



## Maricopa County Attorney

ALLISTER ADEL

November 5, 2020

Michael S. Catlett  
Deputy Solicitor General  
Office of the Attorney General  
2005 North Central Avenue  
Phoenix, Arizona 85004

RE: Your letter of November 4, 2020, concerning Sharpie brand markers at Maricopa County Voting Centers

Dear Mr. Catlett:

County Attorney Adel represents the Maricopa County Elections Department. We are in receipt of your letter, sent to the Director of Elections Day and Emergency Voting, Scott Jarrett, which requested information concerning the use and effect of Sharpie brand markers at Maricopa County Voting Centers. We write to answer your letter. We also write to extend an invitation to General Brnovich, on behalf of our client, to observe a demonstration of the process for casting and tabulating ballots. Because General Brnovich is the chief legal officer of the state and is counsel for the secretary of state, A.R.S. § 41-192(A), who is the state's chief election officer, A.R.S. § 16-142(A), this might be of value to him. Our client would welcome the opportunity to meet with General Brnovich and any of his staff to demonstrate Maricopa County's voting tabulation technology, so he can better understand the process in Maricopa County.

Regarding the questions presented in your letter, it is important to recognize at the outset that Sharpie markers are recommended by the manufacturer of Maricopa County's vote tabulation machines as the preferred way to mark ballots for use in those machines. Ink from ballpoint pens can cause smudges in the machines and foul them, while Sharpie markers do not. Furthermore, Maricopa County's ballots are designed in such a way that any "bleed through" caused by the ink cannot create false votes or cause a voter's intended vote to be miscounted. Specifically, the ovals in the front of the ballot are staggered from those on the back of the ballot so that even if bleed through should occur, there is no impact on any race.

In response to the particular questions raised in your letter, our client answers as follows:

**1. In which voting centers were Sharpies provided or made available to voters and where were those voting centers located?**

Sharpie markers were made available at all 175 voting locations, and the poll workers in all those locations were instructed to provide voters with Sharpie markers to mark their ballots in accordance with the recommendation of the manufacturer.

**2. In each voting center where Sharpies were provided or made available to voters, to what extent were Sharpies used? Were other types of markers or pens provided or used and to what extent?**

Sharpie markers should have been used in all voting centers by all voters. Whether the voter opted to use one cannot be determined without examining each individual ballot—something our client cannot possibly do at present. Ballpoint pens were available in every voting center for signing and completing provisional ballot affidavit envelopes or for poll workers to complete other forms. It is possible that some voters used those ballpoint pens to mark their ballots, or used ballpoint pens that they brought with them to the voting centers. Importantly, the use of a ballpoint pen would not cause a ballot to be misread or not counted. As stated earlier, wet ink from a ballpoint pen can cause the precinct-based tabulator scanning surface to become smudged.

**3. How many ballots cast at each voting center were rejected? Of those ballots, how many were rejected because of over-votes? Of those ballots rejected because of over-votes, how many were rejected because ink from a marker bled through to the reverse side of the ballot?**

No ballots were rejected at voting centers, for overvotes or any other reason. Voters who marked more votes than allowed (an “overvote”), made stray marks on their ballots, or otherwise damaged their ballots so that they could not be read by the vote tabulation machines were given the opportunity to “spoil” their ballots and cast new ones. A “spoiled” ballot is one that the voter chooses not to have counted. Typically, a voter will spoil a ballot when she makes unintentional marks or she realizes that she has mistakenly voted for a candidate for whom she did not intend to vote. Voters who want to spoil their ballots may ask for a new ballot from the poll workers. Spoiled ballots are retained by the Elections Department pursuant to Arizona law, but the votes on those ballots are not counted.

The vote tabulation machines are programmed to alert voters when their ballots contain overvotes or stray marks that might lead to their votes for certain contests not being tabulated. Those voters are then provided the opportunity to spoil their ballot and vote a new one. For various reasons, some voters choose not to spoil their ballots, which is their right.

**4. Were the ballot tabulation machines utilized at voting centers on Election Day programmed to reject over-voted ballots?**

No. As explained in the previous question, no ballots were “rejected” at voting centers on Election Day. The tabulation machines in the voting centers are programmed to identify ballots containing overvotes, stray marks, or other types of damage that would prevent the ballot from being fully tabulated. Those voters are then given the opportunity to spoil their ballots and cast new ones in accordance with Arizona law.

**5. Of the ballots rejected at voting centers, how many of those ballots were spoiled on site such that the voter could choose to vote a new ballot? In the instances where ballots were spoiled on site, how many voters chose not to cast a ballot rather than voting a new ballot?**

As described in the answers above, our client does not reject a voter’s ballot that contains overvotes, stray marks, or other damage that would prevent the ballot from being tabulated. In these instances, a voter is provided the opportunity to spoil his damaged ballot and cast a new one. Whether voters do so or not is entirely up to them. For every election, the Maricopa County Elections Department performs a post-election analysis that includes the amount of spoiled ballots for each voting location. This analysis is currently in-progress and will be completed prior to the Canvass for the General Election.

**6. What is the process for cancelling a voter’s ballot? If a ballot is reflected as “cancelled” on the Secretary of State’s website, what does that mean for the voter?**

The Maricopa County Elections Department is not involved in nor in a position to provide information on the creation of the secretary of state’s website.

Sincerely,

ALLISTER ADEL  
MARICOPA COUNTY ATTORNEY



Tom Liddy  
Civil Services Division Chief