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6 **IN THE SUPERIOR COURT OF THE**
7 **COUNTY OF MARICOPA, STATE OF ARIZONA**

8 AZNH REVOCABLE TRUST, by and
9 through JOHN and SUSAN SULLIVAN,
Trustees, Real Parties In Interest,

10 Plaintiff/Appellant,

11 vs.

12 ARIZONA DEPARTMENT OF REAL
ESTATE; and SUNLAND SPRINGS
13 VILLAGE HOMEOWNERS
ASSOCIATION,

14 Defendants/Appellees.

Case No. LC2025-000025 - 00\

ANSWERING BRIEF

Assign to:
Hon. Joseph Mikitish

15 **I. INTRODUCTION**

16 This case revolves around the interpretation of A.R.S. § 33-1812(A)(7) and whether
17 electronic voting records satisfy the statute's requirement for ballot retention. Appellant
18 AZNH Revocable Trust ("Appellant") argues that the Appellee Sunland Springs Village
19 Homeowners Association (the "Association") violated the statute by failing to retain
20 "electronic ballots" for inspection. However, this argument is based on an incorrect reading
21 of the statute combined with an incorrect assumption that electronic voting must produce
22 ballots identical to paper ballots.
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1. Electronic voting systems function differently than paper-based elections. In an
2. electronic voting environment, data storage, not physical ballot retention, ensures election
3. integrity. The information retained electronically serves the same function as storing paper
4. ballots and is formatted in a way dictated by the eVoting service provider. This data storage
5. not only complies with the dictates of the statute but is consistent with how electronic voting
6. occurs in the digital age. Thus, the Plaintiff's demand for "electronic ballots" is misguided
7. because it assumes that such ballots exist in a traditional, paper-like form, rather than as
8. securely stored voting records.

9. **II. STATEMENT OF THE CASE**

10. Appellant brings this appeal after the Arizona Department of Real Estate ("ADRE")
11. issued a Final Administrative Decision (the "Decision") dated November 5, 2024 (Index of
12. Record on Review ["IRR"] #91) on Appellant's single issue petition which alleged that,
13. pursuant to Arizona Revised Statutes ("A.R.S.") § 33-1812(A)(7), the Association had failed
14. to comply with Petitioner's February 28, 2024 voting records inspection request to inspect
15. "all ballots, envelopes, related materials and sign-in sheets" with regard to an election that
16. had taken place on February 27, 2024. (IRR #91, ¶2.) Appellant's main contention was that
17. the Association failed to produce all voting materials, noting that "about 1500 ballots" had
18. not been produced. (*Ibid.*) The missing ballots referred to were what Appellant claimed to be
19. "electronic ballots". (*Ibid.*)

20. The Administrative Law Judge ("ALJ") concluded in its Decision that the Association
21. was in compliance with A.R.S. § 33-1812(A)(7) because it retained the data lists compiled by
22. its third-party electronic voting provider called VoteHOANow which demonstrate the
23. its third-party electronic voting provider called VoteHOANow which demonstrate the
24. its third-party electronic voting provider called VoteHOANow which demonstrate the
25. its third-party electronic voting provider called VoteHOANow which demonstrate the

1. electronic ballots in electronic format, and that Appellant received all ballots, envelopes,
2 related materials and sign-in sheets related to the February 28, 2024 request for records,
3 including the VoteHOANow data sets. (IRR #91, ¶ 15.)

4 Appellant sought a rehearing of the Decision but that rehearing request was denied on
5 January 8, 2025. (IRR, #92.) On January 14, 2025, the Appellant filed its Notice of Appeal of
6 the Decision.

7 **III. STATEMENT OF FACTS**

8 The Association conducted a hybrid election at its Annual Meeting on February 27,
9 2024 using both paper ballots and electronic voting through VoteHOANow. (IRR #91, ¶ 6.)
10 A paper ballot was created for members to cast in-person at the Annual Meeting or to cast by
11 mail as an absentee ballot. (IRR #91, ¶ 7.) The Association provided a copy of the paper ballot
12 to VoteHOANow who prepared a user interface hosted on its website for members to log into
13 for the purpose of casting an electronic vote. (IRR #91, ¶ 9; Transcript of Hearing
14 [“Transcript”] p. 36:8–37:1.) This user interface at times was referred to as an “electronic
15 ballot”. The “proof” of the electronic ballot created by VoteHOANow was approved by the
16 Association’s manager, Kathy Fowers, prior to the election. (IRR #91, ¶ 12.)

17 Association members received multiple email reminders regarding the February 27,
18 2024 election with links directing members to the online voting website hosted by
19 VoteHOANow. (IRR #91, ¶ 10.) Eighteen (18) members cast votes in person at the Annual
20 Meeting. (IRR #91, ¶ 13.) One hundred fifty-five (155) members cast absentee ballots by
21 mail. (*Ibid.*) Fourteen hundred sixty-one (1,461) members cast electronic votes through
22 VoteHOANow. (*Ibid.*)
23
24
25

1. VoteHOANow captured the voting data from members who cast their vote through the
2 “electronic ballot” user interface hosted on VoteHOANow’s website. (IRR #91, ¶¶ 16–17.)
3 That voting data included: the member’s name; the member’s property address; the
4 registration number and account number for the member’s account with the VoteHOANow
5 platform; an IP address for the member; the date and time the vote was cast through the
6 VoteHOANow platform; and, the indication that one vote was cast for each proposed action
7 on the ballot. (IRR #91, ¶ 17; IRR ## 78–90 [Respondent’s Exhibits 3, 10, 11, 14, and 15].)
8 VoteHOANow provided this voting data to the Association after the election in a
9 “spreadsheet” format (Transcript, p. 37:5–6; p. 43:8–12.).
10

11 On February 28, 2024—the day after the election—Appellant submitted a written
12 request to the Association to inspect the election records. The scope of this request was “all
13 ballots, envelopes, related materials and sign-in sheets” related to the election. In response,
14 the Association produced over four hundred (400) pages of documents, including the data sets
15 provided by VoteHOANow showing the voting data from those who cast their votes
16 electronically. Because Appellant did not see the 1,461 electronic votes in a format similar to
17 the votes cast on a paper ballot, Appellant argued that “electronic ballots” were not produced
18 as required under A.R.S. § 33-1812(A)(7).

19 The disagreement over what format electronic voting information must take resulted
20 in the petition filed with the ADRE, the Decision, and now this appeal.

21 **IV. ISSUES PRESENTED**

22 The issues presented for review are:
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24
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- What does A.R.S. § 33-1812(A)(7) mean when it states that “*Ballots . . . shall be retained in electronic or paper format* and made available for member inspection for at least one year after completion of the election”?
- Did the ALJ err when she found that the Association complied with A.R.S. § 33-1812(A)(7) by retaining the VoteHOANow data lists which demonstrate the electronic ballots in electronic format?

V. LEGAL ARGUMENT

A. Standard of Review

Pursuant to A.R.S. 12-910(F), the court **shall** affirm the agency action unless the court concludes that the agency’s action is contrary to law, is not supported by substantial evidence, is arbitrary and capricious or is an abuse of discretion. “The trial court cannot re-weigh the evidence and substitute the court’s findings for that of the agency.” *Plowman v. Ariz. St. Liquor Bd.*, 152 Ariz. 331, 335, 732 P.2d 222, 226 (App.1986). “In reviewing factual determinations, the court determines only whether there is substantial evidence to support the administrative decision.” *Woerth v. City of Flagstaff*, 167 Ariz. 412, 417, 808 P.2d 297, 302 (App.1990). “A decision supported by substantial evidence may not be set aside as being arbitrary and capricious.” *Smith v. Arizona Long Term Care Sys.*, 207 Ariz. 217, 220, ¶ 14, 84 P.3d 482, 485 (App. 2004). “Substantial evidence exists if the record supports the decision, even if the record would also support a different conclusion.” *Arizona Dep’t of Transp. v. Arizona Motor Vehicle, LLC*, 255 Ariz. 139, 145, ¶ 32, 528 P.3d 891, 897 (App. 2023).

“Abuse of discretion is discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.” *Tilley v. Delci*, 220 Ariz. 233, 238, ¶ 16, 204 P.3d 1082,

1. 1087 (App. 2009). “In determining whether an administrative agency has abused its discretion
2 by acting in an arbitrary and capricious manner, we review the record to determine whether
3 there has been ‘unreasoning action, without consideration and in disregard for facts and
4 circumstances; where there is room for two opinions, the action is not arbitrary or capricious
5 if exercised honestly and upon due consideration, even though it may be believed that an
6 erroneous conclusion has been reached.’” *Maricopa County v. Gottsponer*, 150 Ariz. 367,
7 372, 723 P.2d 716, 721 (App.1986).

8
9 Appellant’s mere disagreement with the Decision does not meet the high legal standard
10 required to overturn it. The burden to do so is substantial and not easily met. As is discussed
11 below, Appellant has failed to demonstrate that the Decision was contrary to law, unsupported
12 by substantial evidence, or the result of an abuse of discretion. Accordingly, the Decision
13 should be affirmed and the appeal dismissed.

14 **B. The Decision Is Not Contrary To Law Because A.R.S. § 33-1812(A)(7) Does**
15 **Not Require a Specific Format for Electronic Ballot Retention.**

16 Appellant’s primary argument is that all “electronic ballots” must be retained in a
17 format identical to “paper ballots” to comply with A.R.S. § 33-1812(A)(7). However, this
18 argument is unsupported by the statutory language and fails to acknowledge the fundamental
19 distinction between electronic and physical data storage.

20 A.R.S. § 33-1812(A)(7) states:

21
22 Notwithstanding any provision in the community documents, after
23 termination of the period of declarant control, votes allocated to a unit
24 may not be cast pursuant to a proxy. *The association shall provide for*
25 *votes to be cast in person and by absentee ballot and, in addition, the*
association may provide for voting by some other form of delivery,
including the use of e-mail and fax delivery. Notwithstanding section

1. 10-3708 or the provisions of the community documents, any action
2 taken at an annual, regular or special meeting of the members shall
3 comply with all of the following if absentee ballots or ballots provided
4 by some other form of delivery are used:

5 ...
6 *7. Ballots, envelopes and related materials, including sign-in sheets if
7 used, shall be retained in electronic or paper format and made
8 available for member inspection for at least one year after completion
9 of the election.*

10 (Emphasis added.)

11 The statute mandates the retention of ballots, envelopes, and related materials in either
12 *electronic or paper format* but does not prescribe what an “electronic ballot” must look like
13 or specify the format in which electronic ballots must be stored.

14 Appellant interprets this provision to mean that electronic votes must be formatted
15 identically to paper ballots—essentially requiring screenshots or some other visual
16 representation of a paper ballot alongside the stored voting data. However, the plain language
17 of the statute imposes no such requirement. The legislature provided no explicit formatting
18 standards, nor did it require a one-to-one equivalence between electronic and paper ballots.
19 Without a statutory mandate dictating a particular format, Appellant cannot claim a violation
20 of A.R.S. § 33-1812(A)(7) based solely on a subjective preference for how electronic ballots
21 should be displayed.

22 This interpretation also disregards the reality of electronic voting systems, which do
23 not generate individual, paper-like ballots. Instead, electronic votes are securely stored in a
24 database or log file designed to ensure accuracy, verifiability, and retention for recount and
25 audit purposes. The legislature has demonstrated its understanding of these differences in
related statutes, as recognized by the ALJ in the Decision.

1. For example, A.R.S. § 10-3708(F) provides context regarding how electronic voting
2 data should be retained:

3 F. After providing notice that complies with subsection G of this
4 section to members that a vote shall be conducted by electronic means,
5 a written ballot may be delivered through an online voting system that
6 does all of the following:

- 7 1. Authenticates the member's identity.
- 8 2. Authenticates the validity of each electronic vote to ensure that the
9 vote is not altered in transit.
- 10 3. Transmits a receipt to each member who casts an electronic vote.
- 11 4. *Stores electronic votes for recount, inspection and review*
12 *purposes.*

13 (Emphasis added.)

14 This provision of the Nonprofit Corporations Act clarifies that an online voting system
15 satisfies statutory requirements if it *stores electronic votes*—not if it generates a visual
16 representation of a paper ballot. The focus is on ensuring that the electronic vote data is
17 securely retained for recount, inspection, and review purposes, not on replicating the format
18 of paper ballots. **The voting data is what is important**—not the specific format it takes.

19 The intent behind A.R.S. § 33-1812(A)(7) is to preserve election integrity—not to
20 impose impractical or technologically arbitrary record-keeping requirements. Recognizing
21 that electronic voting data can be stored differently than paper ballots aligns with both the
22 statutory language and the practical realities of modern electronic voting. As long as the stored
23 electronic votes fulfill the statute's purpose of ensuring transparency and reliability, the
24 Association has fully complied with the law.

25 For these reasons, this Court should uphold the Decision and find the Association met
the statutory requirements by retaining the VoteHOANow data sets.

1. **C. The Decision Has Substantial Evidence Supporting It Because Exhibits 3,**
2. **10, 11, 14 and 15 Fulfill The Requirement Of Retaining Electronic Ballots**
3. **In Electronic Format.**

4 For many of the same reasons the Decision is legally sound, there is also substantial
5 evidence supporting it. The data from the *1,461 electronic votes* was retained in spreadsheet
6 format and was produced to Appellant upon request. Despite Appellant’s mistaken belief to
7 the contrary, these spreadsheets and data lists *are* the “electronic ballots” Appellant has been
8 demanding.

9 The Association introduced multiple VoteHOANow data lists as evidence, including:

- 10 • A tally report of the votes,
- 11 • A list verifying the homeowners who voted electronically,
- 12 • A list of members’ votes for Directors,
- 13 • The Bylaw amendment results,
- 14 • The Revenue Ruling question results, and
- 15 • The approval of the 2023 Minutes.

16 These records, labeled as the Association’s Exhibits 3, 10, 11, 14, and 15, were
17 thoroughly reviewed by the ALJ. Based on this evidence, the ALJ correctly determined that
18 the Association provided Appellant with electronic and paper copies of all VoteHOANow
19 records it received regarding the electronic voting process.
20

21 After reviewing the evidence and arguments presented, the ALJ also concluded that
22 Appellant’s argument—that electronic ballots must be formatted identically to paper ballots
23 (i.e., that the Association must provide an *image* of each vote cast)—was unsupported by law.
24

1. Moreover, there was no evidence that VoteHOANow even retained voting data in a format
2. resembling paper ballots. (IRR #91, ¶ 13.) Instead, the ALJ determined that the
3. VoteHOANow data lists, when taken as a whole, accurately document each vote for each
4. member on each election item in an identifiable manner, thereby satisfying the intent and
5. purpose of A.R.S. § 33-1812(A)(7). (IRR #91, ¶ 13.)

6. The ALJ's consideration of A.R.S. § 10-3708(F)(4) to interpret the storage
7. requirements of electronic voting data does not invalidate the Decision. The preamble to
8. A.R.S. § 33-1812(A), which states, "*Notwithstanding section 10-3708 or the provisions of*
9. *the community documents,*" does not prohibit reference to A.R.S. § 10-3708 for interpretive
10. guidance. Nor does A.R.S. § 10-3708(F)(4) conflict with A.R.S. § 33-1812(A)(7)'s
11. requirement to retain ballots in electronic format. Rather, while A.R.S. § 33-1812(A)(7) is
12. *silent* on the specific format for storing electronic ballots, A.R.S. § 10-3708(F)(4) clarifies
13. that electronic votes must be stored in a manner that allows for recount, inspection, and
14. review. Reading these statutes together provides a logical and harmonized understanding of
15. the requirements.

16. Appellant's self-serving interpretation—that electronic and paper ballots must be
17. stored in *identical* formats—is unsupported by the plain language of both statutes.

18. In sum, there is ample evidence to support the ALJ's findings. Because the Decision is
19. backed by substantial evidence, it cannot be deemed arbitrary or capricious. Accordingly, the
20. Decision should be affirmed and the appeal dismissed.
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1. **D. The ALJ Did Not Abuse Her Discretion Because The Decision Contains**
2 **Well-Reasoned Arguments And Due Consideration For The Facts,**
3 **Evidence, And The Law.**

4 The ALJ's decision is well-reasoned and demonstrates due consideration for both the
5 facts and the law in several ways:

6 1. Careful Consideration of Statutory Language.

7 The ALJ thoroughly analyzed the relevant statutes, particularly A.R.S. § 33-
8 1812(A)(7) and A.R.S. § 10-3708(F)(4). The decision explicitly interprets these statutes,
9 recognizing that A.R.S. § 10-3708(F)(4) requires electronic votes to be stored, not electronic
10 ballots:
11

12 “ARIZ. REV. STAT. § 10-3708(F)(4) requires storage of ‘electronic
votes’ not electronic ballots.”

13 (IRR #91, ¶ 13.)

14 This distinction is critical in determining that the Association complied with the law
15 by retaining electronic voting records in the form provided by the eVoting vendor.

16 2. Recognition of Association's Compliance with Ballot Retention
17 Requirements.
18

19 The ALJ considered the types of records that were retained and determined that they
20 met the statutory requirements. Specifically, the decision notes that the Association retained
21 and produced: Tally reports of the votes; A listing of homeowners who voted electronically;
22 and Individual vote listings for each election item. The ALJ concluded that these records
23 satisfied A.R.S. § 33-1812(A)(7)'s requirement that ballots be retained in electronic or paper
24 format:
25

1. “Based on the foregoing, the Administrative Law Judge concludes
2 that Association is in compliance with ARIZ. REV. STAT. § 33-
3 1812(7) by retaining the Vote HOA Now data lists which demonstrate
4 the electronic ballots ‘in electronic format.’”

(IRR #91, ¶ 15.)

5 3. Logical Analysis of the Petitioner’s Arguments.

6 The ALJ carefully dissected the Appellant’s arguments and found them unconvincing.
7 The Appellant contended that the Association was required to produce an image of each
8 electronic ballot, but the ALJ rejected this by emphasizing: The statute does not mandate a
9 specific format for electronic ballots; The petitioner received all relevant election materials in
10 the form retained by the Association and its voting vendor; and the electronic voting system
11 ensured accuracy by allowing only one vote per registration number.

12 4. Consideration of Election Integrity and Auditability.

13 The ALJ addressed the accuracy and reliability of the electronic voting system, stating:

14 “The online voting system allowed only one vote per election item per
15 personal registration number, and the Vote HOA Now data lists
16 demonstrate that, per each IP address and the personal registration
17 number, only one electronic vote per election item was cast by that
18 member.”

(IRR #91, ¶14.)

19 This demonstrates that the ALJ was not only reviewing the legal technicalities but also
20 considering the practical implications and integrity of the election process.

21 5. Application of Legal Burdens of Proof.

22 The ALJ correctly applied the preponderance of evidence standard and found that the
23 Appellant failed to meet its burden. The Decision explicitly states:
24
25

1. "Petitioner did not sustain the burden of proof that the Association
2. committed a violation of ARIZ. REV. STAT. § 33-1812(A)(7) and,
therefore, the Petition must be denied."

3 (IRR #91, ¶ 16.)

4 This reinforces that the ruling was not arbitrary but rather based on the evidence
5 presented.

6 In total, the ALJ's decision is thorough, well-reasoned, and legally sound. It carefully
7 weighs the evidence, applies the correct legal standards, and reaches a conclusion that aligns
8 with both statutory language and the realities of electronic voting. The ruling appropriately
9 differentiates between ballots stored in electronic and paper format, ensuring that the law is
10 not misapplied to demand an impossible or unnecessary record-keeping requirement.

11 For these reasons, the Decision was not the result of an abuse of discretion and should
12 be affirmed.

13 **VI. CONCLUSION**

14 The Appellant's argument relies on an outdated view of electronic voting, assuming
15 that electronic ballots must mirror paper ballots. In reality, electronic voting operates through
16 secure data storage, which was properly maintained and disclosed by the Association. The
17 Association fully complied with A.R.S. § 33-1812(A)(7) and provided all the election records
18 to Appellant in response to its February 28, 2024 request. For those reasons, the Appellant's
19 appeal should be denied, and the Decision should be affirmed.

20 ///

21 ///

22 ///

1. The Association petitions the Court to award its attorneys' fees and costs incurred in
2. this matter pursuant to A.R.S. § 12-348(A)(2) and A.R.S. § 12-349(A).

3. RESPECTFULLY SUBMITTED this 4 day of March, 2025.

4. **MAXWELL & MORGAN, P.C.**

5. By  _____

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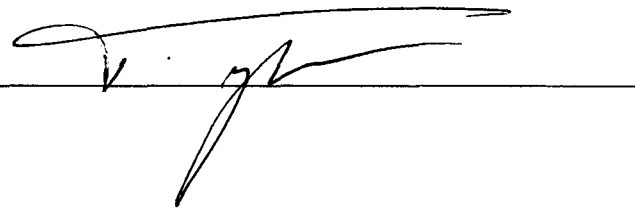
11. **ORIGINAL** of the foregoing ~~is~~ filed
12. this 5 day of March, 2025, to:

13. Maricopa County Superior Court

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