

CLERK OF THE
SUPERIOR COURT
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K. WHITSON, DEP

25 MAR 11 PM 3: 29

1 Office of Administrative Hearings
2 1740 West Adams, Lower Level
3 Phoenix, Arizona 85007
4 Telephone Number: 602-542-9826
5 E-mail: OAH@azoah.com

6 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
7 IN AND FOR THE COUNTY OF MARICOPA

9 In the Matter of

10 AZNH Revocable Trust
11 Petitioner,

12 v.

13 Sunland Springs Village Homeowners
14 Association,
15 Respondent.

LC2025-000025 -001

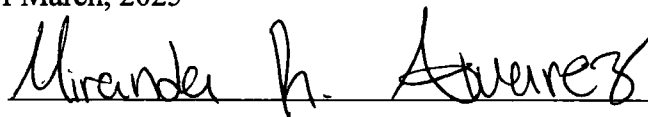
CERTIFICATION OF RECORD ON
REVIEW
RECORD OF ADMINISTRATIVE
HEARING

OAH No. 24F-H047-REL

16
17
18 CERTIFICATION OF TRANSCRIPT AND SUPPLEMENTAL RECORDS

19 The undersigned, pursuant to Rule 5(a) Rules of Procedure for Judicial Review of
20 Administrative Decisions, and pursuant to A.R.S. § 12-904(B), hereby files with the Clerk of
21 the Superior Court, the transcript and the supplemental records of the administrative hearing in
22 the above entitled matter. In addition, a cd/dvd containing a true and accurate electronic copy of
23 the transcript and supplemental records has been provided to the Court for its convenience.

24 DATED this 4th day of March, 2025

25
26 
27

28 Signature of Agency Head or Duly-Authorized Representative

29
30
Office of Administrative Hearings
1740 West Adams Street, Lower Level
Phoenix, Arizona 85007
(602) 542-9826

1 **The INDEX of RECORD on REVIEW and the complete Administrative Record on Review**
2 **in approved form were transmitted by certified mail on this 4th day of March, 2025 to:**

3 Clerk of the Court Attn: LC Specialty Desk
4 Maricopa County Superior Court
5 201 W. Jefferson (CCB)
6 Phoenix, Arizona 85003-2205

7 **A copy of the INDEX of RECORD on REVIEW and an electronic copy of the original case**
8 **documents and index of the Administrative Record on Review were transmitted by First**
9 **Class mail on this 4th day of March, 2025 to:**

10 Honorable Joseph Mikitish
11 C/O Clerk of the Court
12 Maricopa County Superior Court
13 East Court Building
14 101 West Jefferson (ECB-CCB), Suite 613
15 Phoenix, Arizona 85003-2205

16 **A copy of the INDEX of RECORD on REVIEW was e-mailed/mailed on this 4th day of**
17 **February, 2025 to:**

18 Susan Nicolson
19 Commissioner
20 Arizona Department of Real Estate
21 SNicolson@azre.gov
22 vnunez@azre.gov
23 djones@azre.gov
24 labril@azre.gov
25 mneat@azre.gov
26 lrecchia@azre.gov
27 gosborn@azre.gov

28 Chad Gallacher
29 cgallacher@hoalaw.biz
30 MAIL@HOALAW.BIZ

John F. Sullivan
info@sullivanappeals.com

By Miranda Alvarez
Legal Secretary

INDEX of RECORD on REVIEW

Superior Court No. LC2025-000025

**1. Motions, Memoranda or Other Documents Submitted by the Parties to the Appeal:
A.R.S. § 12-904(B)(2)**

| | | |
|----|------------|---|
| 1. | 02-07-2025 | 2025-02-07-2025 ELECTRONIC-docrec (1271211) |
| 2. | 02-07-2025 | 2025-02-07-2025 ELECTRONIC-docrec - dept final denial of rehrg (1271199) |
| 3. | 02-07-2025 | 2025-02-07-2025 ELECTRONIC-docrec - dept final denial of rehrg (1271200) |

2. Transcript: A.R.S. § 12-904(B)(5)

| | | |
|----|------------|---|
| 4. | 02-07-2025 | 2025-02-07-2025 ELECTRONIC- RECTRANS Received Transcript (1272375) |
|----|------------|---|

Arizona Department of Real Estate
Order Denying Rehearing Request

1 **BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 In the Matter of:

4 **AZNH Revocable Trust,**

Petitioner

5
6 vs.

7 **Sunland Springs Village Homeowners
Association,**

8 Respondent

File No.: 24F-H047

Docket No.: 24F-H047-REL

Order Denying Rehearing Request

9
10 **ORDER**

11 On or about November 5, 2024 the Office of Administrative Hearings issued an
Administrative Law Judge (ALJ) Decision ordering “that Petitioner’s petition is denied.”

12 Pursuant to Arizona Revised Statutes § 32-2199.04 a party may file a motion for rehearing
13 or review with the Commissioner of the Arizona Department of Real Estate (Commissioner). As
14 the aggrieved party, the Petitioner filed a timely Dispute Rehearing Request with the
15 Commissioner on or about November 30, 2024. In the request for rehearing, the Petitioner has
16 cited the following four grounds for a rehearing:

- 17 1. Irregularity in the proceedings or any order or abuse of discretion by the administrative
law judge that deprived a party of a fair hearing.
- 18 2. Error in the admission or rejection of evidence or other errors of law occurring during
19 the proceeding.
- 20 3. That finding of fact or decision is arbitrary, capricious or an abuse of discretion.
- 21 4. That the findings of fact or decision is not supported by the evidence or is contrary to
22 law.

23 The opposing party, Respondent Sunland Springs Village Homeowners Association, filed
a timely response to the Dispute Rehearing Request on or about December 23, 2024.

24 After careful review of the Administrative Law Judge’s decision, the Petitioner’s Dispute
25 Rehearing Petition alleging four grounds for a rehearing and the Respondent’s Response To

1 Petition For Rehearing, the Commissioner finds insufficient grounds to support the Petitioner's
2 alleged grounds for a rehearing.

3 **It Is Ordered:**

4 The Petitioner's request for a rehearing is denied.

5 DATED this 8th day of January, 2025.

6 

7 Susan Nicolson (Jan 8, 2025 09:54 MST)

8 Susan Nicolson
9 Commissioner
Department of Real Estate

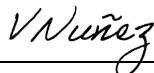
10 **E-FILE** of the foregoing this
11 8th day of January 2025, to:

12 ALJ Kay A. Abramsohn
Office of Administrative Hearing

13 **COPY** mailed by First Class and
14 Certified Mail on the 8th day of
15 January, 2025, Return Receipts Requested to:

16 John F Sullivan
17 1909 E Ray Rd, Ste 9198
Chandler AZ 85225
18 Certified Mail No. 9407 1098 9864 3067 0812 31
Email: info@sullivanappeals.com
19 *Attorney for Petitioner*

20 Chad M. Gallacher
21 4854 East Baseline Rd, Ste 104
Mesa AZ 85206
22 Certified Mail No. 9407 1098 9864 3067 0814 15
Email: mail@hoalaw.biz
23 *Attorney for Respondent*

24 

25 10290603

Office of Administrative Hearings
Administrative Law Judge Decision

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 In the Matter of

No. 24F-H047-REL

4 AZNH Revocable Trust,
5 Petitioner,

**ADMINISTRATIVE LAW JUDGE
DECISION**

6 v.
7 Sunland Springs Village Homeowners
8 Association,
9 Respondent.

10 **HEARING:** September 18, 2024

11 **APPEARANCES:** Attorney John F. Sullivan represented AZNH Revocable Trust
12 (Petitioner). Attorney Chad M. Gallacher represented Sunland Springs Village
13 Homeowners Association (Association).

14 **ADMINISTRATIVE LAW JUDGE:** Kay A. Abramsohn

15 **EXHIBITS ADMITTED INTO EVIDENCE:** Department's electronical file;
16 Petitioner Exhibits 1 through 15; Association Exhibits 1 through 15.

17
18 **FINDINGS OF FACT**

19 1. The Arizona Department of Real Estate (Department) is authorized by
20 statute to receive and to decide petitions for hearings from members of homeowners'
21 associations and from homeowners' associations in the State of Arizona.

22 2. On or about April 20, 2024, Petitioner filed a single issue petition (Petition)
23 with the Department which alleged that, pursuant to Arizona Revised Statutes (ARIZ. REV.
24 STAT.) § 33-1812(A)(7), the Association had failed to comply with Petitioner's February
25 28, 2024, voting records inspection request¹ to inspect "all ballots, envelopes, related
26 materials and sign-in sheets" with regard to an election that had taken place on February
27

28
29
30 ¹ See Petitioner's Exhibit 5.

1 27, 2024.² Petitioner indicated the Association failed to produce all voting materials,
2 noting that “about 1500 ballots” had not been produced.

3 3. On or about May 13, 2024, Association returned its Answer to the
4 Department wherein it denied Petitioner’s claim.³

5 4. On May 15, 2024, the Department referred this matter to the Office of
6 Administrative Hearings (OAH), an independent state agency, for an evidentiary hearing
7 on July 12, 2024 to determine whether a violation of ARIZ. REV. STAT. § 33-1812(A)(7)
8 occurred.⁴

9 5. Association ByLaws Section 3.2 provides that the Board of Directors
10 (Board) may be elected through paper or electronic ballots pursuant to procedures set
11 forth in the ByLaws.⁵ Those procedures in Section 3.3.3 require that the Board provide
12 each member of the Association 30-day notice of the ballot, either by mail or
13 electronically, for the election of the Directors.⁶ Further, Section 3.3.3 requires that
14 “[v]oting shall be by “secret ballot.”

15 6. In preparation for the February 27, 2024 election at the Annual Meeting,
16 Association arranged with a company, *Vote HOA Now*, to conduct electronic balloting.

17 7. A paper ballot was created for members to cast in-person at the Annual
18 Meeting or by mail (*i.e.*, in absentia).⁷

19 8. Association members were voting on several items: on Directors;⁸ on a
20 proposed amendment to the Association ByLaws;⁹ on a resolution that the Association
21

22
23 ² See Department’s electronic file. Petitioner’s Petition included twenty-two (22) attachments consisting of
24 emails back and forth with Association Secretary/Treasurer Cathy Braun and with Association General
25 Manager Kathy Fowers. These emails document not only Petitioner’s request for inspection of the
26 documents but also Petitioner’s multiple issues with the electronic voting process, the management of the
27 electronic voting process, and the overall receipt of documents Petitioner believed necessary to have been
28 provided to it.

29 ³ See Department’s electronic file.

30 ⁴ After a continuance, the hearing was conducted on September 18, 2024.

⁵ See Petitioner Exhibit 2.

⁶ *Id.*

⁷ See Association Exhibit 1.

⁸ See Association Exhibit 7.

⁹ See Association Exhibit 9.

1 act in accordance with an IRS Revenue Ruling regarding excess income,¹⁰ and to
2 approve the Minutes from the 2023 Annual Meeting.¹¹

3 9. *Vote HOA Now* was given the Association’s “ballot” information and the
4 member and member property information necessary for *Vote HOA Now* to provide
5 electronic ballots to members for the election voting. *Vote HOA Now* created the
6 electronic ballot.

7 10. Association members received multiple email reminders regarding the
8 upcoming election; the emails contained a link to the online voting website.¹² The email
9 reminders contained specific instructions about how to vote:

10 Please [CLICK HERE](#) to go to the online voting website
11 (your personal registration code **5494477908** will prefill)
12 Make your choices on the electronic ballot and submit
13 (once your vote is submitted it is final)
14 A confirmation of your vote will appear onscreen and
15 be sent to your email

16 11. Association also created instructions about the options: to vote
17 electronically, and how to accomplish online voting; by submitting a paper ballot, dropping
18 it off at the office; or in person at the meeting.¹³

19 12. Kathy Fowers, the General Manager of Association and the Custodian of
20 Records, approved the “proof” of the electronic ballot created by *Vote HOA Now* after she
21 determined that the *Vote HOA Now*-created electronic ballot matched the paper ballot.¹⁴

22 13. Eighteen (18) members cast votes at the Annual Meeting.¹⁵ One hundred
23 fifty four (155) members cast absentee ballots.¹⁶ Fourteen hundred sixty-one (1,461)
24 members cast electronic votes.

25
26 ¹⁰ See Association Exhibit 7.

27 ¹¹ See Association Exhibit 12.

28 ¹² See Petitioner Exhibit 3.

29 ¹³ See Petitioner Exhibit 4.

30 ¹⁴ Ms. Fowers testimony.

¹⁵ *Id.* See also Association Exhibits 2 and 4 (Annual Meeting sign-in sheets).

¹⁶ See Association Exhibits 8 and 13.

1 14. Petitioner cast an absentee ballot.¹⁷

2 15.

3 16. After the election, Ms. Fowers received the electronic voting results from
4 *Vote HOA Now*.

5 17. *Vote HOA Now* provided the following documents to Association:

- 6 a. A tally report of the votes for Directors, for the Revenue Ruling, for approval
7 of the 20213 Minutes, and for the ByLaws amendment.¹⁸
8 b. A listing verification of the homeowners (with property addresses) who
9 voted electronically.¹⁹
10 c. A listing of the member votes cast for Directors.²⁰
11 d. A listing of the member votes for the ByLaws amendment.²¹
12 e. A listing of the member votes for the Revenue Ruling.²²
13 f. A listing of the member votes for the 2023 Minutes.²³

14 18. Association retained the following:

- 15 a. Two sign-in sheets used at the Annual Meeting.²⁴
16 b. Ballots cast in person at the Annual Meeting.²⁵
17 c. Envelopes which contained the absentee ballots received.²⁶

18 ¹⁷ Mr. Sullivan testimony at hearing; see also Association Exhibit 5 at SSV00171. While Petitioner voted
19 an absentee ballot, Petitioner hand delivered its inspection request on February 28, 2024, the day after
20 the Annual Meeting. See Petitioner Exhibit 5.

21 ¹⁸ See Association Exhibit 10.

22 ¹⁹ See Association Exhibit 11. This document contains the following: a member name; the member's
23 property address; the [Vote HOA Now] registration number and account number; an IP address for the
24 member; the date and time the vote was cast; and, the indication that one vote was cast for each listed
25 member.

26 ²⁰ See Association Exhibit 3. This document contains the following: the [Vote HOA Now] registration
27 number and account number; the IP address for each single vote; and, the date and time the one vote
28 was cast.

29 ²¹ See Association Exhibit 15. This document contains the following: the election item (the ByLaws
30 amendment); whether the vote was to approve or disapprove; the indication that one vote was cast; the
IP address for each single vote; and, the date and time the one vote was cast.

²² See Association Exhibit 14. This document contains the following: the two elections (the 2023 Minutes
and the IRS Revenue Ruling); whether the vote was to approve or disapprove; the indication that one
vote was cast; the IP address for the single vote; and, the date and time the one vote was cast.

²³ *Id.*

²⁴ See Association Exhibits 2 and 4.

²⁵ See Association Exhibit 1.

²⁶ See Association Exhibit 5.

1 6. Statutes should be interpreted to provide a fair and sensible result.
2 *Gutierrez v. Industrial Commission of Arizona*; see also *State v. McFall*, 103 Ariz. 234,
3 238, 439 P.2d 805, 809 (1968) ("Courts will not place an absurd and unreasonable
4 construction on statutes.").

5 7. When the legislature uses a word or words in one section of a statute, but
6 not another, the tribunal may not read those words into the section where the legislature
7 did not include them.³⁶ Unless defined by the legislature, words in statutes are given their
8 ordinary meanings.³⁷

9 8. Each word, phrase, clause, and sentence of a statute or rule must be given
10 meaning so that no part will be void, inert, redundant, or trivial.³⁸

11 9. ARIZ. REV. STAT. § 10-3708(F), Action by written ballot; online voting
12 provides that if a vote is to be conducted by electronic means, *the written ballot may be*
13 *delivered through an online voting system that* does all of the following:

- 14 a. Authenticates the member's identity;
- 15 b. Authenticates the validity of each electronic vote to ensure that the vote
16 is not altered in transit;
- 17 c. Transmits a receipt to each member who casts an electronic vote; and
- 18 d. *Stores electronic votes for recount, inspection and review purposes.*

19 Emphasis added here.

20 10. ARIZ. REV. STAT. § 33-1812, Proxies; absentee ballots; definition
21 provides, in relevant parts, as follows:

22 A. Notwithstanding any provision in the community documents, after
23 termination of the period of declarant control, votes allocated to a unit may
24 not be cast pursuant to a proxy. *The association shall provide for votes to*
25 *be cast in person and by absentee ballot and, in addition, the association*
26 *may provide for voting by some other form of delivery, including the use of*
27 *e-mail and fax delivery.* Notwithstanding section 10-3708 or the provisions
28 of the community documents, any action taken at an annual, regular or
29 special meeting of the members shall comply with all of the following if
30

³⁶ See *U.S. Parking v. City of Phoenix*, 160 Ariz. 210, 772 P.2d 33 (App. 1989).

³⁷ *Id.*

³⁸ See *Deer Valley, v. Houser*, 214 Ariz. 293, 296, 152 P.3d 490, 493 (2007).

absentee ballots or ballots provided by some other form of delivery are used:

.....

6. The completed ballot shall contain the name, address and signature of the person voting, except that if the community documents permit secret ballots, only the envelope shall contain the name, address and signature of the voter.

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

Emphasis added here.

11. ARIZ. REV. STAT § 33-1258 provides, in pertinent part, as follows:

A. Except as provided in subsection B of this section, all financial and other records of the association shall be made reasonably available for examination by any member or any person designated by the member in writing as the member's representative.

12. In the instant case, the Association has provided to Petitioner electronic or paper copies of all of the *Vote HOA Now* records it received regarding the electronic voting process as well as the Association meeting sign-in sheets, the paper ballots received in absentia and at the meeting, the envelopes for the absentee ballots received, and the association created tally sheet and election results affidavit.

13. Petitioner's argument that the Association must provide an image of each "electronic ballot", as was voted by each member, is not well supported by ARIZ. REV. STAT. § 10-3708(F). ARIZ. REV. STAT. § 10-3708(F)(4) requires an online voting system to perform certain actions, one of which is that the online voting system "*stores electronic votes* for recount, inspection and review purposes."³⁹ There is no evidence that *Vote HOA Now* either retains or "stores electronic votes" in any form other than the data list format that was received by the Association,

³⁹ Emphasis added here.

1 specifically as was documented in Association Exhibits 3, 14 and 15. Those *Vote*
2 *HOA Now* data lists, taken as a whole, document each vote for each member for
3 each election item, in identifiable ways. ARIZ. REV. STAT. § 10-3708(F)(4) requires
4 storage of “electronic votes” not electronic ballots.

5 14. Petitioner’s argument fails that without seeing an image of each
6 electronic ballot, it was not possible to determine whether the election results were
7 accurate. The online voting system allowed only one vote per election item per
8 personal registration number, and the *Vote HOA Now* data lists demonstrate that,
9 per each IP addresses and the personal registration number, only one electronic
10 vote per election item was cast by that member.

11 15. Based on the foregoing, the Administrative Law Judge concludes
12 that Association is in compliance with ARIZ. REV. STAT. § 33-1812(7) by retaining
13 the *Vote HOA Now* data lists which demonstrate the electronic ballots “in electronic
14 ... format.” Further, that Petitioner has received from Association, pursuant to his
15 February 28, 2024 request, “all ballots, envelopes, related materials and sign-in
16 sheets.”

17 16. Based on the foregoing, the Administrative Law Judge concludes
18 that Petitioner did not sustain the burden of proof that the Association committed
19 a violation of ARIZ. REV. STAT. § 33-1812(A)(7) and, therefore, the Petition must be
20 denied.

21 **FINAL ORDER**

22 Based on the foregoing,

23 **IT IS ORDERED** that Petitioner’s petition is denied.

24 **NOTICE**

25 **Pursuant to A.R.S. §32-2199.02(B), this Order is binding on the parties**
26 **unless a rehearing is granted pursuant to A.R.S. § 32-**
27 **2199.04. Pursuant to A.R.S. § 41-1092.09, a request for rehearing in**
28 **this matter must be filed with the Commissioner of the Department of**
Real Estate within 30 days of the service of this Order upon the parties.

29 Done this day, November 5, 2024

/s/ Kay A. Abramsohn
Administrative Law Judge

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Transmitted electronically November 5, 2024 to:

Susan Nicolson, Commissioner
Arizona Department of Real Estate

Chad Gallacher
cgallacher@hoalaw.biz

John F. Sullivan
info@sullivanappeals.com

By: OAH Staff

9407 1098 98

Petitioner's HOA Dispute Rehearing Petition



Arizona Department of Real Estate (ADRE)

Homeowners Association Dispute Resolution

www.azre.gov

KATIE HOBBS
GOVERNOR

SUSAN NICOLSON
COMMISSIONER

100 North 15th Avenue, Suite 201, Phoenix, Arizona 85007

HOMEOWNERS ASSOCIATION (HOA) DISPUTE REHEARING PETITION

The HOA Dispute Rehearing Petition is completed by a party to a hearing before the Office of Administrative Hearings who is aggrieved by a decision rendered in a case. This Petition Form must be filed within 30 days from receipt of the decision. Submit completed form and attachments to ADRE through the Department Message Center at <http://azre.gov/>; or mail to the above address Attention: HOA Coordinator.

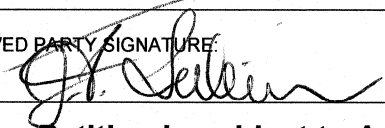
Aggrieved Party Information

| | | |
|--|---|---|
| AGGRIEVED PARTY FULL NAME (Please Print): AZNH Revocable Trust | PHONE NUMBER: 480-818-5070 | EMAIL: info@SullivanAppeals.com |
| DOCKET NUMBER (See ALJ Decision) 24F-H047-REL | CASE NUMBER (See Notice of Petition) 24F-H047-REL | |

Please check the box or boxes to specify the particular grounds for rehearing request. Evidence to support any claim/s will be required for rehearing.

| |
|--|
| <ol style="list-style-type: none"> 1. <input checked="" type="checkbox"/> Irregularity in the proceedings or any order or abuse of discretion by the administrative law judge that deprived a party of a fair hearing. 2. <input type="checkbox"/> Misconduct by the Department, Administrative Law Judge or the prevailing party. 3. <input type="checkbox"/> Accident or surprise that could not have been prevented by ordinary prudence. 4. <input type="checkbox"/> Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing. 5. <input type="checkbox"/> Excessive or insufficient penalties. 6. <input checked="" type="checkbox"/> Error in the admission or rejection of evidence or other errors of law occurring during the proceeding. 7. <input checked="" type="checkbox"/> That the findings of fact or decision is arbitrary, capricious, or an abuse of discretion. 8. <input checked="" type="checkbox"/> That the findings of fact or decision is not supported by the evidence or is contrary to law. |
|--|

Provide statement to substantiate the above claim/s and attach supporting documentation as needed.

| | |
|---|-----------------------|
| — See attachment. — | |
| | |
| | |
| | |
| | |
| | |
| X AGGRIEVED PARTY SIGNATURE:  | Date Nov. 30, 2024 |

Rehearing Petition is subject to Arizona Department of Real Estate Commissioner's approval.

1 purposes’ pursuant to ARIZ. REV. STAT. § 10-3708(F).” FAD p.5, ¶ 22. **The hearing**
2 **transcript shows that Homeowner never made that argument or anything like it.**

3 The Homeowner has consistently argued that:

- 4 ➤ the HOA held an election using paper and electronic ballots;
- 5 ➤ A.R.S. § 33-1812(A)(7) requires the HOA to retain all electronic ballots and make
6 them available for Homeowner’s inspection; and,
- 7 ➤ the HOA did not retain the electronic ballots nor make them available for
8 inspection.

9 See, generally, ALJ Hearing Transcript, including, but not limited to, the Homeowner
10 Opening Statement (Tr. pp.9-10, lines 19-25 & 1-16, respectively). See HOA Opening
11 Statement, Tr. p. 12, lines 1-2 (“As is established, this is a single-issue complaint
12 regarding whether or not the Association complied with 33-1812.”) See also, FAD p.1, ¶
13 2 (ALJ finds Homeowner filed single issue petition claiming HOA failed to comply with
14 A.R.S. § 33-1812(A)(7)).

15 The ALJ concluded that the HOA had complied with A.R.S. § 10-3708 and therefore
16 prevailed at the hearing. The ALJ wrote, in part, that the election results produced by the
17 HOA to the Homeowner “taken as a whole, document each vote for each member for
18 each election item, in identifiable ways. ARIZ. REV. STAT. § 10-3708(F)(4) requires
19 storage of ‘electronic votes’ not electronic ballots.” FAD pp.8-9, ¶ 13.

20 There is nothing in the hearing transcript which illuminates how the ALJ landed upon
21 A.R.S. § 10-3708(F)(4) to decide this controversy.² A.R.S. § 33-1812 imposes a
22 requirement (independent from A.R.S. § 10-3708) that the HOA retain all ballots and
23 make them available for homeowner inspection. The evidence (supported by the
24 Petitioner’s Exhibits and the hearing transcript) shows that the HOA failed to comply
25 with the retention and inspection requirements of A.R.S. § 33-1812(A)(7).

² It should be noted that the ALJ’s subject matter jurisdiction is limited as follows: “an administrative law judge shall adjudicate complaints regarding and ensure compliance with [the Planned Communities Act] and Planned Community Documents.” Ariz. Rev. Stat. § 32-2199. The ALJ lacks authority to decide any controversies arising under the Nonprofit Corporation Act.

1 **II. The HOA Did Not Produce the Electronic Ballots for Inspection**

2 At the hearing, the HOA presented over four hundred pages of documents which the
3 HOA manager testified were created by VoteHOANow for the HOA (Tr. p.56, lines 4-5)
4 and were “the results of the election” (Tr. p.57, lines 14-17). See also, Tr. p.38, lines 1-4
5 & 22-25. The HOA attorney described the aforesaid documents as “the record of the
6 electronic vote.” Tr. p.58, lines 8-12. The HOA Attorney also asserted that the HOA had
7 provided every document in the HOA’s possession and that is sufficient to comply with
8 the statute. Tr. p.61, lines 21-23.

9 The ALJ asserted at the hearing that the HOA did not produce any of the electronic
10 ballots. Tr. p. 55, lines 14-22. Moreover, in the FAD, the ALJ found that HOA
11 documents were “the electronic voting results” (FAD p.4, line 16) and the ALJ listed
12 those documents received by the Homeowner in the FAD (pp.4-5, lines 17-20). No
13 electronic ballots appear on the ALJ’s list of HOA-produced documents.

14
15 **III. The HOA Admits to Violating A.R.S. § 33-1812**

16 In a document filed with the ALJ, the HOA admits the following:

- 17 ➤ the HOA hired a vendor (VoteHOANow) to assist in the 2024 annual election;
18 ➤ prior to the election, the HOA provided a paper ballot to VoteHOANow;
19 ➤ VoteHOANow used the paper ballot to create an electronic ballot which was
20 distributed to HOA voters;
21 ➤ 1,461 voters submitted the electronic ballot;
22 ➤ the HOA did not retain any of the electronic ballots;
23 ➤ after the election, the Homeowner requested inspection of all election
24 materials, including all ballots; and,
25 ➤ the HOA did not produce any of the 1,461 electronic ballots for Homeowner
26 inspection.

27 See Petitioner’s Hearing Exhibit 1 (the HOA filed document).

28 //

1 The ALJ further found:

2 Kathy Fowers, the General Manager of Association and the Custodian of
3 Records, approved the ‘proof’ of the electronic ballot created by *Vote HOA*
4 *Now* after she determined that the *Vote HOA Now*-created electronic ballot
5 matched the paper ballot.

6 FAD p.3, ¶ 12.

7 If no ballot was required, and if no electronic ballot was used in the election,
8 there would be:

- 9 ➤ No need for the HOA to provide a paper ballot to VoteHOANow;
- 10 ➤ No need for VoteHOANow to produce a proposed electronic ballot which
11 matches a paper ballot; and
- 12 ➤ No need for the HOA manager to approve a proposed electronic ballot (a
13 “proof”) by confirming the electronic ballot matches the paper ballot.

14

15 ***c. HOA Manager Testifies that Electronic Voters See and Submit a***
16 ***Ballot***

17 The HOA attorney elicited additional HOA manager testimony:

18 Q. Okay. So when a homeowner goes onto Vote HOA Now, what would
19 they see?

20 A. I see the proof, so I see what they see. They see the -- a picture of the
21 community and the community logo, so they know they’re on the right
22 page. And it tells them the information they need to know, and it
23 identifies which properties they’re sending in a vote for. And then it has
24 the questions, and they have stack options and submit options to move
25 forward and back. And at the end when they've -- and they have all the
26 link to see all of the attachments and supporting documents. And then at
27 the end, it shows the summary of everything they've voted for, and a
28 final submit button, or they can go back and change any piece of that.

1 Q. And what happens when they click submit?

2 A. It submits for them, and they get tallied on their -- their end.

3
4 Tr. pp.36-37, lines 4-25 & 1-4, respectively.

5 As previously stated, the ALJ found that the “proof” matches the paper ballot. FAD
6 p.3, ¶ 12 (*supra*). Thus, when the manager testified, “I see the proof, so I see what they
7 [the voters] see,” the manager is testifying that the electronic voter sees a ballot. *Supra*.
8 The manager further testified that the electronic voter clicks a “submit button” which
9 submits each voter’s selections on the electronic ballot. *Supra*.

10
11 ***d. HOA Manager Testifies - Election Results Came From Ballots***

12 The HOA manager also testified about the source of electronic election results, and
13 testified three (3) times that the results came from a **ballot**. Tr. p.43, lines 16-21; Tr.
14 p.46, lines 15-25 cont. to p.47, lines 1-4.

15 By Order of the ALJ, The HOA submitted a list of hearing exhibits. HOA listed their
16 Hearing Exhibit 14 as “**Electronic Votes cast** regarding the 2023 Annual Meeting
17 Minutes and the IRS Revenue Ruling 70-604.” (Bold added.) [*HOA Exhibit 14 relates to*
18 *two ballot questions: approval of the prior year minutes and adoption of an IRS policy.*]

19 During direct examination, the HOA attorney directed the HOA manager’s attention to
20 HOA Exhibit 14 and asked, “Can you explain what this is?” Tr. p.50, lines 19-20. The
21 manager testified, “These are the issues associated with the board of directors election
22 **ballots.**” Tr. p. 51, lines 4-5 (bold added). And, after waiting for the ALJ to find the
23 exhibit, the HOA attorney stated, “On these **ballots** there was more the homeowners were
24 supposed to vote for besides just the directors who were left.” Tr. p.51, lines 16-17 (bold
25 added). And, in further testimony about HOA Exhibit 14, the manager testified that
26 election results were derived from a **ballot**. Tr. p. 52, lines 4-13.

1 So, herein-above, we have the manager acknowledging five (5) times that votes were
2 cast by electronic ballot, and there is also a *Freudian slip* where the HOA attorney
3 reveals his true thoughts – a ballot was used for electronic voting.
4

5 ***e. ALJ Finds HOA Issued Reminders and Instructions***
6 ***for Electronic Ballots***

7 The ALJ found that Petitioner’s Hearing Exhibits 3 & 4 are reminders and instructions
8 about electronic ballots sent to HOA voters by the HOA. FAD p.3, ¶¶ 10-11.

- 9 ➤ **Petitioner’s Hearing Exhibit 3** consists of eleven (11) identical invitations to vote
10 by electronic ballot (sent on different dates to HOA voters) which contain the
11 following wording (bold added):

12 “Your community needs your vote on the following **ballots**:

13 2024 Directors Election
14 2024 Bylaws Amendment”

15 * * *

16 “Make your choices on the electronic **ballot** and submit”
17 }
18

19 See Petitioner’s Hearing Exhibit 3.³

- 20 ➤ **Petitioner’s Hearing Exhibit 4** are the instructions on electronic voting sent by
21 the HOA to HOA voters and it contains the following wording (bold added):

22 Voting online has three steps: . . . 3. **Make your choices on the ballot**
23 **and submit.**

24 * * *

25 When your (sic) submit your electronic **ballot**, you will receive a
26 confirmation email from the voting vendor (VoteHOANow) indicating
27 your successful submission of a **ballot**

28 See Petitioner’s Hearing Exhibit 4.

³ The ALJ specifically noted that the HOA instructions included, “Make your choices on the electronic ballot and submit.” FAD p.3, ¶ 10.

1 The above evidence is indisputably conclusive that the HOA used electronic ballots in
2 the 2024 election.

3
4 **V. The Collective Errors of the ALJ**

5 The ALJ’s findings and conclusions are clearly erroneous, not supported by substantial
6 evidence and are contrary to law. “An abuse of discretion exists when the record, viewed
7 in the light most favorable to upholding the [FAD], is devoid of competent evidence to
8 support the decision. An abuse of discretion also occurs where there has been an error of
9 law committed in the process of reaching a discretionary conclusion.” *Hurd v. Hurd*, 223
10 Ariz. 48, 52 (Ariz. Ct. App. 2009) (cleaned up).

11 In the instant case, the record does not contain competent evidence to support the
12 FAD, and the ALJ committed an error of law by incorrectly concluding that compliance
13 with A.R.S. § 10-3708 (requiring retention of voting results) sufficed to comply with
14 A.R.S. § 33-1812 (requiring retention and production of ballots for inspection).

15 “In Arizona, ‘arbitrary action’ has been characterized as unreasoning action, without
16 consideration and in disregard of the facts and circumstances. An ‘arbitrary’ action is
17 one taken ‘capriciously or at pleasure,’ or an action taken ‘without adequate determining
18 principle.’ *Maricopa County Sheriff’s Office v. Maricopa County Employee Merit System*
19 *Commission*, 211 Ariz. 219, 222 (Ariz. 2005)(cleaned up). See *Motor Vehicle*
20 *Manufacturers Assoc. of the United States, Inc. v. State Farm Mutual Auto. Ins. Co.*, 463
21 U.S. 29, 43 (1983) (An ALJ acts arbitrarily by failing to “examine the relevant data and
22 articulate a satisfactory explanation for its action including a rational connection between
23 the facts found and the choice made.”)

24 The applicable statute, A.R.S. § 33-1812(A)(7), requires retention and production of
25 ballots for inspection. The FAD is an unreasoned decision which did not consider (and
26 disregarded) the relevant facts and circumstances. The most significant and ignored facts
27 are those in Petitioner’s Hearing Exhibit 1, where the HOA admits all the facts which
28 show the HOA violated A.R.S. § 33-1812(A)(7). The FAD is also arbitrary because the

1 ALJ’s impermissible application of A.R.S. § 10-3708 renders an unsatisfactory
2 explanation for its decision and, therefore, lacks a rational connection to the facts.

3 In short, the FAD is not supported by the evidence and is contrary to law. And, the
4 FAD is arbitrary, capricious and an abuse of discretion.

5

6 **VI. Ballot, User Interface or Google-like Form – It Doesn’t Matter**

7 It should be noted that ballots are not the only thing to be retained for inspection. The
8 statute requires that “ballots, envelopes and **related materials** . . . shall be retained in
9 electronic or paper format and made available for member inspection” Ariz. Rev. Stat. §
10 33-1812 (bold added).

11 The HOA admits they sent a ballot to electronic voters, but also assert it wasn’t a
12 ballot. Tr. p.13, lines 4-15 (in an apparent attempt to avoid culpability, the HOA attorney
13 states electronic voters received “an electronic user interface,” and also says it was
14 similar to a “Google form”). Thus, if not a ballot, but a “user interface” or “Google
15 form,” that user interface or Google-like form is still “related materials” required to be
16 retained and produced for inspection. The HOA did not retain the Google-like forms nor
17 the user interfaces, nor produce them for inspection.

18

19 **VII. Conclusion**

20 It must be emphasized that, per A.R.S. § 33-1812(A)(7), HOA members are
21 entitled to inspect all ballots used in the election. A member need not show any
22 cause or reason to inspect the ballots, and the statute is unambiguous – “ballots shall
23 be retained in electronic or paper format and made available for member
24 inspection.” A.R.S. § 33-1812(A)(7).

25 The ALJ’s impermissible application of A.R.S. § 10-3708 to decide this
26 controversy is a clear error of law. A.R.S. § 33-1812 specifically states that the
27 requirement to retain ballots and make them available for inspection prevails over
28 any provision in A.R.S. § 10-3708. The evidence is indisputable that the HOA

1 violated A.R.S. § 33-1812 and, for unexplained reasons, the ALJ improperly
2 applied A.R.S. § 10-3708 (without any prior notice to the Homeowner) to decide
3 the controversy in the HOA’s favor.

4 The spreadsheets of election results (the “data lists”) presented at the hearing by
5 the HOA are not relevant to inspecting the ballots. The statute does not allow the
6 HOA to propose alternatives or provide substitutions to inspecting the electronic
7 ballots used by voters. The HOA manager’s testimony about those ‘data lists’ was
8 improperly allowed (*over the objection of the Homeowner*) by the ALJ – the data
9 lists are not relevant.

10 Pursuant to A.R.S. § 32-2199, “an administrative law judge shall adjudicate
11 complaints regarding and ensure compliance with” the Planned Communities Act
12 and community documents. In this case, the ALJ failed to do so.

November 30, 2024

Petitioner, AZNH Revocable Trust
By:

/s/ *John F. Sullivan*

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ARIZONA OFFICE OF ADMINISTRATIVE HEARINGS

AZNH REVOCABLE TRUST,

Petitioner,

vs.

SUNLAND SPRINGS VILLAGE
HOMEOWNERS ASSOCIATION,

Respondent.

No. 24F-H047-REL

Phoenix, Arizona
September 18, 2024

AMENDED

BEFORE ADMINISTRATIVE LAW JUDGE KAY ABRAMSOHN

TRANSCRIPT OF PROCEEDINGS

Arizona Department of Real Estate Complaint

Proceedings recorded by electronic sound recording; transcript
produced by eScribers, LLC.

ABIGAIL FARMER
Transcriptionist



I N D E XSeptember 18, 2024

| <u>PETITIONER'S WITNESSES</u> | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> | <u>RECROSS</u> | <u>VD</u> |
|-------------------------------|---------------|--------------|-----------------|----------------|-----------|
| John Sullivan | -- | 26 | -- | -- | -- |
| <u>RESPONDENT'S WITNESSES</u> | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> | <u>RECROSS</u> | <u>VD</u> |
| Cathy Fowers | 31 | 54 | -- | -- | -- |

M I S C E L L A N E O U S

| | <u>PAGE</u> |
|--------------------------------|-------------|
| Petitioner's Opening Statement | 9 |
| Respondent's Opening Statement | 12 |
| Respondent's Closing Argument | 59 |
| Petitioner's Closing Argument | 62 |



EXHIBITSPETITIONER'S EXHIBITS

| <u>NO.</u> | <u>DESCRIPTION</u> | <u>ID</u> | <u>EVD</u> |
|------------|---|-----------|------------|
| 1 | Objection to Motion for Additional Subpoena | 16 | 9 |
| 2 | HOA Bylaws | 10 | 9 |
| 3 | Invitations sent on different dates | 22 | 9 |
| 4 | Ballot submission instructions sent by HOA | 21 | 9 |
| 5 | Request made by Petitioner | 19 | 9 |
| 6 | Receipt for Filing Fee | 22 | 9 |
| 7 | ** | -- | 9 |
| 8 | ** | -- | 9 |
| 9 | ** | -- | 9 |
| 10 | Objection to Motion for Additional Subpoena | -- | 9 |
| 11 | Objection to Motion for Additional Subpoena | -- | 9 |
| 12 | Paper copy of absentee ballot | 18 | 9 |
| 13 | Objection to Motion for Additional Subpoena | -- | 9 |
| 14 | Objection to Motion for Additional Subpoena | 50 | 9 |
| 15 | Objection to Motion for Additional Subpoena | -- | 9 |

RESPONDENT'S EXHIBITS

| <u>NO.</u> | <u>DESCRIPTION</u> | <u>ID</u> | <u>EVD</u> |
|------------|--------------------------|-----------|------------|
| 1 | ** | -- | 9 |
| 2 | ** | -- | 9 |
| 3 | Vote HOA Now Spreadsheet | 15 | 9 |



| | | | |
|----|--|----|---|
| 4 | ** | -- | 9 |
| 5 | ** | -- | 9 |
| 6 | ** | -- | 9 |
| 7 | ** | -- | 9 |
| 8 | ** | -- | 9 |
| 9 | ** | -- | 9 |
| 10 | Issues associated with election | -- | 9 |
| 11 | List of those who voted electronically | 50 | 9 |
| 12 | Issues associated with election | -- | 9 |
| 13 | Issues associated with election | -- | 9 |
| 14 | Issues associated with election | 15 | 9 |
| 15 | Vote associated with HOA Bylaws | 15 | 9 |

APPEARANCESSeptember 18, 2024

Administrative Law Judge: Kay Abramsohn

For the Petitioner:

John Sullivan

Witnesses:

John Sullivan

For the Respondent:

Ted Galliker

Witnesses:

Kathy Fowers



Phoenix, Arizona

September 18, 2024

(Administrative Law Judge Kay Abramsohn Presiding)

ARIZONA DEPARTMENT OF REAL ESTATE COMPLAINT:

THE COURT: Good morning. We're on the record.

This hearing before the Arizona Office of Administrative Hearings is now in session. Today is September 18, 2024. My name is Kay Abramsohn. I'm the administrative law judge assigned for this matter. And we are convening the hearing in docket number 24F-H047-REL for AZNH Revocable Trust, filed through John and Susan Sullivan, trustees, real parties in interest, as Petitioner versus Sunland Springs Village Homeowners Association as Respondent.

And my agency is an independent state agency. We conduct hearings on behalf of about 45 different agencies, boards, and commission, so every hearing's a little bit different. But in this instance, what happened is the complaint got filed with the Arizona Department of Real Estate. There's a few things that happened over there with it. They get some communication from the parties and then the matter gets forwarded over here. So we get a copy of the notices, I call it the notice of hearing packet, it's got the petition, attachments, response, any other communication from Real Estate back to the parties and so that's about it.

I have that information and then the parties have



1 filed significant amount of exhibits, so I have that
2 information. We spoke a little bit off the record. And I
3 have some from Mr. Sullivan--, from Petitioner, Mr. Sullivan, 1
4 through 15 and I have from Respondent, the Homeowners
5 Association, 1 through 15. They're in various places here.
6 While you're presenting the information give me a chance to get
7 to that exhibit if I don't have a copy of it and that's about
8 it.

9 Do I have any questions on the record before we
10 start?

11 Mr. Sullivan?

12 MR. SULLIVAN: No questions, Judge.

13 THE COURT: All right.

14 UNIDENTIFIED SPEAKER: No, Your Honor.

15 THE COURT: All right. Is it Galliker (phonetic)?

16 MR. GALLIKER: Yes.

17 THE COURT: Okay. Good.

18 MR. GALLIKER: I (Indiscernible)

19 THE COURT: And let's do appearances first.

20 Will you please state your name for the record, sir?

21 MR. SULLIVAN: Attorney John Sullivan for AZNH
22 Revocable Trust and its trustees.

23 THE COURT: All right. Thank you, sir.

24 MR. GALLIKER: Attorney Ted Galliker on behalf of
25 Sunland Springs Village Homeowners Association. I have with me



1 today Kathy Fowers, who is the Community Manager for the
2 Association. We also have three board members that just wanted
3 to come observe and see how the proceedings went today. And we
4 have our board president, Paul Marendia. We have Monica Stein,
5 and Brian Crowe, who are also members of the board of
6 directors.

7 THE COURT: All right. Thank you. All right then.
8 Let me go ahead and swear in Mr. Sullivan and Flowers (sic) --
9 Ms. Flowers (sic).

10 MS. POWERS: Hi. There's no L.

11 THE COURT: Fowers. Got it. Okay. Thank you.

12 Mr. Sullivan?

13 MR. SULLIVAN: Yes, Judge.

14 THE COURT: Thank you.

15 Ms. Fowers?

16 MS. FOWERS: Yes.

17 (Parties sworn)

18 THE COURT: All right. So I've indicated -- one of
19 the things that I typically do is go ahead and admit all of the
20 exhibits. And then I'll hear concerns or objections during the
21 presentation. If that exhibit gets proposed for consideration,
22 in the sense that I get some testimony about it. It saves a
23 lot of time in asking for things to be admitted and hearing the
24 objections per se. And typically in these matters, I still
25 consider relevance with regard to it, but it's just easier to



1 say they're in. But you got to tell me something about it
2 outside of the time, whether it's information that can help me,
3 whether it's relevant, and then we'll go from there. So
4 they're all in 1 through 15, 1 through 15.

5 (Petitioner's Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11,
6 12, 13, 14, 15 Received)

7 (Respondent's Exhibits 14, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11,
8 12, 13, 14, 15 Received)

9 And I expect you to either tell me about it or pass
10 over it because once you get going it's just not going to work
11 or it's not going to be relevant.

12 All right. So Mr. Sullivan.

13 MR. SULLIVAN: Thank you, Judge.

14 THE COURT: Do you have an opening statement?

15 MR. SULLIVAN: Yes, Judge. I'm actually making an
16 opening statement and then I'll move right into evidence,
17 Judge.

18 THE COURT: All right.

19 MR. SULLIVAN: In this matter, I believe that the
20 evidence will show you that the HOA conducted an election in
21 February of 2024 and that in preparation for that election,
22 they engaged a business known as Vote HOA Now to prepare
23 electronic ballots because the HOA planned to hold an election
24 by paper ballots and electronic ballots. And making the
25 preparations for the electronic balance, the HOA gave Vote HOA



1 Now a blank absentee ballot from which the Vote HOA Now created
2 an electronic ballot. That ballot was then distributed to
3 members of the community. There were a total of, during the
4 discovery of this, there were a total of 1,461 HOA members that
5 voted electronically. After the election was over, the AZNH
6 Revocable Trust requested to inspect all ballots and related
7 election materials. As a result of that, the HOA produced
8 approximately 450 documents, but none of those documents
9 contained the electronic ballots.

10 The statute calls, as you have -- you may have
11 already looked at the statute, Judge -- as the statute calls
12 for the HOA to make a choice about whether they want to use
13 some form of alternative to absentee and in-person ballots.
14 And if they do make a choice for an alternative, then they are
15 required to meet seven requirements under subsection A of 33-
16 1812.

17 And Judge, I can show you in Exhibit Number 2, which
18 is the HOA bylaws, that they made an election to use electronic
19 or paper ballots for purposes of electing board of directors
20 members, but they haven't formally adopted electronic ballots
21 for another purpose. So they've done so I would say on a de
22 facto basis. And everything that I've just explained to you,
23 Judge, apparently is not in dispute because it's in our Exhibit
24 1. Everything I've explained is in Exhibit 1 and Exhibit 1 --

25 THE COURT: All right. So let me make sure that



1 you're headed in the right direction. So I need a history and
2 a picture of the background. But your petition is limited to
3 whether or not this supplies you with all the documents that
4 you requested.

5 MR. SULLIVAN: That is correct, Judge.

6 THE COURT: I want to make sure that you stay within
7 that --

8 MR. SULLIVAN: I agree.

9 THE COURT: Okay?

10 MR. SULLIVAN: I exactly understand, Judge.

11 MR. GALLIKER: Your Honor?

12 THE COURT: You (Indiscernible)

13 MR. SULLIVAN: (Indiscernible) I think --

14 MR. GALLIKER: (Indiscernible) I would like to make
15 an opening statement as well.

16 THE COURT: Yes.

17 MR. GALLIKER: (Indiscernible) to because he --

18 THE COURT: Yeah. I didn't know how close he was.

19 It sounds like we were ready to get --

20 MR. SULLIVAN: Okay. Sure, sure.

21 THE COURT: -- into the specifics --

22 MR. SULLIVAN: That's fine, Judge.

23 THE COURT: Okay. All right. Okay?

24 MR. GALLIKER: Okay. Yes. Thank you, Your Honor.

25 Yes.



1 As is established, this is a single-issue complaint
2 regarding whether or not the Association complied with 33-1812,
3 which requires production of election materials for review.
4 This entire dispute really boils down to the question of
5 aesthetics at its core. Let me explain. The Association
6 conducted its annual meeting for 2024 on February 27th, 2024.
7 As required by ARS 33-1812, the Association provided for
8 homeowners to cast their votes in-person and by absentee
9 ballots.

10 Mr. Sullivan, in his opening statements, referenced
11 an election choice has to be made. I do not believe that's
12 actually how the statute reads. Rather, there is a requirement
13 of the statute to allow homeowners to vote in-person and by
14 absentee ballot. In addition, the statute expressly allows the
15 association to allow homeowners to deliver their vote by some
16 other means as well. The statute specifically references by
17 email or fax. But what is clear from the statute is in
18 addition to the requirement that the Association provide in-
19 person voting and absentee ballot voting, the Association may
20 also allow homeowners to deliver their votes to the Association
21 in some other means.

22 In this particular election, the Association did just
23 that. In connection with the 2024 annual meeting, the
24 Association arranged for homeowners to be able to deliver their
25 votes electronically through an online voting service, Vote HOA



1 Now. At the 2024 annual meeting, approximately 18 votes were
2 cast in-person, about 155 were cast using the absentee ballots,
3 and 1,461 votes were cast electronically.

4 The process for casting a vote electronically occurs
5 in a similar form as -- sorry, in a similar manner as using a
6 Google form. The voting homeowner follows a link to a secure
7 website where the homeowner must use a unique identifier to
8 confirm that they are, in fact, a homeowner and they had not
9 voted already. But once logged into the secure website, the
10 voting homeowner engages with an electronic user interface on
11 the computer screen to select their choices of candidates. And
12 then they press submit. Once the homeowner submits their
13 votes, the information entered on the interface screen is
14 recorded on a spreadsheet. The spreadsheet contains every
15 (indiscernible) --

16 MR. SULLIVAN: Judge, pardon me. Pardon me, Mr.
17 Galliker. Mr. Galliker, excuse me. Pardon me.

18 Judge, there's a fine line sometimes between an
19 opening statement and perhaps presentation of evidence or
20 testimony. At this point in Mr. Galliker's presentation, it
21 strikes me that he's testifying about a process without
22 referencing that there's any evidence to show you that that is
23 in fact the process.

24 THE COURT: So I would say for the record that I
25 presume Mr. Galliker is giving me a summary of the information



1 that he is going to present as --

2 MR. SULLIVAN: Okay.

3 THE COURT: -- is usually the case in the opening
4 statement.

5 MR. SULLIVAN: Thank you, Judge.

6 THE COURT: So.

7 MR. GALLIKER: That is correct, Your Honor.

8 THE COURT: Okay. So as little summary as necessary
9 to move into the case.

10 MR. GALLIKER: Sure. And perhaps I should preface,
11 Ms. Fowers will explain in her testimony this process. The
12 spreadsheet than captures and then records every piece of
13 information entered by that voting homeowner. But it appears
14 on a different format in the spreadsheet. Nothing is lost;
15 nothing is compromised. The spreadsheet records their votes
16 immediately and accurately.

17 The 1,461 votes cast by homeowners in the spring were
18 recorded on the spreadsheet, was delivered to the Association
19 as a complete record of the electronic voting. The
20 spreadsheet, there are actually three different spreadsheets
21 that record these votes that are 40 plus pages long and contain
22 30 to 40 votes per page. The spreadsheet, recording of votes
23 cast electronically contain sufficient information so that the
24 votes can be independently reviewed, examined, verified,
25 tallied by any homeowner that wanted to do so. However, while



1 the spreadsheet contained all the information recorded through
2 the electronic voting platform, it looks different than the
3 paper ballot that was used for absentee votes to be cast and
4 in-person votes to be cast.

5 We believe (phonetic) evidence will show today that
6 the Petitioner, when he (indiscernible) his request to review
7 the documents was in fact able to review these spreadsheets.
8 They were provided to him. They are Exhibits 3, 14, and 15 of
9 the Association's Exhibits and they contain all the information
10 of every vote that was cast electronically pursuant to 33-1812.

11 So while they look different than one vote per page,
12 they still contain all of the information that was included in
13 the votes that was cast electronically. So the Association
14 would present that it complied with 33-1812 by allowing for
15 homeowners to vote by allowing homeowners to deliver their vote
16 not only by in-person and absentee ballot, but also by some
17 other means, that other means was electronic voting. And the
18 electronic voting record accurately reflected and contained
19 every piece of information that would be necessary to review
20 and do an independent verification of (indiscernible). So at
21 the end of the presentation of evidence, the Association
22 requests that the petition be denied.

23 THE COURT: Thank you. All right. I'm going to
24 (indiscernible).

25 Mr. Sullivan, you were about to start talking about



1 your Exhibits 1 or --

2 MR. SULLIVAN: Yes, Judge.

3 THE COURT: You started to indicate that Exhibit 1,
4 you believed indicates that there were no disputes in the
5 matter, but we're here, so there must be something that you're
6 still disputing.

7 MR. SULLIVAN: Something I (indiscernible)

8 THE COURT: Give me an idea of what you're still
9 disputing.

10 MR. SULLIVAN: I think the evidence will show that
11 there really isn't any dispute of the facts. And based on the
12 opening that I just heard, it strikes me that the Association
13 is stipulating that they did not produce the electronic
14 ballots. And that's essentially what they said. And what I
15 have identified as -- marked for identification as Petitioner's
16 Exhibit 1. And it's the HOA's filing that's entitled Objection
17 to Motion for Additional Subpoena Duces Tecum.

18 And in that writing, the facts that I laid out in the
19 opening are all present there, Judge. I believe you'll find
20 them all present there. And as I was saying before with
21 respect to the bylaws, and actually with respect to 33-1812, so
22 I get the wording correctly here, it says that, "The
23 association shall provide for votes to be cast in person and by
24 absentee ballot and, in addition the association may provide
25 for voting by some other form of delivery, including the use of

1 e-mail and fax delivery."

2 THE COURT: All right. So I'm just going to remind
3 you that I'm not deciding whether or not the method they used
4 was appropriate.

5 MR. SULLIVAN: Well I (indiscernible) --

6 THE COURT: (Indiscernible) the bylaws.

7 MR. SULLIVAN: I agree with that.

8 THE COURT: I hear only what -- only with respect to
9 your petition and their response.

10 MR. SULLIVAN: Right. I --

11 THE COURT: I'm sorry, your request for the documents
12 that --

13 MR. SULLIVAN: Correct.

14 THE COURT: -- and their response. That's what I'm
15 going to hear about.

16 MR. SULLIVAN: I understand. I fully understand
17 that, Judge.

18 THE COURT: Okay.

19 MR. SULLIVAN: The only reason I'm bringing the
20 bylaws to your attention, and that's the Petitioners Exhibit
21 2, is because it shows that the board chose, they made the
22 choice, to use electronic or paper ballots for purposes of
23 electing their directors. And then they don't have any
24 specific adoption of electronic ballots for other manners, but
25 they seem to have done so on a de facto manner.

1 And the reason that's important, Judge, is because it
2 shows that they we're choosing to use electronic ballots. And
3 then, Judge, I have for you, if you don't already have it and,
4 well you do have it in the exhibits, Petitioner's Exhibit 12,
5 which is a paper copy of the absentee ballot that was given to
6 Vote HOA Now from which to create a paper ballot and will give
7 you some idea as to what the ballot might have looked like in
8 electronic form, because if Vote HOA Now had used that as a
9 format, than that should have been what the electronic ballot
10 would have looked like.

11 And that's also important from another respect,
12 Judge. The Respondent is essentially arguing that although
13 they did not produce the electronic ballots, they produced
14 other information which is the equivalent to an electronic
15 ballot. But what the statute calls for is an inspection of the
16 ballot. And aside from looking at the votes, there are several
17 things that should and could be expected -- could and should be
18 inspected. One is that the ballot should describe the actions
19 that are proposed to be taken. Another is that the voter must
20 be given an opportunity to vote for or against the proposed
21 action. The ballot must state the date by which the ballot
22 must be returned to the HOA to be counted, and that date must
23 be at least seven days in advance of the end of the election.
24 And also, Judge, there's a requirement that the ballot show
25 that the vote cannot be cast by any other person except the



1 designated voter. So there's more than just the votes to
2 evaluate to whether the count is correct or not. The question
3 is whether the ballot is conforming to the statute.

4 THE COURT: Again, I'm just going to remind you, my
5 question is not whether the ballot conforms to anything. It's
6 whether or not they gave you the documents.

7 MR. SULLIVAN: Exactly. But I'm responding to what
8 the Respondent --

9 THE COURT: Well, I need you to concentrate on what
10 you need to show me --

11 MR. SULLIVAN: All right.

12 THE COURT: -- in terms of what happens after you
13 made the request.

14 MR. SULLIVAN: All right. Well, we did make a
15 request and that is Exhibit 4. And as I understand it, these
16 Exhibits are admitted based on our ability to show their
17 relevance.

18 THE COURT: So let me find your Exhibit 4.

19 MR. SULLIVAN: All right.

20 THE COURT: Because if it was not part of your
21 attachments, then I have to pull it up.

22 MR. SULLIVAN: I'm sorry, it's Exhibit 5 not 4,
23 Judge. It's Exhibit 5.

24 THE COURT: Okay. So it's one page. Got it.
25 Exhibit 5?

1 MR. SULLIVAN: Yes, Judge.

2 THE COURT: All right.

3 MR. SULLIVAN: One of the things, aside from the fact
4 that we made the request, one of the things that I think's
5 important about this particular exhibit is that the Respondent
6 has argued that we demanded paper ballots and paper documents.
7 That request to clearly show that we've asked for the HOA to
8 make an election between whether they wanted to provide paper
9 or electronic and that we actually had a preference for
10 receiving materials electronically. So there's no demand here
11 that the HOA must provide by providing paper ballots.

12 Now, from what I understood from Mr. Galliker's
13 opening, he seems to be suggesting that, and I know my view of
14 it may be biased, but he seems to be suggesting that perhaps
15 there was no ballot involved here, but in fact there was
16 because if you look (indiscernible) --

17 THE COURT: Again, I'm going to stop you every time
18 you refer specifically to the ballot.

19 MR. SULLIVAN: Okay.

20 THE COURT: My issue is whether or not they provided
21 you with what you requested and what's required to be provided
22 under the statute.

23 MR. SULLIVAN: That's correct, Judge.

24 THE COURT: Okay.

25 MR. SULLIVAN: And I just want to show you that there



1 was in fact a ballot used. I think that's priority because
2 they have an obligation to produce the ballot. So I'm trying
3 to show you that in fact there was a ballot that was used
4 electronically.

5 THE COURT: Okay. Your position is they were
6 required to do that, but you just testified that you gave them
7 a choice and you indicated it could be electronic.

8 MR. SULLIVAN: Right. They can produce a ballot
9 either electronically or on paper.

10 THE COURT: All right.

11 MR. SULLIVAN: So one of the things that Mr. Galliker
12 referred to was that the ballot was somewhat similar to a
13 Google form. And we don't think that that's incorrect. It is
14 similar to a form that you fill out online. And the person
15 that's receiving that ballot, for instance if you prepare a
16 patient statement for your doctor or your intent is to maybe
17 apply for a credit card, the receiver of that electronic form
18 saves that someplace in electronic format and that's what we're
19 looking for. And they should have saved it because the statute
20 requires them to retain it.

21 And so that's why I'm going to go to Exhibit --
22 there's another exhibit here, hang on one second -- yes, Number
23 4. I'm sorry, Number 4. There was sent out by the HOA to all
24 of the community members and its instructions on how to vote
25 electronically by submission of a ballot. So that demonstrates

1 that they did use a ballot and electronic collection.

2 And it also, Judge, there are in Exhibit Number 3 11
3 identical invitations that were sent out on different dates to
4 members of the HOA giving them an invitation to make their
5 voting by electronic ballot and submit it.

6 And then, Judge, Exhibit Number 6, Petitioner's
7 Exhibit 6, is a receipt for the \$500 filing fee.

8 Then ,Judge, it could probably save us --

9 THE COURT: Hold on. So I don't understand what this
10 receipt is. What is it?

11 MR. SULLIVAN: It's the receipt for the filing fee
12 for the hearing we're having today, Judge.

13 THE COURT: Oh, okay. I wasn't sure if there was
14 some connection to the electronic ballot.

15 MR. SULLIVAN: No.

16 THE COURT: Okay. Well, you're here. The HOA would
17 not have sent -- Real Estate wouldn't have sent it unless you
18 paid it, so.

19 MR. SULLIVAN: Well, I still want to make sure we
20 have it on the record, Judge.

21 THE COURT: All right. Well, okay.

22 MR. SULLIVAN: And then also we might be able to
23 consign, because one of the things that you may be interested
24 in is whether you have subject matter and personal
25 jurisdiction. And I think that Mr. Galliker would --



1 THE COURT: So I have jurisdiction over the petition
2 that was filed and to make a recommended decision with regards
3 to that.

4 MR. SULLIVAN: All right. So we don't need to
5 present any evidence on that?

6 THE COURT: No.

7 MR. SULLIVAN: Okay.

8 THE COURT: You wouldn't be here unless I had the
9 authority to have this case and have a decision made.

10 MR. SULLIVAN: Okay.

11 THE COURT: Okay.

12 MR. SULLIVAN: Very well, Judge. We have -- the
13 relief that we're asking; we're asking that we be found as
14 prevailing party; that the \$500 filing fee be paid to us by the
15 HOA.

16 And then, Judge, have you had an opportunity to see
17 Whitmer v. Hilton Casitas Homeowners Association, a Division
18 One decision earlier this year?

19 THE COURT: So if there's some reference to some
20 legal precedent with regard to something that you're going to
21 present but haven't yet presented, I guess you do that in your
22 closing.

23 MR. SULLIVAN: All right.

24 THE COURT: Okay.

25 MR. SULLIVAN: So --

1 THE COURT: So --

2 MR. SULLIVAN: So the reason I bring it up is we're
3 going to ask a couple of things that I know are not something
4 you're normally going to see. We're asking that you issue an
5 order, a proposed order, anyway, that the HOA is prohibited in
6 the future from using an electronic voting service that fails
7 to retain the ballots --

8 THE COURT: All right.

9 MR. SULLIVAN: -- under discussion.

10 THE COURT: I can't issue that.

11 MR. SULLIVAN: Well that --

12 THE COURT: I don't -- I have authority to take the
13 case, decide on the petition, and issue a recommended decision
14 with regard to the petition that was made and whether or not
15 the Complainant -- Petitioner has proven the allegations in the
16 petition.

17 MR. SULLIVAN: I understand that, but --

18 THE COURT: We don't issue orders --

19 MR. SULLIVAN: That (indiscernible) --

20 THE COURT: -- with regards to the future or past
21 violations --

22 MR. SULLIVAN: I --

23 THE COURT: -- unless you allege a past violation.

24 MR. SULLIVAN: I understand that, Judge.

25 THE COURT: All right.



1 MR. SULLIVAN: That's why I'm I brought up Whitmer --

2 THE COURT: Um-hum.

3 MR. SULLIVAN: -- v. Hilton Casitas because it
4 addresses the scope of what the order from the administrative
5 law judge in a HOA case should include. And that's why I --

6 THE COURT: So that's closing argument, sir. And I'm
7 just --

8 MR. SULLIVAN: Okay.

9 THE COURT: To prevent you from taking this on, to
10 make an argument with regards to something that I cannot do by
11 statute --

12 MR. SULLIVAN: Okay.

13 THE COURT: -- by the connection between Real Estate
14 and us, you just need to move to the other exhibits that you
15 want me to know about and the presentation of your evidence.

16 MR. SULLIVAN: Okay. Well, I would like an
17 opportunity in closing to address --

18 THE COURT: You can address legal arguments in
19 closing, sir.

20 MR. SULLIVAN: Okay.

21 THE COURT: Are there other documents in your
22 exhibits that you want me to consider with regard to your
23 petition?

24 MR. SULLIVAN: No, I think that's it for now, Judge.

25 THE COURT: All right. All right. Cross exam?



1 MR. GALLIKER: Yes, I think -- okay.

2 JOHN SULLIVAN

3 called as a witness for the Petitioner, having been previously
4 sworn, testifies as follows:

5 CROSS-EXAMINATION

6 BY MR. GALLIKER:

7 Q Mr. Sullivan, petition is submitted, 15 exhibits.
8 Have you had a chance to review them?

9 A Are you asking me?

10 Q Yes.

11 THE COURT: Yes.

12 THE WITNESS: Oh, I'm sorry. Your exhibits?

13 BY MR. GALLIKER:

14 Q Cross-examination. Yes.

15 A I've seen your exhibits, yes.

16 Q Okay. And those are the exhibits that were
17 produced -- or those are the documents that were produced by
18 the Association in connection with your records request,
19 correct?

20 A Well, you know there was two phases to that.

21 Q Yes, yes. I know.

22 A So, so --

23 Q It would be a yes or no question.

24 A Yeah, but it can't be answered yes or no because it
25 wasn't (indiscernible) --



1 THE COURT: Mr. Sullivan, if he's asking for a yes or
2 no, I come back to you after cross-exam, so you can clarify and
3 answer if you feel like you need to clarify something.

4 THE WITNESS: But I can't answer it yes or no, Judge.

5 THE COURT: All right. Do you want to rephrase your
6 question?

7 MR. GALLIKER: I'll try to rephrase the question.

8 THE COURT: Thank you.

9 BY MR. GALLIKER:

10 Q So you submitted your request to review documents in
11 February.

12 A Okay.

13 THE COURT: Is that a question?

14 MR. GALLIKER: Let me (indiscernible)--

15 THE COURT: He can --

16 BY MR. GALLIKER:

17 Q I will make a statement and I'm going to ask you if
18 my statement is correct. You submitted a request to review
19 documents. You came in in person to review document in March.
20 You sent a follow-up request asking for additional records.
21 The Association provided electronically additional records.
22 You submitted an additional request to see additional records.
23 The Association responded by e-mail, providing additional
24 records. Is that a correct statement?

25 A No.



1 Q Okay.

2 THE COURT: Do you want to go back one by one?

3 MR. GALLIKER: Yeah. Let's look at Exhibit 1.

4 Your Honor, I made one copy -- let me

5 (indiscernible). May I approach?

6 THE COURT: Yes.

7 MR. GALLIKER: Let me give you (indiscernible) -- get
8 that marked (indiscernible). Okay. Okay.

9 BY MR. GALLIKER:

10 Q Can you please turn to Exhibit 1, Petitioner's
11 Exhibit 1, very first page.

12 A Okay.

13 Q Thumb through, there's about 19 documents there.
14 These are records that the Association produced in connection
15 with your records request, correct?

16 A I didn't hear you. Did --

17 Q These documents are records the Association produced
18 to you in connection with your records request?

19 A Yes. We don't dispute that.

20 Q Okay. Exhibit 2. This is a record, again it
21 (indiscernible) page 19.

22 A Page 19?

23 Q Yes.

24 THE COURT: That's the page number at the bottom.

25 BY MR. GALLIKER:



1 Q At the bottom.

2 A Oh, I'm sorry. There we go.

3 Q Yep. Okay.

4 A So you are looking at, was it Exhibit 2?

5 Q Exhibit 2.

6 A All right.

7 Q This was a document produced to you in connection
8 with your records request to the Association, correct?

9 A Well, if it saves time, I can tell you that all these
10 documents on this -- marked as Exhibit 1 were produced to us.

11 Q Okay.

12 THE COURT: So now he's asking about Exhibit -- that
13 packet is probably not just Exhibit 1.

14 MR. GALLIKER: It's Exhibits 1 through, let's see.

15 THE COURT: 1 through 4?

16 MR. GALLIKER: It's different than -- 1 through 5.

17 MR. SULLIVAN: Judge, we just don't dispute that they
18 provided all the records that they had. We just do not dispute
19 that.

20 MR. GALLIKER: Okay.

21 THE COURT: All right. So why don't you than go
22 ahead and tell me which documents in your Exhibits you
23 provided?

24 MR. GALLIKER: All of them. All we provided --

25 THE COURT: Okay. 1 through --



1 MR. GALLIKER: 1 through 15 --

2 THE COURT: Okay.

3 MR. GALLIKER: -- were the documents that the
4 Association produced pursuant to this records -- Mr.
5 Sullivan's records request.

6 THE COURT: Okay. Thank you.

7 MR. GALLIKER: Okay.

8 And so Judge, I want to be clear then --

9 BY MR. GALLIKER:

10 Q Mr. Sullivan, so you agree the documents -- the
11 Association's documents 1 through 15 were produced to you at
12 your request?

13 A Yes.

14 MR. GALLIKER: Okay. I have no other further
15 questions.

16 THE COURT: Okay. (Indiscernible)

17 Alright so then, Mr. Sullivan, is there anything else
18 that you haven't already told me about this and want to tell me
19 before I move to Respondent's case?

20 MR. SULLIVAN: No, Judge. Thank you.

21 THE COURT: All right. Thank you.

22 All right. Mr. Galliker.

23 MR. GALLIKER: The Association would like to call Ms.
24 Kathy Fowers.

25 THE COURT: All right. She's been sworn.



1 MR. GALLIKER: All right.

2 KATHY FOWERS

3 called as a witness for the Respondent, having been previously
4 sworn, testifies as follows:

5 DIRECT EXAMINATION

6 BY MR. GALLIKER:

7 Q Ms. Fowers, can you please introduce --

8 MR. SULLIVAN: Judge, Pardon me. Mr. Galliker has
9 previously disclosed the nature of Ms. Power's testimony. And
10 based on what he's disclosed to me, Ms. Fowers is being offered
11 as a percipient witness. She's been -- testified primarily
12 about the documents that were produced by the HOA, and we don't
13 dispute that.

14 In fact in Mr. Galliker's disclosure, he says, The
15 facts relevant to this matter are explained in detail in the
16 Association's objection to the Petitioners Motion for
17 Additional Subpoena Duces Tecum. Ms. Fowers' testimony is
18 expected to be consistent with the facts as outlined in that
19 objection (indiscernible) both as custodians of records for the
20 Association and as a community (indiscernible).

21 It is anticipated that Ms. Fowers will explain how
22 the records are kept in the usual course of business for the
23 Association and will describe the records obtained by the
24 Association in connection with the 2024 election. She is
25 further expected to testify that all records related to the



1 2024 election were presented to Petitioner for inspection
2 pursuant to his original request, including documents provided
3 by Vote HOA Now identifying the results of the electronic
4 voting and a list of homeowners who delivered their votes
5 electronically.

6 This is all testimony that is completely unrelated to
7 whether they produced the electronic ballots. And we don't
8 dispute that they gave us everything that they had, so this
9 doesn't seem as a percipient witness she has anything actually
10 to add, Judge.

11 THE COURT: Mr. Sullivan, it is not my practice to
12 prevent a party from presenting a witness that they have
13 indicated was disclosed to be a witness.

14 MR. SULLIVAN: Okay.

15 THE COURT: All right?

16 MR. GALLIKER: Thank you, Your Honor.

17 THE COURT: Um-hum.

18 BY MR. GALLIKER:

19 Q Would you introduce yourself to the Court?

20 A Kathy Fowers.

21 Q What do you do for a living, Ms. Fowers?

22 A Manage the (Indiscernible) Association.

23 THE COURT: I'm going to ask you to speak up a little
24 bit. Actually --

25 THE WITNESS: Me?



1 MR. GALLIKER: Does (Indiscernible).

2 THE COURT: No, she doesn't have to sit there. The
3 microphone's here.

4 THE WITNESS: Oh, okay.

5 THE COURT: So --

6 MR. GALLIKER: (Indiscernible) pull up to the
7 microphone?

8 THE WITNESS: I don't mind sitting there if you'd
9 like.

10 THE COURT: No.

11 THE WITNESS: I know my voice isn't loud.

12 THE COURT: You're fine.

13 THE WITNESS: Okay.

14 THE COURT: We're just asking you to speak up a
15 little bit.

16 THE WITNESS: Okay.

17 THE COURT: Um-hum.

18 BY MR. GALLIKER:

19 Q So what community do you manage?

20 A Sunland Springs Village Homeowners Association.

21 Q Is that the Respondent in today's hearing?

22 A Yes.

23 Q How long have you managed Sunland Springs Village
24 Homeowners Association?

25 A I've been a manager there for five and a half years.



1 Q And what are some of your duties as community
2 manager?

3 A Enforce the documents, custodian of records, manage
4 the daily operations, and facilitate processes.

5 Q Were you involved with the 2024 annual meeting and
6 election?

7 A Yes.

8 Q Can you explain how the 2024 annual meeting and
9 election was conducted?

10 A In line with (indiscernible) sheet and the bylaws,
11 the notice was given. All the opportunities of various ways to
12 vote were offered. The meeting was held. The committee --
13 election committee, per the bylaws, was held and they tallied,
14 so in line with the requirements.

15 Q So why did the Association utilize an electronic
16 voting service?

17 MR. SULLIVAN: Objection.

18 THE COURT: Overruled.

19 MR. SULLIVAN: You don't want to hear any objections?

20 THE COURT: No, I'm overruling that particular
21 objection.

22 MR. SULLIVAN: Okay.

23 THE WITNESS: They have done so since the very first
24 when they transitioned in 2020. So the original -- as far as
25 why, I haven't asked the board why. But the original one was



1 they wanted to have as much voter turnout as they could and use
2 technology available today.

3 Q So can you explain how this electronic voting
4 platform functions and operates, the Vote HOA Now?

5 A Yes.

6 MR. SULLIVAN: Objection. There's no foundation for
7 (Indiscernible). She's an employee of the contractor who
8 provides management services for the HOA. She does not work
9 for Vote HOA Now.

10 THE COURT: So I'm going to ask if you want to lay
11 some foundation. I'm also going to remind you that my
12 parameter here is limited to the petition, as your
13 (indiscernible) the petition. So.

14 MR. GALLIKER: Right.

15 BY MR. GALLIKER:

16 Q So what is your specific involvement with Vote HOA
17 Now for election purposes?

18 A To submit to them the list of homeowners weighted for
19 how many properties they own in the community; provide them the
20 ballot and all the supporting documents that go along with the
21 paper ballots; and then once -- and check the proof when it
22 comes out to make sure the wording matches the paper ballot.
23 And then when voting is occurring, I field inquiries if someone
24 can't figure out how to get into the electronic site and then
25 receive the results the day of the annual meeting.



1 Q And do you have personal information about how it
2 actually functions?

3 A From what they've told me, yes.

4 Q Okay. So when a homeowner goes onto Vote HOA Now,
5 what would they see?

6 MR. SULLIVAN: Objection.

7 BY MR. GALLIKER:

8 Q Do you know what they would see?

9 A Yes.

10 Q And how would you know that?

11 THE COURT: He rephrased the question, so I'm
12 overruling your objection.

13 MR. SULLIVAN: All right. Very good.

14 THE COURT: Um-hum.

15 THE WITNESS: I see the proof, so I see what they
16 see. They see the -- a picture of the community and the
17 community logo, so they know they're on the right page. And it
18 tells them the information they need to know, and it identifies
19 which properties they're sending in a vote for. And then it
20 has the questions, and they have stack options and submit
21 options to move forward and back. And at the end when
22 they've -- and they have all the link to see all of the
23 attachments and supporting documents. And then at the end, it
24 shows the summary of everything they've voted for, and a final
25 submit button, or they can go back and change any piece of

1 that.

2 Q And what happens when they click submit?

3 A It submits for them, and they get tallied on
4 their -- their end.

5 Q Where is the record of the vote preserved, recorded?

6 A What I see from them is a spreadsheet.

7 Q Okay. Now were you involved with the February 28th,
8 2024, records request for Mr. Sullivan?

9 A Yes.

10 Q And what was your involvement?

11 A Facilitate the process.

12 Q What documents did the Association provide for Mr.
13 Sullivan to review?

14 A All the paper documents we had, so all the print
15 outs.

16 Q When did his in-person review of the documents take
17 place?

18 A March 13th.

19 Q Okay. And what happened after he reviewed the
20 documents in-person?

21 A He wanted to see the actual votes. And so I had to
22 go back to Vote HOA Now to request that.

23 Q And were those documents subsequently provided to Mr.
24 Sullivan as well?

25 A Yes.



1 Q So let's look at, real quickly, Exhibit 3. Is this
2 one of the -- is Petitioner's Exhibit 3 one of the documents
3 that was provided electronically --

4 A Yes.

5 Q -- to Mr. Sullivan?

6 A Yes. Um-hum.

7 Q And is this the record -- what is this? Can you
8 explain what this is?

9 A It's a record of the voting --

10 MR. SULLIVAN: Objection.

11 THE COURT: Let me hear your objection, sir.

12 MR. SULLIVAN: She's not the creator of the record,
13 Judge. She's testified as to Vote HOA Now records.

14 THE COURT: Do you want to rephrase your question?

15 MR. GALLIKER: Well, I think his objection is
16 misplaced. This is an Association record, and as custodiam of
17 record, yes, it was created by somebody else, but it is now
18 kept by the Association, and she can testify as custodian of
19 records as to what it is.

20 MR. SULLIVAN: Judge, we're not objecting to any of
21 these records.

22 THE COURT: What's your understanding of what this
23 document is?

24 THE WITNESS: The results of the board of directors
25 election.

1 THE COURT: Thank you.

2 BY MR. GALLIKER:

3 Q From this -- let's see. Well, okay. Let's just look
4 real quick -- at Exhibit 14 as well.

5 THE COURT: So actually, based on your last objection
6 in mind for the clarification and (indiscernible) understanding
7 of it, if you're not objecting, Mr. Sullivan, to the documents
8 and you agree that these are the documents they provided to
9 you, I think that before I hear more from Respondent, what is
10 it specifically that you believe they did not give you that
11 you're asking for?

12 MR. SULLIVAN: The electronic ballots of 1,461
13 homeowners.

14 THE COURT: So you are, let me just make sure I
15 understand, you are requesting a screenshot of every one of the
16 1,461 ballots. Is that what you're asking for?

17 MR. SULLIVAN: Well, not necessarily a screenshot,
18 Judge. But the ballots that appeared to the voter was prepared
19 by Vote HOA Now and each voter used a ballot. And so each
20 ballot that was used by a voter should have been retained and
21 delivered for inspection.

22 THE COURT: So you are asking for Vote HOA's record?

23 MR. SULLIVAN: Well, they're actually --

24 THE COURT: Is that correct?

25 MR. SULLIVAN: Correct. They're actually the records



1 of the HOA, Judge, because they were collected by Vote Now HOA
2 (sic) as a vendor for the Association, on behalf of the
3 Association.

4 THE COURT: Did you vote electronically or in person,
5 Mr. Sullivan?

6 MR. SULLIVAN: We voted by absentee ballot.

7 THE COURT: And to the best of your understanding,
8 did you vote by -- was your absentee ballot due on a certain
9 day?

10 MR. SULLIVAN: Yes.

11 THE COURT: Do you remember what day?

12 MR. SULLIVAN: Well, on Exhibit 12, Judge, it will
13 have the date. I have it here. I'm sorry. Let's see.

14 THE COURT: Petitioner's Exhibit 12?

15 MR. SULLIVAN: So that the -- the vote must be
16 delivered before 3 p.m. on Monday February 26th.

17 THE COURT: And remind me again, when was the
18 election meeting date? Meeting that was the 28th?

19 MR. GALLIKER: It was the 27th.

20 THE COURT: 27th. Okay.

21 MR. SULLIVAN: 27th, Judge.

22 THE COURT: Meeting on the 27th. So did you vote by
23 absentee because you weren't in town to vote in-person?

24 MR. SULLIVAN: Well, Judge, the --

25 THE COURT: I just want to know if you could attend



1 the meeting. If in fact, could you attend the meeting?

2 MR. SULLIVAN: Could I attend the meeting? Yes.

3 THE COURT: Okay. And just a minute. I'm going back
4 and forth a little bit.

5 Ms. Fowers, if someone -- was every homeowner allowed
6 to vote electronically?

7 THE WITNESS: If we have their email. And if we
8 don't have their email, they can call me, and I give them the
9 Vote HOA Now code and they can go in and use it electronically.

10 THE COURT: Was every person able to designate on the
11 electronic ballot who they were and what their lot numbers were
12 or units or whatever?

13 THE WITNESS: So the property being voted for is
14 identified.

15 THE COURT: The HOA is (indiscernible) is identified?
16 Once someone enters their name, it's in essence to the list?

17 UNIDENTIFIED SPEAKER: Which is it?

18 MR. GALLIKER: This is part of what I wanted to
19 explain, is that --

20 THE COURT: Okay. So now I think I understand what
21 Mr. Sullivan was seeking and I want to know --

22 One more question, Mr. Sullivan. Essentially based
23 on the information that we already have, you are seeking the
24 electronic copy of what each homeowner submitted as their vote?

25 MR. SULLIVAN: Each ballot that was used to submit



1 their vote, yes.

2 MR. GALLIKER: And the Association's position is --
3 Exhibits 3, 14, and 15 are exactly that.

4 THE COURT: Okay. (Indiscernible) All right. Go
5 forward with your testimony.

6 MR. GALLIKER: Okay.

7 THE COURT: Whatever else you feel you need to
8 submit.

9 MR. GALLIKER: Okay.

10 THE COURT: Because I --

11 MR. GALLIKER: Okay.

12 BY MR. GALLIKER:

13 Q Okay. So a little recap, Ms. Fowers was testifying
14 about these specific documents, Exhibit 3, 14, and 15, and what
15 they contain. And so I want to ask, Ms. Sullivan (sic) -- I'm
16 sorry. Ms. Fowers. (Indiscernible) myself.

17 You've heard the dialogue today, Mr. Sullivan's
18 contention that he feels the Association failed to produce all
19 1,500 ballots. Is that true?

20 A No.

21 Q Did the Association receive separate individual
22 ballots for each vote cast electronically?

23 A The way he wants to see it? Or the information?

24 THE COURT: Can you rephrase your question?

25 MR. GALLIKER: Sure.



1 BY MR. GALLIKER:

2 Q The Judge mentioned what it appears Mr. Sullivan
3 wants to see if a screenshot of every vote before submit is
4 pushed. Does that exist?

5 A Um-hum. For every individual homeowner, they receive
6 an e-mail about what they voted. So they would have that, but
7 that would be their record, not the Association's.

8 Q Okay. So the voting record that the Association has
9 though brought -- I guess, let's go back. What did the
10 Association receive then as far as the electronic votes, the
11 record of the electronic votes?

12 A Spreadsheet holding all the records.

13 Q Okay. And can you walk us through this and show us
14 how this record -- let's start with Exhibit 3.

15 A Okay.

16 Q Can you walk us through and show us how it contained
17 the entire record of the electronic vote?

18 A Yep. So looking at the top, Michael Dahlen and Terry
19 Garrett, on 1/28. Sorry. 1/28 at 1:21, those two at the same
20 IP address, that is a ballot. The next two, Sherry and Brian
21 (phonetic) --

22 Q So --

23 A -- 1/28 at 1:57, at that IP address. That is a valid
24 result.

25 Q Okay. So how can you tell than how they voted --



1 A These --

2 Q -- based on this record? So the IP address, what
3 information does that tell you?

4 A The location it came from.

5 Q So that's actually the homeowner identifier?

6 A In this case, it's not what they put in to access the
7 ballots.

8 THE COURT: Okay. So when you say the number are you
9 mean the registration code is that number?

10 THE WITNESS: No.

11 THE COURT: Oh?

12 BY MR. GALLIKER:

13 Q The -- so she's actually asking the registration
14 number.

15 A Oh, this one.

16 Q Yes. Right.

17 THE COURT: The IP address --

18 THE WITNESS: Yes.

19 THE COURT: -- is that number starting, in the first
20 two cases, 75.204.9132?

21 THE WITNESS: That's the IP address.

22 THE COURT: And what is --

23 THE WITNESS: You can use a registration code as well
24 tied to -- to identify that that's the same individual.

25 BY MR. GALLIKER:



1 Q So I think -- let's back up just a little bit.

2 A Okay.

3 Q As the homeowner, how do they -- what is this
4 registration code?

5 A So we -- I could send in their account numbers, but
6 we protect that account number and instead have Vote HOA Now
7 take all the records and submit their own unique registration
8 code.

9 Q So in essence the Association provides, you already
10 testified, a list of all the homeowners and their lot numbers
11 to Vote HOA Now? Is that correct?

12 A Correct.

13 Q And then Vote HOA Now takes that and creates a unique
14 identifier for that particular homeowner?

15 A Correct.

16 Q And then the homeowner, if they log on, they must use
17 that unique identifier in order to be able to access the
18 electronic platform if (indiscernible) electronically, correct?

19 A Correct. For any property associated with that --

20 Q Okay.

21 A -- identifier.

22 Q So than by looking at this document, because the
23 first two entries have the same unique identifier and the same
24 IP address, that means that was one vote.

25 A Correct.



1 Q Because how many candidates were there at this 2024
2 election?

3 A Three.

4 Q And how many could each homeowner vote for?

5 A Two.

6 Q Okay. So walk us through -- let's take, for example,
7 the first ten. Can you do a little tally for us and explain
8 what you're doing? Walk us through what you're doing as you
9 tabulate the first about ten votes.

10 A First ten?

11 Q And --

12 A Okay. So you have one for Michael, two for Terry,
13 one for Brian, Michael, Terry, Michael, Brian, Terry, Brian.
14 So you have three, four, and three.

15 Q Okay. Could you follow that same process for all 40
16 pages of that spreadsheet to come up with the complete picture
17 of the electronic votes for the candidates?

18 A Yes. When you get to page 2 and there's blanks --
19 there's a blank -- there's a few blanks in there. You see on
20 the very right-hand side it says yes, yes, yes? You have to go
21 back to the first page where all the headers are. That's a
22 quorum only vote. So there's not going to be any board of
23 directors elections for that ballot.

24 Q Okay. So --

25 A Can I point out one more thing?



1 Q Please.

2 A Okay. On page 3, the very top of page 3, all of a
3 sudden it says Michael Dahlen, two; Terry Garrett, two. That's
4 because that ballot, that owner owns two properties. Each --

5 Q So --

6 THE COURT: If I can follow up on that? Each -- both
7 Michael and Terry own two properties?

8 THE WITNESS: No. This is not the homeowner; this is
9 the candidates.

10 BY MR. GALLIKER:

11 Q So the only names on this document are candidates and
12 it shows who they're voting for on this.

13 THE COURT: I wondered why there were so many of the
14 same names.

15 THE WITNESS: Same name.

16 THE COURT: I'm, like, these people own a lot of
17 properties. So the -- go back to page 1.

18 THE WITNESS: Um-hum.

19 THE COURT: First line is one vote for Michael
20 Dahlen?

21 THE WITNESS: Correct.

22 THE COURT: On Page 3, there's two votes by the same
23 person because there's two numbers that are exactly the same?

24 THE WITNESS: Two votes for Michael, two votes for
25 Terry. Correct.



1 MR. GALLIKER: Because they own two lots. That
2 homeowner with that unique identifier own two lots. In fact --

3 THE COURT: Okay. So I understand this, so.

4 MR. GALLIKER: Okay.

5 BY MR. GALLIKER:

6 Q So can you explain why are the homeowners' names are
7 not this spreadsheet? The names of the homeowners, the lot
8 numbers that are actually captured?

9 A Bylaws require secret ballot.

10 Q So how did the Association track or keep the record
11 of who was casting votes?

12 A The (indiscernible) came that way.

13 Q Yes, the Vote HOA Now record.

14 A So I guess if what you're asking is how did we know
15 who voted electronically then and who still got to submit a
16 paper vote?

17 A Yes.

18 Q Is that the question?

19 A Okay. So at the end they send it in, and they send
20 the results of who voted electronically and who voted -- who
21 didn't vote electronically. We take that, who didn't vote
22 electronically, and mark off the people who submitted absentee
23 ballots by their signature envelopes. And that, taking all of
24 those out, tells us who still gets a vote in-person.

25 Q So how does that compare with the absentee or in-



1 person voting process? That these are secret ballots, so in
2 neither condition can Mr. Sullivan, as a reviewer of the
3 documents, he can't tell who voted who for which candidate.
4 Correct?

5 A Shouldn't be able to.

6 Q Okay. So how is the secrecy preserved on the paper
7 ballot side?

8 A So the election committee comes in and they open all
9 of the envelopes and set the secret envelopes, which are still
10 sealed, they set them aside. And then after that, all of the
11 signature envelopes are collected. And then we go through and
12 open those. So before the election committee starts, the
13 election chairperson and I go through this list and make sure
14 that they haven't voted electronically.

15 Q So for those homeowners that vote in-person or by
16 absentee ballot, you have a stack of envelopes with the lot
17 number, the name of the homeowners. So you can verify who
18 voted and that they have the right to vote.

19 A That they have the right --

20 Q And then a separate unconnected pile of documents, in
21 essence, with the votes, the paper ballots. Correct?

22 A Correct.

23 Q So it's a similar process with the electronic vote,
24 correct? You have the spreadsheet showing all the homeowners
25 that voted electronically. Okay. And then separate

1 spreadsheets showing how they voted, correct?

2 A Correct.

3 Q Okay. Let's see. Okay. So Exhibit --

4 Petitioner's -- I'm sorry. Respondent's Exhibit 11, this is
5 the record of the homeowners that voted electronically,
6 correct?

7 A Oh, my eyes are (indiscernible). Yes.

8 THE COURT: I'm sorry. Exhibit 11 is who voted?

9 THE WITNESS: Who voted electronically.

10 THE COURT: Okay.

11 BY MR. GALLIKER:

12 Q Yeah.

13 A You can see in the second column from the right, it
14 asked if they submitted a paper ballot, and this said no
15 because this is just tracking the electronic. And when you see
16 that's blank, about halfway down, so Patricia Amos' (phonetic),
17 go over to the blank because she has two properties, so that
18 second address is taking up the second line.

19 Q Okay. Let's look at Exhibit 14. Can you explain
20 what this is?

21 A This back one back here?

22 Q Yes.

23 A Okay.

24 Q The second to the end.

25 A Which page?

1 THE COURT: It should be close to the very end of
2 that file.

3 MR. SULLIVAN: Thank you, Judge.

4 THE WITNESS: These are the issues associated with
5 the board of directors election ballots.

6 THE COURT: Okay. Hold on. So at the bottom, its
7 415. Does it say that?

8 MR. SULLIVAN: Thank you, Judge.

9 THE COURT: Um-hum. This is very (indiscernible).

10 MR. SULLIVAN: It is.

11 THE WITNESS: I (Indiscernible).

12 THE COURT: Okay. Not in the room with a magnifying
13 glass, but. All right. So generally what is the 14?

14 MR. SULLIVAN: Okay.

15 BY MR. GALLIKER:

16 Q On these ballots there was more the homeowners were
17 supposed to vote for besides just the directors who were left.
18 What does this request?

19 A The meeting minutes and the IRS revenue ruling.

20 Q So there's a question homeowners were supposed to
21 vote to approve the meeting minutes?

22 A Um-hum.

23 Q Or disapprove. And then also approve the IRS ruling
24 or disapprove, correct?

25 A Correct.



1 Q And is there -- does this record show an opportunity
2 to vote for or against?

3 A Yes.

4 Q And so how would you read the votes on this record?

5 A Okay. Choice 1 was to approve the meeting minutes,
6 choice 2 was to disapprove, choice 3, there was not a choice 3.
7 In this -- in the very first one, they voted 1, which would be
8 approve. They did not vote 2, it -- so it has a zero and 3 has
9 a zero. Going across, you have all your identifying
10 information, just shows that this is the same ballot as line
11 two, which was the IRS ruling. One was to approve, 2 was to
12 disapprove. With choice 1 having a one and choice 2 having a
13 zero, they voted to approve.

14 Q Okay. And --

15 THE COURT: So 14 is just on those two things, the
16 minutes and the IRS, right?

17 BY MR. GALLIKER:

18 Q Yes. So this Exhibit 14 then records all 1,461 votes
19 that provided to the approval of meeting minutes and the IRS
20 ruling.

21 A Unless they selected quorum only, than they wouldn't
22 have voted all things.

23 Q Okay. Okay. So this is the complete record of who
24 voted --

25 A Of who did vote, yes.

1 Q -- On these specific issues. Okay. And then let's
2 look at Exhibit 15.

3 A Okay.

4 Q Can you explain what this is?

5 A This one is the bylaws of -- issue, whether they want
6 to amend or not amend. But then, similar fashion, choice 1 was
7 to approve, choice 2 was to disapprove. The first one chose to
8 approve, the second one chose to disapprove. You would only
9 have one IP address on this because these are coming in one
10 single issue.

11 Q So you could go through Exhibit 15 and create your
12 own tabulation of every single person that voted on the bylaws
13 issue and then create your own (indiscernible) to verify the
14 results of that vote. Correct?

15 A Correct.

16 Q Okay.

17 THE COURT: What is the number at the end that says
18 how many were there?

19 MR. GALLIKER: That is the tally sheet for Exhibit
20 9 -- no -- Exhibit 10, Your Honor. The tally sheet for all the
21 votes with the tag of one.

22 THE COURT: Thank you.

23 BY MR. GALLIKER:

24 Q So Ms. Fowers, are there any documents related to the
25 February 24th annual meeting that were withheld from Mr.

1 Sullivan?

2 A No.

3 Q Are there any Association records that were not
4 produced for Mr. Sullivan's review?

5 A No.

6 MR. GALLIKER: No further questions.

7 THE COURT: Cross-exam?

8 MR. SULLIVAN: Thank you, Judge.

9 CROSS-EXAMINATION

10 BY MR. SULLIVAN:

11 Q Ms. Fowers, your testimony earlier was that as part
12 of the process of Vote HOA Now provided you with, I guess you
13 would call it a proposed electronic ballot?

14 A A proof.

15 Q A proof. Okay. So you saw that proposed electronic
16 ballot? Did you ever see the electronic ballot that was
17 actually published to the members?

18 A No.

19 Q Now, that's true also, and I don't want to be
20 redundant, but I also want to make sure we're clear that in
21 complying with the request to produce the ballots and other
22 election materials, the HOA did not produce the electronic
23 ballots?

24 MR. GALLIKER: Objection.

25 THE COURT: All right. So that's your position, sir.



1 I mean, her testimony -- their testimony and response to some
2 of my questions also gave me an indication of what the person
3 could see when they voted.

4 And unfortunately, you're not a homeowner, so you
5 didn't see it.

6 You voted absentee, so you didn't see it. Okay? So
7 I know that that's the case. So your position is they didn't
8 give you that thing that neither of you saw. Is that correct?

9 MR. SULLIVAN: That would be correct.

10 THE COURT: Okay.

11 MR. SULLIVAN: Yeah.

12 THE COURT: All right. So any other questions you
13 want to ask her?

14 MR. SULLIVAN: Well, Judge, the question I asked was
15 whether the HOA had produced the electronic ballots. I think
16 that that should be in the record.

17 THE COURT: So I think that it is in the record. I
18 mean, you asked that question and --

19 MR. SULLIVAN: But the answer should be in the
20 record.

21 THE COURT: So I think it already is, that there is
22 no copy of that thing that she didn't see and you didn't see.

23 MR. SULLIVAN: Okay.

24 BY MR. SULLIVAN:

25 Q And in your testimony a short while ago, you gave



1 reference, or you examined, Respondents Exhibit 3, 11, 14, and
2 15. Is that correct?

3 A Correct.

4 Q Who created those records?

5 A Vote HOA Now.

6 Q So you didn't participate creating those records?

7 A I had to separate them.

8 Q You didn't participate in creating the records that
9 you received from Vote HOA Now?

10 A No.

11 Q Now it would be fair to say that what you describe in
12 your testimony were what the Vote HOA Now was reporting to you
13 on paper as the results of an election?

14 A You said on paper?

15 MR. GALLIKER: Yeah. Objection.

16 BY MR. SULLIVAN:

17 Q All right. Exhibits 3, 11, 14, and 15. Is that
18 right?

19 A They provide them electronically.

20 Q All right. Let's go back and ask -- we'll go back to
21 the question again.

22 A Okay.

23 Q You didn't create any of those documents that are
24 Exhibits 3, 11, 14, and 15, right?

25 MR. GALLIKER: Objection. Asked and answered.



1 THE COURT: I'm going to (indiscernible) -- yes, it
2 has been answered. You printed them out once you received them
3 electronically; is that correct?

4 THE WITNESS: Correct.

5 THE COURT: All right.

6 BY MR. SULLIVAN:

7 Q All right. So you didn't create the records. You
8 received those records from Vote HOA Now?

9 A Yes.

10 MR. GALLIKER: Objection. Asked and answered.

11 THE COURT: Yes, she answered that.

12 MR. SULLIVAN: Okay.

13 BY MR. SULLIVAN:

14 Q And so those records reflect what Vote HOA Now is
15 reporting on paper, these documents that you examined, as the
16 results of the election?

17 A Yes.

18 Q Okay. But you didn't do any examination of any of
19 the electronic ballots yourself?

20 MR. GALLIKER: Objection. Relevance. Objection.
21 This has already --

22 THE COURT: Okay. So in answer to my question, both
23 of you never saw the electronic ballot. So she -- that --
24 that's the (indiscernible) to me. She's not a homeowner; she
25 didn't see it. You voted absentee.



1 MR. SULLIVAN: Right.

2 THE COURT: You didn't see it.

3 MR. SULLIVAN: My question probably should have been
4 worded differently, I guess.

5 BY MR. SULLIVAN:

6 Q You never saw any of the electronic ballots that were
7 submitted by homeowners who voted electronically?

8 MR. GALLIKER: Objection. We have already testified
9 that Exhibits 3, 11, 13, 14, and 15 are the record of the
10 electronic vote. That is what we have presented; that is what
11 we produced; that's what we have provided and testified of .
12 That's all there is.

13 THE COURT: So do you have an argument that is
14 against the presentation of what they have. So your question
15 is (indiscernible), as far as your argument, is that they
16 didn't produce something. So next question.

17 BY MR. SULLIVAN:

18 Q Well, are there any other documents that would show
19 us what each individual voter -- I'll strike that.

20 MR. SULLIVAN: I have no other questions, Judge.

21 THE COURT: Any redirect?

22 MR. GALLIKER: No, Your Honor.

23 THE COURT: All right then. Back to Mr. Sullivan.
24 Any rebuttal for me? Rebuttal testimony with regards to their
25 information and/or do you just want to move into closing?



1 MR. SULLIVAN: I think we're going to close, Judge.

2 THE COURT: All right. So as Complainant, we give
3 you the last word in closing, so Respondent's closing?

4 MR. GALLIKER: Yes. So what we've heard today, Your
5 Honor, relates to whether or not the Association complied with
6 33-1812 by providing and producing its records for review to
7 Mr. Sullivan. The Association has testified they provided
8 everything that exists. There isn't a stack of documents
9 somewhere that they're hiding that has not been produced.

10 The Association has testified, and Mr. Sullivan has
11 acknowledged, that they produced every record that the
12 Association has. The reason Mr. Sullivan appears to not be
13 satisfied is, as the Court accurately mentioned, he really
14 wanted to see a screenshot before the homeowner pushed submit
15 on that electronic vote. That doesn't exist. And by
16 application of 33-1812 also, it doesn't need to exist. The
17 Association, by the language of 33-1812 A, as I indicated in my
18 opening statement, is required to allow homeowners to vote in
19 person and by absentee ballot. There's no dispute there. They
20 absolutely met that requirement.

21 But 33-1812 also allows the Association to provide,
22 this is the direct quote, The association may provide for
23 voting by some other form of delivery. Some other form of
24 delivery means it doesn't have to be in the exact ballot
25 format. Yes, as you go through the subsection 1 through 7



1 below are -- there is a qualifier there before we get to any of
2 those other (indiscernible). If absentee ballots, or ballots
3 provided by some other form of delivery are used.

4 So there -- for the ballot itself, yes, all these
5 parts need to be kept. But what is in this electronic
6 delivery, is it even a ballot? The information that was
7 presented to the Court today demonstrates that the voting
8 mechanism is secure. Each homeowner is given a unique
9 identifier. They are able to -- Vote HOA Now is able to
10 confirm that two homeowners are not voting twice once that
11 unique identifier has used it, its (indiscernible).

12 But the statute expressly allows the Association to
13 collect those votes, or allows homeowners to deliver their
14 votes, by some other means, and in this case that's what
15 happened. The Association allowed homeowners to deliver their
16 votes by another means and that other means was by electronic
17 vote, by Vote HOA Now. It's a method of delivery; it is
18 permitted by statute. But it's not -- we have referred during
19 this discussion to what the homeowner sees as a ballot, as an
20 electronic ballot. But the reality is it's a user interface;
21 it exists only in a software state. And the important thing is
22 what vote is delivered through that mechanism. And the vote is
23 what's important and that is what is preserved.

24 I have represented many HOA clients. I have had
25 homeowners sent an email to the Association saying, oh, I can't



1 find my ballot, but I want to cast my vote for this candidate,
2 this candidates. There's no ballot, but the vote is counted.
3 A ballot wasn't used to deliver that vote to the Association in
4 that instance. In this particular setting as well, it is an
5 electronic means of delivery of the vote.

6 And the information that is preserved and reported is
7 sufficient so any homeowner in the entire community can look at
8 these documents. And essentially, we create an absentee ballot
9 for every vote that was cast. But these votes were not cast
10 using that same method. I think they were cast using an
11 alternative means and that means was electronic delivery of
12 their votes through Vote HOA Now.

13 As Ms. Fowers testified, with every single vote for a
14 candidate, you can go through -- Mr. Sullivan, if he wanted to,
15 he could create a tally sheet of all 1,461 votes cast
16 electronically and independently verify that, yes, his numbers
17 have tallied the vote are correct. Same thing with that bylaw
18 amendments and the IRS ruling and meeting minutes. All the
19 information is there. In fact, there's even more information
20 than is found on the paper version of the absentee ballot.

21 The Association's position with respect to this
22 petition is they provided every document that exists. And the
23 documents that exist are sufficient. The statute expressly
24 allows the Association to make arrangements for homeowners to
25 deliver their vote in an alternative means in addition to



1 absentee ballot or paper ballot. And that's exactly what they
2 did for the purpose of casting as wide a net as possible to
3 include as many homeowners as possible. Clearly, it is a very
4 popular option. It is safe and secure.

5 Mr. Sullivan has not met his burden to show that
6 there was any violation of the statute here. He has an
7 argument that he would like to see this statute read
8 differently. He would want screenshots of every vote that was
9 cast, but that's not required. The Association presented
10 everything they had; the documents are accurate; everything was
11 provided to Mr. Sullivan. Mr. Sullivan has not met his burden
12 to show there has been any violation of 33-1812. And so the
13 Association requests that this petition be denied.

14 THE COURT: Thank you.

15 Mr. Sullivan, your closing statement.

16 MR. SULLIVAN: Judge, the statute is unambiguously
17 clear that if some other form of delivery is used and for any
18 action...at...an annual...special meeting of the members, that
19 the -- and if absentee ballots or ballots provided by some
20 other form of delivery or used that -- and the number 7, 13
21 (sic)-1812, 87 (phonetic), Ballots, envelopes and related the
22 materials...shall be retained in electronic or paper format and
23 made available for member inspection...

24 In this case, it's very clear that they did not
25 produce the ballots, and they admit they didn't produce the



1 ballots for inspection. What they want to try to lead you to
2 believe is that the voter just selected things out of thin air
3 and sent in a vote of some type.

4 I contend, Judge, it's just logically apparent that
5 before a voter can vote for any particular candidate for the
6 board of directors, he has to be presented with names to select
7 from. That would have appeared on the screen. That's the
8 ballot. Also there were three proposed separate actions on the
9 on the paper ballot (indiscernible) would require for a
10 potential voter to read and make an election from. They don't
11 just pick their votes out of thin air.

12 Now I think I've demonstrated, Judge, that there were
13 instructions on voting electronically by electronic ballot.
14 There were invitations to vote by electronic ballot. The HOA
15 has chosen to use paper and electronic ballots in its election
16 for director. And so those ballots should have been produced.

17 Now, I know that the term screenshot has been used a
18 couple of times, but a screen shot is something that you use
19 your own computer to take a picture of the screen that you're
20 looking at. But in this particular case, Vote HOA Now would
21 have sent a ballot to every single potential voter. And each
22 one of those ballots was --possibly -- it was possible to
23 preserve the (indiscernible) ballots.

24 MR. GALLIKER: Objection. That fact's not in
25 evidence. There's no fact Vote HOA Now --

1 THE COURT: He's making an argument. He's making an
2 argument, and I don't -- I don't have evidence. Thank you.
3 Okay. So your statement that you're asserting Vote HOA Now
4 would have sent a ballot. Is that what you're saying?

5 MR. SULLIVAN: Well, the evidence is that they did in
6 fact send a ballot. If you look at Exhibit 1, you'll see that
7 that's in there. Exhibit 1 is the statements made by the HOA.
8 They did in fact send a ballot out. And so if Vote Now HOA
9 (sic) -- Vote HOA Now, rather, had sent out a ballot to every
10 voter, they should have a copy of the ballot that they sent out
11 in electronic form which they can then print out.

12 What the Association is arguing and asking you to
13 accept is that Vote HOA Now produced results of the election
14 and those should be trusted because they were produced by Vote
15 HOA Now. There's no way, based on the evidence that's
16 presented, to verify that the results that are being reported
17 by Vote HOA Now are accurate. There's no way to examine any
18 materials to determine the accuracy of their reporting.

19 And it's virtually impossible to determine whether
20 the ballot that was produced meets all of the other
21 requirements which would be part of the inspection. The
22 inspection would include whether the ballot set forth each
23 proposed action; the ballot provides an opportunity to vote for
24 or against each proposed action; and that the ballot specified
25 the time and date which must be delivered; and the ballot does

1 not authorize another person to cast their vote on behalf of
2 the member. That's all part of what would be done if there was
3 an inspection.

4 So the ballot has to comply to that. And the ballot
5 should have been produced for inspection not only to verify
6 that the results of the election, but to verify that the vote
7 was in its proper form, or that the ballot was in its proper
8 form, Judge.

9 And then, Judge, I'd like to talk about, if you don't
10 mind, Whitmer v. Hilton Casitas Homeowners Association. And
11 that's because I'm asking the tribunal to recommend orders that
12 either permit or require specific conduct on the part of the
13 HOA.

14 Now, under Whitmer v. Hilton Casitas Homeowners
15 Association, which is --

16 THE COURT: (Indiscernible). Do you have a copy for
17 me?

18 MR. SULLIVAN: I do have a copy for you, Judge.

19 MR. GALLIKER: Do you have a copy for me as well?

20 MR. SULLIVAN: There you are.

21 THE COURT: Great. Thank you, sir. So what's your
22 position on this?

23 MR. SULLIVAN: Under Whitmer, Judge, it's a
24 memorandum decision by Division One. And what Division One
25 considered in that case is whether an order by an

1 administrative law judge in a homeowners' case to -- in order
2 to obey the statute that was involved, is an enforceable order.

3 And in that case, what happened is that the HOA had
4 not been complying with the condominium act with respect to
5 budgetary process and a homeowner complained about it. There
6 was a hearing here at the Office of Administrative Hearings.
7 And the officer of administrative hearings -- administrative
8 law judge issued an ordered an order for Hilton Casitas to obey
9 the statute. And then a few years went by, I believe it was
10 eight years, and there were recurring violations of the same
11 nature that arose from the first instance.

12 And Mr. Whitmer went to the Superior Court to enforce
13 the order to obey the statute. And the Superior Court found,
14 and the -- Division One agreed with them, that there were two
15 problems with that order. One was that the order needs to
16 specify either conduct to be prohibited or conduct to be
17 required. Simply an order to obey a statute is too vague to be
18 enforced as a court order or as an administrative order.

19 And the other defect that the Superior Court found, and that
20 Division One agreed with, is that there needs to be a temporal
21 limit. In the case of Mr. Whitmer and Hilton Casitas, the
22 order didn't have any ending time. It went on, theoretically,
23 indefinitely into the future.

24 And so what we've proposed, Judge, and it's in the
25 proposed orders that I submitted to you, we're proposing that

1 you recommend orders that the HOA be prohibited from utilizing
2 a system which does not retain the ballots or also be
3 prohibited from utilizing the vendor that doesn't retain the
4 ballots. Now because Whitmer calls for either a requirement to
5 prohibit or require conduct, the other way is that -- the order
6 could be written, if you're inclined to do so, would be to
7 write an order that requires the HOA, when using an electronic
8 voter vendor, to only use a system that would retain the
9 ballots. You can either prohibit or require -- you can either
10 prohibit them from not showing it or you can require them to do
11 so. And that way it fits into what Division One has required
12 under Whitmer v. Hilton Casitas. And then we're also asking
13 that for the restrictions on the -- restrictions or
14 requirements, that it have a five-year expiration date in order
15 to meet the temporal requirements of Whitmer v. Hilton Casitas.

16 So we're asking that you find that we've prevailed
17 and that we're entitled for reimbursement of our \$500. The HOA
18 has not complied with the statutes; they have not provided the
19 ballots that were used for any electronic collection, Judge.

20 Thank you.

21 THE COURT: (Indiscernible) All right. Thank you.

22 Thank you very much. I have the information and your
23 arguments. And let me say we are finished with the hearing and
24 off the record.

25 (Proceedings concluded)



CERTIFICATE

I, ABIGAIL FARMER, a court-approved transcriber, do hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, to the best of my professional skills and abilities.

/s/

ABIGAIL FARMER,
Transcriber

November 11, 2024



Respondent's Response in Opposition to Petitioner's Dispute Rehearing Petition

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9 CHAD M. GALLACHER - STATE BAR No. 025487
10 *Attorneys for Respondent*

11 **OFFICE OF ADMINISTRATIVE HEARINGS**

12 **STATE OF ARIZONA**

13 **1740 W. Adams St., Lower Level, Phoenix, Arizona 85007**

14 AZNH REVOCABLE TRUST, by and
15 through JOHN and SUSAN SULLIVAN,
16 TRUSTEES, REAL PARTIES IN
17 INTEREST,

18 Petitioner,

19 vs.

20 SUNLAND SPRINGS VILLAGE
21 HOMEOWNERS ASSOCIATION,

22 Respondent.

File No. 24F-047

Docket No. 24F-H047-REL

**RESPONDENT'S RESPONSE IN
OPPOSITION TO PETITIONER'S
DISPUTE REHEARING PETITION**

23 Respondent Sunland Springs Village Homeowners Association (the "Association"),
24 by and through undersigned counsel, hereby responds in opposition to Petitioner's Dispute
25 Rehearing Petition ("Motion for Rehearing"). Contrary to Petitioner's rhetoric, the
26 Administrative Law Judge properly understood the issues, correctly analyzed the law as
27 applied to the facts presented, and issued a well-reasoned opinion. The decision of the
28 Administrative Law Judge should be affirmed, and Petitioner's Motion for Rehearing should
be denied.

1 **I. BACKGROUND.**

2 In February 2024, the Association held its annual meeting. As required by A.R.S. §
3 33-1812(A), the Association provided its members with the option of casting their votes by
4 absentee ballot or in person at the annual meeting. Additionally, as also permitted by A.R.S.
5 § 33-1812(A), the Association provided another method for its members to cast their votes.
6 The Association contracted with *Vote HOA Now* to assist in providing an electronic voting
7 option to its members.
8

9 The electronic voting process created by *Vote HOA Now* for the benefit of the
10 members of the Association utilized a secure website where homeowners were able to
11 submit their votes after using a unique identifier to log in to the website. (*See* Transcript of
12 Proceedings (hereafter “Tr.”), 45:9-25.) Each of the homeowners who cast their votes
13 electronically logged in to the same website to which access could only be obtained once by
14 using the homeowner’s unique identifier. Each such homeowner typed or entered their
15 voting choices into the user interface and pressed submit. Pressing submit captured the
16 homeowner’s vote in spreadsheets, which were then provided to the Association as the
17 record of the electronic vote. (*See* Tr., 41-54.)
18
19

20 Following the 2024 annual meeting of the Association, Petitioner submitted a request
21 to see the voting records. In response, the Association provided Petitioner copies of all of
22 the absentee and in-person ballots cast, the sign-in sheets and envelopes, as well as the
23 spreadsheets detailing the votes cast electronically. Petitioner asserted, however, that there
24 should have been a separate ballot for each vote cast electronically. The Association
25 explained that while the statute required the Association to allow homeowners to cast their
26
27
28

1 votes by in person and absentee ballots, it also gave the Association the option of allowing
2 their homeowners to deliver their votes another way. (See A.R.S. § 33-1812(A).) The
3 Association advised Petitioner that in this instance, the Association had availed itself of the
4 permission granted in A.R.S. § 33-1812(A) and provided the option of allowing their
5 homeowners to deliver their votes electronically through the *Vote HOA Now* platform. The
6 Association confirmed for Petitioner that the electronic voting process did not result in a
7 separate ballot generated for each vote cast electronically, but instead captured the votes on
8 spreadsheets, which spreadsheets had been provided to Petitioner in connection with his
9 records request. Petitioner rejected the Association's explanation.

12 Petitioner filed a single-issue petition with the Department of Real Estate. Petitioner
13 asserted that the Association had violated A.R.S. § 33-1812(A)(7) by failing or refusing to
14 produce about 1,500 ballots from the February 2024 annual meeting. (See Petition No. 24F-
15 H047 filed by Petitioner in this matter.) In response, the Association denied Petitioner's
16 allegation and asserted through filings in this matter that all documents and records related
17 to the 2024 annual meeting and election had been produced to Petitioner and that there were
18 no additional documents in existence that satisfied his request for documents.
19 9407 1098 98 64

21 At the hearing held in this matter, Petitioner bore the burden of proving that the
22 Association violated A.R.S. § 33-1812 by failing to produce documents related to the
23 election. The evidence presented, however, confirmed that the Association had in fact
24 produced every document that existed related to the 2024 annual meeting and election. The
25 Administrative Law Judge recognized the errors and holes in Petitioner's assertion that the
26 Association failed to produce nearly 1,500 ballots when the 1,500 votes referenced were not
27
28

1 cast by paper absentee ballot but were instead cast electronically. Inasmuch as the complete
2 record of all votes cast electronically as well as the complete record of all votes cast by
3 absentee or in person ballot were produced by the Association pursuant to Petitioner's
4 records request, the Administrative Law Judge correctly held that Petitioner did not sustain
5 his burden of proof, requiring denial of his Petition. Despite undisputed evidence and
6 testimony confirming that the electronic voting process did not record homeowner votes on
7 ballots, but rather, on spreadsheets, and despite undisputed evidence and testimony that all
8 existing documents (including the spreadsheets from the electronic voting) were properly
9 produced, Petitioner filed his Petition for Rehearing asserting that the ruling was erroneous
10 because the Administrative Law Judge did not require the Association to produce documents
11 that do not exist (i.e., a ballot for each vote cast electronically).
12
13

14 **II. LEGAL ARGUMENT**

15 **A. Petitioner Failed to Sustain His Burden of Proof.**

16 The Administrative Law Judge correctly held that Petitioner failed to carry his burden
17 as he failed to present any evidence to support his contention that there is a separate
18 electronic ballot generated or retained by *Vote HOA Now* that the Association should have
19 produced. Arizona law is clear that votes need not be cast by ballot. (*See* A.R.S. § 33-
20 1812(A).) Homeowner associations in Arizona are required to provide the option to their
21 members to vote by absentee ballot and in person at the meeting. (*See id.*) As long as an
22 association provides these two options for its members, the homeowners association may
23 also provide alternative ways for homeowners to deliver their votes. (*See id.*) For example,
24 as long as the ballot options were provided, an association would be permitted under A.R.S.
25
26
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1 § 33-1812(A) to allow homeowners to vote at a meeting by raising their hands in favor of
2 the candidates they support. If such a method were employed, the record of the vote would
3 not be recorded on ballots, but would be recorded, presumably, in some written format
4 tabulating the number of hands raised for each candidate. There would be no ballots to
5 review for those votes cast by raised hand, yet the vote would still be acceptable under
6 Arizona law and the complete record of the vote could still be obtained by interested
7 homeowners through the tabulation sheet.
8

9
10 In this instance, the Association allowed homeowners to cast their votes both by
11 ballot and through the electronic means provided by *Vote HOA Now*. (Tr., 34:15-25.) The
12 evidence presented at the hearing confirmed that *Vote HOA Now* was provided with a copy
13 of the paper ballot to enable *Vote HOA Now* to create an appropriate user interface on its
14 website where homeowners could cast their votes. (Tr., 35:16-25; *see also* Ruling, at ¶ 9.)
15 Although the user interface was referred to as an “electronic ballot”, the evidence confirmed
16 that there was not a unique “electronic ballot” provided to all homeowners that could be
17 completed and returned. Rather, the “electronic ballot” was simply a user interface on a
18 website used for the purpose of collecting votes. (Tr., 45:13-18.) The homeowners were not
19 provided separate electronic ballots, but were simply provided a link to *Vote HOA Now*'s
20 website where they could log in using their lot-specific identifier and cast their vote through
21 the website's user interface. (*See id.*) The votes were recorded on spreadsheets (not on
22 ballots) that were later provided to the Association. (Tr., 37:5-6.)
23
24
25

26 The Association's testimony and documentary evidence supported the Association's
27 contention that there was not a separate “electronic ballot” generated through the electronic
28

1 voting process. (Tr., 37:5-6; 43:8-12; 46:12-23.) The Association’s witness testified, and
2 Petitioner acknowledged, that no other documents existed related to the 2024 election
3 besides those provided to Petitioner. (Tr., 32:6-10; 53:24-25; 54:1-5.) The documentary
4 evidence admitted at the hearing included the entire universe of records that were responsive
5 to Petitioner’s request. (*See id.*) The Association testified that it has no other records and
6 that no other records existed related to the February 2024 annual meeting and election. (*See*
7 *id.*) Likewise, Petitioner testified that he never actually even saw any “electronic ballot”.
8 (Tr., 40:4-6; 55:4-11.) Petitioner presented no evidence that other documents related to the
9 2024 election exist. Petitioner offered nothing but his personal thoughts and ideas about
10 electronic voting at the hearing. The record confirms that Petitioner offered no admissible
11 evidence to support his ideas or position. Without any evidence to support his ideas and
12 arguments, there was no other decision the Administrative Law Judge could have made
13 besides entering a holding that Petitioner failed to carry his burden of proof.
14
15

16
17 **B. The Administrative Law Judge Properly Addressed A.R.S. § 10-3708.**

18 Petitioner asserted in his Motion for Rehearing that the Administrative Law Judge’s
19 ruling was flawed because A.R.S. § 10-3708 was not discussed at the hearing. Petitioner’s
20 argument is disingenuous at best. The hearing was to present evidence. The law is not
21 evidence and does not need to be “admitted” in order to be considered. To the contrary, the
22 Judge’s responsibility is to consider and apply the relevant law in light of the evidence
23 presented.
24

25
26 Moreover, A.R.S. § 10-3708 is expressly referenced in A.R.S. § 33-1812, the very
27 statute Petitioner complained was violated by the Association. If A.R.S. § 33-1812 expressly
28

1 references and relies upon A.R.S. § 10-3708 to set forth the law as it relates to ballots and
2 voting, there is no error for the Administrative Law Judge to do the same. In fact, because
3 the text of A.R.S. § 33-1812 expressly identifies A.R.S. § 10-3708, the Administrative Law
4 Judge’s Decision would likely have been deficient if it did not also address the embedded
5 language from the Nonprofit Corporations Act.
6

7 Petitioner’ contention that the judge improperly considered A.R.S. § 10-3708 is
8 further misrepresentative and misleading because A.R.S. § 10-3708 was central to
9 Petitioner’s petition. While Petitioner identified A.R.S. § 33-1812 as having been violated
10 by the Association, Petitioner’s contention that the Association violated A.R.S. § 33-1812
11 was heavily influenced by his improper reading of A.R.S. § 10-3708. From his first demand
12 to the Association, to the Petition he filed with the Department of Real Estate to his Motion
13 for Rehearing, Petitioner has relied on his reading of A.R.S. § 10-3708 to form his arguments
14 against the Association as they relate to the requirements of A.R.S. § 33-1812. He cannot
15 now claim that the Administrative Law Judge erred by incorporating A.R.S. § 10-3708 into
16 her ruling.
17
18

19 A.R.S. § 10-3708(F) provides guidelines regarding voting by electronic means.
20 According to the Arizona Nonprofit Corporations Act, nonprofit corporations may utilize an
21 electronic voting system provided the electronic voting system does four things: “(1)
22 authenticates the member’s identity; (2) authenticates the validity of each electronic vote to
23 ensure that the vote is not altered in transit; (3) transmits a receipt to each member who casts
24 an electronic vote; and (4) stores electronic votes for recount, inspection and review
25 purposes.” Provided these four requirements are satisfied, nonprofit corporations are
26
27
28

1 authorized under Arizona law to utilize electronic voting.

2 The Court correctly referenced and analyzed A.R.S. § 10-3708(F) in its ruling. The
3 Court correctly noted that A.R.S. § 10-3708(F) requires an electronic voting system to store
4 the electronic votes for recount, inspection and review, but does not require that the user
5 interface, that Petitioner refers to as the “electronic ballot”, be preserved for inspection. Only
6 the *votes* cast electronically must be retained according to A.R.S. § 10-3708(F). This is a
7 reasonable requirement because in electronic voting systems, there are no actual ballots that
8 can be retained. As explained above, the votes are input through a user interface and recorded
9 on a spreadsheet and not on a ballot. Consequently, the Court’s holding that the Association
10 properly preserved and produced the votes cast electronically and that Petitioner presented
11 no evidence to the contrary properly resolved the matter based squarely on both the facts
12 and the law. Petitioner has not identified any valid grounds in his Motion for Rehearing to
13 overturn the Court’s ruling. As such, the Court’s ruling must be affirmed.
14
15

17 **C. The Administrative Law Judge’s November 5, 2024 Decision Correctly**
18 **Summarized Petitioner’s Arguments.**

19 Petitioner repeatedly claimed that the Administrative Law Judge erred by misstating
20 his position. As with his other arguments, this contention likewise lacks any merit. The
21 Administrative Law Judge may not have quoted Petitioner’s arguments exactly as he phrased
22 them, but her November 5, 2024 Decision accurately cut to the heart of Petitioner’s
23 arguments and exposed their flaws.
24

25 On Page 1, Ins. 23-24 of his Motion for Rehearing, Petitioner asserted that the
26 Administrative Law Judge incorrectly stated that Petitioner argued that “*Vote HOA Now* was
27 required to retain images of the” computer screens of every homeowner who voted
28

1 electronically before pushing submit to turn in their vote. Petitioner claims this factual
2 finding by the Court was not true because he did not use those exact words. But the transcript
3 confirms that based on his testimony and argument, that is exactly what he was wanting. At
4 the hearing, the Administrative Law Judge, seeing the impossibility of Petitioner's
5 suggestion, sought clarification from Petitioner. The Court asked, "So you are, let me just
6 make sure I understand, you are requesting a screenshot of every one of the 1,451 ballots. Is
7 that what you're asking for?" Petitioner responded, "Well, not necessarily a screenshot,
8 Judge. But the ballots that appeared [on the computer screen] to the voter [that] was prepared
9 by *Vote HOA Now*", that is what he wanted to see. (Tr. 39: 14-19.) In other words, Petitioner
10 wanted a screenshot, or an image, of every computer screen before the voting homeowner
11 submitted their vote. Petitioner's criticism of the Administrative Law Judge's ability to
12 understand Petitioner's arguments and synthesize their true nature was unwarranted.

13
14
15
16 It may be helpful to note that going forward, the Association will not refer to
17 "electronic ballots" in connection with future annual meetings, as the description is a
18 misnomer. Rather, the Association's material and announcements will correctly refer to
19 homeowners' ability to cast their votes electronically through the *Vote HOA Now* website,
20 and not by "electronic ballot". Inasmuch as the Association's past use of the phrase
21 "electronic ballot" has generated confusion because the phrase is not an accurate description
22 of the electronic voting process, the phrase will be removed from future election materials.
23 However, the Association's mislabeling of the electronic voting process does not itself create
24 a violation of A.R.S. § 33-1812. All ballots used by homeowners to vote in the 2024 election
25 were preserved and produced upon request for inspection. Additionally, all records of votes
26
27
28

1 cast electronically were likewise preserved in the format they were recorded: on
2 spreadsheets; not on ballots. Use of the proper terminology will hopefully help avoid
3 challenges such as those brought by Petitioner in the future. Regardless, inaccurate reference
4 to the electronic voting process as using “electronic ballots” does not change the fact that
5 the process actually involves a website with a user interface where homeowners input their
6 votes and then submit them where they are captured on a spreadsheet, and not individual
7 ballots. The Decision of the Administrative Law Judge was accurate and proper. It should
8 be affirmed and Petitioner’s Motion for Rehearing should be denied.
9
10

11 **III. CONCLUSION.**

12 As explained above, the Administrative Law Judge correctly found that Petitioner
13 failed to carry his burden in proving his case. In fact, the undisputed evidence was that the
14 Association produced to Petitioner all documents in existence related to the 2024 annual
15 meeting and election. Petitioner had no evidence to dispute the Association’s full and
16 compliant disclosure. Additionally, the Administrative Law Judge correctly applied the
17 relevant law, including A.R.S. § 10-3708 as incorporated into A.R.S. § 33-1812, to conclude
18 that the Association had not violated the statute. As such, the Association requests that
19 Petitioner’s Motion for Rehearing be denied and that the Decision be affirmed.
20
21

22 RESPECTFULLY SUBMITTED this 23rd day of December, 2024.

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

24
25 By /s/Chad M. Gallacher
26 Chad M. Gallacher, Esq.
27 4854 E. Baseline Road, Suite 104
28 Mesa, Arizona 85206
Attorneys for Respondent

1 **ORIGINAL** of the foregoing
2 filed this 23rd day of
3 December, 2024, to:

4 ADRE Message Center
5 www.azre.gov/message-center

6 **COPY** of the foregoing mailed
7 and emailed this 23rd day of
8 December, 2024

9 John F. Sullivan, Esq.
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28
*/s/Chad M. Gallacher*_____

Office of Administrative Hearings

Electronic submission for docket **24F-H047-REL**

Other

To Administrative Law Judge

Filing date: **2/7/2025**

Filed by: **Vivian Nunez**

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Telephone number: **(602) 771-7781**

Mailing address

**Arizona Department of Real Estate
HOA Dispute Process
100 N 15th Ave, Ste 201
Phoenix AZ 85007**

Pending hearing date: **9/18/2024**

Email notifications

(none)

Other notifications

Resubmission of the Department's Decision

Submission and grounds

Resubmission of the Department's Rehearing Decision, at the request of OAH

Files submitted

RHG Decision.pdf



Arizona Department of Real Estate
Order Denying Rehearing Request

1 **BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 In the Matter of:

4 **AZNH Revocable Trust,**

Petitioner

5
6 vs.

7 **Sunland Springs Village Homeowners
Association,**

8 Respondent

File No.: 24F-H047

Docket No.: 24F-H047-REL

Order Denying Rehearing Request

9
10 **ORDER**

11 On or about November 5, 2024 the Office of Administrative Hearings issued an
12 Administrative Law Judge (ALJ) Decision ordering “that Petitioner’s petition is denied.”

13 Pursuant to Arizona Revised Statutes § 32-2199.04 a party may file a motion for rehearing
14 or review with the Commissioner of the Arizona Department of Real Estate (Commissioner). As
15 the aggrieved party, the Petitioner filed a timely Dispute Rehearing Request with the
16 Commissioner on or about November 30, 2024. In the request for rehearing, the Petitioner has
17 cited the following four grounds for a rehearing:

- 18 1. Irregularity in the proceedings or any order or abuse of discretion by the administrative
19 law judge that deprived a party of a fair hearing.
- 20 2. Error in the admission or rejection of evidence or other errors of law occurring during
21 the proceeding.
- 22 3. That finding of fact or decision is arbitrary, capricious or an abuse of discretion.
- 23 4. That the findings of fact or decision is not supported by the evidence or is contrary to
24 law.

25 The opposing party, Respondent Sunland Springs Village Homeowners Association, filed
a timely response to the Dispute Rehearing Request on or about December 23, 2024.

After careful review of the Administrative Law Judge’s decision, the Petitioner’s Dispute
Rehearing Petition alleging four grounds for a rehearing and the Respondent’s Response To

1 Petition For Rehearing, the Commissioner finds insufficient grounds to support the Petitioner's
2 alleged grounds for a rehearing.

3 **It Is Ordered:**

4 The Petitioner's request for a rehearing is denied.

5 DATED this 8th day of January, 2025.

6 

7 Susan Nicolson (Jan 8, 2025 09:54 MST)

8 Susan Nicolson
9 Commissioner
Department of Real Estate

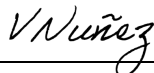
10 **E-FILE** of the foregoing this
11 8th day of January 2025, to:

12 ALJ Kay A. Abramsohn
Office of Administrative Hearing

13 **COPY** mailed by First Class and
14 Certified Mail on the 8th day of
15 January, 2025, Return Receipts Requested to:

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24 

25 10290603

Office of Administrative Hearings
Administrative Law Judge Decision

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 In the Matter of

No. 24F-H047-REL

4 AZNH Revocable Trust,
5 Petitioner,

**ADMINISTRATIVE LAW JUDGE
DECISION**

6 v.
7 Sunland Springs Village Homeowners
8 Association,
9 Respondent.

10 **HEARING:** September 18, 2024

11 **APPEARANCES:** Attorney John F. Sullivan represented AZNH Revocable Trust
12 (Petitioner). Attorney Chad M. Gallacher represented Sunland Springs Village
13 Homeowners Association (Association).

14 **ADMINISTRATIVE LAW JUDGE:** Kay A. Abramsohn

15 **EXHIBITS ADMITTED INTO EVIDENCE:** Department's electronical file;
16 Petitioner Exhibits 1 through 15; Association Exhibits 1 through 15.

17
18 **FINDINGS OF FACT**

19 1. The Arizona Department of Real Estate (Department) is authorized by
20 statute to receive and to decide petitions for hearings from members of homeowners'
21 associations and from homeowners' associations in the State of Arizona.

22 2. On or about April 20, 2024, Petitioner filed a single issue petition (Petition)
23 with the Department which alleged that, pursuant to Arizona Revised Statutes (ARIZ. REV.
24 STAT.) § 33-1812(A)(7), the Association had failed to comply with Petitioner's February
25 28, 2024, voting records inspection request¹ to inspect "all ballots, envelopes, related
26 materials and sign-in sheets" with regard to an election that had taken place on February
27

28
29
30 ¹ See Petitioner's Exhibit 5.

1 27, 2024.² Petitioner indicated the Association failed to produce all voting materials,
2 noting that “about 1500 ballots” had not been produced.

3 3. On or about May 13, 2024, Association returned its Answer to the
4 Department wherein it denied Petitioner’s claim.³

5 4. On May 15, 2024, the Department referred this matter to the Office of
6 Administrative Hearings (OAH), an independent state agency, for an evidentiary hearing
7 on July 12, 2024 to determine whether a violation of ARIZ. REV. STAT. § 33-1812(A)(7)
8 occurred.⁴

9 5. Association ByLaws Section 3.2 provides that the Board of Directors
10 (Board) may be elected through paper or electronic ballots pursuant to procedures set
11 forth in the ByLaws.⁵ Those procedures in Section 3.3.3 require that the Board provide
12 each member of the Association 30-day notice of the ballot, either by mail or
13 electronically, for the election of the Directors.⁶ Further, Section 3.3.3 requires that
14 “[v]oting shall be by “secret ballot.”

15 6. In preparation for the February 27, 2024 election at the Annual Meeting,
16 Association arranged with a company, *Vote HOA Now*, to conduct electronic balloting.

17 7. A paper ballot was created for members to cast in-person at the Annual
18 Meeting or by mail (*i.e.*, in absentia).⁷

19 8. Association members were voting on several items: on Directors;⁸ on a
20 proposed amendment to the Association ByLaws;⁹ on a resolution that the Association
21

22
23 ² See Department’s electronic file. Petitioner’s Petition included twenty-two (22) attachments consisting of
24 emails back and forth with Association Secretary/Treasurer Cathy Braun and with Association General
25 Manager Kathy Fowers. These emails document not only Petitioner’s request for inspection of the
26 documents but also Petitioner’s multiple issues with the electronic voting process, the management of the
27 electronic voting process, and the overall receipt of documents Petitioner believed necessary to have been
28 provided to it.

29 ³ See Department’s electronic file.

30 ⁴ After a continuance, the hearing was conducted on September 18, 2024.

⁵ See Petitioner Exhibit 2.

⁶ *Id.*

⁷ See Association Exhibit 1.

⁸ See Association Exhibit 7.

⁹ See Association Exhibit 9.

1 act in accordance with an IRS Revenue Ruling regarding excess income,¹⁰ and to
2 approve the Minutes from the 2023 Annual Meeting.¹¹

3 9. *Vote HOA Now* was given the Association’s “ballot” information and the
4 member and member property information necessary for *Vote HOA Now* to provide
5 electronic ballots to members for the election voting. *Vote HOA Now* created the
6 electronic ballot.

7 10. Association members received multiple email reminders regarding the
8 upcoming election; the emails contained a link to the online voting website.¹² The email
9 reminders contained specific instructions about how to vote:

10 Please [CLICK HERE](#) to go to the online voting website
11 (your personal registration code **5494477908** will prefill)
12 Make your choices on the electronic ballot and submit
13 (once your vote is submitted it is final)
14 A confirmation of your vote will appear onscreen and
15 be sent to your email

16 11. Association also created instructions about the options: to vote
17 electronically, and how to accomplish online voting; by submitting a paper ballot, dropping
18 it off at the office; or in person at the meeting.¹³

19 12. Kathy Fowers, the General Manager of Association and the Custodian of
20 Records, approved the “proof” of the electronic ballot created by *Vote HOA Now* after she
21 determined that the *Vote HOA Now*-created electronic ballot matched the paper ballot.¹⁴

22 13. Eighteen (18) members cast votes at the Annual Meeting.¹⁵ One hundred
23 fifty four (155) members cast absentee ballots.¹⁶ Fourteen hundred sixty-one (1,461)
24 members cast electronic votes.

25
26 ¹⁰ See Association Exhibit 7.

27 ¹¹ See Association Exhibit 12.

28 ¹² See Petitioner Exhibit 3.

29 ¹³ See Petitioner Exhibit 4.

30 ¹⁴ Ms. Fowers testimony.

¹⁵ *Id.* See also Association Exhibits 2 and 4 (Annual Meeting sign-in sheets).

¹⁶ See Association Exhibits 8 and 13.

1 14. Petitioner cast an absentee ballot.¹⁷

2 15.

3 16. After the election, Ms. Fowers received the electronic voting results from
4 *Vote HOA Now*.

5 17. *Vote HOA Now* provided the following documents to Association:

- 6 a. A tally report of the votes for Directors, for the Revenue Ruling, for approval
7 of the 20213 Minutes, and for the ByLaws amendment.¹⁸
8 b. A listing verification of the homeowners (with property addresses) who
9 voted electronically.¹⁹
10 c. A listing of the member votes cast for Directors.²⁰
11 d. A listing of the member votes for the ByLaws amendment.²¹
12 e. A listing of the member votes for the Revenue Ruling.²²
13 f. A listing of the member votes for the 2023 Minutes.²³

14 18. Association retained the following:

- 15 a. Two sign-in sheets used at the Annual Meeting.²⁴
16 b. Ballots cast in person at the Annual Meeting.²⁵
17 c. Envelopes which contained the absentee ballots received.²⁶

18 ¹⁷ Mr. Sullivan testimony at hearing; see *also* Association Exhibit 5 at SSV00171. While Petitioner voted
19 an absentee ballot, Petitioner hand delivered its inspection request on February 28, 2024, the day after
20 the Annual Meeting. See Petitioner Exhibit 5.

21 ¹⁸ See Association Exhibit 10.

22 ¹⁹ See Association Exhibit 11. This document contains the following: a member name; the member's
23 property address; the [Vote HOA Now] registration number and account number; an IP address for the
24 member; the date and time the vote was cast; and, the indication that one vote was cast for each listed
25 member.

26 ²⁰ See Association Exhibit 3. This document contains the following: the [Vote HOA Now] registration
27 number and account number; the IP address for each single vote; and, the date and time the one vote
28 was cast.

29 ²¹ See Association Exhibit 15. This document contains the following: the election item (the ByLaws
30 amendment); whether the vote was to approve or disapprove; the indication that one vote was cast; the
IP address for each single vote; and, the date and time the one vote was cast.

²² See Association Exhibit 14. This document contains the following: the two elections (the 2023 Minutes
and the IRS Revenue Ruling); whether the vote was to approve or disapprove; the indication that one
vote was cast; the IP address for the single vote; and, the date and time the one vote was cast.

²³ *Id.*

²⁴ See Association Exhibits 2 and 4.

²⁵ See Association Exhibit 1.

²⁶ See Association Exhibit 5.

1 19. The Association Board created the following:

- 2 a. An affidavit of the election results.²⁷
3 b. A tally sheet of the election results.²⁸

4 20. Petitioner has received the *Vote HOA Now* documents and the documents
5 created and retained by Association regarding the election.

6 21. Petitioner's argument is that Petitioner has not received all of the voting
7 documents because Petitioner has not received an image of each of the actual online
8 ballots as were posted by *Vote HOA Now* and, thus, as were voted on by any/each
9 member. Petitioner also argued that there was no mechanism to check whether the
10 voting results were accurate because, without seeing the image of each ballot, it could
11 not be determined if the electronic ballot met the requirements.²⁹

12 22. Petitioner's position is that those actual online ballots are, in fact,
13 Association records required to be kept by the Association and, to be available to
14 members for inspection, arguing that *Vote HOA Now* is required to retain images of those
15 actual online ballots for "recount, inspection and review purposes" pursuant to ARIZ. REV.
16 STAT. § 10-3708(F).

17 23. The Association position is that it has provided all of the election documents
18 created and retained by the Association. Further, that the Association has provided all of
19 the electronic documents received from *Vote HOA Now*. The Association argues that the
20 *Vote HOA Now* electronic documents which Association received, specifically its Exhibits
21 3, 14 and 15, represent the electronic information version of the electronic votes cast in
22 the election and demonstrate, electronically, the same information for each vote as would
23 have been demonstrated to have been cast on a paper ballot.

24 **CONCLUSIONS OF LAW**

25
26 _____
27 ²⁷ See Association Exhibit 6.

28 ²⁸ See Association Exhibit 8.

29 ²⁹ Presuming that Petitioner was also concerned whether the electronic "ballot" contained all of the
30 election items, the hearing record demonstrated that Kathy Fowers had approved the "proof" of the
electronic ballot created by *Vote HOA Now* after she determined that the *Vote HOA Now*-created
electronic ballot matched the paper ballot.

1 6. Statutes should be interpreted to provide a fair and sensible result.
2 *Gutierrez v. Industrial Commission of Arizona*; see also *State v. McFall*, 103 Ariz. 234,
3 238, 439 P.2d 805, 809 (1968) ("Courts will not place an absurd and unreasonable
4 construction on statutes.").

5 7. When the legislature uses a word or words in one section of a statute, but
6 not another, the tribunal may not read those words into the section where the legislature
7 did not include them.³⁶ Unless defined by the legislature, words in statutes are given their
8 ordinary meanings.³⁷

9 8. Each word, phrase, clause, and sentence of a statute or rule must be given
10 meaning so that no part will be void, inert, redundant, or trivial.³⁸

11 9. ARIZ. REV. STAT. § 10-3708(F), Action by written ballot; online voting
12 provides that if a vote is to be conducted by electronic means, *the written ballot may be*
13 *delivered through an online voting system that* does all of the following:

- 14 a. Authenticates the member's identity;
- 15 b. Authenticates the validity of each electronic vote to ensure that the vote
16 is not altered in transit;
- 17 c. Transmits a receipt to each member who casts an electronic vote; and
- 18 d. *Stores electronic votes for recount, inspection and review purposes.*

19 Emphasis added here.

20 10. ARIZ. REV. STAT. § 33-1812, Proxies; absentee ballots; definition
21 provides, in relevant parts, as follows:

22 A. Notwithstanding any provision in the community documents, after
23 termination of the period of declarant control, votes allocated to a unit may
24 not be cast pursuant to a proxy. *The association shall provide for votes to*
25 *be cast in person and by absentee ballot and, in addition, the association*
26 *may provide for voting by some other form of delivery, including the use of*
27 *e-mail and fax delivery.* Notwithstanding section 10-3708 or the provisions
28 of the community documents, any action taken at an annual, regular or
29 special meeting of the members shall comply with all of the following if
30

³⁶ See *U.S. Parking v. City of Phoenix*, 160 Ariz. 210, 772 P.2d 33 (App. 1989).

³⁷ *Id.*

³⁸ See *Deer Valley, v. Houser*, 214 Ariz. 293, 296, 152 P.3d 490, 493 (2007).

absentee ballots or ballots provided by some other form of delivery are used:

.....

6. The completed ballot shall contain the name, address and signature of the person voting, except that if the community documents permit secret ballots, only the envelope shall contain the name, address and signature of the voter.

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

Emphasis added here.

11. ARIZ. REV. STAT § 33-1258 provides, in pertinent part, as follows:

A. Except as provided in subsection B of this section, all financial and other records of the association shall be made reasonably available for examination by any member or any person designated by the member in writing as the member's representative.

12. In the instant case, the Association has provided to Petitioner electronic or paper copies of all of the *Vote HOA Now* records it received regarding the electronic voting process as well as the Association meeting sign-in sheets, the paper ballots received in absentia and at the meeting, the envelopes for the absentee ballots received, and the association created tally sheet and election results affidavit.

13. Petitioner's argument that the Association must provide an image of each "electronic ballot", as was voted by each member, is not well supported by ARIZ. REV. STAT. § 10-3708(F). ARIZ. REV. STAT. § 10-3708(F)(4) requires an online voting system to perform certain actions, one of which is that the online voting system "*stores electronic votes* for recount, inspection and review purposes."³⁹ There is no evidence that *Vote HOA Now* either retains or "stores electronic votes" in any form other than the data list format that was received by the Association,

³⁹ Emphasis added here.

1 specifically as was documented in Association Exhibits 3, 14 and 15. Those *Vote*
2 *HOA Now* data lists, taken as a whole, document each vote for each member for
3 each election item, in identifiable ways. ARIZ. REV. STAT. § 10-3708(F)(4) requires
4 storage of “electronic votes” not electronic ballots.

5 14. Petitioner’s argument fails that without seeing an image of each
6 electronic ballot, it was not possible to determine whether the election results were
7 accurate. The online voting system allowed only one vote per election item per
8 personal registration number, and the *Vote HOA Now* data lists demonstrate that,
9 per each IP addresses and the personal registration number, only one electronic
10 vote per election item was cast by that member.

11 15. Based on the foregoing, the Administrative Law Judge concludes
12 that Association is in compliance with ARIZ. REV. STAT. § 33-1812(7) by retaining
13 the *Vote HOA Now* data lists which demonstrate the electronic ballots “in electronic
14 ... format.” Further, that Petitioner has received from Association, pursuant to his
15 February 28, 2024 request, “all ballots, envelopes, related materials and sign-in
16 sheets.”

17 16. Based on the foregoing, the Administrative Law Judge concludes
18 that Petitioner did not sustain the burden of proof that the Association committed
19 a violation of ARIZ. REV. STAT. § 33-1812(A)(7) and, therefore, the Petition must be
20 denied.

21 **FINAL ORDER**

22 Based on the foregoing,

23 **IT IS ORDERED** that Petitioner’s petition is denied.

24 **NOTICE**

25 **Pursuant to A.R.S. §32-2199.02(B), this Order is binding on the parties**
26 **unless a rehearing is granted pursuant to A.R.S. § 32-**
27 **2199.04. Pursuant to A.R.S. § 41-1092.09, a request for rehearing in**
28 **this matter must be filed with the Commissioner of the Department of**
29 **Real Estate within 30 days of the service of this Order upon the parties.**

30 Done this day, November 5, 2024

/s/ Kay A. Abramsohn
Administrative Law Judge

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Transmitted electronically November 5, 2024 to:

Susan Nicolson, Commissioner
Arizona Department of Real Estate

Chad Gallacher
cgallacher@hoalaw.biz

John F. Sullivan
info@sullivanappeals.com

By: OAH Staff

9407 1098 98

Petitioner's HOA Dispute Rehearing Petition



Arizona Department of Real Estate (ADRE)

Homeowners Association Dispute Resolution

www.azre.gov

KATIE HOBBS
GOVERNOR

SUSAN NICOLSON
COMMISSIONER

100 North 15th Avenue, Suite 201, Phoenix, Arizona 85007

HOMEOWNERS ASSOCIATION (HOA) DISPUTE REHEARING PETITION

The HOA Dispute Rehearing Petition is completed by a party to a hearing before the Office of Administrative Hearings who is aggrieved by a decision rendered in a case. This Petition Form must be filed within 30 days from receipt of the decision. Submit completed form and attachments to ADRE through the Department Message Center at <http://azre.gov/>; or mail to the above address Attention: HOA Coordinator.

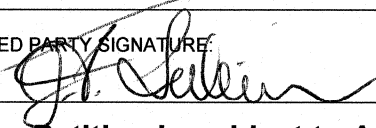
Aggrieved Party Information

| | | |
|--|---|---|
| AGGRIEVED PARTY FULL NAME (Please Print): AZNH Revocable Trust | PHONE NUMBER: 480-818-5070 | EMAIL: info@SullivanAppeals.com |
| DOCKET NUMBER (See ALJ Decision) 24F-H047-REL | CASE NUMBER (See Notice of Petition) 24F-H047-REL | |

Please check the box or boxes to specify the particular grounds for rehearing request. Evidence to support any claim/s will be required for rehearing.

| |
|--|
| <ol style="list-style-type: none"> 1. <input checked="" type="checkbox"/> Irregularity in the proceedings or any order or abuse of discretion by the administrative law judge that deprived a party of a fair hearing. 2. <input type="checkbox"/> Misconduct by the Department, Administrative Law Judge or the prevailing party. 3. <input type="checkbox"/> Accident or surprise that could not have been prevented by ordinary prudence. 4. <input type="checkbox"/> Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing. 5. <input type="checkbox"/> Excessive or insufficient penalties. 6. <input checked="" type="checkbox"/> Error in the admission or rejection of evidence or other errors of law occurring during the proceeding. 7. <input checked="" type="checkbox"/> That the findings of fact or decision is arbitrary, capricious, or an abuse of discretion. 8. <input checked="" type="checkbox"/> That the findings of fact or decision is not supported by the evidence or is contrary to law. |
|--|

Provide statement to substantiate the above claim/s and attach supporting documentation as needed.

| | |
|---|-----------------------|
| — See attachment. — | |
| | |
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| | |
| X AGGRIEVED PARTY SIGNATURE:  | Date Nov. 30, 2024 |

Rehearing Petition is subject to Arizona Department of Real Estate Commissioner's approval.

1 purposes’ pursuant to ARIZ. REV. STAT. § 10-3708(F).” FAD p.5, ¶ 22. **The hearing**
2 **transcript shows that Homeowner never made that argument or anything like it.**

3 The Homeowner has consistently argued that:

- 4 ➤ the HOA held an election using paper and electronic ballots;
- 5 ➤ A.R.S. § 33-1812(A)(7) requires the HOA to retain all electronic ballots and make
6 them available for Homeowner’s inspection; and,
- 7 ➤ the HOA did not retain the electronic ballots nor make them available for
8 inspection.

9 See, generally, ALJ Hearing Transcript, including, but not limited to, the Homeowner
10 Opening Statement (Tr. pp.9-10, lines 19-25 & 1-16, respectively). See HOA Opening
11 Statement, Tr. p. 12, lines 1-2 (“As is established, this is a single-issue complaint
12 regarding whether or not the Association complied with 33-1812.”) See also, FAD p.1, ¶
13 2 (ALJ finds Homeowner filed single issue petition claiming HOA failed to comply with
14 A.R.S. § 33-1812(A)(7)).

15 The ALJ concluded that the HOA had complied with A.R.S. § 10-3708 and therefore
16 prevailed at the hearing. The ALJ wrote, in part, that the election results produced by the
17 HOA to the Homeowner “taken as a whole, document each vote for each member for
18 each election item, in identifiable ways. ARIZ. REV. STAT. § 10-3708(F)(4) requires
19 storage of ‘electronic votes’ not electronic ballots.” FAD pp.8-9, ¶ 13.

20 There is nothing in the hearing transcript which illuminates how the ALJ landed upon
21 A.R.S. § 10-3708(F)(4) to decide this controversy.² A.R.S. § 33-1812 imposes a
22 requirement (independent from A.R.S. § 10-3708) that the HOA retain all ballots and
23 make them available for homeowner inspection. The evidence (supported by the
24 Petitioner’s Exhibits and the hearing transcript) shows that the HOA failed to comply
25 with the retention and inspection requirements of A.R.S. § 33-1812(A)(7).

² It should be noted that the ALJ’s subject matter jurisdiction is limited as follows: “an administrative law judge shall adjudicate complaints regarding and ensure compliance with [the Planned Communities Act] and Planned Community Documents.” Ariz. Rev. Stat. § 32-2199. The ALJ lacks authority to decide any controversies arising under the Nonprofit Corporation Act.

1 **II. The HOA Did Not Produce the Electronic Ballots for Inspection**

2 At the hearing, the HOA presented over four hundred pages of documents which the
3 HOA manager testified were created by VoteHOANow for the HOA (Tr. p.56, lines 4-5)
4 and were “the results of the election” (Tr. p.57, lines 14-17). See also, Tr. p.38, lines 1-4
5 & 22-25. The HOA attorney described the aforesaid documents as “the record of the
6 electronic vote.” Tr. p.58, lines 8-12. The HOA Attorney also asserted that the HOA had
7 provided every document in the HOA’s possession and that is sufficient to comply with
8 the statute. Tr. p.61, lines 21-23.

9 The ALJ asserted at the hearing that the HOA did not produce any of the electronic
10 ballots. Tr. p. 55, lines 14-22. Moreover, in the FAD, the ALJ found that HOA
11 documents were “the electronic voting results” (FAD p.4, line 16) and the ALJ listed
12 those documents received by the Homeowner in the FAD (pp.4-5, lines 17-20). No
13 electronic ballots appear on the ALJ’s list of HOA-produced documents.

14
15 **III. The HOA Admits to Violating A.R.S. § 33-1812**

16 In a document filed with the ALJ, the HOA admits the following:

- 17 ➤ the HOA hired a vendor (VoteHOANow) to assist in the 2024 annual election;
- 18 ➤ prior to the election, the HOA provided a paper ballot to VoteHOANow;
- 19 ➤ VoteHOANow used the paper ballot to create an electronic ballot which was
20 distributed to HOA voters;
- 21 ➤ 1,461 voters submitted the electronic ballot;
- 22 ➤ the HOA did not retain any of the electronic ballots;
- 23 ➤ after the election, the Homeowner requested inspection of all election
24 materials, including all ballots; and,
- 25 ➤ the HOA did not produce any of the 1,461 electronic ballots for Homeowner
26 inspection.

27 See Petitioner’s Hearing Exhibit 1 (the HOA filed document).

28 //

1 The ALJ further found:

2 Kathy Fowers, the General Manager of Association and the Custodian of
3 Records, approved the ‘proof’ of the electronic ballot created by *Vote HOA*
4 *Now* after she determined that the *Vote HOA Now*-created electronic ballot
5 matched the paper ballot.

6 FAD p.3, ¶ 12.

7 If no ballot was required, and if no electronic ballot was used in the election,
8 there would be:

- 9 ➤ No need for the HOA to provide a paper ballot to VoteHOANow;
- 10 ➤ No need for VoteHOANow to produce a proposed electronic ballot which
11 matches a paper ballot; and
- 12 ➤ No need for the HOA manager to approve a proposed electronic ballot (a
13 “proof”) by confirming the electronic ballot matches the paper ballot.

14

15 ***c. HOA Manager Testifies that Electronic Voters See and Submit a***
16 ***Ballot***

17 The HOA attorney elicited additional HOA manager testimony:

18 Q. Okay. So when a homeowner goes onto Vote HOA Now, what would
19 they see?

20 A. I see the proof, so I see what they see. They see the -- a picture of the
21 community and the community logo, so they know they’re on the right
22 page. And it tells them the information they need to know, and it
23 identifies which properties they’re sending in a vote for. And then it has
24 the questions, and they have stack options and submit options to move
25 forward and back. And at the end when they've -- and they have all the
26 link to see all of the attachments and supporting documents. And then at
27 the end, it shows the summary of everything they've voted for, and a
28 final submit button, or they can go back and change any piece of that.

1 Q. And what happens when they click submit?

2 A. It submits for them, and they get tallied on their -- their end.

3
4 Tr. pp.36-37, lines 4-25 & 1-4, respectively.

5 As previously stated, the ALJ found that the “proof” matches the paper ballot. FAD
6 p.3, ¶ 12 (*supra*). Thus, when the manager testified, “I see the proof, so I see what they
7 [the voters] see,” the manager is testifying that the electronic voter sees a ballot. *Supra*.
8 The manager further testified that the electronic voter clicks a “submit button” which
9 submits each voter’s selections on the electronic ballot. *Supra*.

10
11 ***d. HOA Manager Testifies - Election Results Came From Ballots***

12 The HOA manager also testified about the source of electronic election results, and
13 testified three (3) times that the results came from a **ballot**. Tr. p.43, lines 16-21; Tr.
14 p.46, lines 15-25 cont. to p.47, lines 1-4.

15 By Order of the ALJ, The HOA submitted a list of hearing exhibits. HOA listed their
16 Hearing Exhibit 14 as “**Electronic Votes cast** regarding the 2023 Annual Meeting
17 Minutes and the IRS Revenue Ruling 70-604.” (Bold added.) [*HOA Exhibit 14 relates to*
18 *two ballot questions: approval of the prior year minutes and adoption of an IRS policy.*]

19 During direct examination, the HOA attorney directed the HOA manager’s attention to
20 HOA Exhibit 14 and asked, “Can you explain what this is?” Tr. p.50, lines 19-20. The
21 manager testified, “These are the issues associated with the board of directors election
22 **ballots.**” Tr. p. 51, lines 4-5 (bold added). And, after waiting for the ALJ to find the
23 exhibit, the HOA attorney stated, “On these **ballots** there was more the homeowners were
24 supposed to vote for besides just the directors who were left.” Tr. p.51, lines 16-17 (bold
25 added). And, in further testimony about HOA Exhibit 14, the manager testified that
26 election results were derived from a **ballot**. Tr. p. 52, lines 4-13.

1 So, herein-above, we have the manager acknowledging five (5) times that votes were
2 cast by electronic ballot, and there is also a *Freudian slip* where the HOA attorney
3 reveals his true thoughts – a ballot was used for electronic voting.
4

5 ***e. ALJ Finds HOA Issued Reminders and Instructions***
6 ***for Electronic Ballots***

7 The ALJ found that Petitioner’s Hearing Exhibits 3 & 4 are reminders and instructions
8 about electronic ballots sent to HOA voters by the HOA. FAD p.3, ¶¶ 10-11.

9 ➤ **Petitioner’s Hearing Exhibit 3** consists of eleven (11) identical invitations to vote
10 by electronic ballot (sent on different dates to HOA voters) which contain the
11 following wording (bold added):
12

13 “Your community needs your vote on the following **ballots**:

14 2024 Directors Election
15 2024 Bylaws Amendment”

16 * * *

17 “Make your choices on the electronic **ballot** and submit”
18

19 See Petitioner’s Hearing Exhibit 3.³

20 ➤ **Petitioner’s Hearing Exhibit 4** are the instructions on electronic voting sent by
21 the HOA to HOA voters and it contains the following wording (bold added):

22 Voting online has three steps: . . . 3. **Make your choices on the ballot**
23 **and submit.**

24 * * *

25 When your (sic) submit your electronic **ballot**, you will receive a
26 confirmation email from the voting vendor (VoteHOANow) indicating
27 your successful submission of a **ballot**

28 See Petitioner’s Hearing Exhibit 4.

³ The ALJ specifically noted that the HOA instructions included, “Make your choices on the electronic ballot and submit.” FAD p.3, ¶ 10.

1 The above evidence is indisputably conclusive that the HOA used electronic ballots in
2 the 2024 election.

3
4 **V. The Collective Errors of the ALJ**

5 The ALJ’s findings and conclusions are clearly erroneous, not supported by substantial
6 evidence and are contrary to law. “An abuse of discretion exists when the record, viewed
7 in the light most favorable to upholding the [FAD], is devoid of competent evidence to
8 support the decision. An abuse of discretion also occurs where there has been an error of
9 law committed in the process of reaching a discretionary conclusion.” *Hurd v. Hurd*, 223
10 Ariz. 48, 52 (Ariz. Ct. App. 2009) (cleaned up).

11 In the instant case, the record does not contain competent evidence to support the
12 FAD, and the ALJ committed an error of law by incorrectly concluding that compliance
13 with A.R.S. § 10-3708 (requiring retention of voting results) sufficed to comply with
14 A.R.S. § 33-1812 (requiring retention and production of ballots for inspection).

15 “In Arizona, ‘arbitrary action’ has been characterized as unreasoning action, without
16 consideration and in disregard of the facts and circumstances. An ‘arbitrary’ action is
17 one taken ‘capriciously or at pleasure,’ or an action taken ‘without adequate determining
18 principle.’ *Maricopa County Sheriff’s Office v. Maricopa County Employee Merit System*
19 *Commission*, 211 Ariz. 219, 222 (Ariz. 2005)(cleaned up). See *Motor Vehicle*
20 *Manufacturers Assoc. of the United States, Inc. v. State Farm Mutual Auto. Ins. Co.*, 463
21 U.S. 29, 43 (1983) (An ALJ acts arbitrarily by failing to “examine the relevant data and
22 articulate a satisfactory explanation for its action including a rational connection between
23 the facts found and the choice made.”)

24 The applicable statute, A.R.S. § 33-1812(A)(7), requires retention and production of
25 ballots for inspection. The FAD is an unreasoned decision which did not consider (and
26 disregarded) the relevant facts and circumstances. The most significant and ignored facts
27 are those in Petitioner’s Hearing Exhibit 1, where the HOA admits all the facts which
28 show the HOA violated A.R.S. § 33-1812(A)(7). The FAD is also arbitrary because the

1 ALJ’s impermissible application of A.R.S. § 10-3708 renders an unsatisfactory
2 explanation for its decision and, therefore, lacks a rational connection to the facts.

3 In short, the FAD is not supported by the evidence and is contrary to law. And, the
4 FAD is arbitrary, capricious and an abuse of discretion.

5

6 **VI. Ballot, User Interface or Google-like Form – It Doesn’t Matter**

7 It should be noted that ballots are not the only thing to be retained for inspection. The
8 statute requires that “ballots, envelopes and **related materials** . . . shall be retained in
9 electronic or paper format and made available for member inspection” Ariz. Rev. Stat. §
10 33-1812 (bold added).

11 The HOA admits they sent a ballot to electronic voters, but also assert it wasn’t a
12 ballot. Tr. p.13, lines 4-15 (in an apparent attempt to avoid culpability, the HOA attorney
13 states electronic voters received “an electronic user interface,” and also says it was
14 similar to a “Google form”). Thus, if not a ballot, but a “user interface” or “Google
15 form,” that user interface or Google-like form is still “related materials” required to be
16 retained and produced for inspection. The HOA did not retain the Google-like forms nor
17 the user interfaces, nor produce them for inspection.

18

19 **VII. Conclusion**

20 It must be emphasized that, per A.R.S. § 33-1812(A)(7), HOA members are
21 entitled to inspect all ballots used in the election. A member need not show any
22 cause or reason to inspect the ballots, and the statute is unambiguous – “ballots shall
23 be retained in electronic or paper format and made available for member
24 inspection.” A.R.S. § 33-1812(A)(7).

25 The ALJ’s impermissible application of A.R.S. § 10-3708 to decide this
26 controversy is a clear error of law. A.R.S. § 33-1812 specifically states that the
27 requirement to retain ballots and make them available for inspection prevails over
28 any provision in A.R.S. § 10-3708. The evidence is indisputable that the HOA

1 violated A.R.S. § 33-1812 and, for unexplained reasons, the ALJ improperly
2 applied A.R.S. § 10-3708 (without any prior notice to the Homeowner) to decide
3 the controversy in the HOA’s favor.

4 The spreadsheets of election results (the “data lists”) presented at the hearing by
5 the HOA are not relevant to inspecting the ballots. The statute does not allow the
6 HOA to propose alternatives or provide substitutions to inspecting the electronic
7 ballots used by voters. The HOA manager’s testimony about those ‘data lists’ was
8 improperly allowed (*over the objection of the Homeowner*) by the ALJ – the data
9 lists are not relevant.

10 Pursuant to A.R.S. § 32-2199, “an administrative law judge shall adjudicate
11 complaints regarding and ensure compliance with” the Planned Communities Act
12 and community documents. In this case, the ALJ failed to do so.

November 30, 2024

Petitioner, AZNH Revocable Trust
By:

/s/ *John F. Sullivan*

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ARIZONA OFFICE OF ADMINISTRATIVE HEARINGS

AZNH REVOCABLE TRUST,

Petitioner,

vs.

SUNLAND SPRINGS VILLAGE
HOMEOWNERS ASSOCIATION,

Respondent.

No. 24F-H047-REL

Phoenix, Arizona
September 18, 2024

AMENDED

BEFORE ADMINISTRATIVE LAW JUDGE KAY ABRAMSOHN

TRANSCRIPT OF PROCEEDINGS

Arizona Department of Real Estate Complaint

Proceedings recorded by electronic sound recording; transcript produced by eScribers, LLC.

ABIGAIL FARMER
Transcriptionist



I N D E XSeptember 18, 2024

| <u>PETITIONER'S WITNESSES</u> | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> | <u>RECROSS</u> | <u>VD</u> |
|-------------------------------|---------------|--------------|-----------------|----------------|-----------|
| John Sullivan | -- | 26 | -- | -- | -- |
| <u>RESPONDENT'S WITNESSES</u> | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> | <u>RECROSS</u> | <u>VD</u> |
| Cathy Fowers | 31 | 54 | -- | -- | -- |

M I S C E L L A N E O U S

| | <u>PAGE</u> |
|--------------------------------|-------------|
| Petitioner's Opening Statement | 9 |
| Respondent's Opening Statement | 12 |
| Respondent's Closing Argument | 59 |
| Petitioner's Closing Argument | 62 |



EXHIBITSPETITIONER'S EXHIBITS

| <u>NO.</u> | <u>DESCRIPTION</u> | <u>ID</u> | <u>EVD</u> |
|------------|---|-----------|------------|
| 1 | Objection to Motion for Additional Subpoena | 16 | 9 |
| 2 | HOA Bylaws | 10 | 9 |
| 3 | Invitations sent on different dates | 22 | 9 |
| 4 | Ballot submission instructions sent by HOA | 21 | 9 |
| 5 | Request made by Petitioner | 19 | 9 |
| 6 | Receipt for Filing Fee | 22 | 9 |
| 7 | ** | -- | 9 |
| 8 | ** | -- | 9 |
| 9 | ** | -- | 9 |
| 10 | Objection to Motion for Additional Subpoena | -- | 9 |
| 11 | Objection to Motion for Additional Subpoena | -- | 9 |
| 12 | Paper copy of absentee ballot | 18 | 9 |
| 13 | Objection to Motion for Additional Subpoena | -- | 9 |
| 14 | Objection to Motion for Additional Subpoena | 50 | 9 |
| 15 | Objection to Motion for Additional Subpoena | -- | 9 |

RESPONDENT'S EXHIBITS

| <u>NO.</u> | <u>DESCRIPTION</u> | <u>ID</u> | <u>EVD</u> |
|------------|--------------------------|-----------|------------|
| 1 | ** | -- | 9 |
| 2 | ** | -- | 9 |
| 3 | Vote HOA Now Spreadsheet | 15 | 9 |



| | | | |
|----|--|----|---|
| 4 | ** | -- | 9 |
| 5 | ** | -- | 9 |
| 6 | ** | -- | 9 |
| 7 | ** | -- | 9 |
| 8 | ** | -- | 9 |
| 9 | ** | -- | 9 |
| 10 | Issues associated with election | -- | 9 |
| 11 | List of those who voted electronically | 50 | 9 |
| 12 | Issues associated with election | -- | 9 |
| 13 | Issues associated with election | -- | 9 |
| 14 | Issues associated with election | 15 | 9 |
| 15 | Vote associated with HOA Bylaws | 15 | 9 |

APPEARANCESSeptember 18, 2024

Administrative Law Judge: Kay Abramsohn

For the Petitioner:

John Sullivan

Witnesses:

John Sullivan

For the Respondent:

Ted Galliker

Witnesses:

Kathy Fowers



Phoenix, Arizona

September 18, 2024

(Administrative Law Judge Kay Abramsohn Presiding)

ARIZONA DEPARTMENT OF REAL ESTATE COMPLAINT:

THE COURT: Good morning. We're on the record.

This hearing before the Arizona Office of Administrative Hearings is now in session. Today is September 18, 2024. My name is Kay Abramsohn. I'm the administrative law judge assigned for this matter. And we are convening the hearing in docket number 24F-H047-REL for AZNH Revocable Trust, filed through John and Susan Sullivan, trustees, real parties in interest, as Petitioner versus Sunland Springs Village Homeowners Association as Respondent.

And my agency is an independent state agency. We conduct hearings on behalf of about 45 different agencies, boards, and commission, so every hearing's a little bit different. But in this instance, what happened is the complaint got filed with the Arizona Department of Real Estate. There's a few things that happened over there with it. They get some communication from the parties and then the matter gets forwarded over here. So we get a copy of the notices, I call it the notice of hearing packet, it's got the petition, attachments, response, any other communication from Real Estate back to the parties and so that's about it.

I have that information and then the parties have



1 filed significant amount of exhibits, so I have that
2 information. We spoke a little bit off the record. And I
3 have some from Mr. Sullivan--, from Petitioner, Mr. Sullivan, 1
4 through 15 and I have from Respondent, the Homeowners
5 Association, 1 through 15. They're in various places here.
6 While you're presenting the information give me a chance to get
7 to that exhibit if I don't have a copy of it and that's about
8 it.

9 Do I have any questions on the record before we
10 start?

11 Mr. Sullivan?

12 MR. SULLIVAN: No questions, Judge.

13 THE COURT: All right.

14 UNIDENTIFIED SPEAKER: No, Your Honor.

15 THE COURT: All right. Is it Galliker (phonetic)?

16 MR. GALLIKER: Yes.

17 THE COURT: Okay. Good.

18 MR. GALLIKER: I (Indiscernible)

19 THE COURT: And let's do appearances first.

20 Will you please state your name for the record, sir?

21 MR. SULLIVAN: Attorney John Sullivan for AZNH
22 Revocable Trust and its trustees.

23 THE COURT: All right. Thank you, sir.

24 MR. GALLIKER: Attorney Ted Galliker on behalf of
25 Sunland Springs Village Homeowners Association. I have with me



1 today Kathy Fowers, who is the Community Manager for the
2 Association. We also have three board members that just wanted
3 to come observe and see how the proceedings went today. And we
4 have our board president, Paul Marendia. We have Monica Stein,
5 and Brian Crowe, who are also members of the board of
6 directors.

7 THE COURT: All right. Thank you. All right then.
8 Let me go ahead and swear in Mr. Sullivan and Flowers (sic) --
9 Ms. Flowers (sic).

10 MS. POWERS: Hi. There's no L.

11 THE COURT: Fowers. Got it. Okay. Thank you.

12 Mr. Sullivan?

13 MR. SULLIVAN: Yes, Judge.

14 THE COURT: Thank you.

15 Ms. Fowers?

16 MS. FOWERS: Yes.

17 (Parties sworn)

18 THE COURT: All right. So I've indicated -- one of
19 the things that I typically do is go ahead and admit all of the
20 exhibits. And then I'll hear concerns or objections during the
21 presentation. If that exhibit gets proposed for consideration,
22 in the sense that I get some testimony about it. It saves a
23 lot of time in asking for things to be admitted and hearing the
24 objections per se. And typically in these matters, I still
25 consider relevance with regard to it, but it's just easier to



1 say they're in. But you got to tell me something about it
2 outside of the time, whether it's information that can help me,
3 whether it's relevant, and then we'll go from there. So
4 they're all in 1 through 15, 1 through 15.

5 (Petitioner's Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11,
6 12, 13, 14, 15 Received)

7 (Respondent's Exhibits 14, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11,
8 12, 13, 14, 15 Received)

9 And I expect you to either tell me about it or pass
10 over it because once you get going it's just not going to work
11 or it's not going to be relevant.

12 All right. So Mr. Sullivan.

13 MR. SULLIVAN: Thank you, Judge.

14 THE COURT: Do you have an opening statement?

15 MR. SULLIVAN: Yes, Judge. I'm actually making an
16 opening statement and then I'll move right into evidence,
17 Judge.

18 THE COURT: All right.

19 MR. SULLIVAN: In this matter, I believe that the
20 evidence will show you that the HOA conducted an election in
21 February of 2024 and that in preparation for that election,
22 they engaged a business known as Vote HOA Now to prepare
23 electronic ballots because the HOA planned to hold an election
24 by paper ballots and electronic ballots. And making the
25 preparations for the electronic balance, the HOA gave Vote HOA



1 Now a blank absentee ballot from which the Vote HOA Now created
2 an electronic ballot. That ballot was then distributed to
3 members of the community. There were a total of, during the
4 discovery of this, there were a total of 1,461 HOA members that
5 voted electronically. After the election was over, the AZNH
6 Revocable Trust requested to inspect all ballots and related
7 election materials. As a result of that, the HOA produced
8 approximately 450 documents, but none of those documents
9 contained the electronic ballots.

10 The statute calls, as you have -- you may have
11 already looked at the statute, Judge -- as the statute calls
12 for the HOA to make a choice about whether they want to use
13 some form of alternative to absentee and in-person ballots.
14 And if they do make a choice for an alternative, then they are
15 required to meet seven requirements under subsection A of 33-
16 1812.

17 And Judge, I can show you in Exhibit Number 2, which
18 is the HOA bylaws, that they made an election to use electronic
19 or paper ballots for purposes of electing board of directors
20 members, but they haven't formally adopted electronic ballots
21 for another purpose. So they've done so I would say on a de
22 facto basis. And everything that I've just explained to you,
23 Judge, apparently is not in dispute because it's in our Exhibit
24 1. Everything I've explained is in Exhibit 1 and Exhibit 1 --

25 THE COURT: All right. So let me make sure that



1 you're headed in the right direction. So I need a history and
2 a picture of the background. But your petition is limited to
3 whether or not this supplies you with all the documents that
4 you requested.

5 MR. SULLIVAN: That is correct, Judge.

6 THE COURT: I want to make sure that you stay within
7 that --

8 MR. SULLIVAN: I agree.

9 THE COURT: Okay?

10 MR. SULLIVAN: I exactly understand, Judge.

11 MR. GALLIKER: Your Honor?

12 THE COURT: You (Indiscernible)

13 MR. SULLIVAN: (Indiscernible) I think --

14 MR. GALLIKER: (Indiscernible) I would like to make
15 an opening statement as well.

16 THE COURT: Yes.

17 MR. GALLIKER: (Indiscernible) to because he --

18 THE COURT: Yeah. I didn't know how close he was.

19 It sounds like we were ready to get --

20 MR. SULLIVAN: Okay. Sure, sure.

21 THE COURT: -- into the specifics --

22 MR. SULLIVAN: That's fine, Judge.

23 THE COURT: Okay. All right. Okay?

24 MR. GALLIKER: Okay. Yes. Thank you, Your Honor.

25 Yes.



1 As is established, this is a single-issue complaint
2 regarding whether or not the Association complied with 33-1812,
3 which requires production of election materials for review.
4 This entire dispute really boils down to the question of
5 aesthetics at its core. Let me explain. The Association
6 conducted its annual meeting for 2024 on February 27th, 2024.
7 As required by ARS 33-1812, the Association provided for
8 homeowners to cast their votes in-person and by absentee
9 ballots.

10 Mr. Sullivan, in his opening statements, referenced
11 an election choice has to be made. I do not believe that's
12 actually how the statute reads. Rather, there is a requirement
13 of the statute to allow homeowners to vote in-person and by
14 absentee ballot. In addition, the statute expressly allows the
15 association to allow homeowners to deliver their vote by some
16 other means as well. The statute specifically references by
17 email or fax. But what is clear from the statute is in
18 addition to the requirement that the Association provide in-
19 person voting and absentee ballot voting, the Association may
20 also allow homeowners to deliver their votes to the Association
21 in some other means.

22 In this particular election, the Association did just
23 that. In connection with the 2024 annual meeting, the
24 Association arranged for homeowners to be able to deliver their
25 votes electronically through an online voting service, Vote HOA



1 Now. At the 2024 annual meeting, approximately 18 votes were
2 cast in-person, about 155 were cast using the absentee ballots,
3 and 1,461 votes were cast electronically.

4 The process for casting a vote electronically occurs
5 in a similar form as -- sorry, in a similar manner as using a
6 Google form. The voting homeowner follows a link to a secure
7 website where the homeowner must use a unique identifier to
8 confirm that they are, in fact, a homeowner and they had not
9 voted already. But once logged into the secure website, the
10 voting homeowner engages with an electronic user interface on
11 the computer screen to select their choices of candidates. And
12 then they press submit. Once the homeowner submits their
13 votes, the information entered on the interface screen is
14 recorded on a spreadsheet. The spreadsheet contains every
15 (indiscernible) --

16 MR. SULLIVAN: Judge, pardon me. Pardon me, Mr.
17 Galliker. Mr. Galliker, excuse me. Pardon me.

18 Judge, there's a fine line sometimes between an
19 opening statement and perhaps presentation of evidence or
20 testimony. At this point in Mr. Galliker's presentation, it
21 strikes me that he's testifying about a process without
22 referencing that there's any evidence to show you that that is
23 in fact the process.

24 THE COURT: So I would say for the record that I
25 presume Mr. Galliker is giving me a summary of the information

1 that he is going to present as --

2 MR. SULLIVAN: Okay.

3 THE COURT: -- is usually the case in the opening
4 statement.

5 MR. SULLIVAN: Thank you, Judge.

6 THE COURT: So.

7 MR. GALLIKER: That is correct, Your Honor.

8 THE COURT: Okay. So as little summary as necessary
9 to move into the case.

10 MR. GALLIKER: Sure. And perhaps I should preface,
11 Ms. Fowers will explain in her testimony this process. The
12 spreadsheet than captures and then records every piece of
13 information entered by that voting homeowner. But it appears
14 on a different format in the spreadsheet. Nothing is lost;
15 nothing is compromised. The spreadsheet records their votes
16 immediately and accurately.

17 The 1,461 votes cast by homeowners in the spring were
18 recorded on the spreadsheet, was delivered to the Association
19 as a complete record of the electronic voting. The
20 spreadsheet, there are actually three different spreadsheets
21 that record these votes that are 40 plus pages long and contain
22 30 to 40 votes per page. The spreadsheet, recording of votes
23 cast electronically contain sufficient information so that the
24 votes can be independently reviewed, examined, verified,
25 tallied by any homeowner that wanted to do so. However, while



1 the spreadsheet contained all the information recorded through
2 the electronic voting platform, it looks different than the
3 paper ballot that was used for absentee votes to be cast and
4 in-person votes to be cast.

5 We believe (phonetic) evidence will show today that
6 the Petitioner, when he (indiscernible) his request to review
7 the documents was in fact able to review these spreadsheets.
8 They were provided to him. They are Exhibits 3, 14, and 15 of
9 the Association's Exhibits and they contain all the information
10 of every vote that was cast electronically pursuant to 33-1812.

11 So while they look different than one vote per page,
12 they still contain all of the information that was included in
13 the votes that was cast electronically. So the Association
14 would present that it complied with 33-1812 by allowing for
15 homeowners to vote by allowing homeowners to deliver their vote
16 not only by in-person and absentee ballot, but also by some
17 other means, that other means was electronic voting. And the
18 electronic voting record accurately reflected and contained
19 every piece of information that would be necessary to review
20 and do an independent verification of (indiscernible). So at
21 the end of the presentation of evidence, the Association
22 requests that the petition be denied.

23 THE COURT: Thank you. All right. I'm going to
24 (indiscernible).

25 Mr. Sullivan, you were about to start talking about



1 your Exhibits 1 or --

2 MR. SULLIVAN: Yes, Judge.

3 THE COURT: You started to indicate that Exhibit 1,
4 you believed indicates that there were no disputes in the
5 matter, but we're here, so there must be something that you're
6 still disputing.

7 MR. SULLIVAN: Something I (indiscernible)

8 THE COURT: Give me an idea of what you're still
9 disputing.

10 MR. SULLIVAN: I think the evidence will show that
11 there really isn't any dispute of the facts. And based on the
12 opening that I just heard, it strikes me that the Association
13 is stipulating that they did not produce the electronic
14 ballots. And that's essentially what they said. And what I
15 have identified as -- marked for identification as Petitioner's
16 Exhibit 1. And it's the HOA's filing that's entitled Objection
17 to Motion for Additional Subpoena Duces Tecum.

18 And in that writing, the facts that I laid out in the
19 opening are all present there, Judge. I believe you'll find
20 them all present there. And as I was saying before with
21 respect to the bylaws, and actually with respect to 33-1812, so
22 I get the wording correctly here, it says that, "The
23 association shall provide for votes to be cast in person and by
24 absentee ballot and, in addition the association may provide
25 for voting by some other form of delivery, including the use of

1 e-mail and fax delivery."

2 THE COURT: All right. So I'm just going to remind
3 you that I'm not deciding whether or not the method they used
4 was appropriate.

5 MR. SULLIVAN: Well I (indiscernible) --

6 THE COURT: (Indiscernible) the bylaws.

7 MR. SULLIVAN: I agree with that.

8 THE COURT: I hear only what -- only with respect to
9 your petition and their response.

10 MR. SULLIVAN: Right. I --

11 THE COURT: I'm sorry, your request for the documents
12 that --

13 MR. SULLIVAN: Correct.

14 THE COURT: -- and their response. That's what I'm
15 going to hear about.

16 MR. SULLIVAN: I understand. I fully understand
17 that, Judge.

18 THE COURT: Okay.

19 MR. SULLIVAN: The only reason I'm bringing the
20 bylaws to your attention, and that's the Petitioners Exhibit
21 2, is because it shows that the board chose, they made the
22 choice, to use electronic or paper ballots for purposes of
23 electing their directors. And then they don't have any
24 specific adoption of electronic ballots for other manners, but
25 they seem to have done so on a de facto manner.

1 And the reason that's important, Judge, is because it
2 shows that they we're choosing to use electronic ballots. And
3 then, Judge, I have for you, if you don't already have it and,
4 well you do have it in the exhibits, Petitioner's Exhibit 12,
5 which is a paper copy of the absentee ballot that was given to
6 Vote HOA Now from which to create a paper ballot and will give
7 you some idea as to what the ballot might have looked like in
8 electronic form, because if Vote HOA Now had used that as a
9 format, than that should have been what the electronic ballot
10 would have looked like.

11 And that's also important from another respect,
12 Judge. The Respondent is essentially arguing that although
13 they did not produce the electronic ballots, they produced
14 other information which is the equivalent to an electronic
15 ballot. But what the statute calls for is an inspection of the
16 ballot. And aside from looking at the votes, there are several
17 things that should and could be expected -- could and should be
18 inspected. One is that the ballot should describe the actions
19 that are proposed to be taken. Another is that the voter must
20 be given an opportunity to vote for or against the proposed
21 action. The ballot must state the date by which the ballot
22 must be returned to the HOA to be counted, and that date must
23 be at least seven days in advance of the end of the election.
24 And also, Judge, there's a requirement that the ballot show
25 that the vote cannot be cast by any other person except the



1 designated voter. So there's more than just the votes to
2 evaluate to whether the count is correct or not. The question
3 is whether the ballot is conforming to the statute.

4 THE COURT: Again, I'm just going to remind you, my
5 question is not whether the ballot conforms to anything. It's
6 whether or not they gave you the documents.

7 MR. SULLIVAN: Exactly. But I'm responding to what
8 the Respondent --

9 THE COURT: Well, I need you to concentrate on what
10 you need to show me --

11 MR. SULLIVAN: All right.

12 THE COURT: -- in terms of what happens after you
13 made the request.

14 MR. SULLIVAN: All right. Well, we did make a
15 request and that is Exhibit 4. And as I understand it, these
16 Exhibits are admitted based on our ability to show their
17 relevance.

18 THE COURT: So let me find your Exhibit 4.

19 MR. SULLIVAN: All right.

20 THE COURT: Because if it was not part of your
21 attachments, then I have to pull it up.

22 MR. SULLIVAN: I'm sorry, it's Exhibit 5 not 4,
23 Judge. It's Exhibit 5.

24 THE COURT: Okay. So it's one page. Got it.
25 Exhibit 5?

1 MR. SULLIVAN: Yes, Judge.

2 THE COURT: All right.

3 MR. SULLIVAN: One of the things, aside from the fact
4 that we made the request, one of the things that I think's
5 important about this particular exhibit is that the Respondent
6 has argued that we demanded paper ballots and paper documents.
7 That request to clearly show that we've asked for the HOA to
8 make an election between whether they wanted to provide paper
9 or electronic and that we actually had a preference for
10 receiving materials electronically. So there's no demand here
11 that the HOA must provide by providing paper ballots.

12 Now, from what I understood from Mr. Galliker's
13 opening, he seems to be suggesting that, and I know my view of
14 it may be biased, but he seems to be suggesting that perhaps
15 there was no ballot involved here, but in fact there was
16 because if you look (indiscernible) --

17 THE COURT: Again, I'm going to stop you every time
18 you refer specifically to the ballot.

19 MR. SULLIVAN: Okay.

20 THE COURT: My issue is whether or not they provided
21 you with what you requested and what's required to be provided
22 under the statute.

23 MR. SULLIVAN: That's correct, Judge.

24 THE COURT: Okay.

25 MR. SULLIVAN: And I just want to show you that there



1 was in fact a ballot used. I think that's priority because
2 they have an obligation to produce the ballot. So I'm trying
3 to show you that in fact there was a ballot that was used
4 electronically.

5 THE COURT: Okay. Your position is they were
6 required to do that, but you just testified that you gave them
7 a choice and you indicated it could be electronic.

8 MR. SULLIVAN: Right. They can produce a ballot
9 either electronically or on paper.

10 THE COURT: All right.

11 MR. SULLIVAN: So one of the things that Mr. Galliker
12 referred to was that the ballot was somewhat similar to a
13 Google form. And we don't think that that's incorrect. It is
14 similar to a form that you fill out online. And the person
15 that's receiving that ballot, for instance if you prepare a
16 patient statement for your doctor or your intent is to maybe
17 apply for a credit card, the receiver of that electronic form
18 saves that someplace in electronic format and that's what we're
19 looking for. And they should have saved it because the statute
20 requires them to retain it.

21 And so that's why I'm going to go to Exhibit --
22 there's another exhibit here, hang on one second -- yes, Number
23 4. I'm sorry, Number 4. There was sent out by the HOA to all
24 of the community members and its instructions on how to vote
25 electronically by submission of a ballot. So that demonstrates

1 that they did use a ballot and electronic collection.

2 And it also, Judge, there are in Exhibit Number 3 11
3 identical invitations that were sent out on different dates to
4 members of the HOA giving them an invitation to make their
5 voting by electronic ballot and submit it.

6 And then, Judge, Exhibit Number 6, Petitioner's
7 Exhibit 6, is a receipt for the \$500 filing fee.

8 Then ,Judge, it could probably save us --

9 THE COURT: Hold on. So I don't understand what this
10 receipt is. What is it?

11 MR. SULLIVAN: It's the receipt for the filing fee
12 for the hearing we're having today, Judge.

13 THE COURT: Oh, okay. I wasn't sure if there was
14 some connection to the electronic ballot.

15 MR. SULLIVAN: No.

16 THE COURT: Okay. Well, you're here. The HOA would
17 not have sent -- Real Estate wouldn't have sent it unless you
18 paid it, so.

19 MR. SULLIVAN: Well, I still want to make sure we
20 have it on the record, Judge.

21 THE COURT: All right. Well, okay.

22 MR. SULLIVAN: And then also we might be able to
23 consign, because one of the things that you may be interested
24 in is whether you have subject matter and personal
25 jurisdiction. And I think that Mr. Galliker would --



1 THE COURT: So I have jurisdiction over the petition
2 that was filed and to make a recommended decision with regards
3 to that.

4 MR. SULLIVAN: All right. So we don't need to
5 present any evidence on that?

6 THE COURT: No.

7 MR. SULLIVAN: Okay.

8 THE COURT: You wouldn't be here unless I had the
9 authority to have this case and have a decision made.

10 MR. SULLIVAN: Okay.

11 THE COURT: Okay.

12 MR. SULLIVAN: Very well, Judge. We have -- the
13 relief that we're asking; we're asking that we be found as
14 prevailing party; that the \$500 filing fee be paid to us by the
15 HOA.

16 And then, Judge, have you had an opportunity to see
17 Whitmer v. Hilton Casitas Homeowners Association, a Division
18 One decision earlier this year?

19 THE COURT: So if there's some reference to some
20 legal precedent with regard to something that you're going to
21 present but haven't yet presented, I guess you do that in your
22 closing.

23 MR. SULLIVAN: All right.

24 THE COURT: Okay.

25 MR. SULLIVAN: So --

1 THE COURT: So --

2 MR. SULLIVAN: So the reason I bring it up is we're
3 going to ask a couple of things that I know are not something
4 you're normally going to see. We're asking that you issue an
5 order, a proposed order, anyway, that the HOA is prohibited in
6 the future from using an electronic voting service that fails
7 to retain the ballots --

8 THE COURT: All right.

9 MR. SULLIVAN: -- under discussion.

10 THE COURT: I can't issue that.

11 MR. SULLIVAN: Well that --

12 THE COURT: I don't -- I have authority to take the
13 case, decide on the petition, and issue a recommended decision
14 with regard to the petition that was made and whether or not
15 the Complainant -- Petitioner has proven the allegations in the
16 petition.

17 MR. SULLIVAN: I understand that, but --

18 THE COURT: We don't issue orders --

19 MR. SULLIVAN: That (indiscernible) --

20 THE COURT: -- with regards to the future or past
21 violations --

22 MR. SULLIVAN: I --

23 THE COURT: -- unless you allege a past violation.

24 MR. SULLIVAN: I understand that, Judge.

25 THE COURT: All right.



1 MR. SULLIVAN: That's why I'm I brought up Whitmer --

2 THE COURT: Um-hum.

3 MR. SULLIVAN: -- v. Hilton Casitas because it
4 addresses the scope of what the order from the administrative
5 law judge in a HOA case should include. And that's why I --

6 THE COURT: So that's closing argument, sir. And I'm
7 just --

8 MR. SULLIVAN: Okay.

9 THE COURT: To prevent you from taking this on, to
10 make an argument with regards to something that I cannot do by
11 statute --

12 MR. SULLIVAN: Okay.

13 THE COURT: -- by the connection between Real Estate
14 and us, you just need to move to the other exhibits that you
15 want me to know about and the presentation of your evidence.

16 MR. SULLIVAN: Okay. Well, I would like an
17 opportunity in closing to address --

18 THE COURT: You can address legal arguments in
19 closing, sir.

20 MR. SULLIVAN: Okay.

21 THE COURT: Are there other documents in your
22 exhibits that you want me to consider with regard to your
23 petition?

24 MR. SULLIVAN: No, I think that's it for now, Judge.

25 THE COURT: All right. All right. Cross exam?



1 MR. GALLIKER: Yes, I think -- okay.

2 JOHN SULLIVAN

3 called as a witness for the Petitioner, having been previously
4 sworn, testifies as follows:

5 CROSS-EXAMINATION

6 BY MR. GALLIKER:

7 Q Mr. Sullivan, petition is submitted, 15 exhibits.
8 Have you had a chance to review them?

9 A Are you asking me?

10 Q Yes.

11 THE COURT: Yes.

12 THE WITNESS: Oh, I'm sorry. Your exhibits?

13 BY MR. GALLIKER:

14 Q Cross-examination. Yes.

15 A I've seen your exhibits, yes.

16 Q Okay. And those are the exhibits that were
17 produced -- or those are the documents that were produced by
18 the Association in connection with your records request,
19 correct?

20 A Well, you know there was two phases to that.

21 Q Yes, yes. I know.

22 A So, so --

23 Q It would be a yes or no question.

24 A Yeah, but it can't be answered yes or no because it
25 wasn't (indiscernible) --



1 THE COURT: Mr. Sullivan, if he's asking for a yes or
2 no, I come back to you after cross-exam, so you can clarify and
3 answer if you feel like you need to clarify something.

4 THE WITNESS: But I can't answer it yes or no, Judge.

5 THE COURT: All right. Do you want to rephrase your
6 question?

7 MR. GALLIKER: I'll try to rephrase the question.

8 THE COURT: Thank you.

9 BY MR. GALLIKER:

10 Q So you submitted your request to review documents in
11 February.

12 A Okay.

13 THE COURT: Is that a question?

14 MR. GALLIKER: Let me (indiscernible)--

15 THE COURT: He can --

16 BY MR. GALLIKER:

17 Q I will make a statement and I'm going to ask you if
18 my statement is correct. You submitted a request to review
19 documents. You came in in person to review document in March.
20 You sent a follow-up request asking for additional records.
21 The Association provided electronically additional records.
22 You submitted an additional request to see additional records.
23 The Association responded by e-mail, providing additional
24 records. Is that a correct statement?

25 A No.



1 Q Okay.

2 THE COURT: Do you want to go back one by one?

3 MR. GALLIKER: Yeah. Let's look at Exhibit 1.

4 Your Honor, I made one copy -- let me

5 (indiscernible). May I approach?

6 THE COURT: Yes.

7 MR. GALLIKER: Let me give you (indiscernible) -- get
8 that marked (indiscernible). Okay. Okay.

9 BY MR. GALLIKER:

10 Q Can you please turn to Exhibit 1, Petitioner's
11 Exhibit 1, very first page.

12 A Okay.

13 Q Thumb through, there's about 19 documents there.
14 These are records that the Association produced in connection
15 with your records request, correct?

16 A I didn't hear you. Did --

17 Q These documents are records the Association produced
18 to you in connection with your records request?

19 A Yes. We don't dispute that.

20 Q Okay. Exhibit 2. This is a record, again it
21 (indiscernible) page 19.

22 A Page 19?

23 Q Yes.

24 THE COURT: That's the page number at the bottom.

25 BY MR. GALLIKER:



1 Q At the bottom.

2 A Oh, I'm sorry. There we go.

3 Q Yep. Okay.

4 A So you are looking at, was it Exhibit 2?

5 Q Exhibit 2.

6 A All right.

7 Q This was a document produced to you in connection
8 with your records request to the Association, correct?

9 A Well, if it saves time, I can tell you that all these
10 documents on this -- marked as Exhibit 1 were produced to us.

11 Q Okay.

12 THE COURT: So now he's asking about Exhibit -- that
13 packet is probably not just Exhibit 1.

14 MR. GALLIKER: It's Exhibits 1 through, let's see.

15 THE COURT: 1 through 4?

16 MR. GALLIKER: It's different than -- 1 through 5.

17 MR. SULLIVAN: Judge, we just don't dispute that they
18 provided all the records that they had. We just do not dispute
19 that.

20 MR. GALLIKER: Okay.

21 THE COURT: All right. So why don't you than go
22 ahead and tell me which documents in your Exhibits you
23 provided?

24 MR. GALLIKER: All of them. All we provided --

25 THE COURT: Okay. 1 through --



1 MR. GALLIKER: 1 through 15 --

2 THE COURT: Okay.

3 MR. GALLIKER: -- were the documents that the
4 Association produced pursuant to this records -- Mr.
5 Sullivan's records request.

6 THE COURT: Okay. Thank you.

7 MR. GALLIKER: Okay.

8 And so Judge, I want to be clear then --

9 BY MR. GALLIKER:

10 Q Mr. Sullivan, so you agree the documents -- the
11 Association's documents 1 through 15 were produced to you at
12 your request?

13 A Yes.

14 MR. GALLIKER: Okay. I have no other further
15 questions.

16 THE COURT: Okay. (Indiscernible)

17 Alright so then, Mr. Sullivan, is there anything else
18 that you haven't already told me about this and want to tell me
19 before I move to Respondent's case?

20 MR. SULLIVAN: No, Judge. Thank you.

21 THE COURT: All right. Thank you.

22 All right. Mr. Galliker.

23 MR. GALLIKER: The Association would like to call Ms.
24 Kathy Fowers.

25 THE COURT: All right. She's been sworn.



1 MR. GALLIKER: All right.

2 KATHY FOWERS

3 called as a witness for the Respondent, having been previously
4 sworn, testifies as follows:

5 DIRECT EXAMINATION

6 BY MR. GALLIKER:

7 Q Ms. Fowers, can you please introduce --

8 MR. SULLIVAN: Judge, Pardon me. Mr. Galliker has
9 previously disclosed the nature of Ms. Power's testimony. And
10 based on what he's disclosed to me, Ms. Fowers is being offered
11 as a percipient witness. She's been -- testified primarily
12 about the documents that were produced by the HOA, and we don't
13 dispute that.

14 In fact in Mr. Galliker's disclosure, he says, The
15 facts relevant to this matter are explained in detail in the
16 Association's objection to the Petitioners Motion for
17 Additional Subpoena Duces Tecum. Ms. Fowers' testimony is
18 expected to be consistent with the facts as outlined in that
19 objection (indiscernible) both as custodians of records for the
20 Association and as a community (indiscernible).

21 It is anticipated that Ms. Fowers will explain how
22 the records are kept in the usual course of business for the
23 Association and will describe the records obtained by the
24 Association in connection with the 2024 election. She is
25 further expected to testify that all records related to the



1 2024 election were presented to Petitioner for inspection
2 pursuant to his original request, including documents provided
3 by Vote HOA Now identifying the results of the electronic
4 voting and a list of homeowners who delivered their votes
5 electronically.

6 This is all testimony that is completely unrelated to
7 whether they produced the electronic ballots. And we don't
8 dispute that they gave us everything that they had, so this
9 doesn't seem as a percipient witness she has anything actually
10 to add, Judge.

11 THE COURT: Mr. Sullivan, it is not my practice to
12 prevent a party from presenting a witness that they have
13 indicated was disclosed to be a witness.

14 MR. SULLIVAN: Okay.

15 THE COURT: All right?

16 MR. GALLIKER: Thank you, Your Honor.

17 THE COURT: Um-hum.

18 BY MR. GALLIKER:

19 Q Would you introduce yourself to the Court?

20 A Kathy Fowers.

21 Q What do you do for a living, Ms. Fowers?

22 A Manage the (Indiscernible) Association.

23 THE COURT: I'm going to ask you to speak up a little
24 bit. Actually --

25 THE WITNESS: Me?



1 MR. GALLIKER: Does (Indiscernible).

2 THE COURT: No, she doesn't have to sit there. The
3 microphone's here.

4 THE WITNESS: Oh, okay.

5 THE COURT: So --

6 MR. GALLIKER: (Indiscernible) pull up to the
7 microphone?

8 THE WITNESS: I don't mind sitting there if you'd
9 like.

10 THE COURT: No.

11 THE WITNESS: I know my voice isn't loud.

12 THE COURT: You're fine.

13 THE WITNESS: Okay.

14 THE COURT: We're just asking you to speak up a
15 little bit.

16 THE WITNESS: Okay.

17 THE COURT: Um-hum.

18 BY MR. GALLIKER:

19 Q So what community do you manage?

20 A Sunland Springs Village Homeowners Association.

21 Q Is that the Respondent in today's hearing?

22 A Yes.

23 Q How long have you managed Sunland Springs Village
24 Homeowners Association?

25 A I've been a manager there for five and a half years.



1 Q And what are some of your duties as community
2 manager?

3 A Enforce the documents, custodian of records, manage
4 the daily operations, and facilitate processes.

5 Q Were you involved with the 2024 annual meeting and
6 election?

7 A Yes.

8 Q Can you explain how the 2024 annual meeting and
9 election was conducted?

10 A In line with (indiscernible) sheet and the bylaws,
11 the notice was given. All the opportunities of various ways to
12 vote were offered. The meeting was held. The committee --
13 election committee, per the bylaws, was held and they tallied,
14 so in line with the requirements.

15 Q So why did the Association utilize an electronic
16 voting service?

17 MR. SULLIVAN: Objection.

18 THE COURT: Overruled.

19 MR. SULLIVAN: You don't want to hear any objections?

20 THE COURT: No, I'm overruling that particular
21 objection.

22 MR. SULLIVAN: Okay.

23 THE WITNESS: They have done so since the very first
24 when they transitioned in 2020. So the original -- as far as
25 why, I haven't asked the board why. But the original one was



1 they wanted to have as much voter turnout as they could and use
2 technology available today.

3 Q So can you explain how this electronic voting
4 platform functions and operates, the Vote HOA Now?

5 A Yes.

6 MR. SULLIVAN: Objection. There's no foundation for
7 (Indiscernible). She's an employee of the contractor who
8 provides management services for the HOA. She does not work
9 for Vote HOA Now.

10 THE COURT: So I'm going to ask if you want to lay
11 some foundation. I'm also going to remind you that my
12 parameter here is limited to the petition, as your
13 (indiscernible) the petition. So.

14 MR. GALLIKER: Right.

15 BY MR. GALLIKER:

16 Q So what is your specific involvement with Vote HOA
17 Now for election purposes?

18 A To submit to them the list of homeowners weighted for
19 how many properties they own in the community; provide them the
20 ballot and all the supporting documents that go along with the
21 paper ballots; and then once -- and check the proof when it
22 comes out to make sure the wording matches the paper ballot.
23 And then when voting is occurring, I field inquiries if someone
24 can't figure out how to get into the electronic site and then
25 receive the results the day of the annual meeting.



1 Q And do you have personal information about how it
2 actually functions?

3 A From what they've told me, yes.

4 Q Okay. So when a homeowner goes onto Vote HOA Now,
5 what would they see?

6 MR. SULLIVAN: Objection.

7 BY MR. GALLIKER:

8 Q Do you know what they would see?

9 A Yes.

10 Q And how would you know that?

11 THE COURT: He rephrased the question, so I'm
12 overruling your objection.

13 MR. SULLIVAN: All right. Very good.

14 THE COURT: Um-hum.

15 THE WITNESS: I see the proof, so I see what they
16 see. They see the -- a picture of the community and the
17 community logo, so they know they're on the right page. And it
18 tells them the information they need to know, and it identifies
19 which properties they're sending in a vote for. And then it
20 has the questions, and they have stack options and submit
21 options to move forward and back. And at the end when
22 they've -- and they have all the link to see all of the
23 attachments and supporting documents. And then at the end, it
24 shows the summary of everything they've voted for, and a final
25 submit button, or they can go back and change any piece of

1 that.

2 Q And what happens when they click submit?

3 A It submits for them, and they get tallied on
4 their -- their end.

5 Q Where is the record of the vote preserved, recorded?

6 A What I see from them is a spreadsheet.

7 Q Okay. Now were you involved with the February 28th,
8 2024, records request for Mr. Sullivan?

9 A Yes.

10 Q And what was your involvement?

11 A Facilitate the process.

12 Q What documents did the Association provide for Mr.
13 Sullivan to review?

14 A All the paper documents we had, so all the print
15 outs.

16 Q When did his in-person review of the documents take
17 place?

18 A March 13th.

19 Q Okay. And what happened after he reviewed the
20 documents in-person?

21 A He wanted to see the actual votes. And so I had to
22 go back to Vote HOA Now to request that.

23 Q And were those documents subsequently provided to Mr.
24 Sullivan as well?

25 A Yes.



1 Q So let's look at, real quickly, Exhibit 3. Is this
2 one of the -- is Petitioner's Exhibit 3 one of the documents
3 that was provided electronically --

4 A Yes.

5 Q -- to Mr. Sullivan?

6 A Yes. Um-hum.

7 Q And is this the record -- what is this? Can you
8 explain what this is?

9 A It's a record of the voting --

10 MR. SULLIVAN: Objection.

11 THE COURT: Let me hear your objection, sir.

12 MR. SULLIVAN: She's not the creator of the record,
13 Judge. She's testified as to Vote HOA Now records.

14 THE COURT: Do you want to rephrase your question?

15 MR. GALLIKER: Well, I think his objection is
16 misplaced. This is an Association record, and as custodiam of
17 record, yes, it was created by somebody else, but it is now
18 kept by the Association, and she can testify as custodian of
19 records as to what it is.

20 MR. SULLIVAN: Judge, we're not objecting to any of
21 these records.

22 THE COURT: What's your understanding of what this
23 document is?

24 THE WITNESS: The results of the board of directors
25 election.

1 THE COURT: Thank you.

2 BY MR. GALLIKER:

3 Q From this -- let's see. Well, okay. Let's just look
4 real quick -- at Exhibit 14 as well.

5 THE COURT: So actually, based on your last objection
6 in mind for the clarification and (indiscernible) understanding
7 of it, if you're not objecting, Mr. Sullivan, to the documents
8 and you agree that these are the documents they provided to
9 you, I think that before I hear more from Respondent, what is
10 it specifically that you believe they did not give you that
11 you're asking for?

12 MR. SULLIVAN: The electronic ballots of 1,461
13 homeowners.

14 THE COURT: So you are, let me just make sure I
15 understand, you are requesting a screenshot of every one of the
16 1,461 ballots. Is that what you're asking for?

17 MR. SULLIVAN: Well, not necessarily a screenshot,
18 Judge. But the ballots that appeared to the voter was prepared
19 by Vote HOA Now and each voter used a ballot. And so each
20 ballot that was used by a voter should have been retained and
21 delivered for inspection.

22 THE COURT: So you are asking for Vote HOA's record?

23 MR. SULLIVAN: Well, they're actually --

24 THE COURT: Is that correct?

25 MR. SULLIVAN: Correct. They're actually the records



1 of the HOA, Judge, because they were collected by Vote Now HOA
2 (sic) as a vendor for the Association, on behalf of the
3 Association.

4 THE COURT: Did you vote electronically or in person,
5 Mr. Sullivan?

6 MR. SULLIVAN: We voted by absentee ballot.

7 THE COURT: And to the best of your understanding,
8 did you vote by -- was your absentee ballot due on a certain
9 day?

10 MR. SULLIVAN: Yes.

11 THE COURT: Do you remember what day?

12 MR. SULLIVAN: Well, on Exhibit 12, Judge, it will
13 have the date. I have it here. I'm sorry. Let's see.

14 THE COURT: Petitioner's Exhibit 12?

15 MR. SULLIVAN: So that the -- the vote must be
16 delivered before 3 p.m. on Monday February 26th.

17 THE COURT: And remind me again, when was the
18 election meeting date? Meeting that was the 28th?

19 MR. GALLIKER: It was the 27th.

20 THE COURT: 27th. Okay.

21 MR. SULLIVAN: 27th, Judge.

22 THE COURT: Meeting on the 27th. So did you vote by
23 absentee because you weren't in town to vote in-person?

24 MR. SULLIVAN: Well, Judge, the --

25 THE COURT: I just want to know if you could attend



1 the meeting. If in fact, could you attend the meeting?

2 MR. SULLIVAN: Could I attend the meeting? Yes.

3 THE COURT: Okay. And just a minute. I'm going back
4 and forth a little bit.

5 Ms. Fowers, if someone -- was every homeowner allowed
6 to vote electronically?

7 THE WITNESS: If we have their email. And if we
8 don't have their email, they can call me, and I give them the
9 Vote HOA Now code and they can go in and use it electronically.

10 THE COURT: Was every person able to designate on the
11 electronic ballot who they were and what their lot numbers were
12 or units or whatever?

13 THE WITNESS: So the property being voted for is
14 identified.

15 THE COURT: The HOA is (indiscernible) is identified?
16 Once someone enters their name, it's in essence to the list?

17 UNIDENTIFIED SPEAKER: Which is it?

18 MR. GALLIKER: This is part of what I wanted to
19 explain, is that --

20 THE COURT: Okay. So now I think I understand what
21 Mr. Sullivan was seeking and I want to know --

22 One more question, Mr. Sullivan. Essentially based
23 on the information that we already have, you are seeking the
24 electronic copy of what each homeowner submitted as their vote?

25 MR. SULLIVAN: Each ballot that was used to submit



1 their vote, yes.

2 MR. GALLIKER: And the Association's position is --
3 Exhibits 3, 14, and 15 are exactly that.

4 THE COURT: Okay. (Indiscernible) All right. Go
5 forward with your testimony.

6 MR. GALLIKER: Okay.

7 THE COURT: Whatever else you feel you need to
8 submit.

9 MR. GALLIKER: Okay.

10 THE COURT: Because I --

11 MR. GALLIKER: Okay.

12 BY MR. GALLIKER:

13 Q Okay. So a little recap, Ms. Fowers was testifying
14 about these specific documents, Exhibit 3, 14, and 15, and what
15 they contain. And so I want to ask, Ms. Sullivan (sic) -- I'm
16 sorry. Ms. Fowers. (Indiscernible) myself.

17 You've heard the dialogue today, Mr. Sullivan's
18 contention that he feels the Association failed to produce all
19 1,500 ballots. Is that true?

20 A No.

21 Q Did the Association receive separate individual
22 ballots for each vote cast electronically?

23 A The way he wants to see it? Or the information?

24 THE COURT: Can you rephrase your question?

25 MR. GALLIKER: Sure.



1 BY MR. GALLIKER:

2 Q The Judge mentioned what it appears Mr. Sullivan
3 wants to see if a screenshot of every vote before submit is
4 pushed. Does that exist?

5 A Um-hum. For every individual homeowner, they receive
6 an e-mail about what they voted. So they would have that, but
7 that would be their record, not the Association's.

8 Q Okay. So the voting record that the Association has
9 though brought -- I guess, let's go back. What did the
10 Association receive then as far as the electronic votes, the
11 record of the electronic votes?

12 A Spreadsheet holding all the records.

13 Q Okay. And can you walk us through this and show us
14 how this record -- let's start with Exhibit 3.

15 A Okay.

16 Q Can you walk us through and show us how it contained
17 the entire record of the electronic vote?

18 A Yep. So looking at the top, Michael Dahlen and Terry
19 Garrett, on 1/28. Sorry. 1/28 at 1:21, those two at the same
20 IP address, that is a ballot. The next two, Sherry and Brian
21 (phonetic) --

22 Q So --

23 A -- 1/28 at 1:57, at that IP address. That is a valid
24 result.

25 Q Okay. So how can you tell than how they voted --



1 A These --

2 Q -- based on this record? So the IP address, what
3 information does that tell you?

4 A The location it came from.

5 Q So that's actually the homeowner identifier?

6 A In this case, it's not what they put in to access the
7 ballots.

8 THE COURT: Okay. So when you say the number are you
9 mean the registration code is that number?

10 THE WITNESS: No.

11 THE COURT: Oh?

12 BY MR. GALLIKER:

13 Q The -- so she's actually asking the registration
14 number.

15 A Oh, this one.

16 Q Yes. Right.

17 THE COURT: The IP address --

18 THE WITNESS: Yes.

19 THE COURT: -- is that number starting, in the first
20 two cases, 75.204.9132?

21 THE WITNESS: That's the IP address.

22 THE COURT: And what is --

23 THE WITNESS: You can use a registration code as well
24 tied to -- to identify that that's the same individual.

25 BY MR. GALLIKER:



1 Q So I think -- let's back up just a little bit.

2 A Okay.

3 Q As the homeowner, how do they -- what is this
4 registration code?

5 A So we -- I could send in their account numbers, but
6 we protect that account number and instead have Vote HOA Now
7 take all the records and submit their own unique registration
8 code.

9 Q So in essence the Association provides, you already
10 testified, a list of all the homeowners and their lot numbers
11 to Vote HOA Now? Is that correct?

12 A Correct.

13 Q And then Vote HOA Now takes that and creates a unique
14 identifier for that particular homeowner?

15 A Correct.

16 Q And then the homeowner, if they log on, they must use
17 that unique identifier in order to be able to access the
18 electronic platform if (indiscernible) electronically, correct?

19 A Correct. For any property associated with that --

20 Q Okay.

21 A -- identifier.

22 Q So than by looking at this document, because the
23 first two entries have the same unique identifier and the same
24 IP address, that means that was one vote.

25 A Correct.



1 Q Because how many candidates were there at this 2024
2 election?

3 A Three.

4 Q And how many could each homeowner vote for?

5 A Two.

6 Q Okay. So walk us through -- let's take, for example,
7 the first ten. Can you do a little tally for us and explain
8 what you're doing? Walk us through what you're doing as you
9 tabulate the first about ten votes.

10 A First ten?

11 Q And --

12 A Okay. So you have one for Michael, two for Terry,
13 one for Brian, Michael, Terry, Michael, Brian, Terry, Brian.
14 So you have three, four, and three.

15 Q Okay. Could you follow that same process for all 40
16 pages of that spreadsheet to come up with the complete picture
17 of the electronic votes for the candidates?

18 A Yes. When you get to page 2 and there's blanks --
19 there's a blank -- there's a few blanks in there. You see on
20 the very right-hand side it says yes, yes, yes? You have to go
21 back to the first page where all the headers are. That's a
22 quorum only vote. So there's not going to be any board of
23 directors elections for that ballot.

24 Q Okay. So --

25 A Can I point out one more thing?



1 Q Please.

2 A Okay. On page 3, the very top of page 3, all of a
3 sudden it says Michael Dahlen, two; Terry Garrett, two. That's
4 because that ballot, that owner owns two properties. Each --

5 Q So --

6 THE COURT: If I can follow up on that? Each -- both
7 Michael and Terry own two properties?

8 THE WITNESS: No. This is not the homeowner; this is
9 the candidates.

10 BY MR. GALLIKER:

11 Q So the only names on this document are candidates and
12 it shows who they're voting for on this.

13 THE COURT: I wondered why there were so many of the
14 same names.

15 THE WITNESS: Same name.

16 THE COURT: I'm, like, these people own a lot of
17 properties. So the -- go back to page 1.

18 THE WITNESS: Um-hum.

19 THE COURT: First line is one vote for Michael
20 Dahlen?

21 THE WITNESS: Correct.

22 THE COURT: On Page 3, there's two votes by the same
23 person because there's two numbers that are exactly the same?

24 THE WITNESS: Two votes for Michael, two votes for
25 Terry. Correct.



1 MR. GALLIKER: Because they own two lots. That
2 homeowner with that unique identifier own two lots. In fact --

3 THE COURT: Okay. So I understand this, so.

4 MR. GALLIKER: Okay.

5 BY MR. GALLIKER:

6 Q So can you explain why are the homeowners' names are
7 not this spreadsheet? The names of the homeowners, the lot
8 numbers that are actually captured?

9 A Bylaws require secret ballot.

10 Q So how did the Association track or keep the record
11 of who was casting votes?

12 A The (indiscernible) came that way.

13 Q Yes, the Vote HOA Now record.

14 A So I guess if what you're asking is how did we know
15 who voted electronically then and who still got to submit a
16 paper vote?

17 A Yes.

18 Q Is that the question?

19 A Okay. So at the end they send it in, and they send
20 the results of who voted electronically and who voted -- who
21 didn't vote electronically. We take that, who didn't vote
22 electronically, and mark off the people who submitted absentee
23 ballots by their signature envelopes. And that, taking all of
24 those out, tells us who still gets a vote in-person.

25 Q So how does that compare with the absentee or in-



1 person voting process? That these are secret ballots, so in
2 neither condition can Mr. Sullivan, as a reviewer of the
3 documents, he can't tell who voted who for which candidate.
4 Correct?

5 A Shouldn't be able to.

6 Q Okay. So how is the secrecy preserved on the paper
7 ballot side?

8 A So the election committee comes in and they open all
9 of the envelopes and set the secret envelopes, which are still
10 sealed, they set them aside. And then after that, all of the
11 signature envelopes are collected. And then we go through and
12 open those. So before the election committee starts, the
13 election chairperson and I go through this list and make sure
14 that they haven't voted electronically.

15 Q So for those homeowners that vote in-person or by
16 absentee ballot, you have a stack of envelopes with the lot
17 number, the name of the homeowners. So you can verify who
18 voted and that they have the right to vote.

19 A That they have the right --

20 Q And then a separate unconnected pile of documents, in
21 essence, with the votes, the paper ballots. Correct?

22 A Correct.

23 Q So it's a similar process with the electronic vote,
24 correct? You have the spreadsheet showing all the homeowners
25 that voted electronically. Okay. And then separate

1 spreadsheets showing how they voted, correct?

2 A Correct.

3 Q Okay. Let's see. Okay. So Exhibit --

4 Petitioner's -- I'm sorry. Respondent's Exhibit 11, this is
5 the record of the homeowners that voted electronically,
6 correct?

7 A Oh, my eyes are (indiscernible). Yes.

8 THE COURT: I'm sorry. Exhibit 11 is who voted?

9 THE WITNESS: Who voted electronically.

10 THE COURT: Okay.

11 BY MR. GALLIKER:

12 Q Yeah.

13 A You can see in the second column from the right, it
14 asked if they submitted a paper ballot, and this said no
15 because this is just tracking the electronic. And when you see
16 that's blank, about halfway down, so Patricia Amos' (phonetic),
17 go over to the blank because she has two properties, so that
18 second address is taking up the second line.

19 Q Okay. Let's look at Exhibit 14. Can you explain
20 what this is?

21 A This back one back here?

22 Q Yes.

23 A Okay.

24 Q The second to the end.

25 A Which page?

1 THE COURT: It should be close to the very end of
2 that file.

3 MR. SULLIVAN: Thank you, Judge.

4 THE WITNESS: These are the issues associated with
5 the board of directors election ballots.

6 THE COURT: Okay. Hold on. So at the bottom, its
7 415. Does it say that?

8 MR. SULLIVAN: Thank you, Judge.

9 THE COURT: Um-hum. This is very (indiscernible).

10 MR. SULLIVAN: It is.

11 THE WITNESS: I (Indiscernible).

12 THE COURT: Okay. Not in the room with a magnifying
13 glass, but. All right. So generally what is the 14?

14 MR. SULLIVAN: Okay.

15 BY MR. GALLIKER:

16 Q On these ballots there was more the homeowners were
17 supposed to vote for besides just the directors who were left.
18 What does this request?

19 A The meeting minutes and the IRS revenue ruling.

20 Q So there's a question homeowners were supposed to
21 vote to approve the meeting minutes?

22 A Um-hum.

23 Q Or disapprove. And then also approve the IRS ruling
24 or disapprove, correct?

25 A Correct.



1 Q And is there -- does this record show an opportunity
2 to vote for or against?

3 A Yes.

4 Q And so how would you read the votes on this record?

5 A Okay. Choice 1 was to approve the meeting minutes,
6 choice 2 was to disapprove, choice 3, there was not a choice 3.
7 In this -- in the very first one, they voted 1, which would be
8 approve. They did not vote 2, it -- so it has a zero and 3 has
9 a zero. Going across, you have all your identifying
10 information, just shows that this is the same ballot as line
11 two, which was the IRS ruling. One was to approve, 2 was to
12 disapprove. With choice 1 having a one and choice 2 having a
13 zero, they voted to approve.

14 Q Okay. And --

15 THE COURT: So 14 is just on those two things, the
16 minutes and the IRS, right?

17 BY MR. GALLIKER:

18 Q Yes. So this Exhibit 14 then records all 1,461 votes
19 that provided to the approval of meeting minutes and the IRS
20 ruling.

21 A Unless they selected quorum only, than they wouldn't
22 have voted all things.

23 Q Okay. Okay. So this is the complete record of who
24 voted --

25 A Of who did vote, yes.

1 Q -- On these specific issues. Okay. And then let's
2 look at Exhibit 15.

3 A Okay.

4 Q Can you explain what this is?

5 A This one is the bylaws of -- issue, whether they want
6 to amend or not amend. But then, similar fashion, choice 1 was
7 to approve, choice 2 was to disapprove. The first one chose to
8 approve, the second one chose to disapprove. You would only
9 have one IP address on this because these are coming in one
10 single issue.

11 Q So you could go through Exhibit 15 and create your
12 own tabulation of every single person that voted on the bylaws
13 issue and then create your own (indiscernible) to verify the
14 results of that vote. Correct?

15 A Correct.

16 Q Okay.

17 THE COURT: What is the number at the end that says
18 how many were there?

19 MR. GALLIKER: That is the tally sheet for Exhibit
20 9 -- no -- Exhibit 10, Your Honor. The tally sheet for all the
21 votes with the tag of one.

22 THE COURT: Thank you.

23 BY MR. GALLIKER:

24 Q So Ms. Fowers, are there any documents related to the
25 February 24th annual meeting that were withheld from Mr.

1 Sullivan?

2 A No.

3 Q Are there any Association records that were not
4 produced for Mr. Sullivan's review?

5 A No.

6 MR. GALLIKER: No further questions.

7 THE COURT: Cross-exam?

8 MR. SULLIVAN: Thank you, Judge.

9 CROSS-EXAMINATION

10 BY MR. SULLIVAN:

11 Q Ms. Fowers, your testimony earlier was that as part
12 of the process of Vote HOA Now provided you with, I guess you
13 would call it a proposed electronic ballot?

14 A A proof.

15 Q A proof. Okay. So you saw that proposed electronic
16 ballot? Did you ever see the electronic ballot that was
17 actually published to the members?

18 A No.

19 Q Now, that's true also, and I don't want to be
20 redundant, but I also want to make sure we're clear that in
21 complying with the request to produce the ballots and other
22 election materials, the HOA did not produce the electronic
23 ballots?

24 MR. GALLIKER: Objection.

25 THE COURT: All right. So that's your position, sir.



1 I mean, her testimony -- their testimony and response to some
2 of my questions also gave me an indication of what the person
3 could see when they voted.

4 And unfortunately, you're not a homeowner, so you
5 didn't see it.

6 You voted absentee, so you didn't see it. Okay? So
7 I know that that's the case. So your position is they didn't
8 give you that thing that neither of you saw. Is that correct?

9 MR. SULLIVAN: That would be correct.

10 THE COURT: Okay.

11 MR. SULLIVAN: Yeah.

12 THE COURT: All right. So any other questions you
13 want to ask her?

14 MR. SULLIVAN: Well, Judge, the question I asked was
15 whether the HOA had produced the electronic ballots. I think
16 that that should be in the record.

17 THE COURT: So I think that it is in the record. I
18 mean, you asked that question and --

19 MR. SULLIVAN: But the answer should be in the
20 record.

21 THE COURT: So I think it already is, that there is
22 no copy of that thing that she didn't see and you didn't see.

23 MR. SULLIVAN: Okay.

24 BY MR. SULLIVAN:

25 Q And in your testimony a short while ago, you gave



1 reference, or you examined, Respondents Exhibit 3, 11, 14, and
2 15. Is that correct?

3 A Correct.

4 Q Who created those records?

5 A Vote HOA Now.

6 Q So you didn't participate creating those records?

7 A I had to separate them.

8 Q You didn't participate in creating the records that
9 you received from Vote HOA Now?

10 A No.

11 Q Now it would be fair to say that what you describe in
12 your testimony were what the Vote HOA Now was reporting to you
13 on paper as the results of an election?

14 A You said on paper?

15 MR. GALLIKER: Yeah. Objection.

16 BY MR. SULLIVAN:

17 Q All right. Exhibits 3, 11, 14, and 15. Is that
18 right?

19 A They provide them electronically.

20 Q All right. Let's go back and ask -- we'll go back to
21 the question again.

22 A Okay.

23 Q You didn't create any of those documents that are
24 Exhibits 3, 11, 14, and 15, right?

25 MR. GALLIKER: Objection. Asked and answered.



1 THE COURT: I'm going to (indiscernible) -- yes, it
2 has been answered. You printed them out once you received them
3 electronically; is that correct?

4 THE WITNESS: Correct.

5 THE COURT: All right.

6 BY MR. SULLIVAN:

7 Q All right. So you didn't create the records. You
8 received those records from Vote HOA Now?

9 A Yes.

10 MR. GALLIKER: Objection. Asked and answered.

11 THE COURT: Yes, she answered that.

12 MR. SULLIVAN: Okay.

13 BY MR. SULLIVAN:

14 Q And so those records reflect what Vote HOA Now is
15 reporting on paper, these documents that you examined, as the
16 results of the election?

17 A Yes.

18 Q Okay. But you didn't do any examination of any of
19 the electronic ballots yourself?

20 MR. GALLIKER: Objection. Relevance. Objection.
21 This has already --

22 THE COURT: Okay. So in answer to my question, both
23 of you never saw the electronic ballot. So she -- that --
24 that's the (indiscernible) to me. She's not a homeowner; she
25 didn't see it. You voted absentee.



1 MR. SULLIVAN: Right.

2 THE COURT: You didn't see it.

3 MR. SULLIVAN: My question probably should have been
4 worded differently, I guess.

5 BY MR. SULLIVAN:

6 Q You never saw any of the electronic ballots that were
7 submitted by homeowners who voted electronically?

8 MR. GALLIKER: Objection. We have already testified
9 that Exhibits 3, 11, 13, 14, and 15 are the record of the
10 electronic vote. That is what we have presented; that is what
11 we produced; that's what we have provided and testified of .
12 That's all there is.

13 THE COURT: So do you have an argument that is
14 against the presentation of what they have. So your question
15 is (indiscernible), as far as your argument, is that they
16 didn't produce something. So next question.

17 BY MR. SULLIVAN:

18 Q Well, are there any other documents that would show
19 us what each individual voter -- I'll strike that.

20 MR. SULLIVAN: I have no other questions, Judge.

21 THE COURT: Any redirect?

22 MR. GALLIKER: No, Your Honor.

23 THE COURT: All right then. Back to Mr. Sullivan.
24 Any rebuttal for me? Rebuttal testimony with regards to their
25 information and/or do you just want to move into closing?



1 MR. SULLIVAN: I think we're going to close, Judge.

2 THE COURT: All right. So as Complainant, we give
3 you the last word in closing, so Respondent's closing?

4 MR. GALLIKER: Yes. So what we've heard today, Your
5 Honor, relates to whether or not the Association complied with
6 33-1812 by providing and producing its records for review to
7 Mr. Sullivan. The Association has testified they provided
8 everything that exists. There isn't a stack of documents
9 somewhere that they're hiding that has not been produced.

10 The Association has testified, and Mr. Sullivan has
11 acknowledged, that they produced every record that the
12 Association has. The reason Mr. Sullivan appears to not be
13 satisfied is, as the Court accurately mentioned, he really
14 wanted to see a screenshot before the homeowner pushed submit
15 on that electronic vote. That doesn't exist. And by
16 application of 33-1812 also, it doesn't need to exist. The
17 Association, by the language of 33-1812 A, as I indicated in my
18 opening statement, is required to allow homeowners to vote in
19 person and by absentee ballot. There's no dispute there. They
20 absolutely met that requirement.

21 But 33-1812 also allows the Association to provide,
22 this is the direct quote, The association may provide for
23 voting by some other form of delivery. Some other form of
24 delivery means it doesn't have to be in the exact ballot
25 format. Yes, as you go through the subsection 1 through 7



1 below are -- there is a qualifier there before we get to any of
2 those other (indiscernible). If absentee ballots, or ballots
3 provided by some other form of delivery are used.

4 So there -- for the ballot itself, yes, all these
5 parts need to be kept. But what is in this electronic
6 delivery, is it even a ballot? The information that was
7 presented to the Court today demonstrates that the voting
8 mechanism is secure. Each homeowner is given a unique
9 identifier. They are able to -- Vote HOA Now is able to
10 confirm that two homeowners are not voting twice once that
11 unique identifier has used it, its (indiscernible).

12 But the statute expressly allows the Association to
13 collect those votes, or allows homeowners to deliver their
14 votes, by some other means, and in this case that's what
15 happened. The Association allowed homeowners to deliver their
16 votes by another means and that other means was by electronic
17 vote, by Vote HOA Now. It's a method of delivery; it is
18 permitted by statute. But it's not -- we have referred during
19 this discussion to what the homeowner sees as a ballot, as an
20 electronic ballot. But the reality is it's a user interface;
21 it exists only in a software state. And the important thing is
22 what vote is delivered through that mechanism. And the vote is
23 what's important and that is what is preserved.

24 I have represented many HOA clients. I have had
25 homeowners sent an email to the Association saying, oh, I can't



1 find my ballot, but I want to cast my vote for this candidate,
2 this candidates. There's no ballot, but the vote is counted.
3 A ballot wasn't used to deliver that vote to the Association in
4 that instance. In this particular setting as well, it is an
5 electronic means of delivery of the vote.

6 And the information that is preserved and reported is
7 sufficient so any homeowner in the entire community can look at
8 these documents. And essentially, we create an absentee ballot
9 for every vote that was cast. But these votes were not cast
10 using that same method. I think they were cast using an
11 alternative means and that means was electronic delivery of
12 their votes through Vote HOA Now.

13 As Ms. Fowers testified, with every single vote for a
14 candidate, you can go through -- Mr. Sullivan, if he wanted to,
15 he could create a tally sheet of all 1,461 votes cast
16 electronically and independently verify that, yes, his numbers
17 have tallied the vote are correct. Same thing with that bylaw
18 amendments and the IRS ruling and meeting minutes. All the
19 information is there. In fact, there's even more information
20 than is found on the paper version of the absentee ballot.

21 The Association's position with respect to this
22 petition is they provided every document that exists. And the
23 documents that exist are sufficient. The statute expressly
24 allows the Association to make arrangements for homeowners to
25 deliver their vote in an alternative means in addition to



1 absentee ballot or paper ballot. And that's exactly what they
2 did for the purpose of casting as wide a net as possible to
3 include as many homeowners as possible. Clearly, it is a very
4 popular option. It is safe and secure.

5 Mr. Sullivan has not met his burden to show that
6 there was any violation of the statute here. He has an
7 argument that he would like to see this statute read
8 differently. He would want screenshots of every vote that was
9 cast, but that's not required. The Association presented
10 everything they had; the documents are accurate; everything was
11 provided to Mr. Sullivan. Mr. Sullivan has not met his burden
12 to show there has been any violation of 33-1812. And so the
13 Association requests that this petition be denied.

14 THE COURT: Thank you.

15 Mr. Sullivan, your closing statement.

16 MR. SULLIVAN: Judge, the statute is unambiguously
17 clear that if some other form of delivery is used and for any
18 action...at...an annual...special meeting of the members, that
19 the -- and if absentee ballots or ballots provided by some
20 other form of delivery or used that -- and the number 7, 13
21 (sic)-1812, 87 (phonetic), Ballots, envelopes and related the
22 materials...shall be retained in electronic or paper format and
23 made available for member inspection...

24 In this case, it's very clear that they did not
25 produce the ballots, and they admit they didn't produce the



1 ballots for inspection. What they want to try to lead you to
2 believe is that the voter just selected things out of thin air
3 and sent in a vote of some type.

4 I contend, Judge, it's just logically apparent that
5 before a voter can vote for any particular candidate for the
6 board of directors, he has to be presented with names to select
7 from. That would have appeared on the screen. That's the
8 ballot. Also there were three proposed separate actions on the
9 on the paper ballot (indiscernible) would require for a
10 potential voter to read and make an election from. They don't
11 just pick their votes out of thin air.

12 Now I think I've demonstrated, Judge, that there were
13 instructions on voting electronically by electronic ballot.
14 There were invitations to vote by electronic ballot. The HOA
15 has chosen to use paper and electronic ballots in its election
16 for director. And so those ballots should have been produced.

17 Now, I know that the term screenshot has been used a
18 couple of times, but a screen shot is something that you use
19 your own computer to take a picture of the screen that you're
20 looking at. But in this particular case, Vote HOA Now would
21 have sent a ballot to every single potential voter. And each
22 one of those ballots was --possibly -- it was possible to
23 preserve the (indiscernible) ballots.

24 MR. GALLIKER: Objection. That fact's not in
25 evidence. There's no fact Vote HOA Now --

1 THE COURT: He's making an argument. He's making an
2 argument, and I don't -- I don't have evidence. Thank you.
3 Okay. So your statement that you're asserting Vote HOA Now
4 would have sent a ballot. Is that what you're saying?

5 MR. SULLIVAN: Well, the evidence is that they did in
6 fact send a ballot. If you look at Exhibit 1, you'll see that
7 that's in there. Exhibit 1 is the statements made by the HOA.
8 They did in fact send a ballot out. And so if Vote Now HOA
9 (sic) -- Vote HOA Now, rather, had sent out a ballot to every
10 voter, they should have a copy of the ballot that they sent out
11 in electronic form which they can then print out.

12 What the Association is arguing and asking you to
13 accept is that Vote HOA Now produced results of the election
14 and those should be trusted because they were produced by Vote
15 HOA Now. There's no way, based on the evidence that's
16 presented, to verify that the results that are being reported
17 by Vote HOA Now are accurate. There's no way to examine any
18 materials to determine the accuracy of their reporting.

19 And it's virtually impossible to determine whether
20 the ballot that was produced meets all of the other
21 requirements which would be part of the inspection. The
22 inspection would include whether the ballot set forth each
23 proposed action; the ballot provides an opportunity to vote for
24 or against each proposed action; and that the ballot specified
25 the time and date which must be delivered; and the ballot does

1 not authorize another person to cast their vote on behalf of
2 the member. That's all part of what would be done if there was
3 an inspection.

4 So the ballot has to comply to that. And the ballot
5 should have been produced for inspection not only to verify
6 that the results of the election, but to verify that the vote
7 was in its proper form, or that the ballot was in its proper
8 form, Judge.

9 And then, Judge, I'd like to talk about, if you don't
10 mind, Whitmer v. Hilton Casitas Homeowners Association. And
11 that's because I'm asking the tribunal to recommend orders that
12 either permit or require specific conduct on the part of the
13 HOA.

14 Now, under Whitmer v. Hilton Casitas Homeowners
15 Association, which is --

16 THE COURT: (Indiscernible). Do you have a copy for
17 me?

18 MR. SULLIVAN: I do have a copy for you, Judge.

19 MR. GALLIKER: Do you have a copy for me as well?

20 MR. SULLIVAN: There you are.

21 THE COURT: Great. Thank you, sir. So what's your
22 position on this?

23 MR. SULLIVAN: Under Whitmer, Judge, it's a
24 memorandum decision by Division One. And what Division One
25 considered in that case is whether an order by an

1 administrative law judge in a homeowners' case to -- in order
2 to obey the statute that was involved, is an enforceable order.

3 And in that case, what happened is that the HOA had
4 not been complying with the condominium act with respect to
5 budgetary process and a homeowner complained about it. There
6 was a hearing here at the Office of Administrative Hearings.
7 And the officer of administrative hearings -- administrative
8 law judge issued an ordered an order for Hilton Casitas to obey
9 the statute. And then a few years went by, I believe it was
10 eight years, and there were recurring violations of the same
11 nature that arose from the first instance.

12 And Mr. Whitmer went to the Superior Court to enforce
13 the order to obey the statute. And the Superior Court found,
14 and the -- Division One agreed with them, that there were two
15 problems with that order. One was that the order needs to
16 specify either conduct to be prohibited or conduct to be
17 required. Simply an order to obey a statute is too vague to be
18 enforced as a court order or as an administrative order.

19 And the other defect that the Superior Court found, and that
20 Division One agreed with, is that there needs to be a temporal
21 limit. In the case of Mr. Whitmer and Hilton Casitas, the
22 order didn't have any ending time. It went on, theoretically,
23 indefinitely into the future.

24 And so what we've proposed, Judge, and it's in the
25 proposed orders that I submitted to you, we're proposing that

1 you recommend orders that the HOA be prohibited from utilizing
2 a system which does not retain the ballots or also be
3 prohibited from utilizing the vendor that doesn't retain the
4 ballots. Now because Whitmer calls for either a requirement to
5 prohibit or require conduct, the other way is that -- the order
6 could be written, if you're inclined to do so, would be to
7 write an order that requires the HOA, when using an electronic
8 voter vendor, to only use a system that would retain the
9 ballots. You can either prohibit or require -- you can either
10 prohibit them from not showing it or you can require them to do
11 so. And that way it fits into what Division One has required
12 under Whitmer v. Hilton Casitas. And then we're also asking
13 that for the restrictions on the -- restrictions or
14 requirements, that it have a five-year expiration date in order
15 to meet the temporal requirements of Whitmer v. Hilton Casitas.

16 So we're asking that you find that we've prevailed
17 and that we're entitled for reimbursement of our \$500. The HOA
18 has not complied with the statutes; they have not provided the
19 ballots that were used for any electronic collection, Judge.

20 Thank you.

21 THE COURT: (Indiscernible) All right. Thank you.

22 Thank you very much. I have the information and your
23 arguments. And let me say we are finished with the hearing and
24 off the record.

25 (Proceedings concluded)



CERTIFICATE

I, ABIGAIL FARMER, a court-approved transcriber, do hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, to the best of my professional skills and abilities.

/s/

ABIGAIL FARMER,
Transcriber

November 11, 2024



Respondent's Response in Opposition to Petitioner's Dispute Rehearing Petition

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11 **OFFICE OF ADMINISTRATIVE HEARINGS**

12 **STATE OF ARIZONA**

13 **1740 W. Adams St., Lower Level, Phoenix, Arizona 85007**

14 AZNH REVOCABLE TRUST, by and
15 through JOHN and SUSAN SULLIVAN,
16 TRUSTEES, REAL PARTIES IN
17 INTEREST,

18 Petitioner,

19 vs.

20 SUNLAND SPRINGS VILLAGE
21 HOMEOWNERS ASSOCIATION,

22 Respondent.

File No. 24F-047

Docket No. 24F-H047-REL

**RESPONDENT'S RESPONSE IN
OPPOSITION TO PETITIONER'S
DISPUTE REHEARING PETITION**

23 Respondent Sunland Springs Village Homeowners Association (the "Association"),
24 by and through undersigned counsel, hereby responds in opposition to Petitioner's Dispute
25 Rehearing Petition ("Motion for Rehearing"). Contrary to Petitioner's rhetoric, the
26 Administrative Law Judge properly understood the issues, correctly analyzed the law as
27 applied to the facts presented, and issued a well-reasoned opinion. The decision of the
28 Administrative Law Judge should be affirmed, and Petitioner's Motion for Rehearing should
be denied.

1 **I. BACKGROUND.**

2 In February 2024, the Association held its annual meeting. As required by A.R.S. §
3 33-1812(A), the Association provided its members with the option of casting their votes by
4 absentee ballot or in person at the annual meeting. Additionally, as also permitted by A.R.S.
5 § 33-1812(A), the Association provided another method for its members to cast their votes.
6 The Association contracted with *Vote HOA Now* to assist in providing an electronic voting
7 option to its members.
8

9 The electronic voting process created by *Vote HOA Now* for the benefit of the
10 members of the Association utilized a secure website where homeowners were able to
11 submit their votes after using a unique identifier to log in to the website. (*See* Transcript of
12 Proceedings (hereafter “Tr.”), 45:9-25.) Each of the homeowners who cast their votes
13 electronically logged in to the same website to which access could only be obtained once by
14 using the homeowner’s unique identifier. Each such homeowner typed or entered their
15 voting choices into the user interface and pressed submit. Pressing submit captured the
16 homeowner’s vote in spreadsheets, which were then provided to the Association as the
17 record of the electronic vote. (*See* Tr., 41-54.)
18
19

20 Following the 2024 annual meeting of the Association, Petitioner submitted a request
21 to see the voting records. In response, the Association provided Petitioner copies of all of
22 the absentee and in-person ballots cast, the sign-in sheets and envelopes, as well as the
23 spreadsheets detailing the votes cast electronically. Petitioner asserted, however, that there
24 should have been a separate ballot for each vote cast electronically. The Association
25 explained that while the statute required the Association to allow homeowners to cast their
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1 votes by in person and absentee ballots, it also gave the Association the option of allowing
2 their homeowners to deliver their votes another way. (See A.R.S. § 33-1812(A).) The
3 Association advised Petitioner that in this instance, the Association had availed itself of the
4 permission granted in A.R.S. § 33-1812(A) and provided the option of allowing their
5 homeowners to deliver their votes electronically through the *Vote HOA Now* platform. The
6 Association confirmed for Petitioner that the electronic voting process did not result in a
7 separate ballot generated for each vote cast electronically, but instead captured the votes on
8 spreadsheets, which spreadsheets had been provided to Petitioner in connection with his
9 records request. Petitioner rejected the Association's explanation.

12 Petitioner filed a single-issue petition with the Department of Real Estate. Petitioner
13 asserted that the Association had violated A.R.S. § 33-1812(A)(7) by failing or refusing to
14 produce about 1,500 ballots from the February 2024 annual meeting. (See Petition No. 24F-
15 H047 filed by Petitioner in this matter.) In response, the Association denied Petitioner's
16 allegation and asserted through filings in this matter that all documents and records related
17 to the 2024 annual meeting and election had been produced to Petitioner and that there were
18 no additional documents in existence that satisfied his request for documents.
19 9407 1098 98 64

21 At the hearing held in this matter, Petitioner bore the burden of proving that the
22 Association violated A.R.S. § 33-1812 by failing to produce documents related to the
23 election. The evidence presented, however, confirmed that the Association had in fact
24 produced every document that existed related to the 2024 annual meeting and election. The
25 Administrative Law Judge recognized the errors and holes in Petitioner's assertion that the
26 Association failed to produce nearly 1,500 ballots when the 1,500 votes referenced were not
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1 cast by paper absentee ballot but were instead cast electronically. Inasmuch as the complete
2 record of all votes cast electronically as well as the complete record of all votes cast by
3 absentee or in person ballot were produced by the Association pursuant to Petitioner's
4 records request, the Administrative Law Judge correctly held that Petitioner did not sustain
5 his burden of proof, requiring denial of his Petition. Despite undisputed evidence and
6 testimony confirming that the electronic voting process did not record homeowner votes on
7 ballots, but rather, on spreadsheets, and despite undisputed evidence and testimony that all
8 existing documents (including the spreadsheets from the electronic voting) were properly
9 produced, Petitioner filed his Petition for Rehearing asserting that the ruling was erroneous
10 because the Administrative Law Judge did not require the Association to produce documents
11 that do not exist (i.e., a ballot for each vote cast electronically).

12 **II. LEGAL ARGUMENT**

13 **A. Petitioner Failed to Sustain His Burden of Proof.**

14 The Administrative Law Judge correctly held that Petitioner failed to carry his burden
15 as he failed to present any evidence to support his contention that there is a separate
16 electronic ballot generated or retained by *Vote HOA Now* that the Association should have
17 produced. Arizona law is clear that votes need not be cast by ballot. (*See* A.R.S. § 33-
18 1812(A).) Homeowner associations in Arizona are required to provide the option to their
19 members to vote by absentee ballot and in person at the meeting. (*See id.*) As long as an
20 association provides these two options for its members, the homeowners association may
21 also provide alternative ways for homeowners to deliver their votes. (*See id.*) For example,
22 as long as the ballot options were provided, an association would be permitted under A.R.S.
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1 § 33-1812(A) to allow homeowners to vote at a meeting by raising their hands in favor of
2 the candidates they support. If such a method were employed, the record of the vote would
3 not be recorded on ballots, but would be recorded, presumably, in some written format
4 tabulating the number of hands raised for each candidate. There would be no ballots to
5 review for those votes cast by raised hand, yet the vote would still be acceptable under
6 Arizona law and the complete record of the vote could still be obtained by interested
7 homeowners through the tabulation sheet.
8

9
10 In this instance, the Association allowed homeowners to cast their votes both by
11 ballot and through the electronic means provided by *Vote HOA Now*. (Tr., 34:15-25.) The
12 evidence presented at the hearing confirmed that *Vote HOA Now* was provided with a copy
13 of the paper ballot to enable *Vote HOA Now* to create an appropriate user interface on its
14 website where homeowners could cast their votes. (Tr., 35:16-25; *see also* Ruling, at ¶ 9.)
15 Although the user interface was referred to as an “electronic ballot”, the evidence confirmed
16 that there was not a unique “electronic ballot” provided to all homeowners that could be
17 completed and returned. Rather, the “electronic ballot” was simply a user interface on a
18 website used for the purpose of collecting votes. (Tr., 45:13-18.) The homeowners were not
19 provided separate electronic ballots, but were simply provided a link to *Vote HOA Now’s*
20 website where they could log in using their lot-specific identifier and cast their vote through
21 the website’s user interface. (*See id.*) The votes were recorded on spreadsheets (not on
22 ballots) that were later provided to the Association. (Tr., 37:5-6.)
23
24
25

26 The Association’s testimony and documentary evidence supported the Association’s
27 contention that there was not a separate “electronic ballot” generated through the electronic
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1 voting process. (Tr., 37:5-6; 43:8-12; 46:12-23.) The Association’s witness testified, and
2 Petitioner acknowledged, that no other documents existed related to the 2024 election
3 besides those provided to Petitioner. (Tr., 32:6-10; 53:24-25; 54:1-5.) The documentary
4 evidence admitted at the hearing included the entire universe of records that were responsive
5 to Petitioner’s request. (*See id.*) The Association testified that it has no other records and
6 that no other records existed related to the February 2024 annual meeting and election. (*See*
7 *id.*) Likewise, Petitioner testified that he never actually even saw any “electronic ballot”.
8 (Tr., 40:4-6; 55:4-11.) Petitioner presented no evidence that other documents related to the
9 2024 election exist. Petitioner offered nothing but his personal thoughts and ideas about
10 electronic voting at the hearing. The record confirms that Petitioner offered no admissible
11 evidence to support his ideas or position. Without any evidence to support his ideas and
12 arguments, there was no other decision the Administrative Law Judge could have made
13 besides entering a holding that Petitioner failed to carry his burden of proof.
14
15

16
17 **B. The Administrative Law Judge Properly Addressed A.R.S. § 10-3708.**

18 Petitioner asserted in his Motion for Rehearing that the Administrative Law Judge’s
19 ruling was flawed because A.R.S. § 10-3708 was not discussed at the hearing. Petitioner’s
20 argument is disingenuous at best. The hearing was to present evidence. The law is not
21 evidence and does not need to be “admitted” in order to be considered. To the contrary, the
22 Judge’s responsibility is to consider and apply the relevant law in light of the evidence
23 presented.
24
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26 Moreover, A.R.S. § 10-3708 is expressly referenced in A.R.S. § 33-1812, the very
27 statute Petitioner complained was violated by the Association. If A.R.S. § 33-1812 expressly
28

1 references and relies upon A.R.S. § 10-3708 to set forth the law as it relates to ballots and
2 voting, there is no error for the Administrative Law Judge to do the same. In fact, because
3 the text of A.R.S. § 33-1812 expressly identifies A.R.S. § 10-3708, the Administrative Law
4 Judge’s Decision would likely have been deficient if it did not also address the embedded
5 language from the Nonprofit Corporations Act.
6

7 Petitioner’ contention that the judge improperly considered A.R.S. § 10-3708 is
8 further misrepresentative and misleading because A.R.S. § 10-3708 was central to
9 Petitioner’s petition. While Petitioner identified A.R.S. § 33-1812 as having been violated
10 by the Association, Petitioner’s contention that the Association violated A.R.S. § 33-1812
11 was heavily influenced by his improper reading of A.R.S. § 10-3708. From his first demand
12 to the Association, to the Petition he filed with the Department of Real Estate to his Motion
13 for Rehearing, Petitioner has relied on his reading of A.R.S. § 10-3708 to form his arguments
14 against the Association as they relate to the requirements of A.R.S. § 33-1812. He cannot
15 now claim that the Administrative Law Judge erred by incorporating A.R.S. § 10-3708 into
16 her ruling.
17
18

19 A.R.S. § 10-3708(F) provides guidelines regarding voting by electronic means.
20 According to the Arizona Nonprofit Corporations Act, nonprofit corporations may utilize an
21 electronic voting system provided the electronic voting system does four things: “(1)
22 authenticates the member’s identity; (2) authenticates the validity of each electronic vote to
23 ensure that the vote is not altered in transit; (3) transmits a receipt to each member who casts
24 an electronic vote; and (4) stores electronic votes for recount, inspection and review
25 purposes.” Provided these four requirements are satisfied, nonprofit corporations are
26
27
28

1 authorized under Arizona law to utilize electronic voting.

2 The Court correctly referenced and analyzed A.R.S. § 10-3708(F) in its ruling. The
3 Court correctly noted that A.R.S. § 10-3708(F) requires an electronic voting system to store
4 the electronic votes for recount, inspection and review, but does not require that the user
5 interface, that Petitioner refers to as the “electronic ballot”, be preserved for inspection. Only
6 the *votes* cast electronically must be retained according to A.R.S. § 10-3708(F). This is a
7 reasonable requirement because in electronic voting systems, there are no actual ballots that
8 can be retained. As explained above, the votes are input through a user interface and recorded
9 on a spreadsheet and not on a ballot. Consequently, the Court’s holding that the Association
10 properly preserved and produced the votes cast electronically and that Petitioner presented
11 no evidence to the contrary properly resolved the matter based squarely on both the facts
12 and the law. Petitioner has not identified any valid grounds in his Motion for Rehearing to
13 overturn the Court’s ruling. As such, the Court’s ruling must be affirmed.
14
15

17 **C. The Administrative Law Judge’s November 5, 2024 Decision Correctly**
18 **Summarized Petitioner’s Arguments.**

19 Petitioner repeatedly claimed that the Administrative Law Judge erred by misstating
20 his position. As with his other arguments, this contention likewise lacks any merit. The
21 Administrative Law Judge may not have quoted Petitioner’s arguments exactly as he phrased
22 them, but her November 5, 2024 Decision accurately cut to the heart of Petitioner’s
23 arguments and exposed their flaws.
24

25 On Page 1, lns. 23-24 of his Motion for Rehearing, Petitioner asserted that the
26 Administrative Law Judge incorrectly stated that Petitioner argued that “*Vote HOA Now* was
27 required to retain images of the” computer screens of every homeowner who voted
28

1 electronically before pushing submit to turn in their vote. Petitioner claims this factual
2 finding by the Court was not true because he did not use those exact words. But the transcript
3 confirms that based on his testimony and argument, that is exactly what he was wanting. At
4 the hearing, the Administrative Law Judge, seeing the impossibility of Petitioner's
5 suggestion, sought clarification from Petitioner. The Court asked, "So you are, let me just
6 make sure I understand, you are requesting a screenshot of every one of the 1,451 ballots. Is
7 that what you're asking for?" Petitioner responded, "Well, not necessarily a screenshot,
8 Judge. But the ballots that appeared [on the computer screen] to the voter [that] was prepared
9 by *Vote HOA Now*", that is what he wanted to see. (Tr. 39: 14-19.) In other words, Petitioner
10 wanted a screenshot, or an image, of every computer screen before the voting homeowner
11 submitted their vote. Petitioner's criticism of the Administrative Law Judge's ability to
12 understand Petitioner's arguments and synthesize their true nature was unwarranted.

13
14
15
16 It may be helpful to note that going forward, the Association will not refer to
17 "electronic ballots" in connection with future annual meetings, as the description is a
18 misnomer. Rather, the Association's material and announcements will correctly refer to
19 homeowners' ability to cast their votes electronically through the *Vote HOA Now* website,
20 and not by "electronic ballot". Inasmuch as the Association's past use of the phrase
21 "electronic ballot" has generated confusion because the phrase is not an accurate description
22 of the electronic voting process, the phrase will be removed from future election materials.
23 However, the Association's mislabeling of the electronic voting process does not itself create
24 a violation of A.R.S. § 33-1812. All ballots used by homeowners to vote in the 2024 election
25 were preserved and produced upon request for inspection. Additionally, all records of votes
26
27
28

1 cast electronically were likewise preserved in the format they were recorded: on
2 spreadsheets; not on ballots. Use of the proper terminology will hopefully help avoid
3 challenges such as those brought by Petitioner in the future. Regardless, inaccurate reference
4 to the electronic voting process as using “electronic ballots” does not change the fact that
5 the process actually involves a website with a user interface where homeowners input their
6 votes and then submit them where they are captured on a spreadsheet, and not individual
7 ballots. The Decision of the Administrative Law Judge was accurate and proper. It should
8 be affirmed and Petitioner’s Motion for Rehearing should be denied.
9
10

11 **III. CONCLUSION.**

12 As explained above, the Administrative Law Judge correctly found that Petitioner
13 failed to carry his burden in proving his case. In fact, the undisputed evidence was that the
14 Association produced to Petitioner all documents in existence related to the 2024 annual
15 meeting and election. Petitioner had no evidence to dispute the Association’s full and
16 compliant disclosure. Additionally, the Administrative Law Judge correctly applied the
17 relevant law, including A.R.S. § 10-3708 as incorporated into A.R.S. § 33-1812, to conclude
18 that the Association had not violated the statute. As such, the Association requests that
19 Petitioner’s Motion for Rehearing be denied and that the Decision be affirmed.
20
21

22 RESPECTFULLY SUBMITTED this 23rd day of December, 2024.

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

24
25 By /s/Chad M. Gallacher
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1 **ORIGINAL** of the foregoing
2 filed this 23rd day of
3 December, 2024, to:

4 ADRE Message Center
5 www.azre.gov/message-center

6 **COPY** of the foregoing mailed
7 and emailed this 23rd day of
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ARIZONA OFFICE OF ADMINISTRATIVE HEARINGS

AZNH REVOCABLE TRUST,

Petitioner,

vs.

SUNLAND SPRINGS VILLAGE
HOMEOWNERS ASSOCIATION,

Respondent.

No. 24F-H047-REL

Phoenix, Arizona
September 18, 2024

AMENDED

BEFORE ADMINISTRATIVE LAW JUDGE KAY ABRAMSOHN

TRANSCRIPT OF PROCEEDINGS

Arizona Department of Real Estate Complaint

Proceedings recorded by electronic sound recording; transcript
produced by eScribers, LLC.

ABIGAIL FARMER
Transcriptionist



I N D E XSeptember 18, 2024

| <u>PETITIONER'S WITNESSES</u> | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> | <u>RECROSS</u> | <u>VD</u> |
|-------------------------------|---------------|--------------|-----------------|----------------|-----------|
| John Sullivan | -- | 26 | -- | -- | -- |
| <u>RESPONDENT'S WITNESSES</u> | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> | <u>RECROSS</u> | <u>VD</u> |
| Cathy Fowers | 31 | 54 | -- | -- | -- |

M I S C E L L A N E O U S

| | <u>PAGE</u> |
|--------------------------------|-------------|
| Petitioner's Opening Statement | 9 |
| Respondent's Opening Statement | 12 |
| Respondent's Closing Argument | 59 |
| Petitioner's Closing Argument | 62 |

EXHIBITSPETITIONER'S EXHIBITS

| <u>NO.</u> | <u>DESCRIPTION</u> | <u>ID</u> | <u>EVD</u> |
|------------|---|-----------|------------|
| 1 | Objection to Motion for Additional Subpoena | 16 | 9 |
| 2 | HOA Bylaws | 10 | 9 |
| 3 | Invitations sent on different dates | 22 | 9 |
| 4 | Ballot submission instructions sent by HOA | 21 | 9 |
| 5 | Request made by Petitioner | 19 | 9 |
| 6 | Receipt for Filing Fee | 22 | 9 |
| 7 | ** | -- | 9 |
| 8 | ** | -- | 9 |
| 9 | ** | -- | 9 |
| 10 | Objection to Motion for Additional Subpoena | -- | 9 |
| 11 | Objection to Motion for Additional Subpoena | -- | 9 |
| 12 | Paper copy of absentee ballot | 18 | 9 |
| 13 | Objection to Motion for Additional Subpoena | -- | 9 |
| 14 | Objection to Motion for Additional Subpoena | 50 | 9 |
| 15 | Objection to Motion for Additional Subpoena | -- | 9 |

RESPONDENT'S EXHIBITS

| <u>NO.</u> | <u>DESCRIPTION</u> | <u>ID</u> | <u>EVD</u> |
|------------|--------------------------|-----------|------------|
| 1 | ** | -- | 9 |
| 2 | ** | -- | 9 |
| 3 | Vote HOA Now Spreadsheet | 15 | 9 |



| | | | |
|----|--|----|---|
| 4 | ** | -- | 9 |
| 5 | ** | -- | 9 |
| 6 | ** | -- | 9 |
| 7 | ** | -- | 9 |
| 8 | ** | -- | 9 |
| 9 | ** | -- | 9 |
| 10 | Issues associated with election | -- | 9 |
| 11 | List of those who voted electronically | 50 | 9 |
| 12 | Issues associated with election | -- | 9 |
| 13 | Issues associated with election | -- | 9 |
| 14 | Issues associated with election | 15 | 9 |
| 15 | Vote associated with HOA Bylaws | 15 | 9 |

APPEARANCESSeptember 18, 2024

Administrative Law Judge: Kay Abramsohn

For the Petitioner:

John Sullivan

Witnesses:

John Sullivan

For the Respondent:

Ted Galliker

Witnesses:

Kathy Fowers



Phoenix, Arizona

September 18, 2024

(Administrative Law Judge Kay Abramsohn Presiding)

ARIZONA DEPARTMENT OF REAL ESTATE COMPLAINT:

THE COURT: Good morning. We're on the record.

This hearing before the Arizona Office of Administrative Hearings is now in session. Today is September 18, 2024. My name is Kay Abramsohn. I'm the administrative law judge assigned for this matter. And we are convening the hearing in docket number 24F-H047-REL for AZNH Revocable Trust, filed through John and Susan Sullivan, trustees, real parties in interest, as Petitioner versus Sunland Springs Village Homeowners Association as Respondent.

And my agency is an independent state agency. We conduct hearings on behalf of about 45 different agencies, boards, and commission, so every hearing's a little bit different. But in this instance, what happened is the complaint got filed with the Arizona Department of Real Estate. There's a few things that happened over there with it. They get some communication from the parties and then the matter gets forwarded over here. So we get a copy of the notices, I call it the notice of hearing packet, it's got the petition, attachments, response, any other communication from Real Estate back to the parties and so that's about it.

I have that information and then the parties have



1 filed significant amount of exhibits, so I have that
2 information. We spoke a little bit off the record. And I
3 have some from Mr. Sullivan--, from Petitioner, Mr. Sullivan, 1
4 through 15 and I have from Respondent, the Homeowners
5 Association, 1 through 15. They're in various places here.
6 While you're presenting the information give me a chance to get
7 to that exhibit if I don't have a copy of it and that's about
8 it.

9 Do I have any questions on the record before we
10 start?

11 Mr. Sullivan?

12 MR. SULLIVAN: No questions, Judge.

13 THE COURT: All right.

14 UNIDENTIFIED SPEAKER: No, Your Honor.

15 THE COURT: All right. Is it Galliker (phonetic)?

16 MR. GALLIKER: Yes.

17 THE COURT: Okay. Good.

18 MR. GALLIKER: I (Indiscernible)

19 THE COURT: And let's do appearances first.

20 Will you please state your name for the record, sir?

21 MR. SULLIVAN: Attorney John Sullivan for AZNH

22 Revocable Trust and its trustees.

23 THE COURT: All right. Thank you, sir.

24 MR. GALLIKER: Attorney Ted Galliker on behalf of
25 Sunland Springs Village Homeowners Association. I have with me



1 today Kathy Fowers, who is the Community Manager for the
2 Association. We also have three board members that just wanted
3 to come observe and see how the proceedings went today. And we
4 have our board president, Paul Marendia. We have Monica Stein,
5 and Brian Crowe, who are also members of the board of
6 directors.

7 THE COURT: All right. Thank you. All right then.
8 Let me go ahead and swear in Mr. Sullivan and Flowers (sic) --
9 Ms. Flowers (sic).

10 MS. POWERS: Hi. There's no L.

11 THE COURT: Fowers. Got it. Okay. Thank you.

12 Mr. Sullivan?

13 MR. SULLIVAN: Yes, Judge.

14 THE COURT: Thank you.

15 Ms. Fowers?

16 MS. FOWERS: Yes.

17 (Parties sworn)

18 THE COURT: All right. So I've indicated -- one of
19 the things that I typically do is go ahead and admit all of the
20 exhibits. And then I'll hear concerns or objections during the
21 presentation. If that exhibit gets proposed for consideration,
22 in the sense that I get some testimony about it. It saves a
23 lot of time in asking for things to be admitted and hearing the
24 objections per se. And typically in these matters, I still
25 consider relevance with regard to it, but it's just easier to



1 say they're in. But you got to tell me something about it
2 outside of the time, whether it's information that can help me,
3 whether it's relevant, and then we'll go from there. So
4 they're all in 1 through 15, 1 through 15.

5 (Petitioner's Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11,
6 12, 13, 14, 15 Received)

7 (Respondent's Exhibits 14, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11,
8 12, 13, 14, 15 Received)

9 And I expect you to either tell me about it or pass
10 over it because once you get going it's just not going to work
11 or it's not going to be relevant.

12 All right. So Mr. Sullivan.

13 MR. SULLIVAN: Thank you, Judge.

14 THE COURT: Do you have an opening statement?

15 MR. SULLIVAN: Yes, Judge. I'm actually making an
16 opening statement and then I'll move right into evidence,
17 Judge.

18 THE COURT: All right.

19 MR. SULLIVAN: In this matter, I believe that the
20 evidence will show you that the HOA conducted an election in
21 February of 2024 and that in preparation for that election,
22 they engaged a business known as Vote HOA Now to prepare
23 electronic ballots because the HOA planned to hold an election
24 by paper ballots and electronic ballots. And making the
25 preparations for the electronic balance, the HOA gave Vote HOA



1 Now a blank absentee ballot from which the Vote HOA Now created
2 an electronic ballot. That ballot was then distributed to
3 members of the community. There were a total of, during the
4 discovery of this, there were a total of 1,461 HOA members that
5 voted electronically. After the election was over, the AZNH
6 Revocable Trust requested to inspect all ballots and related
7 election materials. As a result of that, the HOA produced
8 approximately 450 documents, but none of those documents
9 contained the electronic ballots.

10 The statute calls, as you have -- you may have
11 already looked at the statute, Judge -- as the statute calls
12 for the HOA to make a choice about whether they want to use
13 some form of alternative to absentee and in-person ballots.
14 And if they do make a choice for an alternative, then they are
15 required to meet seven requirements under subsection A of 33-
16 1812.

17 And Judge, I can show you in Exhibit Number 2, which
18 is the HOA bylaws, that they made an election to use electronic
19 or paper ballots for purposes of electing board of directors
20 members, but they haven't formally adopted electronic ballots
21 for another purpose. So they've done so I would say on a de
22 facto basis. And everything that I've just explained to you,
23 Judge, apparently is not in dispute because it's in our Exhibit
24 1. Everything I've explained is in Exhibit 1 and Exhibit 1 --

25 THE COURT: All right. So let me make sure that



1 you're headed in the right direction. So I need a history and
2 a picture of the background. But your petition is limited to
3 whether or not this supplies you with all the documents that
4 you requested.

5 MR. SULLIVAN: That is correct, Judge.

6 THE COURT: I want to make sure that you stay within
7 that --

8 MR. SULLIVAN: I agree.

9 THE COURT: Okay?

10 MR. SULLIVAN: I exactly understand, Judge.

11 MR. GALLIKER: Your Honor?

12 THE COURT: You (Indiscernible)

13 MR. SULLIVAN: (Indiscernible) I think --

14 MR. GALLIKER: (Indiscernible) I would like to make
15 an opening statement as well.

16 THE COURT: Yes.

17 MR. GALLIKER: (Indiscernible) to because he --

18 THE COURT: Yeah. I didn't know how close he was.

19 It sounds like we were ready to get --

20 MR. SULLIVAN: Okay. Sure, sure.

21 THE COURT: -- into the specifics --

22 MR. SULLIVAN: That's fine, Judge.

23 THE COURT: Okay. All right. Okay?

24 MR. GALLIKER: Okay. Yes. Thank you, Your Honor.

25 Yes.



1 As is established, this is a single-issue complaint
2 regarding whether or not the Association complied with 33-1812,
3 which requires production of election materials for review.
4 This entire dispute really boils down to the question of
5 aesthetics at its core. Let me explain. The Association
6 conducted its annual meeting for 2024 on February 27th, 2024.
7 As required by ARS 33-1812, the Association provided for
8 homeowners to cast their votes in-person and by absentee
9 ballots.

10 Mr. Sullivan, in his opening statements, referenced
11 an election choice has to be made. I do not believe that's
12 actually how the statute reads. Rather, there is a requirement
13 of the statute to allow homeowners to vote in-person and by
14 absentee ballot. In addition, the statute expressly allows the
15 association to allow homeowners to deliver their vote by some
16 other means as well. The statute specifically references by
17 email or fax. But what is clear from the statute is in
18 addition to the requirement that the Association provide in-
19 person voting and absentee ballot voting, the Association may
20 also allow homeowners to deliver their votes to the Association
21 in some other means.

22 In this particular election, the Association did just
23 that. In connection with the 2024 annual meeting, the
24 Association arranged for homeowners to be able to deliver their
25 votes electronically through an online voting service, Vote HOA



1 Now. At the 2024 annual meeting, approximately 18 votes were
2 cast in-person, about 155 were cast using the absentee ballots,
3 and 1,461 votes were cast electronically.

4 The process for casting a vote electronically occurs
5 in a similar form as -- sorry, in a similar manner as using a
6 Google form. The voting homeowner follows a link to a secure
7 website where the homeowner must use a unique identifier to
8 confirm that they are, in fact, a homeowner and they had not
9 voted already. But once logged into the secure website, the
10 voting homeowner engages with an electronic user interface on
11 the computer screen to select their choices of candidates. And
12 then they press submit. Once the homeowner submits their
13 votes, the information entered on the interface screen is
14 recorded on a spreadsheet. The spreadsheet contains every
15 (indiscernible) --

16 MR. SULLIVAN: Judge, pardon me. Pardon me, Mr.
17 Galliker. Mr. Galliker, excuse me. Pardon me.

18 Judge, there's a fine line sometimes between an
19 opening statement and perhaps presentation of evidence or
20 testimony. At this point in Mr. Galliker's presentation, it
21 strikes me that he's testifying about a process without
22 referencing that there's any evidence to show you that that is
23 in fact the process.

24 THE COURT: So I would say for the record that I
25 presume Mr. Galliker is giving me a summary of the information



1 that he is going to present as --

2 MR. SULLIVAN: Okay.

3 THE COURT: -- is usually the case in the opening
4 statement.

5 MR. SULLIVAN: Thank you, Judge.

6 THE COURT: So.

7 MR. GALLIKER: That is correct, Your Honor.

8 THE COURT: Okay. So as little summary as necessary
9 to move into the case.

10 MR. GALLIKER: Sure. And perhaps I should preface,
11 Ms. Fowers will explain in her testimony this process. The
12 spreadsheet than captures and then records every piece of
13 information entered by that voting homeowner. But it appears
14 on a different format in the spreadsheet. Nothing is lost;
15 nothing is compromised. The spreadsheet records their votes
16 immediately and accurately.

17 The 1,461 votes cast by homeowners in the spring were
18 recorded on the spreadsheet, was delivered to the Association
19 as a complete record of the electronic voting. The
20 spreadsheet, there are actually three different spreadsheets
21 that record these votes that are 40 plus pages long and contain
22 30 to 40 votes per page. The spreadsheet, recording of votes
23 cast electronically contain sufficient information so that the
24 votes can be independently reviewed, examined, verified,
25 tallied by any homeowner that wanted to do so. However, while



1 the spreadsheet contained all the information recorded through
2 the electronic voting platform, it looks different than the
3 paper ballot that was used for absentee votes to be cast and
4 in-person votes to be cast.

5 We believe (phonetic) evidence will show today that
6 the Petitioner, when he (indiscernible) his request to review
7 the documents was in fact able to review these spreadsheets.
8 They were provided to him. They are Exhibits 3, 14, and 15 of
9 the Association's Exhibits and they contain all the information
10 of every vote that was cast electronically pursuant to 33-1812.

11 So while they look different than one vote per page,
12 they still contain all of the information that was included in
13 the votes that was cast electronically. So the Association
14 would present that it complied with 33-1812 by allowing for
15 homeowners to vote by allowing homeowners to deliver their vote
16 not only by in-person and absentee ballot, but also by some
17 other means, that other means was electronic voting. And the
18 electronic voting record accurately reflected and contained
19 every piece of information that would be necessary to review
20 and do an independent verification of (indiscernible). So at
21 the end of the presentation of evidence, the Association
22 requests that the petition be denied.

23 THE COURT: Thank you. All right. I'm going to
24 (indiscernible).

25 Mr. Sullivan, you were about to start talking about



1 your Exhibits 1 or --

2 MR. SULLIVAN: Yes, Judge.

3 THE COURT: You started to indicate that Exhibit 1,
4 you believed indicates that there were no disputes in the
5 matter, but we're here, so there must be something that you're
6 still disputing.

7 MR. SULLIVAN: Something I (indiscernible)

8 THE COURT: Give me an idea of what you're still
9 disputing.

10 MR. SULLIVAN: I think the evidence will show that
11 there really isn't any dispute of the facts. And based on the
12 opening that I just heard, it strikes me that the Association
13 is stipulating that they did not produce the electronic
14 ballots. And that's essentially what they said. And what I
15 have identified as -- marked for identification as Petitioner's
16 Exhibit 1. And it's the HOA's filing that's entitled Objection
17 to Motion for Additional Subpoena Duces Tecum.

18 And in that writing, the facts that I laid out in the
19 opening are all present there, Judge. I believe you'll find
20 them all present there. And as I was saying before with
21 respect to the bylaws, and actually with respect to 33-1812, so
22 I get the wording correctly here, it says that, "The
23 association shall provide for votes to be cast in person and by
24 absentee ballot and, in addition the association may provide
25 for voting by some other form of delivery, including the use of

1 e-mail and fax delivery."

2 THE COURT: All right. So I'm just going to remind
3 you that I'm not deciding whether or not the method they used
4 was appropriate.

5 MR. SULLIVAN: Well I (indiscernible) --

6 THE COURT: (Indiscernible) the bylaws.

7 MR. SULLIVAN: I agree with that.

8 THE COURT: I hear only what -- only with respect to
9 your petition and their response.

10 MR. SULLIVAN: Right. I --

11 THE COURT: I'm sorry, your request for the documents
12 that --

13 MR. SULLIVAN: Correct.

14 THE COURT: -- and their response. That's what I'm
15 going to hear about.

16 MR. SULLIVAN: I understand. I fully understand
17 that, Judge.

18 THE COURT: Okay.

19 MR. SULLIVAN: The only reason I'm bringing the
20 bylaws to your attention, and that's the Petitioners Exhibit
21 2, is because it shows that the board chose, they made the
22 choice, to use electronic or paper ballots for purposes of
23 electing their directors. And then they don't have any
24 specific adoption of electronic ballots for other manners, but
25 they seem to have done so on a de facto manner.

1 And the reason that's important, Judge, is because it
2 shows that they we're choosing to use electronic ballots. And
3 then, Judge, I have for you, if you don't already have it and,
4 well you do have it in the exhibits, Petitioner's Exhibit 12,
5 which is a paper copy of the absentee ballot that was given to
6 Vote HOA Now from which to create a paper ballot and will give
7 you some idea as to what the ballot might have looked like in
8 electronic form, because if Vote HOA Now had used that as a
9 format, than that should have been what the electronic ballot
10 would have looked like.

11 And that's also important from another respect,
12 Judge. The Respondent is essentially arguing that although
13 they did not produce the electronic ballots, they produced
14 other information which is the equivalent to an electronic
15 ballot. But what the statute calls for is an inspection of the
16 ballot. And aside from looking at the votes, there are several
17 things that should and could be expected -- could and should be
18 inspected. One is that the ballot should describe the actions
19 that are proposed to be taken. Another is that the voter must
20 be given an opportunity to vote for or against the proposed
21 action. The ballot must state the date by which the ballot
22 must be returned to the HOA to be counted, and that date must
23 be at least seven days in advance of the end of the election.
24 And also, Judge, there's a requirement that the ballot show
25 that the vote cannot be cast by any other person except the



1 designated voter. So there's more than just the votes to
2 evaluate to whether the count is correct or not. The question
3 is whether the ballot is conforming to the statute.

4 THE COURT: Again, I'm just going to remind you, my
5 question is not whether the ballot conforms to anything. It's
6 whether or not they gave you the documents.

7 MR. SULLIVAN: Exactly. But I'm responding to what
8 the Respondent --

9 THE COURT: Well, I need you to concentrate on what
10 you need to show me --

11 MR. SULLIVAN: All right.

12 THE COURT: -- in terms of what happens after you
13 made the request.

14 MR. SULLIVAN: All right. Well, we did make a
15 request and that is Exhibit 4. And as I understand it, these
16 Exhibits are admitted based on our ability to show their
17 relevance.

18 THE COURT: So let me find your Exhibit 4.

19 MR. SULLIVAN: All right.

20 THE COURT: Because if it was not part of your
21 attachments, then I have to pull it up.

22 MR. SULLIVAN: I'm sorry, it's Exhibit 5 not 4,
23 Judge. It's Exhibit 5.

24 THE COURT: Okay. So it's one page. Got it.
25 Exhibit 5?

1 MR. SULLIVAN: Yes, Judge.

2 THE COURT: All right.

3 MR. SULLIVAN: One of the things, aside from the fact
4 that we made the request, one of the things that I think's
5 important about this particular exhibit is that the Respondent
6 has argued that we demanded paper ballots and paper documents.
7 That request to clearly show that we've asked for the HOA to
8 make an election between whether they wanted to provide paper
9 or electronic and that we actually had a preference for
10 receiving materials electronically. So there's no demand here
11 that the HOA must provide by providing paper ballots.

12 Now, from what I understood from Mr. Galliker's
13 opening, he seems to be suggesting that, and I know my view of
14 it may be biased, but he seems to be suggesting that perhaps
15 there was no ballot involved here, but in fact there was
16 because if you look (indiscernible) --

17 THE COURT: Again, I'm going to stop you every time
18 you refer specifically to the ballot.

19 MR. SULLIVAN: Okay.

20 THE COURT: My issue is whether or not they provided
21 you with what you requested and what's required to be provided
22 under the statute.

23 MR. SULLIVAN: That's correct, Judge.

24 THE COURT: Okay.

25 MR. SULLIVAN: And I just want to show you that there



1 was in fact a ballot used. I think that's priority because
2 they have an obligation to produce the ballot. So I'm trying
3 to show you that in fact there was a ballot that was used
4 electronically.

5 THE COURT: Okay. Your position is they were
6 required to do that, but you just testified that you gave them
7 a choice and you indicated it could be electronic.

8 MR. SULLIVAN: Right. They can produce a ballot
9 either electronically or on paper.

10 THE COURT: All right.

11 MR. SULLIVAN: So one of the things that Mr. Galliker
12 referred to was that the ballot was somewhat similar to a
13 Google form. And we don't think that that's incorrect. It is
14 similar to a form that you fill out online. And the person
15 that's receiving that ballot, for instance if you prepare a
16 patient statement for your doctor or your intent is to maybe
17 apply for a credit card, the receiver of that electronic form
18 saves that someplace in electronic format and that's what we're
19 looking for. And they should have saved it because the statute
20 requires them to retain it.

21 And so that's why I'm going to go to Exhibit --
22 there's another exhibit here, hang on one second -- yes, Number
23 4. I'm sorry, Number 4. There was sent out by the HOA to all
24 of the community members and its instructions on how to vote
25 electronically by submission of a ballot. So that demonstrates

1 that they did use a ballot and electronic collection.

2 And it also, Judge, there are in Exhibit Number 3 11
3 identical invitations that were sent out on different dates to
4 members of the HOA giving them an invitation to make their
5 voting by electronic ballot and submit it.

6 And then, Judge, Exhibit Number 6, Petitioner's
7 Exhibit 6, is a receipt for the \$500 filing fee.

8 Then ,Judge, it could probably save us --

9 THE COURT: Hold on. So I don't understand what this
10 receipt is. What is it?

11 MR. SULLIVAN: It's the receipt for the filing fee
12 for the hearing we're having today, Judge.

13 THE COURT: Oh, okay. I wasn't sure if there was
14 some connection to the electronic ballot.

15 MR. SULLIVAN: No.

16 THE COURT: Okay. Well, you're here. The HOA would
17 not have sent -- Real Estate wouldn't have sent it unless you
18 paid it, so.

19 MR. SULLIVAN: Well, I still want to make sure we
20 have it on the record, Judge.

21 THE COURT: All right. Well, okay.

22 MR. SULLIVAN: And then also we might be able to
23 consign, because one of the things that you may be interested
24 in is whether you have subject matter and personal
25 jurisdiction. And I think that Mr. Galliker would --



1 THE COURT: So I have jurisdiction over the petition
2 that was filed and to make a recommended decision with regards
3 to that.

4 MR. SULLIVAN: All right. So we don't need to
5 present any evidence on that?

6 THE COURT: No.

7 MR. SULLIVAN: Okay.

8 THE COURT: You wouldn't be here unless I had the
9 authority to have this case and have a decision made.

10 MR. SULLIVAN: Okay.

11 THE COURT: Okay.

12 MR. SULLIVAN: Very well, Judge. We have -- the
13 relief that we're asking; we're asking that we be found as
14 prevailing party; that the \$500 filing fee be paid to us by the
15 HOA.

16 And then, Judge, have you had an opportunity to see
17 Whitmer v. Hilton Casitas Homeowners Association, a Division
18 One decision earlier this year?

19 THE COURT: So if there's some reference to some
20 legal precedent with regard to something that you're going to
21 present but haven't yet presented, I guess you do that in your
22 closing.

23 MR. SULLIVAN: All right.

24 THE COURT: Okay.

25 MR. SULLIVAN: So --

1 THE COURT: So --

2 MR. SULLIVAN: So the reason I bring it up is we're
3 going to ask a couple of things that I know are not something
4 you're normally going to see. We're asking that you issue an
5 order, a proposed order, anyway, that the HOA is prohibited in
6 the future from using an electronic voting service that fails
7 to retain the ballots --

8 THE COURT: All right.

9 MR. SULLIVAN: -- under discussion.

10 THE COURT: I can't issue that.

11 MR. SULLIVAN: Well that --

12 THE COURT: I don't -- I have authority to take the
13 case, decide on the petition, and issue a recommended decision
14 with regard to the petition that was made and whether or not
15 the Complainant -- Petitioner has proven the allegations in the
16 petition.

17 MR. SULLIVAN: I understand that, but --

18 THE COURT: We don't issue orders --

19 MR. SULLIVAN: That (indiscernible) --

20 THE COURT: -- with regards to the future or past
21 violations --

22 MR. SULLIVAN: I --

23 THE COURT: -- unless you allege a past violation.

24 MR. SULLIVAN: I understand that, Judge.

25 THE COURT: All right.



1 MR. SULLIVAN: That's why I'm I brought up Whitmer --

2 THE COURT: Um-hum.

3 MR. SULLIVAN: -- v. Hilton Casitas because it
4 addresses the scope of what the order from the administrative
5 law judge in a HOA case should include. And that's why I --

6 THE COURT: So that's closing argument, sir. And I'm
7 just --

8 MR. SULLIVAN: Okay.

9 THE COURT: To prevent you from taking this on, to
10 make an argument with regards to something that I cannot do by
11 statute --

12 MR. SULLIVAN: Okay.

13 THE COURT: -- by the connection between Real Estate
14 and us, you just need to move to the other exhibits that you
15 want me to know about and the presentation of your evidence.

16 MR. SULLIVAN: Okay. Well, I would like an
17 opportunity in closing to address --

18 THE COURT: You can address legal arguments in
19 closing, sir.

20 MR. SULLIVAN: Okay.

21 THE COURT: Are there other documents in your
22 exhibits that you want me to consider with regard to your
23 petition?

24 MR. SULLIVAN: No, I think that's it for now, Judge.

25 THE COURT: All right. All right. Cross exam?



1 MR. GALLIKER: Yes, I think -- okay.

2 JOHN SULLIVAN

3 called as a witness for the Petitioner, having been previously
4 sworn, testifies as follows:

5 CROSS-EXAMINATION

6 BY MR. GALLIKER:

7 Q Mr. Sullivan, petition is submitted, 15 exhibits.
8 Have you had a chance to review them?

9 A Are you asking me?

10 Q Yes.

11 THE COURT: Yes.

12 THE WITNESS: Oh, I'm sorry. Your exhibits?

13 BY MR. GALLIKER:

14 Q Cross-examination. Yes.

15 A I've seen your exhibits, yes.

16 Q Okay. And those are the exhibits that were
17 produced -- or those are the documents that were produced by
18 the Association in connection with your records request,
19 correct?

20 A Well, you know there was two phases to that.

21 Q Yes, yes. I know.

22 A So, so --

23 Q It would be a yes or no question.

24 A Yeah, but it can't be answered yes or no because it
25 wasn't (indiscernible) --



1 THE COURT: Mr. Sullivan, if he's asking for a yes or
2 no, I come back to you after cross-exam, so you can clarify and
3 answer if you feel like you need to clarify something.

4 THE WITNESS: But I can't answer it yes or no, Judge.

5 THE COURT: All right. Do you want to rephrase your
6 question?

7 MR. GALLIKER: I'll try to rephrase the question.

8 THE COURT: Thank you.

9 BY MR. GALLIKER:

10 Q So you submitted your request to review documents in
11 February.

12 A Okay.

13 THE COURT: Is that a question?

14 MR. GALLIKER: Let me (indiscernible)--

15 THE COURT: He can --

16 BY MR. GALLIKER:

17 Q I will make a statement and I'm going to ask you if
18 my statement is correct. You submitted a request to review
19 documents. You came in in person to review document in March.
20 You sent a follow-up request asking for additional records.
21 The Association provided electronically additional records.
22 You submitted an additional request to see additional records.
23 The Association responded by e-mail, providing additional
24 records. Is that a correct statement?

25 A No.



1 Q Okay.

2 THE COURT: Do you want to go back one by one?

3 MR. GALLIKER: Yeah. Let's look at Exhibit 1.

4 Your Honor, I made one copy -- let me

5 (indiscernible). May I approach?

6 THE COURT: Yes.

7 MR. GALLIKER: Let me give you (indiscernible) -- get
8 that marked (indiscernible). Okay. Okay.

9 BY MR. GALLIKER:

10 Q Can you please turn to Exhibit 1, Petitioner's
11 Exhibit 1, very first page.

12 A Okay.

13 Q Thumb through, there's about 19 documents there.
14 These are records that the Association produced in connection
15 with your records request, correct?

16 A I didn't hear you. Did --

17 Q These documents are records the Association produced
18 to you in connection with your records request?

19 A Yes. We don't dispute that.

20 Q Okay. Exhibit 2. This is a record, again it
21 (indiscernible) page 19.

22 A Page 19?

23 Q Yes.

24 THE COURT: That's the page number at the bottom.

25 BY MR. GALLIKER:



1 Q At the bottom.

2 A Oh, I'm sorry. There we go.

3 Q Yep. Okay.

4 A So you are looking at, was it Exhibit 2?

5 Q Exhibit 2.

6 A All right.

7 Q This was a document produced to you in connection
8 with your records request to the Association, correct?

9 A Well, if it saves time, I can tell you that all these
10 documents on this -- marked as Exhibit 1 were produced to us.

11 Q Okay.

12 THE COURT: So now he's asking about Exhibit -- that
13 packet is probably not just Exhibit 1.

14 MR. GALLIKER: It's Exhibits 1 through, let's see.

15 THE COURT: 1 through 4?

16 MR. GALLIKER: It's different than -- 1 through 5.

17 MR. SULLIVAN: Judge, we just don't dispute that they
18 provided all the records that they had. We just do not dispute
19 that.

20 MR. GALLIKER: Okay.

21 THE COURT: All right. So why don't you than go
22 ahead and tell me which documents in your Exhibits you
23 provided?

24 MR. GALLIKER: All of them. All we provided --

25 THE COURT: Okay. 1 through --



1 MR. GALLIKER: 1 through 15 --

2 THE COURT: Okay.

3 MR. GALLIKER: -- were the documents that the
4 Association produced pursuant to this records -- Mr.
5 Sullivan's records request.

6 THE COURT: Okay. Thank you.

7 MR. GALLIKER: Okay.

8 And so Judge, I want to be clear then --

9 BY MR. GALLIKER:

10 Q Mr. Sullivan, so you agree the documents -- the
11 Association's documents 1 through 15 were produced to you at
12 your request?

13 A Yes.

14 MR. GALLIKER: Okay. I have no other further
15 questions.

16 THE COURT: Okay. (Indiscernible)

17 Alright so then, Mr. Sullivan, is there anything else
18 that you haven't already told me about this and want to tell me
19 before I move to Respondent's case?

20 MR. SULLIVAN: No, Judge. Thank you.

21 THE COURT: All right. Thank you.

22 All right. Mr. Galliker.

23 MR. GALLIKER: The Association would like to call Ms.
24 Kathy Fowers.

25 THE COURT: All right. She's been sworn.



1 MR. GALLIKER: All right.

2 KATHY FOWERS

3 called as a witness for the Respondent, having been previously
4 sworn, testifies as follows:

5 DIRECT EXAMINATION

6 BY MR. GALLIKER:

7 Q Ms. Fowers, can you please introduce --

8 MR. SULLIVAN: Judge, Pardon me. Mr. Galliker has
9 previously disclosed the nature of Ms. Power's testimony. And
10 based on what he's disclosed to me, Ms. Fowers is being offered
11 as a percipient witness. She's been -- testified primarily
12 about the documents that were produced by the HOA, and we don't
13 dispute that.

14 In fact in Mr. Galliker's disclosure, he says, The
15 facts relevant to this matter are explained in detail in the
16 Association's objection to the Petitioners Motion for
17 Additional Subpoena Duces Tecum. Ms. Fowers' testimony is
18 expected to be consistent with the facts as outlined in that
19 objection (indiscernible) both as custodians of records for the
20 Association and as a community (indiscernible).

21 It is anticipated that Ms. Fowers will explain how
22 the records are kept in the usual course of business for the
23 Association and will describe the records obtained by the
24 Association in connection with the 2024 election. She is
25 further expected to testify that all records related to the



1 2024 election were presented to Petitioner for inspection
2 pursuant to his original request, including documents provided
3 by Vote HOA Now identifying the results of the electronic
4 voting and a list of homeowners who delivered their votes
5 electronically.

6 This is all testimony that is completely unrelated to
7 whether they produced the electronic ballots. And we don't
8 dispute that they gave us everything that they had, so this
9 doesn't seem as a percipient witness she has anything actually
10 to add, Judge.

11 THE COURT: Mr. Sullivan, it is not my practice to
12 prevent a party from presenting a witness that they have
13 indicated was disclosed to be a witness.

14 MR. SULLIVAN: Okay.

15 THE COURT: All right?

16 MR. GALLIKER: Thank you, Your Honor.

17 THE COURT: Um-hum.

18 BY MR. GALLIKER:

19 Q Would you introduce yourself to the Court?

20 A Kathy Fowers.

21 Q What do you do for a living, Ms. Fowers?

22 A Manage the (Indiscernible) Association.

23 THE COURT: I'm going to ask you to speak up a little
24 bit. Actually --

25 THE WITNESS: Me?



1 MR. GALLIKER: Does (Indiscernible).

2 THE COURT: No, she doesn't have to sit there. The
3 microphone's here.

4 THE WITNESS: Oh, okay.

5 THE COURT: So --

6 MR. GALLIKER: (Indiscernible) pull up to the
7 microphone?

8 THE WITNESS: I don't mind sitting there if you'd
9 like.

10 THE COURT: No.

11 THE WITNESS: I know my voice isn't loud.

12 THE COURT: You're fine.

13 THE WITNESS: Okay.

14 THE COURT: We're just asking you to speak up a
15 little bit.

16 THE WITNESS: Okay.

17 THE COURT: Um-hum.

18 BY MR. GALLIKER:

19 Q So what community do you manage?

20 A Sunland Springs Village Homeowners Association.

21 Q Is that the Respondent in today's hearing?

22 A Yes.

23 Q How long have you managed Sunland Springs Village
24 Homeowners Association?

25 A I've been a manager there for five and a half years.



1 Q And what are some of your duties as community
2 manager?

3 A Enforce the documents, custodian of records, manage
4 the daily operations, and facilitate processes.

5 Q Were you involved with the 2024 annual meeting and
6 election?

7 A Yes.

8 Q Can you explain how the 2024 annual meeting and
9 election was conducted?

10 A In line with (indiscernible) sheet and the bylaws,
11 the notice was given. All the opportunities of various ways to
12 vote were offered. The meeting was held. The committee --
13 election committee, per the bylaws, was held and they tallied,
14 so in line with the requirements.

15 Q So why did the Association utilize an electronic
16 voting service?

17 MR. SULLIVAN: Objection.

18 THE COURT: Overruled.

19 MR. SULLIVAN: You don't want to hear any objections?

20 THE COURT: No, I'm overruling that particular
21 objection.

22 MR. SULLIVAN: Okay.

23 THE WITNESS: They have done so since the very first
24 when they transitioned in 2020. So the original -- as far as
25 why, I haven't asked the board why. But the original one was



1 they wanted to have as much voter turnout as they could and use
2 technology available today.

3 Q So can you explain how this electronic voting
4 platform functions and operates, the Vote HOA Now?

5 A Yes.

6 MR. SULLIVAN: Objection. There's no foundation for
7 (Indiscernible). She's an employee of the contractor who
8 provides management services for the HOA. She does not work
9 for Vote HOA Now.

10 THE COURT: So I'm going to ask if you want to lay
11 some foundation. I'm also going to remind you that my
12 parameter here is limited to the petition, as your
13 (indiscernible) the petition. So.

14 MR. GALLIKER: Right.

15 BY MR. GALLIKER:

16 Q So what is your specific involvement with Vote HOA
17 Now for election purposes?

18 A To submit to them the list of homeowners weighted for
19 how many properties they own in the community; provide them the
20 ballot and all the supporting documents that go along with the
21 paper ballots; and then once -- and check the proof when it
22 comes out to make sure the wording matches the paper ballot.
23 And then when voting is occurring, I field inquiries if someone
24 can't figure out how to get into the electronic site and then
25 receive the results the day of the annual meeting.



1 Q And do you have personal information about how it
2 actually functions?

3 A From what they've told me, yes.

4 Q Okay. So when a homeowner goes onto Vote HOA Now,
5 what would they see?

6 MR. SULLIVAN: Objection.

7 BY MR. GALLIKER:

8 Q Do you know what they would see?

9 A Yes.

10 Q And how would you know that?

11 THE COURT: He rephrased the question, so I'm
12 overruling your objection.

13 MR. SULLIVAN: All right. Very good.

14 THE COURT: Um-hum.

15 THE WITNESS: I see the proof, so I see what they
16 see. They see the -- a picture of the community and the
17 community logo, so they know they're on the right page. And it
18 tells them the information they need to know, and it identifies
19 which properties they're sending in a vote for. And then it
20 has the questions, and they have stack options and submit
21 options to move forward and back. And at the end when
22 they've -- and they have all the link to see all of the
23 attachments and supporting documents. And then at the end, it
24 shows the summary of everything they've voted for, and a final
25 submit button, or they can go back and change any piece of

1 that.

2 Q And what happens when they click submit?

3 A It submits for them, and they get tallied on
4 their -- their end.

5 Q Where is the record of the vote preserved, recorded?

6 A What I see from them is a spreadsheet.

7 Q Okay. Now were you involved with the February 28th,
8 2024, records request for Mr. Sullivan?

9 A Yes.

10 Q And what was your involvement?

11 A Facilitate the process.

12 Q What documents did the Association provide for Mr.
13 Sullivan to review?

14 A All the paper documents we had, so all the print
15 outs.

16 Q When did his in-person review of the documents take
17 place?

18 A March 13th.

19 Q Okay. And what happened after he reviewed the
20 documents in-person?

21 A He wanted to see the actual votes. And so I had to
22 go back to Vote HOA Now to request that.

23 Q And were those documents subsequently provided to Mr.
24 Sullivan as well?

25 A Yes.



1 Q So let's look at, real quickly, Exhibit 3. Is this
2 one of the -- is Petitioner's Exhibit 3 one of the documents
3 that was provided electronically --

4 A Yes.

5 Q -- to Mr. Sullivan?

6 A Yes. Um-hum.

7 Q And is this the record -- what is this? Can you
8 explain what this is?

9 A It's a record of the voting --

10 MR. SULLIVAN: Objection.

11 THE COURT: Let me hear your objection, sir.

12 MR. SULLIVAN: She's not the creator of the record,
13 Judge. She's testified as to Vote HOA Now records.

14 THE COURT: Do you want to rephrase your question?

15 MR. GALLIKER: Well, I think his objection is
16 misplaced. This is an Association record, and as custodiam of
17 record, yes, it was created by somebody else, but it is now
18 kept by the Association, and she can testify as custodian of
19 records as to what it is.

20 MR. SULLIVAN: Judge, we're not objecting to any of
21 these records.

22 THE COURT: What's your understanding of what this
23 document is?

24 THE WITNESS: The results of the board of directors
25 election.

1 THE COURT: Thank you.

2 BY MR. GALLIKER:

3 Q From this -- let's see. Well, okay. Let's just look
4 real quick -- at Exhibit 14 as well.

5 THE COURT: So actually, based on your last objection
6 in mind for the clarification and (indiscernible) understanding
7 of it, if you're not objecting, Mr. Sullivan, to the documents
8 and you agree that these are the documents they provided to
9 you, I think that before I hear more from Respondent, what is
10 it specifically that you believe they did not give you that
11 you're asking for?

12 MR. SULLIVAN: The electronic ballots of 1,461
13 homeowners.

14 THE COURT: So you are, let me just make sure I
15 understand, you are requesting a screenshot of every one of the
16 1,461 ballots. Is that what you're asking for?

17 MR. SULLIVAN: Well, not necessarily a screenshot,
18 Judge. But the ballots that appeared to the voter was prepared
19 by Vote HOA Now and each voter used a ballot. And so each
20 ballot that was used by a voter should have been retained and
21 delivered for inspection.

22 THE COURT: So you are asking for Vote HOA's record?

23 MR. SULLIVAN: Well, they're actually --

24 THE COURT: Is that correct?

25 MR. SULLIVAN: Correct. They're actually the records



1 of the HOA, Judge, because they were collected by Vote Now HOA
2 (sic) as a vendor for the Association, on behalf of the
3 Association.

4 THE COURT: Did you vote electronically or in person,
5 Mr. Sullivan?

6 MR. SULLIVAN: We voted by absentee ballot.

7 THE COURT: And to the best of your understanding,
8 did you vote by -- was your absentee ballot due on a certain
9 day?

10 MR. SULLIVAN: Yes.

11 THE COURT: Do you remember what day?

12 MR. SULLIVAN: Well, on Exhibit 12, Judge, it will
13 have the date. I have it here. I'm sorry. Let's see.

14 THE COURT: Petitioner's Exhibit 12?

15 MR. SULLIVAN: So that the -- the vote must be
16 delivered before 3 p.m. on Monday February 26th.

17 THE COURT: And remind me again, when was the
18 election meeting date? Meeting that was the 28th?

19 MR. GALLIKER: It was the 27th.

20 THE COURT: 27th. Okay.

21 MR. SULLIVAN: 27th, Judge.

22 THE COURT: Meeting on the 27th. So did you vote by
23 absentee because you weren't in town to vote in-person?

24 MR. SULLIVAN: Well, Judge, the --

25 THE COURT: I just want to know if you could attend



1 the meeting. If in fact, could you attend the meeting?

2 MR. SULLIVAN: Could I attend the meeting? Yes.

3 THE COURT: Okay. And just a minute. I'm going back
4 and forth a little bit.

5 Ms. Fowers, if someone -- was every homeowner allowed
6 to vote electronically?

7 THE WITNESS: If we have their email. And if we
8 don't have their email, they can call me, and I give them the
9 Vote HOA Now code and they can go in and use it electronically.

10 THE COURT: Was every person able to designate on the
11 electronic ballot who they were and what their lot numbers were
12 or units or whatever?

13 THE WITNESS: So the property being voted for is
14 identified.

15 THE COURT: The HOA is (indiscernible) is identified?
16 Once someone enters their name, it's in essence to the list?

17 UNIDENTIFIED SPEAKER: Which is it?

18 MR. GALLIKER: This is part of what I wanted to
19 explain, is that --

20 THE COURT: Okay. So now I think I understand what
21 Mr. Sullivan was seeking and I want to know --

22 One more question, Mr. Sullivan. Essentially based
23 on the information that we already have, you are seeking the
24 electronic copy of what each homeowner submitted as their vote?

25 MR. SULLIVAN: Each ballot that was used to submit



1 their vote, yes.

2 MR. GALLIKER: And the Association's position is --
3 Exhibits 3, 14, and 15 are exactly that.

4 THE COURT: Okay. (Indiscernible) All right. Go
5 forward with your testimony.

6 MR. GALLIKER: Okay.

7 THE COURT: Whatever else you feel you need to
8 submit.

9 MR. GALLIKER: Okay.

10 THE COURT: Because I --

11 MR. GALLIKER: Okay.

12 BY MR. GALLIKER:

13 Q Okay. So a little recap, Ms. Fowers was testifying
14 about these specific documents, Exhibit 3, 14, and 15, and what
15 they contain. And so I want to ask, Ms. Sullivan (sic) -- I'm
16 sorry. Ms. Fowers. (Indiscernible) myself.

17 You've heard the dialogue today, Mr. Sullivan's
18 contention that he feels the Association failed to produce all
19 1,500 ballots. Is that true?

20 A No.

21 Q Did the Association receive separate individual
22 ballots for each vote cast electronically?

23 A The way he wants to see it? Or the information?

24 THE COURT: Can you rephrase your question?

25 MR. GALLIKER: Sure.



1 BY MR. GALLIKER:

2 Q The Judge mentioned what it appears Mr. Sullivan
3 wants to see if a screenshot of every vote before submit is
4 pushed. Does that exist?

5 A Um-hum. For every individual homeowner, they receive
6 an e-mail about what they voted. So they would have that, but
7 that would be their record, not the Association's.

8 Q Okay. So the voting record that the Association has
9 though brought -- I guess, let's go back. What did the
10 Association receive then as far as the electronic votes, the
11 record of the electronic votes?

12 A Spreadsheet holding all the records.

13 Q Okay. And can you walk us through this and show us
14 how this record -- let's start with Exhibit 3.

15 A Okay.

16 Q Can you walk us through and show us how it contained
17 the entire record of the electronic vote?

18 A Yep. So looking at the top, Michael Dahlen and Terry
19 Garrett, on 1/28. Sorry. 1/28 at 1:21, those two at the same
20 IP address, that is a ballot. The next two, Sherry and Brian
21 (phonetic) --

22 Q So --

23 A -- 1/28 at 1:57, at that IP address. That is a valid
24 result.

25 Q Okay. So how can you tell than how they voted --



1 A These --

2 Q -- based on this record? So the IP address, what
3 information does that tell you?

4 A The location it came from.

5 Q So that's actually the homeowner identifier?

6 A In this case, it's not what they put in to access the
7 ballots.

8 THE COURT: Okay. So when you say the number are you
9 mean the registration code is that number?

10 THE WITNESS: No.

11 THE COURT: Oh?

12 BY MR. GALLIKER:

13 Q The -- so she's actually asking the registration
14 number.

15 A Oh, this one.

16 Q Yes. Right.

17 THE COURT: The IP address --

18 THE WITNESS: Yes.

19 THE COURT: -- is that number starting, in the first
20 two cases, 75.204.9132?

21 THE WITNESS: That's the IP address.

22 THE COURT: And what is --

23 THE WITNESS: You can use a registration code as well
24 tied to -- to identify that that's the same individual.

25 BY MR. GALLIKER:



1 Q So I think -- let's back up just a little bit.

2 A Okay.

3 Q As the homeowner, how do they -- what is this
4 registration code?

5 A So we -- I could send in their account numbers, but
6 we protect that account number and instead have Vote HOA Now
7 take all the records and submit their own unique registration
8 code.

9 Q So in essence the Association provides, you already
10 testified, a list of all the homeowners and their lot numbers
11 to Vote HOA Now? Is that correct?

12 A Correct.

13 Q And then Vote HOA Now takes that and creates a unique
14 identifier for that particular homeowner?

15 A Correct.

16 Q And then the homeowner, if they log on, they must use
17 that unique identifier in order to be able to access the
18 electronic platform if (indiscernible) electronically, correct?

19 A Correct. For any property associated with that --

20 Q Okay.

21 A -- identifier.

22 Q So than by looking at this document, because the
23 first two entries have the same unique identifier and the same
24 IP address, that means that was one vote.

25 A Correct.



1 Q Because how many candidates were there at this 2024
2 election?

3 A Three.

4 Q And how many could each homeowner vote for?

5 A Two.

6 Q Okay. So walk us through -- let's take, for example,
7 the first ten. Can you do a little tally for us and explain
8 what you're doing? Walk us through what you're doing as you
9 tabulate the first about ten votes.

10 A First ten?

11 Q And --

12 A Okay. So you have one for Michael, two for Terry,
13 one for Brian, Michael, Terry, Michael, Brian, Terry, Brian.
14 So you have three, four, and three.

15 Q Okay. Could you follow that same process for all 40
16 pages of that spreadsheet to come up with the complete picture
17 of the electronic votes for the candidates?

18 A Yes. When you get to page 2 and there's blanks --
19 there's a blank -- there's a few blanks in there. You see on
20 the very right-hand side it says yes, yes, yes? You have to go
21 back to the first page where all the headers are. That's a
22 quorum only vote. So there's not going to be any board of
23 directors elections for that ballot.

24 Q Okay. So --

25 A Can I point out one more thing?



1 Q Please.

2 A Okay. On page 3, the very top of page 3, all of a
3 sudden it says Michael Dahlen, two; Terry Garrett, two. That's
4 because that ballot, that owner owns two properties. Each --

5 Q So --

6 THE COURT: If I can follow up on that? Each -- both
7 Michael and Terry own two properties?

8 THE WITNESS: No. This is not the homeowner; this is
9 the candidates.

10 BY MR. GALLIKER:

11 Q So the only names on this document are candidates and
12 it shows who they're voting for on this.

13 THE COURT: I wondered why there were so many of the
14 same names.

15 THE WITNESS: Same name.

16 THE COURT: I'm, like, these people own a lot of
17 properties. So the -- go back to page 1.

18 THE WITNESS: Um-hum.

19 THE COURT: First line is one vote for Michael
20 Dahlen?

21 THE WITNESS: Correct.

22 THE COURT: On Page 3, there's two votes by the same
23 person because there's two numbers that are exactly the same?

24 THE WITNESS: Two votes for Michael, two votes for
25 Terry. Correct.



1 MR. GALLIKER: Because they own two lots. That
2 homeowner with that unique identifier own two lots. In fact --

3 THE COURT: Okay. So I understand this, so.

4 MR. GALLIKER: Okay.

5 BY MR. GALLIKER:

6 Q So can you explain why are the homeowners' names are
7 not this spreadsheet? The names of the homeowners, the lot
8 numbers that are actually captured?

9 A Bylaws require secret ballot.

10 Q So how did the Association track or keep the record
11 of who was casting votes?

12 A The (indiscernible) came that way.

13 Q Yes, the Vote HOA Now record.

14 A So I guess if what you're asking is how did we know
15 who voted electronically then and who still got to submit a
16 paper vote?

17 A Yes.

18 Q Is that the question?

19 A Okay. So at the end they send it in, and they send
20 the results of who voted electronically and who voted -- who
21 didn't vote electronically. We take that, who didn't vote
22 electronically, and mark off the people who submitted absentee
23 ballots by their signature envelopes. And that, taking all of
24 those out, tells us who still gets a vote in-person.

25 Q So how does that compare with the absentee or in-



1 person voting process? That these are secret ballots, so in
2 neither condition can Mr. Sullivan, as a reviewer of the
3 documents, he can't tell who voted who for which candidate.
4 Correct?

5 A Shouldn't be able to.

6 Q Okay. So how is the secrecy preserved on the paper
7 ballot side?

8 A So the election committee comes in and they open all
9 of the envelopes and set the secret envelopes, which are still
10 sealed, they set them aside. And then after that, all of the
11 signature envelopes are collected. And then we go through and
12 open those. So before the election committee starts, the
13 election chairperson and I go through this list and make sure
14 that they haven't voted electronically.

15 Q So for those homeowners that vote in-person or by
16 absentee ballot, you have a stack of envelopes with the lot
17 number, the name of the homeowners. So you can verify who
18 voted and that they have the right to vote.

19 A That they have the right --

20 Q And then a separate unconnected pile of documents, in
21 essence, with the votes, the paper ballots. Correct?

22 A Correct.

23 Q So it's a similar process with the electronic vote,
24 correct? You have the spreadsheet showing all the homeowners
25 that voted electronically. Okay. And then separate

1 spreadsheets showing how they voted, correct?

2 A Correct.

3 Q Okay. Let's see. Okay. So Exhibit --

4 Petitioner's -- I'm sorry. Respondent's Exhibit 11, this is
5 the record of the homeowners that voted electronically,
6 correct?

7 A Oh, my eyes are (indiscernible). Yes.

8 THE COURT: I'm sorry. Exhibit 11 is who voted?

9 THE WITNESS: Who voted electronically.

10 THE COURT: Okay.

11 BY MR. GALLIKER:

12 Q Yeah.

13 A You can see in the second column from the right, it
14 asked if they submitted a paper ballot, and this said no
15 because this is just tracking the electronic. And when you see
16 that's blank, about halfway down, so Patricia Amos' (phonetic),
17 go over to the blank because she has two properties, so that
18 second address is taking up the second line.

19 Q Okay. Let's look at Exhibit 14. Can you explain
20 what this is?

21 A This back one back here?

22 Q Yes.

23 A Okay.

24 Q The second to the end.

25 A Which page?

1 THE COURT: It should be close to the very end of
2 that file.

3 MR. SULLIVAN: Thank you, Judge.

4 THE WITNESS: These are the issues associated with
5 the board of directors election ballots.

6 THE COURT: Okay. Hold on. So at the bottom, its
7 415. Does it say that?

8 MR. SULLIVAN: Thank you, Judge.

9 THE COURT: Um-hum. This is very (indiscernible).

10 MR. SULLIVAN: It is.

11 THE WITNESS: I (Indiscernible).

12 THE COURT: Okay. Not in the room with a magnifying
13 glass, but. All right. So generally what is the 14?

14 MR. SULLIVAN: Okay.

15 BY MR. GALLIKER:

16 Q On these ballots there was more the homeowners were
17 supposed to vote for besides just the directors who were left.
18 What does this request?

19 A The meeting minutes and the IRS revenue ruling.

20 Q So there's a question homeowners were supposed to
21 vote to approve the meeting minutes?

22 A Um-hum.

23 Q Or disapprove. And then also approve the IRS ruling
24 or disapprove, correct?

25 A Correct.



1 Q And is there -- does this record show an opportunity
2 to vote for or against?

3 A Yes.

4 Q And so how would you read the votes on this record?

5 A Okay. Choice 1 was to approve the meeting minutes,
6 choice 2 was to disapprove, choice 3, there was not a choice 3.
7 In this -- in the very first one, they voted 1, which would be
8 approve. They did not vote 2, it -- so it has a zero and 3 has
9 a zero. Going across, you have all your identifying
10 information, just shows that this is the same ballot as line
11 two, which was the IRS ruling. One was to approve, 2 was to
12 disapprove. With choice 1 having a one and choice 2 having a
13 zero, they voted to approve.

14 Q Okay. And --

15 THE COURT: So 14 is just on those two things, the
16 minutes and the IRS, right?

17 BY MR. GALLIKER:

18 Q Yes. So this Exhibit 14 then records all 1,461 votes
19 that provided to the approval of meeting minutes and the IRS
20 ruling.

21 A Unless they selected quorum only, than they wouldn't
22 have voted all things.

23 Q Okay. Okay. So this is the complete record of who
24 voted --

25 A Of who did vote, yes.

1 Q -- On these specific issues. Okay. And then let's
2 look at Exhibit 15.

3 A Okay.

4 Q Can you explain what this is?

5 A This one is the bylaws of -- issue, whether they want
6 to amend or not amend. But then, similar fashion, choice 1 was
7 to approve, choice 2 was to disapprove. The first one chose to
8 approve, the second one chose to disapprove. You would only
9 have one IP address on this because these are coming in one
10 single issue.

11 Q So you could go through Exhibit 15 and create your
12 own tabulation of every single person that voted on the bylaws
13 issue and then create your own (indiscernible) to verify the
14 results of that vote. Correct?

15 A Correct.

16 Q Okay.

17 THE COURT: What is the number at the end that says
18 how many were there?

19 MR. GALLIKER: That is the tally sheet for Exhibit
20 9 -- no -- Exhibit 10, Your Honor. The tally sheet for all the
21 votes with the tag of one.

22 THE COURT: Thank you.

23 BY MR. GALLIKER:

24 Q So Ms. Fowers, are there any documents related to the
25 February 24th annual meeting that were withheld from Mr.

1 Sullivan?

2 A No.

3 Q Are there any Association records that were not
4 produced for Mr. Sullivan's review?

5 A No.

6 MR. GALLIKER: No further questions.

7 THE COURT: Cross-exam?

8 MR. SULLIVAN: Thank you, Judge.

9 CROSS-EXAMINATION

10 BY MR. SULLIVAN:

11 Q Ms. Fowers, your testimony earlier was that as part
12 of the process of Vote HOA Now provided you with, I guess you
13 would call it a proposed electronic ballot?

14 A A proof.

15 Q A proof. Okay. So you saw that proposed electronic
16 ballot? Did you ever see the electronic ballot that was
17 actually published to the members?

18 A No.

19 Q Now, that's true also, and I don't want to be
20 redundant, but I also want to make sure we're clear that in
21 complying with the request to produce the ballots and other
22 election materials, the HOA did not produce the electronic
23 ballots?

24 MR. GALLIKER: Objection.

25 THE COURT: All right. So that's your position, sir.



1 I mean, her testimony -- their testimony and response to some
2 of my questions also gave me an indication of what the person
3 could see when they voted.

4 And unfortunately, you're not a homeowner, so you
5 didn't see it.

6 You voted absentee, so you didn't see it. Okay? So
7 I know that that's the case. So your position is they didn't
8 give you that thing that neither of you saw. Is that correct?

9 MR. SULLIVAN: That would be correct.

10 THE COURT: Okay.

11 MR. SULLIVAN: Yeah.

12 THE COURT: All right. So any other questions you
13 want to ask her?

14 MR. SULLIVAN: Well, Judge, the question I asked was
15 whether the HOA had produced the electronic ballots. I think
16 that that should be in the record.

17 THE COURT: So I think that it is in the record. I
18 mean, you asked that question and --

19 MR. SULLIVAN: But the answer should be in the
20 record.

21 THE COURT: So I think it already is, that there is
22 no copy of that thing that she didn't see and you didn't see.

23 MR. SULLIVAN: Okay.

24 BY MR. SULLIVAN:

25 Q And in your testimony a short while ago, you gave



1 reference, or you examined, Respondents Exhibit 3, 11, 14, and
2 15. Is that correct?

3 A Correct.

4 Q Who created those records?

5 A Vote HOA Now.

6 Q So you didn't participate creating those records?

7 A I had to separate them.

8 Q You didn't participate in creating the records that
9 you received from Vote HOA Now?

10 A No.

11 Q Now it would be fair to say that what you describe in
12 your testimony were what the Vote HOA Now was reporting to you
13 on paper as the results of an election?

14 A You said on paper?

15 MR. GALLIKER: Yeah. Objection.

16 BY MR. SULLIVAN:

17 Q All right. Exhibits 3, 11, 14, and 15. Is that
18 right?

19 A They provide them electronically.

20 Q All right. Let's go back and ask -- we'll go back to
21 the question again.

22 A Okay.

23 Q You didn't create any of those documents that are
24 Exhibits 3, 11, 14, and 15, right?

25 MR. GALLIKER: Objection. Asked and answered.



1 THE COURT: I'm going to (indiscernible) -- yes, it
2 has been answered. You printed them out once you received them
3 electronically; is that correct?

4 THE WITNESS: Correct.

5 THE COURT: All right.

6 BY MR. SULLIVAN:

7 Q All right. So you didn't create the records. You
8 received those records from Vote HOA Now?

9 A Yes.

10 MR. GALLIKER: Objection. Asked and answered.

11 THE COURT: Yes, she answered that.

12 MR. SULLIVAN: Okay.

13 BY MR. SULLIVAN:

14 Q And so those records reflect what Vote HOA Now is
15 reporting on paper, these documents that you examined, as the
16 results of the election?

17 A Yes.

18 Q Okay. But you didn't do any examination of any of
19 the electronic ballots yourself?

20 MR. GALLIKER: Objection. Relevance. Objection.
21 This has already --

22 THE COURT: Okay. So in answer to my question, both
23 of you never saw the electronic ballot. So she -- that --
24 that's the (indiscernible) to me. She's not a homeowner; she
25 didn't see it. You voted absentee.



1 MR. SULLIVAN: Right.

2 THE COURT: You didn't see it.

3 MR. SULLIVAN: My question probably should have been
4 worded differently, I guess.

5 BY MR. SULLIVAN:

6 Q You never saw any of the electronic ballots that were
7 submitted by homeowners who voted electronically?

8 MR. GALLIKER: Objection. We have already testified
9 that Exhibits 3, 11, 13, 14, and 15 are the record of the
10 electronic vote. That is what we have presented; that is what
11 we produced; that's what we have provided and testified of .
12 That's all there is.

13 THE COURT: So do you have an argument that is
14 against the presentation of what they have. So your question
15 is (indiscernible), as far as your argument, is that they
16 didn't produce something. So next question.

17 BY MR. SULLIVAN:

18 Q Well, are there any other documents that would show
19 us what each individual voter -- I'll strike that.

20 MR. SULLIVAN: I have no other questions, Judge.

21 THE COURT: Any redirect?

22 MR. GALLIKER: No, Your Honor.

23 THE COURT: All right then. Back to Mr. Sullivan.
24 Any rebuttal for me? Rebuttal testimony with regards to their
25 information and/or do you just want to move into closing?



1 MR. SULLIVAN: I think we're going to close, Judge.

2 THE COURT: All right. So as Complainant, we give
3 you the last word in closing, so Respondent's closing?

4 MR. GALLIKER: Yes. So what we've heard today, Your
5 Honor, relates to whether or not the Association complied with
6 33-1812 by providing and producing its records for review to
7 Mr. Sullivan. The Association has testified they provided
8 everything that exists. There isn't a stack of documents
9 somewhere that they're hiding that has not been produced.

10 The Association has testified, and Mr. Sullivan has
11 acknowledged, that they produced every record that the
12 Association has. The reason Mr. Sullivan appears to not be
13 satisfied is, as the Court accurately mentioned, he really
14 wanted to see a screenshot before the homeowner pushed submit
15 on that electronic vote. That doesn't exist. And by
16 application of 33-1812 also, it doesn't need to exist. The
17 Association, by the language of 33-1812 A, as I indicated in my
18 opening statement, is required to allow homeowners to vote in
19 person and by absentee ballot. There's no dispute there. They
20 absolutely met that requirement.

21 But 33-1812 also allows the Association to provide,
22 this is the direct quote, The association may provide for
23 voting by some other form of delivery. Some other form of
24 delivery means it doesn't have to be in the exact ballot
25 format. Yes, as you go through the subsection 1 through 7



1 below are -- there is a qualifier there before we get to any of
2 those other (indiscernible). If absentee ballots, or ballots
3 provided by some other form of delivery are used.

4 So there -- for the ballot itself, yes, all these
5 parts need to be kept. But what is in this electronic
6 delivery, is it even a ballot? The information that was
7 presented to the Court today demonstrates that the voting
8 mechanism is secure. Each homeowner is given a unique
9 identifier. They are able to -- Vote HOA Now is able to
10 confirm that two homeowners are not voting twice once that
11 unique identifier has used it, its (indiscernible).

12 But the statute expressly allows the Association to
13 collect those votes, or allows homeowners to deliver their
14 votes, by some other means, and in this case that's what
15 happened. The Association allowed homeowners to deliver their
16 votes by another means and that other means was by electronic
17 vote, by Vote HOA Now. It's a method of delivery; it is
18 permitted by statute. But it's not -- we have referred during
19 this discussion to what the homeowner sees as a ballot, as an
20 electronic ballot. But the reality is it's a user interface;
21 it exists only in a software state. And the important thing is
22 what vote is delivered through that mechanism. And the vote is
23 what's important and that is what is preserved.

24 I have represented many HOA clients. I have had
25 homeowners sent an email to the Association saying, oh, I can't



1 find my ballot, but I want to cast my vote for this candidate,
2 this candidates. There's no ballot, but the vote is counted.
3 A ballot wasn't used to deliver that vote to the Association in
4 that instance. In this particular setting as well, it is an
5 electronic means of delivery of the vote.

6 And the information that is preserved and reported is
7 sufficient so any homeowner in the entire community can look at
8 these documents. And essentially, we create an absentee ballot
9 for every vote that was cast. But these votes were not cast
10 using that same method. I think they were cast using an
11 alternative means and that means was electronic delivery of
12 their votes through Vote HOA Now.

13 As Ms. Fowers testified, with every single vote for a
14 candidate, you can go through -- Mr. Sullivan, if he wanted to,
15 he could create a tally sheet of all 1,461 votes cast
16 electronically and independently verify that, yes, his numbers
17 have tallied the vote are correct. Same thing with that bylaw
18 amendments and the IRS ruling and meeting minutes. All the
19 information is there. In fact, there's even more information
20 than is found on the paper version of the absentee ballot.

21 The Association's position with respect to this
22 petition is they provided every document that exists. And the
23 documents that exist are sufficient. The statute expressly
24 allows the Association to make arrangements for homeowners to
25 deliver their vote in an alternative means in addition to



1 absentee ballot or paper ballot. And that's exactly what they
2 did for the purpose of casting as wide a net as possible to
3 include as many homeowners as possible. Clearly, it is a very
4 popular option. It is safe and secure.

5 Mr. Sullivan has not met his burden to show that
6 there was any violation of the statute here. He has an
7 argument that he would like to see this statute read
8 differently. He would want screenshots of every vote that was
9 cast, but that's not required. The Association presented
10 everything they had; the documents are accurate; everything was
11 provided to Mr. Sullivan. Mr. Sullivan has not met his burden
12 to show there has been any violation of 33-1812. And so the
13 Association requests that this petition be denied.

14 THE COURT: Thank you.

15 Mr. Sullivan, your closing statement.

16 MR. SULLIVAN: Judge, the statute is unambiguously
17 clear that if some other form of delivery is used and for any
18 action...at...an annual...special meeting of the members, that
19 the -- and if absentee ballots or ballots provided by some
20 other form of delivery or used that -- and the number 7, 13
21 (sic)-1812, 87 (phonetic), Ballots, envelopes and related the
22 materials...shall be retained in electronic or paper format and
23 made available for member inspection...

24 In this case, it's very clear that they did not
25 produce the ballots, and they admit they didn't produce the



1 ballots for inspection. What they want to try to lead you to
2 believe is that the voter just selected things out of thin air
3 and sent in a vote of some type.

4 I contend, Judge, it's just logically apparent that
5 before a voter can vote for any particular candidate for the
6 board of directors, he has to be presented with names to select
7 from. That would have appeared on the screen. That's the
8 ballot. Also there were three proposed separate actions on the
9 on the paper ballot (indiscernible) would require for a
10 potential voter to read and make an election from. They don't
11 just pick their votes out of thin air.

12 Now I think I've demonstrated, Judge, that there were
13 instructions on voting electronically by electronic ballot.
14 There were invitations to vote by electronic ballot. The HOA
15 has chosen to use paper and electronic ballots in its election
16 for director. And so those ballots should have been produced.

17 Now, I know that the term screenshot has been used a
18 couple of times, but a screen shot is something that you use
19 your own computer to take a picture of the screen that you're
20 looking at. But in this particular case, Vote HOA Now would
21 have sent a ballot to every single potential voter. And each
22 one of those ballots was --possibly -- it was possible to
23 preserve the (indiscernible) ballots.

24 MR. GALLIKER: Objection. That fact's not in
25 evidence. There's no fact Vote HOA Now --

1 THE COURT: He's making an argument. He's making an
2 argument, and I don't -- I don't have evidence. Thank you.
3 Okay. So your statement that you're asserting Vote HOA Now
4 would have sent a ballot. Is that what you're saying?

5 MR. SULLIVAN: Well, the evidence is that they did in
6 fact send a ballot. If you look at Exhibit 1, you'll see that
7 that's in there. Exhibit 1 is the statements made by the HOA.
8 They did in fact send a ballot out. And so if Vote Now HOA
9 (sic) -- Vote HOA Now, rather, had sent out a ballot to every
10 voter, they should have a copy of the ballot that they sent out
11 in electronic form which they can then print out.

12 What the Association is arguing and asking you to
13 accept is that Vote HOA Now produced results of the election
14 and those should be trusted because they were produced by Vote
15 HOA Now. There's no way, based on the evidence that's
16 presented, to verify that the results that are being reported
17 by Vote HOA Now are accurate. There's no way to examine any
18 materials to determine the accuracy of their reporting.

19 And it's virtually impossible to determine whether
20 the ballot that was produced meets all of the other
21 requirements which would be part of the inspection. The
22 inspection would include whether the ballot set forth each
23 proposed action; the ballot provides an opportunity to vote for
24 or against each proposed action; and that the ballot specified
25 the time and date which must be delivered; and the ballot does

1 not authorize another person to cast their vote on behalf of
2 the member. That's all part of what would be done if there was
3 an inspection.

4 So the ballot has to comply to that. And the ballot
5 should have been produced for inspection not only to verify
6 that the results of the election, but to verify that the vote
7 was in its proper form, or that the ballot was in its proper
8 form, Judge.

9 And then, Judge, I'd like to talk about, if you don't
10 mind, Whitmer v. Hilton Casitas Homeowners Association. And
11 that's because I'm asking the tribunal to recommend orders that
12 either permit or require specific conduct on the part of the
13 HOA.

14 Now, under Whitmer v. Hilton Casitas Homeowners
15 Association, which is --

16 THE COURT: (Indiscernible). Do you have a copy for
17 me?

18 MR. SULLIVAN: I do have a copy for you, Judge.

19 MR. GALLIKER: Do you have a copy for me as well?

20 MR. SULLIVAN: There you are.

21 THE COURT: Great. Thank you, sir. So what's your
22 position on this?

23 MR. SULLIVAN: Under Whitmer, Judge, it's a
24 memorandum decision by Division One. And what Division One
25 considered in that case is whether an order by an

1 administrative law judge in a homeowners' case to -- in order
2 to obey the statute that was involved, is an enforceable order.

3 And in that case, what happened is that the HOA had
4 not been complying with the condominium act with respect to
5 budgetary process and a homeowner complained about it. There
6 was a hearing here at the Office of Administrative Hearings.
7 And the officer of administrative hearings -- administrative
8 law judge issued an ordered an order for Hilton Casitas to obey
9 the statute. And then a few years went by, I believe it was
10 eight years, and there were recurring violations of the same
11 nature that arose from the first instance.

12 And Mr. Whitmer went to the Superior Court to enforce
13 the order to obey the statute. And the Superior Court found,
14 and the -- Division One agreed with them, that there were two
15 problems with that order. One was that the order needs to
16 specify either conduct to be prohibited or conduct to be
17 required. Simply an order to obey a statute is too vague to be
18 enforced as a court order or as an administrative order.

19 And the other defect that the Superior Court found, and that
20 Division One agreed with, is that there needs to be a temporal
21 limit. In the case of Mr. Whitmer and Hilton Casitas, the
22 order didn't have any ending time. It went on, theoretically,
23 indefinitely into the future.

24 And so what we've proposed, Judge, and it's in the
25 proposed orders that I submitted to you, we're proposing that

1 you recommend orders that the HOA be prohibited from utilizing
2 a system which does not retain the ballots or also be
3 prohibited from utilizing the vendor that doesn't retain the
4 ballots. Now because Whitmer calls for either a requirement to
5 prohibit or require conduct, the other way is that -- the order
6 could be written, if you're inclined to do so, would be to
7 write an order that requires the HOA, when using an electronic
8 voter vendor, to only use a system that would retain the
9 ballots. You can either prohibit or require -- you can either
10 prohibit them from not showing it or you can require them to do
11 so. And that way it fits into what Division One has required
12 under Whitmer v. Hilton Casitas. And then we're also asking
13 that for the restrictions on the -- restrictions or
14 requirements, that it have a five-year expiration date in order
15 to meet the temporal requirements of Whitmer v. Hilton Casitas.

16 So we're asking that you find that we've prevailed
17 and that we're entitled for reimbursement of our \$500. The HOA
18 has not complied with the statutes; they have not provided the
19 ballots that were used for any electronic collection, Judge.

20 Thank you.

21 THE COURT: (Indiscernible) All right. Thank you.

22 Thank you very much. I have the information and your
23 arguments. And let me say we are finished with the hearing and
24 off the record.

25 (Proceedings concluded)



CERTIFICATE

I, ABIGAIL FARMER, a court-approved transcriber, do hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, to the best of my professional skills and abilities.

/s/

ABIGAIL FARMER,
Transcriber

November 11, 2024

