

Chairman Thompson and members of the committee,

On Wednesday, September 13, we attended the public comment hearing on proposed changes to regulation K.A.R. 7-47-1 which was authorized by K.S.A. 25-3009. The SOS office received multiple emails voicing objections to the regulation. Not about the proposed changes, but about what wasn't being changed, specifically item (d) which allows for the use of ballot images during the post-election audit.

During this past legislative session, the SOS office offered HB2086, which began as a 53 page "clean-up bill". Some of you may not know the story behind many of the amendments added to that bill so I will give you the short version. Those of us who are fighting for election security saw this bill for what it was; a power grab by the SOS which, did in fact include several clean-up items. We didn't see the bill on the House side until about 24 hours before testimony was due. While we were able to offer a couple of brief testimonies as to the issues with the bill, the bill passed the house unanimously. A small group of us attacked the bill on multiple issues in the Senate committee hearing. After multiple amendments (and more that could have been made) the bill was added to SB221 in Conference Committee and was signed by the Governor April 24th.

One of the major concerns of our group was, and still is the use of ballot images in the post-election audits, which is allowed by KAR 7-47-1, even though the statute clearly states paper ballots shall be used. As you can see in the screenshots below, the SOS office attempted to change the statute to be compliant with the regulation which had been written in 2019.

↓ HB2086 as originally introduced

26 (b) (1) The audit shall be performed manually and shall review all
27 paper ballots *or the corresponding ballot images* selected pursuant to
28 subsection (a). The audit shall be performed by a sworn election board
29 consisting of bipartisan trained board members. The county election
30 officer shall determine the members of the sworn election board who will
31 conduct the audit.

↓ SB221 (Substitute for HB2086) Enrolled version – note removal of ballot image language

(b) (1) The audit shall be performed manually and shall review all
paper ballots selected pursuant to subsection (a). The audit shall be
performed by a sworn election board consisting of bipartisan trained
board members. The county election officer shall determine the
members of the sworn election board who will conduct the audit.

The legislators agreed with our objections to this wording, which would have allowed "ballot images" to be used, and the wording was removed with an amendment.

Mr. Barker specifically mentioned in the public comment hearing on Wednesday "I removed it. I told Thompson to pull it".

My response was you did that knowing you had this regulation in your back pocket.

Mr. Barker, to paraphrase, also commented that he was in daily contact with the legislators during the entire hearing process, he spoke with them daily and the legislators knew about the regulation.

If Mr. Barker's statement regarding the legislators' knowledge of the regulation is correct, and the legislators knew removing the "ballot images" wording would have no effect on what we were trying to accomplish, we would be deeply disappointed in the members of the committee our group had been in communication with during the hearing process of HB2086.

Back to the regulation hearing. Mr. Barker was asked what was needed to stop the ballot images from being used. Would that require specific language stating they couldn't be used? His answer was yes. Until the legislators specifically include language in the statute that states ballot images shall not be used, the SOS office will continue to circumvent the statute with this regulation.

A letter to the Attorney General's office produced the following response:

From: General <General@ag.ks.gov>
Date: September 13, 2023 at 3:21:26 PM CDT
To: 20newsworthy20@gmail.com
Subject: Reply To: Proposed Regulation 7-47-1

Dear Kari,

Thank you for reaching out to the Office of Kansas Attorney General Kris W. Kobach. We've received your email expressing concern for the Secretary of State's proposed administrative regulations. Democracies rely on constituent interaction, and we appreciate you taking part in keeping our democracy strong. To effectively represent Kansans, we must hear from you.

We have heard from a number of concerned Kansans regarding this matter, and we'd like to take this opportunity to let you know that the proposed regulation in question, as referenced in your email, was fully approved by the previous administration in 2019, prior to Attorney General Kobach assuming office.

What our office approved on June 19th, 2023, regarding the revision of Section 7-47-1(d), was a simple change in legal citation, to bring the proposed regulation in line with other administrative regulations as they show up in the regulation books. The substance of this section, however, is preexisting from the approval handed down in 2019.

We trust this information is useful to you. Please contact our office again if we can assist you with future matters within our jurisdiction.

Sincerely,

W. Hendrix
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This response makes it clear our previous AG was complicit in the abhorrent actions of our SOS office regarding this regulation. What's interesting is our current AG was the SOS at the time this regulation was authorized. Mr. Barker indicated it was started by the previous administration and completed by the current. What we don't know is which administration, or possibly both, wrote the language regarding the use of ballot images. Regardless of what is being changed or not changed by the regulation, if something is not compliant with statute, then

it should be corrected, at least in our minds. As it stands, it appears the current AG's office will do nothing to correct this repugnant behavior.

Apologies for dragging on with this, but there is more information that we believe is pertinent. The following is an excerpt from public comment submitted to Mr. Barker regarding 7-47-1.

Let's return to August 2022, the statewide constitutional amendment and my introduction to the existence of K.A.R. 7-47-1. On the morning of August 8th, I emailed the Sedgwick County Election office regarding the use of ballot images rather than paper ballots for the post-election audit. I referenced K.S.A. 25-3009 and included a highlighted copy of the applicable section which stated paper ballots shall be used. I asked if per the statute, paper ballots are to be reviewed, how can scanned ballot images be used? The following morning, having not received a response, I emailed asking for an update. A couple of hours later I received a response referencing KAR 7-47-1 (d). This was the day before the audit was to begin. The response I received and the fact that a regulation allowed for a statute to be ignored didn't sit well with me. I read that regulation literally 10 more times that day, and finally it jumped out at me. The very first sentence clearly stated that the requirements of this regulation shall not apply to statewide constitutional amendments. At 9 pm, August 9th I emailed the election office an "urgent-time sensitive" email pointing out that while I didn't agree a regulation should have the power to usurp statute and allow for the use of ballot images, I understood what the regulation said. I proceeded to point out that the referenced regulation did not apply to the statewide constitutional amendment and therefore, at least for that race, the paper ballots shall be used. When I arrived the following morning to observe the audit, I was told ballot images would be used for all races. Election officials were literally picking and choosing which parts of the statutes and regulations they would adhere to. The SOS office is making legislative decisions without authority by adding a race that isn't required to be audited per statute. Secondly, the Regulation written by the SOS office didn't apply for this race so by what authority did he authorize the use of ballot images?

Below (these are referenced above) are screenshots of HB2086 as introduced and SB221 (HB2086 was added into SB221). As you are well aware, the SOS office attempted to change the statute to be compliant with the regulation. The Kansas legislators agreed with the group of citizens who protested this change and that section of the statute was returned to its original form. Twice now, the legislature has voiced their intent and yet the SOS's office still isn't listening. Again I ask, why is it essential to Secretary Schwab that ballot images are used? Paper ballots are the most secure form of audit and would provide the greatest safeguards against fraud. I encourage you to read the Halderman report to learn why paper ballots are vital to the security of our elections. <https://www.documentcloud.org/documents/23846675-halderman-report> While authority has been granted to the SOS to write regulations, the authority is being abused by the SOS and going against both the will of the people and the legislators.

The obsession the Secretary of State's office has with the use of ballot images is curious. Are you trying to hide the fact that neither the statute or the regulation was followed in the post-election audit of the Value Them Both Constitutional Amendment? Are you encouraging fraud by aligning digital images with digital ballots with no way of preserving and auditing individual paper ballots?

My hope is that you value honesty, truth and transparency in our State elections. I believe that in your position as General Counsel to the Secretary of State that you have a duty to the people of Kansas to inform Mr. Schwab that regulations should not be put in place that would be in violation of Kansas statutes and that any attempt to do so would be in violation of his role and duties as Secretary of State.

I have been watching the actions of the Secretary of State's office with respect to election security and I will continue to do so. As every day citizens we are required to follow the law and are punished if we fail to do so. The implementation of regulations that disempower the people of Kansas is not what the people desire and certainly not part of the Oath of office you swore to uphold. I encourage this office to follow the statutes.

Since it doesn't seem the SOS or the AG office is going to address this lack of compliance between state statute KSA 25-3009 and KAR 7-47-1, the legislators must. If you don't, then you

are complicit in this abhorrent behavior as well. Notice I don't mention the behavior is a crime because the fact our penalties for election crimes are abysmal and basically non-existent is a crime in and of itself. Please correct the non-compliance issue and change the penalties for election crimes so a person is terrified to commit one for fear of the consequences.

Thank you for your time today,

Brett Anderson, Sedgwick County Precinct Committeeman
Kari Sue Vosburgh, Sedgwick County Precinct Committeewoman
WTPKS