

Approved 3-13-91  
Date

MINUTES OF THE House COMMITTEE ON Elections

The meeting was called to order by Representative Tom Sawyer at  
Chairperson

9:14 a.m./p.m. on Thursday, March 7th, 1991 in room 521-S of the Capitol.

All members were present except:

Committee staff present:

Pat Mah, Research  
Arden Ensley, Revisor  
Ellie Luthye, Committee Secretary

Conferees appearing before the committee:

Ron Hein  
Linda Wood, Lyon County Clerk  
Elgia C. Stevenson, Johnson County Election Commissioner  
Representative Elaine Wells

The House Elections Committee was called to order by Chairman Tom Sawyer at 9:14 a.m., Thursday, March 7th, 1991.

The minutes of the meetings on March 1st, 4th, 5th and 6th were presented for approval. Representative King made a motion to approve the minutes, seconded by Representative Macy and the motion carried.

The Chair opened hearings on the bills concerning election procedures changes, HB 2233, determining the validity of ballots; HB 2236, absentee ballots; HB 2238, torn, defaced and wrongfully marked ballots; HB 2239, absentee ballots; and HB 2327, rules for canvassers. As in previous meetings, the conferees were given permission to speak on all the bills they were interested in at one time.

Ron Hein was the first conferee to appear before the committee. He addressed specifically three bills, HB 2233, HB 2239 and HB 2327. He stood in favor of these three bills, having served as an attorney in the case of Wellman v. Wells and became aware of several statutes on the books that are subject to abuse by the electoral process and these bills would help eliminate this abuse. He also showed some examples of the ballots that were questioned during this election challenge. (Attachment 1)

Linda Wood, Lyon County Clerk, next appeared before the committee with testimony on all the election bills. Following her comments on each bill she requested that an interim committee study the election law issues raised in the recounts and election contests arising out of the November, 1990 election. (Attachment 2)

The Election Commission, Elgia C. Stevenson, from Johnson County was the next conferee. She also urged the committee to consider the formation of an interim study committee to develop some guidelines which could reduce the turmoil of vote challenges. (Attachment 3)

Ron Thornburgh appeared before the committee on behalf of Secretary of State Graves. The office of the Secretary of State supports HB 2233, stating because of the problems in the contest of the 59th district last year, there is a real need for legislation which clarifies when and how a ballot is to be counted. (Attachment 4)

In regard to HB 2238 it is suggested an amendment be made to insure that each voter only has to read the notice regarding torn or wrongfully marked ballots and not that each voter must be given an individual copy of the notice.

Representative Elaine Wells appeared with written testimony on each of the bills. She touched briefly on each bill and then referred the committee to her written testimony. (Attachments 5, 6, 7 and 8)

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Elections,  
room 521-S, Statehouse, at 9:14 a.m./p.m. on Thursday, March 7, 1991.

Following this testimony, and questions by the committee, the Chair declared hearings closed on HB 2233, HB 2236, HB 2238, HB 2239 and HB 2327.

The next order of business was final action on HB 2326, concerning change of names of voters. An amendment was requested which would authorize the County Election Officer to change the voter's voter registration records to reflect name change. (Attachment 9)

Representative McKechnie made a motion to accept this amendment, seconded by Representative King and the motion carried. Representative Praeger made a motion to pass HB 2326 as amended, seconded by Representative Wells and the motion carried.

The next bill before the committee for final action was HB 2136, disposition of filing fees. A motion was made by Representative King to report the bill adversely, seconded by Representative Shallenburger and the motion carried.

HB 2151 was next presented to the committee for discussion and final action. Representative Shallenburger made a conceptual amendment to eliminate the office of election commissioner and make the county clerks responsible for the elections. This was seconded by Representative McKechnie.

Representative King made a substitute motion to have an interim study of all of these election bills, seconded by Representative Parkinson, and the substitute motion passed on a vote of 9-8.

HB 2508 was next presented to the committee for final action. Representative Shallenburger moved to table this bill, seconded by Representative McKechnie.

Representative Cates made a substitute motion to amend line 15 to read "the first Tuesday in April of 1996," seconded by Representative Baker. A vote was taken and the substitute motion failed.

The question was called on the original motion to table HB 2508 and the motion passes.

The Chair adjourned the House Elections Committee at 10:30 a.m.

The next meeting of the House Elections Committee will meet on Friday, March 8th, 1991 at 9:00 a.m. in Room 521-S.



HEIN AND EBERT, CHTD.

ATTORNEYS AT LAW

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913/273-1441

Ronald R. Hein  
William F. Ebert  
Steven D. Rosel

HOUSE ELECTIONS COMMITTEE  
TESTIMONY RE: HB 2233, HB 2239 and HB 2327

PRESENTED BY RONALD R. HEIN  
March 7, 1991

Mr. Chairman, members of the committee:

My name is Ron Hein, and although I am a registered lobbyist, I am appearing today on behalf of myself as an individual.

I was involved as an attorney in the case of Wellman v. Wells, during the course of that litigation, became aware of several statutes on the books that are subject to abuse by the electoral process.

Two of the statutes which represent concern are subsections (b)(2) and (b)(3) of K.S.A. 25-3002. HB 2233, which deletes both subsections, and HB 2327, which deletes subsection (b)(3) only, will do a great deal to insure that there is uniformity in the treatment of ballots in this state.

First of all, it should be noted that these rules for the Board of Canvassers, which relate to throwing out ballots which may have an identifying mark or which have been defaced, mutilated, or torn, are only applicable to paper ballots. Therefore, on the face of it, there is disparity between the rural areas which still utilize paper ballots, and the urban areas which are more inclined to be using voting machines or computer balloting. I believe that the existence of subsection (1), which provides that no ballot shall be invalidated by any technical error unless it is impossible to determine the voters intention must be read in conjunction with subsections (b)(2) and (b)(3), but it became apparent to me that boards could exercise a great deal of discretion with regards to what constituted an identifying mark, or as to what constituted a defaced, mutilated or torn ballot.

Although the Secretary of State was given authority to adopt rules and regulations defining what an identifying mark is, no rules have been promulgated, primarily because the Secretary of State's office has candidly admitted that they do not know what constitutes an identifying mark. These laws were originally enacted at a time when fraudulent actions by election officials was quite common. In 1968, the electoral process was changed so that the election commissioner would appoint to the election board representatives of both the Republican and Democrat party. The law provides that all ballots are to be counted by unanimous vote, unless the ballots are objected to by a minority member of the counting board. Those ballots are then subjected to additional review by the Board of Canvassers.

In short, many of the problems encountered in the late 1800s and early 1900s that necessitated these two statutes have now been negated by the passage of time, increased communications function, and the utilization of a unanimous bi-partisan board, coupled with the additional aid of poll watchers who are representative of the individual candidates. Therefore, I support both bills.

With regards to HB 2239, I would support this legislation as an effort to insure that there is some accountability that ballots have to be received by the Election Commissioner prior to the closing of the polls at 7:00 p.m. on election day. In the *Wellman v. Wells* case, there was a ballot that was received by the Election Commissioner after the polls had been closed, in fact the next morning. The argument was made at the trial that the ballot should be counted, and the evidence was that the ballot had been placed into a drop box, which box is only opened at 8:00 a.m. every day, ostensibly to receive night deposits for the courthouse. The issue thus arose whether or not a ballot that did not actually reach the Election Commissioner before the polls closed should be entitled to count. Testimony was received that other ballots were received in the mail and otherwise after the closing of the polls, and were not counted by the Election Commissioner. This ballot likewise was not counted, but an effort was made to have the ballot count at the trial, and although the Judge found that the ballot should not be counted, because it violated the provisions of K.S.A. 25-1132, the Select Committee determined on a non-unanimous vote that the ballot should be submitted to the full House of Representatives to be opened and, presumably, counted.

I don't believe that Election Commissioners throughout the state should have the discretion to accept some ballots after 7:00 p.m., and not accept others, and although I am not certain whether the exact wording in HB 2239 is the way to solve the problem, it appears to be a step in the right direction to insure that the obligation is on the voter to insure that their ballot is received by the Election Commissioner on or before the closing of the polls, and that the voter cannot rely upon an argument of good faith in the event that the mail was delayed, or a friend does not drop the ballot off on time, or that any other reason is given for a ballot being late. Therefore, I do support the concept of HB 2239.

Thank you for permitting me to testify today, and I will be happy to yield to any questions.

# State of Kansas

## Official General Ballot

### National and State Offices

### County of Osage

### November 6, 1990

### NATIONAL OFFICES

To vote for a person whose name is printed on the ballot make a cross or check mark in the square at the right of the person's name. To vote for a person whose name is not printed on the ballot, write the person's name in the blank space and make a cross or check mark in the square to the right.

**For UNITED STATES SENATOR**

Vote For One

DICK WILLIAMS, Wichita Democrat

→ NANCY LONDON KASSEBAUM, Burdick Republican

**For UNITED STATES REPRESENTATIVE  
5th DISTRICT**

Vote For One

GEORGE D. WINGERT, Ottawa Democrat

→ DICK NICHOLS, McPherson Republican

### STATE OFFICES

To vote for the pair of candidates, make a cross or check mark in the square or parentheses at the right of the names of the candidates for governor and lieutenant governor.

**For GOVERNOR and LIEUTENANT GOVERNOR**

Vote For One Pair

MIKE HAYDEN, Atwood Republican   
 HARLAND E. PRIDDLE, Topeka

N. CHRISTINA CAMPBELL-CLINE, Wichita Independent   
 TIMOTHY T. BENTON, Garnett Nomination(s)

→ JOAN FINNEY, Topeka Democrat   
 JAMES FRANCISCO, Mulvane

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**For SECRETARY of STATE**

Vote For One

→ BILL GRAVES, Salina Republican

RONALD J. (R.J.) DICKENS, Wichita Democrat

**For ATTORNEY GENERAL**

Vote For One

→ BOB STEPHAN, Wichita Republican

BERT CANTWELL, Edwardsville Democrat

**For STATE TREASURER**

Vote For One

→ SALLY THOMPSON, Topeka Democrat

ERIC RUCKER, Topeka Republican

**For COMMISSIONER of INSURANCE**

Vote For One

→ RONALD L. (RON) TODD, Lawrence Republican

PAUL FELECIANO, JR., Wichita Democrat

**For STATE REPRESENTATIVE  
59th DISTRICT**

Vote For One

KARLEN CHRISTESEN-WELLMAN, Osage City Democrat

→ ELAINE L. WELLS, Carbondale Republican

**For STATE BOARD OF EDUCATION MEMBER  
3rd DISTRICT**

Vote For One

→ PAUL D. ADAMS, Osage City Republican

State of Kansas  
**Official General Ballot**  
 National and State Offices *OK*  
 County of Osage  
 November 6, 1990



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 NANCY LANDON KASSEBAUM, Burdick \_\_\_\_\_ Republican   
 \_\_\_\_\_

**For UNITED STATES REPRESENTATIVE**  
**5th DISTRICT** Vote For One  
 GEORGE D. WINGERT, Ottawa \_\_\_\_\_ Democrat   
 DICK NICHOLS, McPherson \_\_\_\_\_ Republican   
 \_\_\_\_\_

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 HARLAND E. PRIDDLE, Topeka \_\_\_\_\_ Republican

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 TIMOTHY T. BENTON, Garnett \_\_\_\_\_ Nomination(s)

*JOAN* FINNEY, Topeka \_\_\_\_\_  
 JAMES FRANCISCO, Mulvane \_\_\_\_\_ Democrat

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 RONALD J. (R.J.) DICKENS, Wichita \_\_\_\_\_ Democrat   
 \_\_\_\_\_

**For ATTORNEY GENERAL** Vote For One  
 BOB STEPHAN, Wichita \_\_\_\_\_ Republican   
 BERT CANTWELL, Edwardsville \_\_\_\_\_ Democrat   
 \_\_\_\_\_

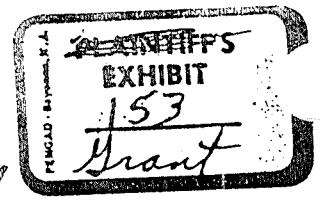
**For STATE TREASURER** Vote For One  
 SALLY THOMPSON, Topeka \_\_\_\_\_ Democrat   
 ERIC RUCKER, Topeka \_\_\_\_\_ Republican   
 \_\_\_\_\_

**For COMMISSIONER of INSURANCE** Vote For One  
 RONALD L. (RON) TODD, Lawrence \_\_\_\_\_ Republican   
 PAUL FELECIANO, JR., Wichita \_\_\_\_\_ Democrat   
 \_\_\_\_\_

**For STATE REPRESENTATIVE**  
**59th DISTRICT** Vote For One  
 KARLEN CHRISTESEN-WELLMAN, Osage City \_\_\_\_\_ Democrat   
 ELAINE L. WELLS, Carbondale \_\_\_\_\_ Republican   
 \_\_\_\_\_

**For STATE BOARD OF EDUCATION MEMBER**  
**3rd DISTRICT** Vote For One  
 PAUL D. ADAMS, Osage City \_\_\_\_\_ Republican   
 \_\_\_\_\_

State of Kansas  
**Official General Ballot**  
 National and State Offices  
 County of Osage  
 November 6, 1990



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**For ATTORNEY GENERAL** Vote For One  
 BOB STEPHAN, Wichita Republican   
 BERT CANTWELL, Edwardsville Democrat

**For STATE TREASURER** Vote For One  
 SALLY THOMPSON, Topeka Democrat   
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 ELAINE L. WELLS, Carbondale Republican

**For STATE BOARD OF EDUCATION MEMBER**  
**3rd DISTRICT** Vote For One  
 PAUL D. ADAMS, Osage City Republican



STATE OF KANSAS  
ABSENT VOTER BALLOT

A GENERAL ELECTION	B November 6, 1990	C Lyon County
<p><b>NATIONAL OFFICES</b></p> <p>To vote for a person, darken the oval to the left of the person's name. To vote for a person whose name is not printed on the ballot, write the person's name in the blank space and darken the oval to the left.</p>	<p>For ATTORNEY GENERAL Vote For One</p> <p><input checked="" type="radio"/> BOB STEPHAN Republican Wichita</p> <p><input type="radio"/> BERT CANTWELL Democrat Edwardsville</p> <p><input type="radio"/> _____</p>	<p><i>Torn &amp; Taped</i></p>
<p>For UNITED STATES SENATOR Vote For One</p> <p><input type="radio"/> DICK WILLIAMS Democrat Wichita</p> <p><input checked="" type="radio"/> NANCY LANDON Republican KASSEBAUM, Burdick</p> <p><input type="radio"/> _____</p>	<p>For STATE TREASURER Vote for One</p> <p><input type="radio"/> SALLY THOMPSON Democrat Topeka</p> <p><input checked="" type="radio"/> ERIC RUCKER Republican Topeka</p> <p><input type="radio"/> _____</p>	
<p>For UNITED STATES REPRESENTATIVE 5th DISTRICT Vote For One</p> <p><input type="radio"/> GEORGE D. WINGERT, Ottawa Democrat</p> <p><input checked="" type="radio"/> DICK NICHOLS Republican McPherson</p> <p><input type="radio"/> _____</p>	<p>For COMMISSIONER OF INSURANCE Vote for One</p> <p><input checked="" type="radio"/> RONALD L. (RON) TODD, Lawrence Republican</p> <p><input type="radio"/> PAUL FELICIANO, Democrat JR., Wichita</p> <p><input type="radio"/> _____</p>	
<p><b>STATE OFFICES</b></p> <p>To vote for the pair of candidates, darken the oval to the left of the names of the candidates for governor and lieutenant governor.</p>	<p>For STATE REPRESENTATIVE 59th DISTRICT Vote for One</p> <p><input type="radio"/> KARLEN CHRISTESEN- Democrat WELLMAN, Osage City</p> <p><input checked="" type="radio"/> ELAINE L. WELLS Republican Carbondale</p> <p><input type="radio"/> _____</p>	
<p>For GOVERNOR AND LIEUTENANT GOVERNOR Vote For One Pair</p> <p><input type="radio"/> JOAN FINNEY Democrat Topeka</p> <p>JAMES FRANCISCO Mulvane</p> <p><input checked="" type="radio"/> MIKE HAYDEN Republican Atwood</p> <p>HARLAND E. PRIDDLE Topeka</p> <p><input type="radio"/> N. CHRISTINA Independent Nominations CAMPBELL-CLINE, Wichita</p> <p>TIMOTHY T. BENTON Garnett</p>	<p>For STATE BOARD OF EDUCATION 3rd DISTRICT Vote for One</p> <p><input checked="" type="radio"/> PAUL D. ADAMS Republican Osage City</p> <p><input type="radio"/> _____</p>	<p><b>JUDICIAL BALLOT</b></p>
<p>To vote for a person, darken the oval to the left of the person's name. To vote for a person whose name is not printed on the ballot, write the person's name in the blank space and darken the oval to the left.</p>	<p><b>JUDGES OF THE DISTRICT COURT</b></p>	<p><b>QUESTION NUMBER 1</b></p>
<p>For SECRETARY OF STATE Vote For One</p> <p><input checked="" type="radio"/> BILL GRAVES Republican Salina</p> <p><input type="radio"/> RONALD J. (R.J.) DICKENS, Wichita Democrat</p> <p><input type="radio"/> _____</p>	<p>To vote for a Judge of the District Court being retained in office, darken the oval to the left of the word "YES".</p> <p>To vote against a Judge of the District Court being retained in office, darken the oval to the left of the word "NO".</p>	<p>To vote for a Justice being retained in office, darken the oval to the left of the word "YES".</p> <p>To vote against a Justice being retained in office, darken the oval to the left of the word "NO".</p>
A	B 004	C 004

*Torn & Taped*

Shall KAY McFARLAND, Topeka, Position No. 2, Kansas Supreme Court, be retained in office?

YES  
 NO

Shall RICHARD W. HOLMES, Wichita, Position No. 3, Kansas Supreme Court, be retained in office?

YES  
 NO

Shall TYLER C. LOCKETT, Wichita, Position No. 4, Kansas Supreme Court, be retained in office?

YES  
 NO

Shall FRED N. SIX, Lawrence, Position No. 5, Kansas Supreme Court, be retained in office?

YES  
 NO

*ABSENT*  
*JK 552*

March 7, 1991

NOTES FOR TESTIMONY  
LINDA WOOD, LYON COUNTY CLERK

INTRODUCTION - Mr. Chairman, Honorable representatives, ladies and gentlemen, my name is Linda Wood and I am the Clerk and Election Officer for Lyon County, Kansas. I feel uniquely qualified to speak to you about legislation affecting elections after my recent experience with an election contest in the 59th State Representative District. I have had the "opportunity" to see firsthand the application of many existing statutes governing elections. So I am aware of certain gaps between what appears to have been the intention of the legislators when a law is drafted and the practical reality of conducting an election, holding a recount or overseeing an election contest. I must admit that my first reaction to the demands of an election contest was to advocate changing all the laws governing elections. But that was in the heat of the moment. After some time for reflection, I still believe some changes are needed, but nothing as drastic as I initially thought. Please keep this background in mind as you hear my testimony.

HB2233, Wells (also applicable to HB2327, Sawyer & Shallenburger)

This bill proposes amendments to K.S.A. 25-3002 which would delete the sections voiding ballots which bear an identifying mark and ballots which are defaced, mutilated or torn. In the recent election contest for the 59th District, the inspection team pulled for review by Judge Merlin Wheeler some Lyon County ballots which they questioned as being "marked" or "torn". Unfortunately, common sense did not prevail in this process. Lyon County uses an opti-scan machine. So our ballots are perforated across the bottom so that the numbered stub can be detached when the ballot is returned to the receiving board by the voter. A quarter-inch tear at the bottom of the ballot occasionally happens when the stub is removed. The inspection team pulled those ballots on the grounds that they met the criteria of a torn ballot and so should be wholly void. I do not believe that was the intent of this law. And I do believe that the intent of this law is valid. Any ballot which is purposely defaced, mutilated or torn should be void and not counted. Common sense should dictate what constitutes a defaced, mutilated or torn ballot that shall not be counted under the law. Judge Wheeler remarked that technically speaking, every ballot in Lyon County is a torn ballot since the perforated stub is torn off. Certainly no one would advocate that they all be voided and not counted. Let the statute stand, but let reason prevail.

The portion of the law which speaks about identifying marks states that, "Determination of whether a mark is an identifying

mark shall rest in the discretion of the board canvassing in the case of a canvass and in the election court in the case of an election contest." What is wrong with that? Certainly the intent of the law is clear--to prevent someone from being paid for casting a ballot by allowing the canvassing board to reject ballots which can be identified as belonging to a specific voter. I agree that the law is not precise in stating what constitutes a marked ballot, but no law can be expected to address every possibility. So this law leaves that decision to those charged with the inspection of the ballots--it's a judgment call, and some things must be. Have faith in the good judgment of the officials who make these decisions.

Finally, concerning K.S.A. 25-3002 as it is now written, I would like to see subpart (4) worded more precisely to include opti-scan ballots which have the voting mark in the oval to the left of the name of the candidate and to define that an overvote can also occur when the ballot says, for example, to vote for three or fewer and the voter marks the oval or the square for four or more.

#### HB2236. Wells

This bill amends K.S.A. 1990 Supp. 25-1120 to include on the ballot envelope of absentee ballots a declaration which must be completed and signed by the absentee voter stating that he or she marked, enclosed and sealed the ballot in the envelope. The envelope currently in use for absentee ballots already has on it the declaration specified in the amendment. And the instructions enclosed with the ballot if it is mailed state that the declaration is to be completed and signed, and that the ballot is to be "personally" placed in the ballot envelope and sealed. In Lyon County, if this declaration is not completed and signed, we do not accept the absentee ballot as a valid ballot.

I would rather see legislation insuring that an affidavit of assistance is completed when an absentee voter obtains assistance in marking his or her ballot. Instructions to the absent voter should specify that such an affidavit must be completed if assistance is received, or the ballot will be invalid.

I oppose this bill in its present form, because I believe it fails to achieve the desired effect.

#### HB2238. Wells

I agree that written instructions should be available at the polling places concerning obtaining a replacement ballot in case of a tear, defacement or mismark; however, on the grounds of economy and clarity, I am adamantly opposed to giving each voter an additional document. I stress to my election board workers that they are to include in their verbal instructions to voters the notice that they may replace a spoiled ballot. As a practical matter, I doubt that 10% of the voters actually listen to and

register those instructions. I think that handing each voter a notice, besides increasing dramatically the costs of every election, will only serve to confuse the voter. One more piece of paper to keep track of and read is NOT going to solve this problem. Perhaps written instructions about replacing a spoiled ballot could be laminated to the writing shelf in the voting booth. Or a laminated placard could be suspended inside the booth. Please, don't pass legislation which will definitely increase election costs and in all probability not accomplish the aim.

HB2239, Wells

This bill proposes to amend K.S.A. 25-1132 to state that no absentee ballot shall be counted unless it is "received, and such receipt recorded, in the office of the county election officer not later than the hour for closing of the polls on the date of any election...". At this time, I do not count absentee ballots which do not reach my office by poll closing time on election day. The portion of this bill that makes me nervous is the "receipt recorded" phrase. We log in absentee ballots as we receive them by noting the date of receipt on a tablet. Is this adequate, or will some sort of receipt document have to be prepared. This point needs to be clarified. And once again, I urge you not to create more paper to be paid for and completed.

=====

In summary, I would request that an interim committee study the election law issues raised in the recounts and election contests arising out of the November, 1990 elections. I have many suggestions on clarification and modification of the laws and regulations, but I believe we all need to take a breathing spell and regain our perspective before we make sweeping changes. Thank you for your time and attention.

COMMENT ON HB2235  
FROM LINDA WOOD, LYON COUNTY CLERK

I must go on record as opposing this bill in its present form. While an automatic recount may be justified in a county-wide, State or Federal race when there is a 25 vote or less difference, there is no way that such a recount can be appropriate in local races, especially in township and third-class city elections. In some instances, we're lucky to have twenty-five total votes cast! Please reword this amendment to exclude local races.

Also, on line 9 of the second page, I suggest that it be changed to read "is made at the request of a candidate *or a voter in a question submitted election,...*". Line 16 could also be changed to read "recount, or if as a result of the recount *requested by a voter...*".



TO: Representative Tom Sawyer, Chair, Elections Committee  
Representative Judy Macy, Vice-Chair  
Members of the House Elections Committee

FROM: Elgia C. Stevenson  
Election Commissioner *Elgia C. Stevenson*

SUBJECT: House bills scheduled for the March 7, 1991 hearing

DATE: March 6, 1991

At this writing, I do not know if I will be permitted to testify before the committee to comment on bills addressing recount related topics and calendared for hearing on Thursday, March 7, 1991.

In qualification of my comments, it is relevant that the committee know that I was deeply involved in the two tumultuous legislative recounts in Johnson County during the mid 60s, as well guiding the recount of the 15th Representative District in November 1990.

Time has never dimmed my memories of the charade and mockery presented by the recount officials of the 60s. Unfortunately, no effort was made to create guidelines for the procedure. Those recollections were a strong factor in my decisions involving preparations for and the conduct of the recount procedures for the 15th.

Presently, I am concerned about the passage of legislation submitted in a session so soon after an emotional November and December. Clearer thinking usually evolves with the passage of time when emotions demanding stringent corrective actions have lessened.

Would the committee consider the formation of an interim study committee this summer to develop some guidelines which could reduce the turmoil of vote challenges? Topics should range from the handling of paper ballots prior to a count through the actual recount/contest activity.

Laws are so permanent and inflexible. Rules and regulations reflect the law but can provide detailed operational guidance, which is seriously lacking at this time. The summer effort would certainly go a long way to provide the basis for some outstanding 1992 legislation on the subject.

Should the decision be made in favor of an interim committee, I hope I have the opportunity to contribute to the study and better election processes. Without apologies, I know I can help.

Thank you for reading my comments.

House Elections Committee  
Attachment 3  
3-7-91

Bill Graves  
Secretary of State



2nd Floor, State Capitol  
Topeka, KS 66612-1594  
(913) 296-2236

## STATE OF KANSAS

TESTIMONY OF RON THORNBURGH  
HOUSE ELECTIONS COMMITTEE  
MARCH 7, 1991

### Vote Counting Procedures Legislation

Thank you Mr. Chairman and members of the committee for the opportunity to appear before you today on behalf of Secretary of State Graves.

We support legislation designed to clearly identify procedures to count ballots and which clearly identify the determination of voter intent as the basis for determining the validity of a voted ballot. If the counting board can determine the intent of a vote without sacrificing the secrecy of anyone's vote, the ballot should be counted.

We support House Bill 2233 which deletes language regarding identifiable and mutilated ballots. Because of the problems in the contest of the 59th district last year, there is a real need for legislation which clarifies when and how a ballot is to be counted. By eliminating the identifiable and mutilated ballots, we will not disenfranchise any voter because of some stray marks on the ballot. If any questions about potential voter intimidation arise because of allowing identifiable ballots, we already have criminal statutes on the books.

In addition, we have only one question regarding House Bill 2238. Will a single laminated copy in each polling place be sufficient to meet the requirements of the act if it is given to each voter prior to their entry to the voting booth? If not, we suggest an amendment to insure that each voter only has to read the notice and not that each voter must be given an individual copy of the notice.

The office of the Secretary of State does not have a position on the remaining legislation before the committee today.

Thank you. I will be happy to stand for questions.

House Elections Committee  
Attachment 4  
3-7-91



TOPEKA

HOUSE OF  
REPRESENTATIVESCOMMITTEE ASSIGNMENTS  
MEMBER: ELECTIONS  
INSURANCE  
PENSIONS, INVESTMENTS AND  
BENEFITSELAINE L. WELLS  
REPRESENTATIVE, FIFTY-NINTH DISTRICT  
OSAGE AND NORTH LYON COUNTIES  
R.R. 1, BOX 166  
CARBONDALE, KANSAS 66414  
(913) 665-7740HOUSE COMMITTEE ON ELECTIONS  
March 7, 1991  
TESTIMONY  
ON  
HB2233  
by  
REPRESENTATIVE ELAINE L. WELLS

Following the **long** recount procedures, the **long** court lawsuit, and then **long** legislative hearings, both attorneys in the contested election of the 59th District were asked by the Senate Elections committee to make recommendations for updating and bettering the election process. It was my original intent on this bill to just clarify what a torn, mutilated, defaced, and identifying mark meant. But after listening to both attorneys who agreed that the intent of the voter should be the ultimate factor in determining whether or not to count a ballot, it was apparent that the best solution was to eliminate the section dealing with not counting those ballots because they were torn, defaced, mutilated, or contained identifying marks. This was the specific recommendation of the attorney who represented my opponent.

In the election contest over 650 ballots were originally questioned which contained identifying marks, or were defaced, torn, or mutilated. If those ballots had not been counted, you can imagine the outcry of voters who had exercised their right to vote, and then because of a minor technicality had their vote cancelled.

During the court hearings, testimony regarding the history of these statutes was presented. Since we are limited on time I won't go into detail except to tell you that they originated from the Australian ballot and then to election corruptness in the early 1900's. Voters were forced to vote a certain way and had to assure that they had voted that way by marking or identifying their ballot. Election fraud occurred and even murders took place over the outcome of elections.



We have since outgrown such archaic statutes and today the election process is free from such corruptness.

In the decisions made by the court the intent of the voter was held the highest factor in determining to count a ballot. A ballot which contained derogatory remarks about the gubernatorial candidates had not been counted by the precinct election board because they decided it was a defaced ballot. But the judges' remarks revolved around the voter's right to freedom of speech and counted the ballot. With such a diverse interpretation of the statute, the need exists to clarify whether or not such ballots are valid and are to be counted.

The statute is so harsh that it could have discounted every ballot that had been torn by pollworkers. This would have been every ballot in Lyon County because they are all torn. The optical-scanner procedure requires tearing the bottom portion of the ballot. Counties with paper ballots clip the corners and according to the statute those that are clipped inappropriate are not to be counted.

Going through the election court contest was difficult for both candidates. You remember the comments in the letter from Mrs. Wellman/Jones read by Representative Whiteman, "If we want fair elections, we must have clear laws. I urge you as a House to address this problem this session, so that no candidates will have to face what I and Rep. Wells have faced."

Mr. Chairman, and committee, I thank you for hearing this bill and for the opportunity to testify on it. I hope you will recommend it favorable for passage.

ELAINE L. WELLS  
 REPRESENTATIVE, FIFTY-NINTH DISTRICT  
 OSAGE AND NORTH LYON COUNTIES  
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HOUSE OF  
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
 MEMBER: ELECTIONS  
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 PENSIONS, INVESTMENTS AND  
 BENEFITS

HOUSE ELECTIONS COMMITTEE  
 MARCH 7, 1991  
 TESTIMONY ON  
 HB2236  
 by  
 REPRESENTATIVE ELAINE L. WELLS

Thank you, Mr. Chairman, for the hearing on this bill and for the opportunity afforded to testify on it.

Many voters cannot make it to the polls on election day for very valid reasons. The Absentee Ballot process gives those voters the right to vote in our democratic system by filling out a ballot and returning it to the election officer prior to the close of the election. In addition to the ballot an affidavit requiring the signature is also part of the voting absentee process.

For many voters who vote for the first time by absentee, and for even voters who have voted absentee many times before, filling out the Declaration is not considered as a necessary step in making sure their vote will count. This was evidenced in the election contest when absentee ballots were challenged and not counted because the affidavit was not correctly completed and signed.

This bill attempts to notify the voter the importance of completing and signing the Declaration by adding to the printed form, "THIS DECLARATION MUST BE COMPLETED AND SIGNED".

Someone who goes to the trouble of voting absentee should have every opportunity to make sure their vote does count. And hopefully, this will help in assuring that it will.

Again, thank you and I will be happy to respond to any questions.



TOPEKA

HOUSE OF  
REPRESENTATIVES

HOUSE COMMITTEE ON ELECTIONS  
MARCH 7, 1991  
TESTIMONY ON  
HB2238  
by  
REPRESENTATIVE ELAINE L. WELLS

ELAINE L. WELLS  
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COMMITTEE ASSIGNMENTS  
MEMBER: ELECTIONS  
INSURANCE  
PENSIONS, INVESTMENTS AND  
BENEFITS

Thank you, Mr. Chairman for the hearing on this bill. I appreciate the opportunity also to testify on it.

It became very apparent during the election contest that voters were not aware of the voting procedures in the statutes. In particular was the procedure of returning to obtain a new ballot if one decided to change a vote.

This bill simply requires that when the voter is given the ballot they are also given instructions regarding the procedure.

Since several counties use machine voting this will not apply. If paper ballots are used, it will. That is where the problem occurs. And giving them the instructions will assure them that the time and effort they went to, to go to the polls to vote will make their vote count.

Again, thanks for the consideration! I'll be happy to respond to any questions.



TOPEKA

HOUSE OF  
REPRESENTATIVES

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HOUSE ELECTIONS COMMITTEE  
MARCH 7, 1991  
TESTIMONY ON  
HB2239  
by  
REPRESENTATIVE ELAINE L. WELLS

Again, thank you Mr. Chairman, for the hearing on this bill and for my opportunity to testify on it.

This bill will clarify the receipt of absentee ballots for the county election officer to include in the counting of valid ballots.

The problem of knowing whether or not to count a ballot received by the election officer is rare but in cases where the courthouse has a drop box the question of whether or not to count it becomes a concern.

This legislation will clarify that the ballot has to be received and a record of that receipt recorded before the closing of the polls on election day.

Again, thanks, and I'll be happy to respond to any questions!

HOUSE BILL No. 2326

By Representatives Sawyer, Sader, Sebelius and Shallenburger

2-13

AN ACT relating to elections; concerning changes in names of voters; amending K.S.A. 1990 Supp. 25-2316c and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1990 Supp. 25-2316c is hereby amended to

read as follows: 25-2316c. (a) When a registered voter changes name by marriage, divorce or legal proceeding, if such voter is otherwise qualified to vote at such voting place, such voter must reregister in order to be eligible to vote, except that when a registered voter legally changes name during the period of 30 days preceding an election, such voter shall be allowed to vote at such any election on the condition that such voter first gives an affidavit to the election judges stating the facts relevant to such change of name.

Upon receipt of an affidavit of change of name, the county election officer shall send to the address specified on the affidavit, by forwardable first class mail, a notice that it is necessary to reregister to vote. The notice also shall include voter registration materials if the voter is still a resident of the county of original registration. The notice authorized by this subsection shall be on a form prescribed by the secretary of state. Any voter giving such affidavit shall be given an application for registration and upon completion thereof, the county election officer shall send, by nonforwardable first-class mail, a new certificate of registration.

and authorizing the County Election Officer to change the voter's voter registration records to reflect such change.

(b) When a registered voter changes residence, such voter must reregister in order to be eligible to vote, except that when a registered voter changes residence from one place in a precinct to another place within the same precinct during the period of 30 days preceding an election, such voter shall be allowed to vote at such election on the condition that such voter first gives an affidavit to the election judges stating the facts relevant to such change of residence. Whenever the county election officer receives from any election officer a notice of registration of a voter in a different place than that shown in the records of the county election officer, such officer shall remove the name of such voter from the registration

to any voter giving such affidavit.