

Testimony before the Senate Elections Committee

Neutral on Elections Audit HB 2333

By

Representative Jarrod Ousley, Kansas House District 24

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Madame Chair, Members of the Committee:

I come here today concerned about the accuracy and efficacy of our election auditing process.

Lyndon Johnson said that “the vote is the most powerful instrument ever devised by man for breaking down injustice, and for tearing down the walls that imprison men because they are different from other men.”

Our votes are the crucial element of our democracy; the method via which we chart our course, build our lives, and the foundation upon which we are to govern ourselves.

In 2014, the League of Women Voters held a forum featuring Dr. Beth Clarkson, ASQ-Certified Quality Engineer, with a PhD in Statistics. Having read her lawsuit to obtain the paper records of the vote counts in Wichita so that she could conduct an audit of the 2014 election, I was curious to learn more about the election audit process, how election audits occur here in Kansas, and to see if there was anything the legislature could do to assist her. I was deeply concerned after hearing her presentation that the audit process in Kansas is neither reliable nor effective. Kansas uses Electronic Voting Machines, but does not provide a paper record of the votes. This means there is no way for the voter to verify that their vote is counted as it was cast. Due to the nature of our electronic voting machines, like most technology, it is possible for the data they record (our votes) to contain errors due to software malfunctions, programming errors, or potentially, intentional alternations. Post-election audits of voter-verifiable paper records are a critical tool for detecting ballot-counting errors, improving reliability, and discouraging fraud.

Dr. Clarkson has written on the subject, and so has the Brennan Center for Justice, and Princeton University. Dr. Clarkson has noted repeatedly that her statistical analysis of the recorded votes in Kansas, without an audit, is not evidence of fraud, but that it does indicate that there are voting abnormalities. Unfortunately, if the only record of the vote is contained in the copy of the electronic data, the inconsistency is simply repeated from the machine to the audit. For example, if a software glitch were to cause every 100th vote to be lost to the machine, and the audit conducted of that machine consists of comparing the data on the machine to the data recorded from the machine on a CD, the audit would not reveal the glitch, it would simply repeat it. However, if a voter received a receipt from the machine with a copy of their vote (absent voter identification information), and the polling location also kept a copy of this receipt, a true audit of the election could be undertaken. In states where the production of such receipts are required, statistical abnormalities, like the ones found by Dr. Clarkson are less likely to occur, and election results more closely resemble polling conducted prior to the election.

Dr. Clarkson was gracious enough to meet with me, to further explain the steps that are important to ensuring accurate elections. She highlighted the following: (1) machines must be tested prior to an election, to make certain they are operating properly; (2) a paper receipt must be provided to the voter; and (3) election audits must be random.

Two years ago, Secretary of State Kris Kobach submitted a bill regarding election audits (HB2543) in the House Election Committee simultaneously to the submission of my bill which included Dr. Clarkson's recommended requirements. During the hearing on the Secretary Kobach's bill, HB2543 was amended to include the foregoing requirements, and substantial compromises were made. The agreed upon language version of the bill passed out of committee two times in 2016, yet never made it to the House floor.

During the 2017 session, I introduced HB 2251, with identical language to what had been agreed upon in committee during the 2016, while the SOS introduced a much narrower version in HB2333, reducing the audit to one race/office on the ballot. Again, these two bills were blended and a compromise was struck that exempted races involving judges, uncontested races, races where the margin was greater than 30%, and limited the local races audited, a compromise that passed the House 124-0.

During a Senate Elections Committee hearing on the bill, the Secretary of State provided testimony in favor of HB2333 as amended by the House. However, an amendment to greatly restrict the scope of the audit's power was put forward, restricting the audit to only 1 federal race and one legislative race, and this amendment was adopted. This means, in practice, on my ballot next year, I will be voting for a candidate in a federal congressional race, the Governor of Kansas, the Secretary of State of Kansas, the Insurance Commissioner in Kansas, the Attorney General in Kansas, the State Treasurer, myself for my state House seat, members of the State Board of Education, Judges, and Precinct Committee People, but ONLY the Congressional race and one state house race will be subject to the audit.

The bill passed by the House last session called for an audit of the ballot. The version before you contains language that only audits one federal office and one contested race for Kansas legislative audit. Every candidate on the ballot, and every voter, has a right to know that each race was conducted in a manner that is free from error, I cannot support the narrowing of the audit to the two races as was proposed by last year's Senate committee amendment and previously adopted.

It is vital to the health of our democracy for citizens to have trust in our voting system, especially when the appearance of partisan bias can lead to a lack of confidence in the neutrality of election officials. Such trust can be built by providing accurate, effective, and transparent audits. We must ensure that every Kansan's vote is counted as it was cast.

Respectfully submitted,

Rep. Jarrod Ousley

Kansas House District 24

¹ <http://bethclarkson.com/>

² <http://cjonlin.com/news/2015-08-23/mathematician-not-optimistic-about-suit-seeking-ballot-audit>

³ <https://www.statlife.org.uk/significance/politics/2288-how-trustworthy-are-electronic-voting-systems-in-the-us>

⁴ <http://www.brennancenter.org/publication/post-election-audits-restoring-trust-elections>

⁵ <http://citsite.s3-website-us-east-1.amazonaws.com/oldsie-htdocs/voting/videos.html>