

# Report of the Special Committee on Elections to the 2024 Kansas Legislature

**CHAIRPERSON:** Senator Mike Thompson

**VICE-CHAIRPERSON:** Representative Pat Proctor

**OTHER MEMBERS:** Senators Oletha Faust-Goudeau, Rick Kloos, Mike Petersen, and Tim Shallenburger; and Representatives Michael Dodson, Cyndi Howerton, Tom Sawyer, Paul Waggoner, and Brandon Woodard

## **STUDY TOPIC**

The Committee is directed to address these election integrity topics and make recommendations to the 2024 Legislature regarding further study or legislation:

- Continue to evaluate a limit on the number of advance voting ballots delivered on behalf of other voters, remote ballot drop boxes, and the deadline for returning advance voting ballots;
- Review laws, rules and regulations, and procedures regarding voter roll maintenance;
- Review the process to replace a U.S. senator in the case of a vacancy; and
- Discuss restoring voter confidence.



# Special Committee on Elections

## REPORT

### Conclusions and Recommendations

The Special Committee on Elections suggests further study and consideration on the following topics:

- Evaluate statutory elections audit requirements and consider expanding the audits to evaluate more races in each election;
- Consider making election day a state holiday;
- Solicit testimony from voting machine vendors;
- Consider legislation requiring recount procedures and audits to be completed with paper ballots;
- Consider the benefits and drawbacks of restricting the use of advance voting ballots, particularly as it relates to election security;
- Evaluate the signature-verification methods used for advance mail ballots and consider implementing additional training;
- Consider how other states evaluate their election security through ethical hacking and other testing methods;
- Consider legislation to create a Citizen Oversight Board for elections that would oversee, track, and follow up on voter fraud reports;
- Provide for more consistent oversight of election procedures at the county level;
- Request a closed session meeting for legislators to learn more about election security procedures;
- Request more information regarding the difference in powers and duties between the county election officers and the Office of the Secretary of State;
- Direct counties to ensure their election policies and procedures are documented in writing; and
- Continue to study issues with voting machines and strategies for combating bad actors.

*Proposed Legislation:* None.

## **BACKGROUND**

As election integrity has been a topic of consideration for the Legislature over the past several sessions, the Legislative Coordinating Council (LCC) authorized the Special Committee on Elections (Committee) to continue study on advance voting ballots, voter roll maintenance, and other issues related to election security.

## **COMMITTEE ACTIVITIES**

The LCC approved two meeting days for the Committee during the 2023 Interim. Members met at the Statehouse on September 28 and 29, 2023.

### **September 28 Meeting**

#### ***Election Law Overview***

A Kansas Legislative Research Department (KLRD) Research Analyst provided an overview of election laws enacted since 2017, including laws regarding the three-day grace period for advance mail ballot return (2017 HB 2158), the requirement for a paper record to be produced for every vote cast on voting machines (2018 HB 2539), and limitations on ballot harvesting (2021 Senate Sub. for HB 2183). The analyst also provided a memorandum with information on advance voting ballots, ballot return deadlines, voting machines, and drop boxes, as well as responses on these topics provided by the Secretary of State (Secretary) and the Kansas County Clerks and Election Officials Association.

#### ***Legal Proceedings on Election Law***

A Senior Assistant Revisor of Statutes from the Office of Revisor of Statutes provided an overview of the litigation status on challenged election laws. Three provisions from 2021 HB 2183 were challenged in Shawnee County District Court, regarding false representation of an election official (KSA 25-2438), signature verification on advance voting ballots (KSA 25-1124(h)), and the limit of ten advance voting ballots an individual could deliver on behalf of others (KSA 25-2437). The Senior Assistant Revisor stated provisions of KSA 25-2438, KSA 25-1124(h), and KSA 25-2437 remained in full force and effect pending review on appeal by the Kansas Supreme Court.

Two provisions in 2021 HB 2332 were challenged in federal district court for the District of Kansas. These provisions prohibited third parties from sending advance voting ballot applications to Kansas voters with personalized information already completed on the application form (KSA 25-1122(k)(2)), and prohibited third parties located outside of Kansas from sending any such applications to Kansas voters (KSA 25-1122(l)(1)). The district court issued a permanent injunction on KSA 25-1122(l)(1) on the basis that it violated the Plaintiff's constitutional rights. Similarly, the district court found that subsection (k)(2) violated the Plaintiffs' constitutional rights of speech and association and was overbroad in that it criminalized a substantial amount of protected speech. The court permanently enjoined the enforcement of KSA 25-1122(k)(2), and the State has filed an appeal with the 10<sup>th</sup> Circuit Court of Appeals.

#### ***Agency Involvement in Voter Registration***

Two Visiting Fellows from Opportunity Solutions Project addressed a 2019 memorandum of understanding (MOU) Governor Kelly entered into with Loud Light, Demos, the American Civil Liberties Union (ACLU), and the ACLU of Kansas, intended to settle concerns regarding alleged violations by the State of the National Voter Registration Act of 1993 (NVRA). The conferees stated the Legislature was informed of the MOU when Demos released a press release in 2021, with a similar press release coming from Governor Kelly's office shortly thereafter.

The conferees stated that, in December 2020, Demos published a policy paper outlining a strategy for advancing voting rights through executive action, including directing federal agencies to provide voter registration services. In March 2021, President Biden signed Executive Order 14019, which, among other things, directs the head of every federal agency to "evaluate ways in which the agency can, as appropriate and consistent with applicable law, promote voter registration and voter participation." It also directs all federal agencies to consider "soliciting and facilitating approved, nonpartisan third-party organizations and State officials to provide voter registration services on agency premises."

The conferees pointed out that Haskell Indian Nations University in Lawrence is one such designated voter registration agency under the NVRA. The conferees stated the concern with this Executive Order is the appearance of federal resources being used to engage in targeted voter registration efforts designed to benefit left-wing candidates.

The conferees proposed three solutions for addressing this issue:

- Require legislative approval for new federal funding and guidance;
- Pass legislation declaring null and void any National Voter Registration Agency designations under the NVRA made to date by anyone other than the Legislature; and
- Use legislative oversight power in coordination with the Attorney General to investigate and prosecute any wrongdoing.

### ***Post Audit Report: Reviewing Kansas's Procedures for Election Security, Part 2***

A Principal Auditor from the Kansas Legislative Division of Post Audit (LPA) presented the second of a two-part report focused on the State's procedures for election security. The report, *Reviewing Kansas's Procedures for Election Security, Part 2*, concerns the following question: Do county election offices have adequate policies and practices to ensure the accuracy and security of voting machines, ballots, storage units, and devices used to tabulate votes during elections?

The Principal Auditor stated LPA reviewed national best practices for election security and selected 50 individual practices to review, organized into five categories:

- Overall process security;
- Election management computer security;
- Ballot security;

- Voting and tabulation machine security; and
- Transfer and movement security.

LPA also included five additional election security requirements from state law. Reviews of 13 counties' policies and practices from the 2022 primary or general election are included in the report; LPA also reviewed policies in Chase and Ford counties but was not able to verify their practices because most of the 2022 election documentation was sealed prior to LPA review.

The Principal Auditor provided an overview of the findings included in the report:

- Counties reviewed generally had adequate practices to ensure overall election process security;
- Counties reviewed generally had adequate election management computer security practices;
- County results varied, but ballot security practices were weaker overall than other election management security measures;
- Most counties reviewed had inadequate voting and tabulation machine security practices except for physical security practices; and
- Counties had some transfer and movement security practices that were adequate, but others that were generally inadequate.

The Principal Auditor stated that larger counties generally had stronger security practices than smaller counties, likely because of their greater security needs and resources. None of the counties had adequate written election security policies or guidelines. LPA suggested the Secretary's Office be more proactive in giving county election officers baseline or minimum security guidelines to follow to help them move toward best practices. LPA made recommendations to the Secretary's Office, to

which the Office provided responses as included in the report.

### ***Overview of Election Topics — Office of the Secretary of State***

The General Counsel and the Director of Elections from the Secretary’s Office provided testimony and answered questions before the Committee.

The General Counsel stated Kansas stands out in several categories of election administration:

- Kansas uses a decentralized model of election administration, which allows counties to be responsive to their own unique circumstances and available resources;
- Kansas is one of nine states that have a strict voter identification law for both mail and in-person voting;
- Kansas has strong procedures in voter roll maintenance;
- Kansas requires signature verification for advance mail ballots and provides individualized tracking when the ballot is returned;
- Kansas is one of few states with pre- and post-election tabulation testing, post-election audits, audits of close election, procedural audits, and expansive recount laws;
- Kansans report one of the highest levels of voter confidence in their state system; and
- Kansas has a successful record of prosecuting election fraud.

The Director of Elections also addressed several topics before the Committee:

- Usability of voting machines, particularly reporting from voters about issues with machines. The Director discussed the

Secretary’s Office’s approach to handling such reports;

- Issues from the 2022 Primary Election, including the error caught in Cherokee County;
- Implementation of watermarked ballots as required by KSA 25-2912 as enacted in 2022 Senate Sub. for HB 2138;
- The designation of election equipment as critical infrastructure essential to national defense by President Barack Obama, which was reaffirmed by Presidents Donald Trump and Joe Biden; and
- Efforts to continue training election officials in best practices through the Office’s Certified Election Training Program in response to the LPA report.

The General Counsel also provided an update on implementation of enacted 2023 bills (SB 221, Senate Sub. for HB 2053, HB 2087) and enacted 2022 bills (Senate Sub. for HB 2138) and discussed recount procedures and challenges some counties have with staffing elections. The Director of Elections provided information to the Committee regarding ballot printing, certification and maintenance of voting systems, internet connectivity capability of electronic poll books, mailing of advance mail ballots, and the upcoming presidential preference primary.

### ***Committee Discussion***

During discussion, Committee members requested the following items:

- A copy of draft rules and regulations from the Secretary’s Office;
- An example of the watermark that will be required on ballots;
- Information on how many ballots are printed county-by-county to determine whether a standard could be established;

- Information about federal funds that are used for voter registration efforts; and
- A copy of the MOU between Governor Kelly and Loud Light, *et al.*

## September 29 Meeting

### *Overview of Advance Mail Ballot Deadlines*

A Senior Research Analyst for KLRD provided an overview of deadlines for advance mail ballots in different states. All states offer some options for voting outside the polling place through absentee or mail ballots, and the terminology varies by state. In Kansas, the advance mail ballot return deadline is the third day following the election if it is postmarked on or before election day. Senate Sub for HB 2053 (2023), which provides for the presidential preference primary, sets a return deadline for advance mail ballots at the close of polls on the primary's election day for that election.

### *Three-day Grace Period for Advance Mail Ballots*

A former Kansas State Representative provided testimony regarding the acceptance of advance mail ballots postmarked before the close of the polls on election day and received no later than the third day following the election. When the Legislature passed HB 2158 in 2017, legislators were told the ballots would always have a postmark on them or a barcode that could be deciphered. The former Representative stated that, today, not all mail is routinely postmarked, and some postmarks are unreadable, so it is difficult to tell whether a ballot was mailed before the close of the polls on election day as required in KSA 25-1132. He stated he would request the statute relating to the deadline be returned to the standard of having all ballots in hand at the close of the polls on election day and remove the three-day grace period.

### *Overview of Election Integrity Issues and Election Machine Vulnerabilities*

Five representatives of the Liberty Lions League provided testimony on issues related to election integrity and security.

**Overview and introduction of speakers.** The first conferee provided an overview of potential issues with voting machines, stating that contractual requirements of voting machine vendors prohibit any investigation of what is inside the machines, how they operate, or the software or code used in the election process. As a result, he stated, there is no way to ensure the machines are safe to use.

**Election machines and malware.** The second conferee provided information from her perspective as a software designer and developer. She stated potential vulnerabilities tend to be ignored because of overconfidence in election systems. The second conferee further stated vendors of voting machines are from all over the world, and U.S. officials and citizens have no control over how those vendors program the machines; this also makes it difficult to identify vulnerabilities and fix them.

**Election machine vulnerabilities and audits.** The third conferee testified regarding his personal experience working for a congressman in Florida who, according to the conferee, asked him to write code to flip votes in the 2000 election. He stated that, to be secure, ballots must be paper and counted by hand. The third conferee stated that election systems currently being used cannot be examined to learn their source code or blueprint the system to ensure the code functions as it should. He stated computer programmers can hide their work and audits are not helpful for identifying those problems.

During Committee discussion, the Senior Assistant Revisor stated that KSA 25-3009 requires post-election audits to be conducted each year and specifies which types of races are to be selected for audit by the Secretary depending on the year and types of elections that are held. KSA 25-3010 provides for county audits of election procedures and administration after elections held in even-numbered years.

**Mechanics and vulnerabilities of election machines.** The fourth conferee from Liberty Lions League, a cybersecurity and network consultant, spoke about the election machine ecosystem and how the various machines can be used to manipulate elections from the outside. He

explained the ecosystem includes voter registration databases, voter validation systems, tabulation systems, and reporting systems. He suggested electronic poll books, for example, can be manipulated in terms of the total number of voters.

The fourth conferee further stated that a decentralized system for elections is needed in order to ensure control of the process stays in the hands of local citizens. He provided a demonstration showing how someone might go about changing votes in a voting system. The fourth conferee stated the only way to stop these problems is to go back to the precinct level, use paper ballots and poll books, and ensure the citizens are able to be a part of the entire voting process.

**Election integrity, remote ballot drop boxes, and ballot harvesting.** A fifth conferee representing Liberty Lions League testified about election integrity, remote ballot drop boxes, and ballot security. He stated many concerns with election integrity he has observed:

- Counties themselves do not program their election machines. This has been outsourced to third-party for-profit contractors, which can lead to problems;
- Drop boxes are not addressed in the statutes, so no laws govern or standardize their use;
- Laws are needed to standardize the chain of custody for ballots;
- The Kansas Open Records Act does not provide for enough transparency for citizens; and
- Signature-verification procedures for advance mail ballots are lacking, and such ballots should have additional security measures in place.

The fifth conferee made several recommendations regarding reforms to election law and procedure.

## CONCLUSIONS AND RECOMMENDATIONS

Following discussion, the Committee made no formal recommendations but made suggestions for further study and consideration:

- Evaluate statutory election audit requirements and consider expanding the audits to evaluate more races in each election;
- Consider making election day a state holiday;
- Solicit testimony from voting machine vendors;
- Consider legislation requiring recount procedures and audits to be completed with paper ballots;
- Consider the benefits and drawbacks of restricting the use of advance voting ballots, particularly as it relates to election security;
- Evaluate the signature-verification methods used for advance mail ballots and consider implementing additional training;
- Consider how other states evaluate their election security through ethical hacking and other testing methods;
- Consider legislation to create a Citizen Oversight Board for elections that would oversee, track, and follow up on voter fraud reports;
- Provide for more consistent oversight of election procedures at the county level;
- Request a closed session meeting for legislators to learn more about election security procedures;
- Request more information regarding the difference in powers and duties between



the county election officers and the Secretary's Office;

- Direct counties to ensure their election policies and procedures are documented in writing; and

- Continue to study issues with voting machines and strategies for combating bad actors.