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STATE OF KANSAS

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To: 2023 Special Committee on Elections

Re: Testimony of the Kansas Secretary of State

The Secretary of State's Office appreciates the opportunity to provide an update on the administration of elections in Kansas to the Committee.

In the past few years, significant legislation to update and modernize Kansas election law was proposed by the Office and enacted by the Legislature. This partnership has resulted in Kansas maintaining its leading edge as a state recognized for strong, safe, and secure elections systems and election administration. One of the strengths of Kansas elections, and strong safeguard of the state's election system, is the decentralized nature of election administration. In Kansas, counties, not the state, are responsible for election administration, which includes not only conducting elections but other aspects of election administration, such as registering voters, determining the method of voting, and voter roll maintenance.

It is important to note that despite election-related issues in other states that have garnered attention, Kansas has strong election laws, such as voter ID, signature verification, a ban on same-day registration, and other safeguards that prevent issues that occur in other states from taking place in Kansas. That is why Kansas is a recognized leader in state election administration. We appreciate the ability to work with the Legislature to maintain this recognition.

The Office's testimony is divided into three sections. The first section details how Kansas elections are viewed in relation to other states, and identifies areas where Kansas is a leader in election administration. The second section provides Committee-requested information. The third section addresses allegations that seek to undermine confidence in the election system in Kansas.

PART I: National Observations and Comments on Kansas' Elections:

1. Kansas is recognized as a national leader in election best practices for:
 - a. Use of voter ID for both in-person and mail ballot voting. Voters must present a government issued photo identification at every election.

- b. Voter roll maintenance procedures. While every state suffers under federal restrictions on removing voters, the voter rolls in Kansas are maintained and updated daily. From November 1, 2020, through November 1, 2022:
- Voter registration records removed from voter registration list – 131,563.
 - Voter registration records cancelled due to death – 48,113.
 - Voter registration records cancelled due to felony conviction – 1,543.
- c. Mail ballot security with the use of verified request-only system to obtain a ballot, and daily individualized tracking by each county of mail ballots requested and returned.
- d. Election result verification through the combination of pre- and post-election tabulator testing, post-election audits, close-election audits, and procedural audits.
- e. Kansas’ election process is transparent and open to observers at all stages of the process. Kansans may volunteer as poll workers to view the process during advance voting and on election day. In addition, Kansas allows every candidate and political party to have poll agents available to observe polling places and tabulation of results during election day, on election night, and at audits and recounts.
- f. Decentralized election administration structure with counties conducting elections and the Secretary of State’s role limited by state law to giving advice and performing specific enumerated tasks combined with a broad set of election options available to each county to task-organize its election effort to meet its own unique circumstances.
2. Kansas is often recognized for the fact that it is a state with a legislature and governor of different parties where major election legislation – security/integrity (2022) and process modernization (2023) – can be passed, signed into law, and not draw litigation. It is viewed as a testament to the recognition in Kansas of the importance of having strong election laws and continually working to ensure the security and integrity of the state’s election process.
3. Kansas has a high level of voter confidence in its state election system. Kansas voters never lost confidence in their election system. The 2022 Value Them Both Constitutional Amendment recount validated the Kansas election system to the public. The results are below.

COUNTY	CANVASS		RECOUNT	
	YES	NO	YES	NO
CRAWFORD	4,653	5,845	4,653	5,847
DOUGLAS	8,716	38,718	8,718	38,703
HARVEY	5,775	6,650	5,779	6,651
JEFFERSON	2,998	3,732	2,994	3,728
JOHNSON	79,818	174,933	79,798	174,915
LYON	3,625	6,265	3,625	6,264
SEDGWICK	61,824	85,923	61,843	85,885
SHAWNEE	21,717	42,682	21,720	42,698
THOMAS	1,721	820	1,723	820
TOTALS	190,847	365,568	190,853	365,511

4. The case before the Kansas Supreme Court regarding whether strict scrutiny should apply to election law challenges, *League of Women Voters, et al v. Schwab, et al*, is probably the most watched election law case in the country.
5. Kansas has been subject to costly, time-consuming litigation. Litigation challenging elections in Kansas has failed, 0-8, with the courts consistently ruling against plaintiffs. The federal lawsuits *Roberts et al v. Caskey et al* and *Farr v. United States Government et al*, both filed in 2022, come in for special derision.

The *Farr* lawsuit claimed the CIA stole the evidence of the algorithm used to alter the election results.

The *Roberts* case asked a federal court to decertify the entire Kansas 2020 election and rerun the 2020 presidential election in 2022.

Court comments on these claims included:

- “long on suspicion, contingency, and hypothesis, but short on facts”
- “only to keep a vague notion alive to undermine the finality of the 2020 elections”

PART II: The Four Issues on which the Committee Requested Testimony

Topic 1: *Usability of voting machines. Issues/errors Kansans have reported with electronic voting machines, statistics on that if those are gathered by your office, and if there is a follow-up process for investigating or addressing those issues.*

The Secretary of State’s office receives occasional reports from voters reporting on an interaction with their voting machine on Election Day. When those reports are received, the office will work with the voter to determine the nature of the interaction. The office will ask what polling place the incident occurred, did the voter report this to the supervising judge at the polling place, or to the county election office, and finally, was the voter able to cast a vote that reflected the voter’s intent. Almost every instance reported involved the voter casting a vote for the person whom they intended.

The office has received reports that when using a touch screen machine, the machine did not initially reflect the voter’s intention. This will occasionally occur when the calibration of the voting machine needs to be corrected. After the voter has made all their selections, every voting machine, regardless of vendor, produces a summary report of who the voter selected. Each machine requires the voter to review this before casting a vote. This is when a voter must contact the supervising judge to alert the judge of the issue.

Once an issue has been reported, the supervising judge will remove the machine from the voting process until the machine can be re-calibrated and tested before being used again. The office always follows up with the county election office to ensure the office has been made aware of the issue.

The Secretary of State’s office does not keep statistical information on these types of reports.

Some allege systemic fraud is based on voting and tabulation machines switching voters' choices from one candidate to another. For instance, a voter selects candidate X on a voting machine, but the paper ballot records a vote for candidate Y and the voter failed to check it. Or a voter feeds a ballot with candidate X selected into a tabulator, but it records a vote for candidate Y.

Kansas employs multiple best practices and state laws to prevent any purported vote switching schemes from occurring:

- Counties conduct acceptance tests on the voting and tabulation machines when they are first received to ensure the machines are intact and functioning properly. This includes correctly processing a test election, which documents whether votes are recorded correctly.
- Before elections, counties conduct logic and accuracy testing on the voting and tabulation machines. This ensures the machines are functioning as expected.
- After elections, counties conduct public post-election testing on all tabulation machines. This ensures the tabulation machines are still functioning as intended after the election.
- Every vote in Kansas is recorded on a paper ballot. If using a ballot marking device, the voter has, and should exercise the opportunity to physically examine the ballot to ensure it is marked correctly.
- Finally, state law (K.S.A. 25-3009) requires counties to conduct post-election audits of randomly selected precincts. This manually compares the official tabulations of these precincts to the ballots and provides one final check to ensure the ballots were correctly counted. In 2022, Cherokee County officials identified a vendor programming error through this process. This is an example of a post-election control working.

Topic 2: *An update on the implementation of watermarked ballots passed in 2021 HB 2138.*

Prior to passage of HB 2138, counties were required to provide a unique mark on each ballot. HB 2138 added the requirement of a ballot watermark by January 1, 2024, in addition to the unique mark. Currently Kansas is one of only a few states to require a ballot watermark. The Secretary of State's office is currently in the process of working with election vendors and county election offices to ensure a ballot watermark will be in place for elections occurring in 2024.

Topic 3: *Any updates on implementation of enacted 2023 bills (SB 221, HB 2053, HB 2087). Added implementation updates for enacted 2022 bills (2022 HB 2138)*

2022 HB2138 Election Integrity: This bill was a substantial improvement to election integrity to what was already a very secure election system. The following measures have been implemented:

- New tool that flags registered voters who may have moved – counties are sending mailings after the 2022 federal election to voters who have had no election activity in four years.
- New close race election audit – used in 2022 GOP Treasurer primary.

COUNTY	CANVASS		RECOUNT	
	JOHNSON	TYSON	JOHNSON	TYSON
BARTON	1,762	1,062	1,762	1,062
CLOUD	1,082	748	1,082	748
DICKINSON	2,902	1,432	2,898	1,428
HARVEY	4,091	2,366	4,086	2,366
MCPHERSON	4,509	1,882	4,517	1,885
OTTAWA	891	607	891	607
TOTALS	15,237	8,097	15,236	8,096

- Conducting procedural audits this fall. Evaluation criteria have been developed. Kansas, along with Texas and Mississippi are the only states to conduct procedural audits.
- Established parameters for an affidavit system for chain of custody from polling places and advance voting locations to county election offices.
- Amended or adopted associated election regulations.

2023 HB2087 Electoral College: This bill made Kansas’ electoral college laws consistent with the new federal laws, clarified provisions concerning independent and third-party presidential candidates, and eliminate obsolete provisions. There were no provisions requiring implementation.

2023 HB2053 Presidential Primary: This bill added a third statewide election to the 2024 calendar incorporating the standard election procedures with some variances included by the legislature from the standard election timeline that voters will need to be aware of. The office has reviewed the bill, resolved ambiguities, and posted online the key points of the bill as an aid to the two political parties.

By December 2023 we will know if the political parties will have a primary. By January 2024, we will know who has filed to be a candidate in Kansas. By September 2024 we will know each party’s national candidate and each party will be required to file its slate of electors with the Secretary of State’s office. Unlike the August primary election, where the vote determines the party’s candidate in the general election, in the presidential preference primary the vote totals are given to the state political parties for their use in binding delegates for the national party’s nomination decision.

We were gratified that both political parties trusted the state’s election system and turned over the critical vote counting component, a traditional role of the political parties, to the counties to administer the presidential preference primary election.

2023 SB221 Election Modernization: This was the largest election modernization bill since 1968 amending over 120 election provisions. The goal was to update multiple provisions, fix inconsistent and incompatible timelines and confusing terminology and eliminate obsolete, confusing provisions.

Since passage, the office has submitted amendments to 18 election regulations into the regulation adoption process. The office also reviewed the entire package of changes with county election officers, identified important changes, and answered questions on how counties are to implement the changes.

Topic 4: *Any response or clarification your office would like offer regarding the Legislative Post Audit on Elections.*

General Comments:

Since the time-period reviewed by the LPA audit, the legislature has enacted two major and two minor election bills, over 20 election regulations have been amended or are in the process of being amended, and the county certified training program was launched.

We applaud Appendix C, which directly refutes three of the most common allegations regarding the election system: First, all voting systems were and remain certified. Second, changes to unofficial election night results are normal and do not demonstrate fraud. Third, election security practices prevent vote flipping.

We also want to reaffirm the observation by LPA that elections are incredibly complex operations and require large numbers of people and processes that play out over months. Each of Kansas' 105 counties has a county election officer responsible for conducting all elections in the county.

Methodology comments:

1. We questioned the conclusion that lack of paperwork indicates an action was not performed– small organizations often minimize records and instead, talk to each other.
2. The Election Administration Commission (EAC)'s list of "best practices" was intended to be a menu from which election administrators could select those practices that fit a particular election environment. It is not intended to be a checklist that every county must follow.

LPA Conclusions:

- 1,2. 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?

LPA's conclusions mirrored our observations – county resources or lack thereof drive the level of security employed by the county. Based on the 2022 and 2023 legislation the office has proposed amending election regulations governing the physical security and data security of election systems to increase the minimal acceptable levels and has found a way to use existing federal election security funds to help cover most of the cost.

3. Do county election officers receive adequate training to administer federal elections?

After the 2022 election, the Secretary of State's Office developed and is currently conducting training to certify all county election officers. Training began earlier this year and to date, over 150 county election officials have taken the first three classes of the training program.

PART III: Addressing false information regarding Kansas elections

Following the 2020 elections, concerns were raised in some states about election administration. It is important to note that every state's election laws are different and that Kansas, as a recognized leader in election administration, has strong laws in place to safeguard our state's election system. The following are just a few of the unfounded allegations raised about Kansas elections.

1. The Voting Systems in Kansas are Certified.

There are a variety of assertions that no election systems in Kansas are properly certified. Two of the more common variations are debunked below:

Assertion: After the Election Assistance Commission (EAC) adopted the new Voluntary Voting System Guidelines (VVSg) 2.0 standard for election systems, all systems currently certified to VVSg 1.0 became de-certified.

The Help America Vote Act of 2002 (HAVA) requires the EAC accredit voting system test laboratories and certify voting equipment. Participation by states in EAC's certification program is *voluntary*. Kansas law does not require EAC certification, however, current and former Secretaries have used discretion over many years to use a voting system's federal certification when certifying a voting system in Kansas.

VVSg 1.0 were originally promulgated in 2005 and adopted in 2007, with minor updates in 2015 (with VVSg 1.1). Not a single system in use was ever certified to VVSg 1.1, nor were systems required to be. The second round of updates, VVSg 2.0, were promulgated in late 2021 and adopted in 2023.

As some see it, the new VVSg 2.0 standard's arrival — before the 2024 election, but before any elections systems can be certified to that standard will be ready for the 2024 election — decertified all systems used in all 105 counties of Kansas. They claim that “All of the systems are officially de-certified”. This is false.

Fact: All election systems currently in use in Kansas are certified and remain certified to the VVSg 1.0 standard. No system in Kansas will be certified to the VVSg 2.0 standard until after the 2024 election. **The EAC's Adoption of Voluntary Voting Systems Guidelines (VVSg) DOES NOT decertify the Election Systems currently used in Kansas.**

Assertion: The lack of a quorum on the EAC prevented systems from being certified. No Voting System Test Laboratories (VSTL) system certification were valid because the EAC lacked a quorum or chairperson. The EAC lacked a quorum during 2010-2014 and 2018-2019; and lacked a chairperson during 2017-2018.

Fact: Kansas law is clear that the Secretary of State certifies election systems for use in Kansas, not the EAC. So, what the EAC does or does not do is not binding in Kansas. The lack of a quorum on the EAC did not prevent systems from being certified.

Christy McCormick, Chairwoman of the EAC and Mark A. Robbins, EAC executive director, have repeatedly discredited the “no quorum” theory noting that that participation is the EAC's Testing

and Certification Program is wholly voluntary for states and that both testing labs, Pro V&V and SLI Compliance, were accredited in, respectively, 2015 and 2007, and remain accredited.

2. Hand Counting Ballots

Allegation: Hand counting is a better option than tabulator counting.

Fact: Hand counting ballots, when compared to tabulator counting, takes longer, is less reliable, more expensive, presents logistical challenges for counties, and manipulating the results of a hand counted election is simple.

Numerous studies — in voting and other fields such as banking and retail — have shown that people make far more errors counting than do machines, especially when reaching larger numbers of things to count. The tedious and repetitive nature of counting leads directly to oversights, missed steps, and error. Tabulators are very good at tedious, repetitive tasks. Humans are not.

The example of Osage County, MO

In April 2023, Osage County, MO, a rural county, conducted a hand count of the ballots on election night for a routine local election to test the process. Osage County clerk determined it will return to using tabulators for the following reasons:

- Negative public outcry when hand counting decision announced.
- Took substantially longer to complete the hand count on election night than planned.
- Election night results posted much later than usual resulting in public uproar.
- Required substantial increase in resources, staff, and training – costs were ~20% higher than a tabulator count.
- Significantly higher error rate than tabulator count.
- Although errors were not attributed to fraud it would be simple to defraud a hand count
- Higher number of rejected ballots due to no auto-rejection of over-voted ballot.
- Overworked staff threatened to quit if hand counts used again.
- Conclusion: Tabulators are faster, more accurate, more efficient, cheaper, easier on staff, and better at preventing fraud.

Some Other Study Results:

A Rice University study found that hand counting ballots “was time-consuming and prone to high error rates, with only 57.5% of participants’ counts providing the correct election results.”

A 2018 Wisconsin study reviewing hand and tabulator counts from 2011 and 2016 elections concluded that optical scanners were twice as accurate as hand counting.

In Cobb County, Georgia, after the 2020 election, a hand tally ordered by the state for just presidential votes on about 397,000 ballots took hundreds of people five days. At that rate it would have taken 100 days to count every race on each ballot using the same procedures.

In 2021, the Cyber Ninjas tried to hand count the ballots in Maricopa County, Arizona, but after considerable time and cost, could never come up with a reliable vote count.

In 2022, Nye County, Nevada, attempted to hand validate the machine count. The machine count took about four hours. The hand count took upwards of three weeks for a small rural county with few races. Moreover, there was significant error rate with the hand counting.

Use of Hand Counting in Post Election Audits: Hand tallies are used effectively in post-election audits to spot check the tabulator results of a single election, in certain precincts, and is done without the time pressure of trying to promptly report results on election night. Once ballots are sorted by precinct, a single election can be hand-counted.

France: Proponents of hand-counting often point to France which employs mainly hand counting. French elections, however, have only one race and the ballot is a card with the selected candidate's name pre-printed on it, allowing an easy "stack and count." In Kansas, a single ballot may contain more than 20 separate votes including a write-in option. Kansas and France are not comparable.

3. Voting Systems are not Connected to the Internet

Allegation: One of the most common false allegations is that components of voting systems used in Kansas are connected to the internet.

Fact: Components of Kansas voting systems are not connected to the internet. Kansas law expressly forbids voting system components to be connected to the internet and to have the capacity to be connected to the internet. All Kansas election system vendors have certified to the Secretary of State's office that their equipment cannot be connected to the internet. Prior to this law, Kansas county election officials adopted a policy in 2005 banning any piece of voting equipment from connecting to the internet.

No evidence has ever been presented to this office that demonstrates voting systems are connected to the internet. Allegations have been made based on the following mistaken assumptions:

1. Information from other states is presumed applicable to Kansas. Materials from some states expressly require their voting system components to be connected to the internet. Kansas prohibits internet connection.
2. E-poll books, which are connected to the internet is evidence that other components of the election system are also connected. But e-poll books are not voting equipment, they do not touch any ballot. E-poll books, by their inherent nature must be connected to the internet to ensure no one double votes by checking into multiple polling places.

/ Clayton Barker

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