court.

First, state law gives the Legislature sweeping authority to issue subpoenas and conduct investigations. The Arizona Attorney General's Office weighed in on this, saying that legislative bodies or committee chairs can issue summonses either to inform future legislation or to "investigate whether a particular governmental entity properly discharged its functions."

But state law also requires that, after results are certified, ballots be kept "in a secure facility managed by the county treasurer, who shall keep it unopened and unaltered for twenty-four months for elections for a federal office."

That portion of the law also states that a court order could unseal the ballots.

County attorney Thomas Liddy told the judge on Thursday that the county interprets the law to say that, for the two-year period, the county can only give the court access to the ballots in specific instances – such as when a specific race is so close that it triggers a recount, or when a court orders the ballots to be examined, which may occur if there is a question of fraud or misconduct.

Kory Langhofer, an attorney representing the Senate, told the judge that the subpoenas have the power to override the law and demand the ballots. He said part of the Senate's role in the state is ensuring fair elections, and because there are questions, it is the senators' duty to investigate.

Thomason said in his ruling that the subpoenas "are, in essence, the equivalent of a Court order, requiring production of certain information."

He said the law "does not immunize the ballots from being subpoenaed, let alone from being subpoenaed by the legislature, acting in its Constitutional role to ensure the 'purity' of elections," he said. "This statute simply does not create a privilege, justifying non-disclosure."

A court order unsealing ballots has happened once since the county certified its election on Nov. 20.

On Nov. 30, a Maricopa County Superior Court judge granted a request from the leader of the state Republican Party to inspect a sampling of 100 Arizona ballots for irregularities. The Republican Party then came back and asked to review more ballots, and the county said it would not object. The reviews did not find irregularities in vote counting significant enough to change the outcome of the election.

Judge says private information must be protected

One major concern the supervisors had about releasing the information was the chance that private voter information could be released publicly.

The judge said that also was concerning to him, but state law requires the senators "to maintain confidentiality of the subpoenaed materials."

It's unclear whether the court would be involved in monitoring the release of the information. At a previous hearing, there was discussion of the court overseeing the process, but that was not mentioned in the judge's decision.

The judge said his intention was to keep his ruling limited, and stay out of the politics of the case. But he did opine on the officials' choice to get the court involved, rather than work it out themselves.

He chastised the elected officials for not working together for the common good, and for "spending valuable resources on lawyers, 'fighting' with another branch of government over what materials can be provided to another branch of government under a subpoena."

"When government officials resort to 'name calling' and threats, something has gone terribly wrong," he wrote.

Senate wants another audit

The Jan. 12 subpoenas were sweeping, demanding copies of all mail-in ballots, access to voting machines, and information from voter records and election logs.

The supervisors already have provided much of what the subpoenas requested, but not the ballots or access to the machines.

The Senate wants to use the machines, ballots and information to commission its own audit of the election. Senate leaders say they are unsatisfied with the county's multiple pre- and post-election audits.

The county has performed multiple logic and accuracy tests, along with a hand count of a statistically significant number of ballots. The audits showed machines counted votes accurately. Election consultants from across the country say the county's auditing practices are sound, and another hand count is not necessary.

The latest audit was performed this month by two independent firms that inspected the county's voting machines.

The results of the independent audit were released Tuesday. The audit found that votes were counted correctly and the machines worked properly and were not hacked or connected to the internet during the election.

Fann said on Wednesday in response to the audit results that the Senate appreciates the supervisors doing the audits but questions remain that could be answered with a review of voter information and another audit of the ballots themselves.

County provided some materials to Senate already

The Jan. 12 subpoena asked for a slew of material and machines from the November general election, including:

- All original paper ballots.

- Digital copies of all mail-in ballots cast.

- All ballot tabulation and processing equipment.

- Software for voting machines and election management system.

- Hardware such as thumb drives used to transfer votes from machines to servers.

- Election reports.

- Voter rolls, and personal information about voters and their voting history.

The county already has provided "hundreds of thousands of pages of documents," according to a county spokesperson, including:

- Voter registration information that can be publicly requested.
- Secure tabulator event logs that show who accessed the equipment.
- Detailed reporting of election results.

The county did not provide:

- Private voter information.
- Tabulation equipment.
- 2020 ballots or copies of ballots.

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