

## MINUTES OF THE HOUSE GOVERNMENTAL ORGANIZATION AND ELECTIONS COMMITTEE

The meeting was called to order by Chairman Jene Vickrey at 3:30 P.M. on March 15, 2005 in Room 519-S of the Capitol.

All members were present.

## Committee staff present:

Mike Heim, Legislative Research Department  
Martha Dorsey, Legislative Research Department  
Norm Furse, Revisor of Statutes Office  
Theresa Kiernan, Revisor of Statutes Office  
Maureen Stinson, Committee Secretary

## Conferees appearing before the committee:

Brad Bryant, Office of the Secretary of State  
Elizabeth Ensley, Shawnee County  
Pat Rahija, Wyandotte County  
Karen Hartenbower, Lyon County  
Kevin Siek, Topeka Independent Living Resource Center  
Michael Donnelly, Disability Rights Center of Kansas  
Michael Byington, Kansas Association for the Blind and Visually Impaired  
Brian Newby - Johnson County

## Others attending:

See attached list.

Chairman Vickrey opened the hearing on:

**SB 132**      **Elections-Optical scanning voting equipment**

Brad Bryant, Office of the Secretary of State, testified in support of the bill (Attachment 1). He explained that many of the laws cited in the bill have not been amended since 1982 and need to be revised to reflect the current state of technology and to recognize the fact that the operating systems, firmware, and software, as well as the hardware, must be considered when reviewing and certifying voting systems.

Elizabeth Ensley, Commissioner of Elections, Shawnee County, appeared in opposition to the bill (Attachment 2). She said the issue that concerns her is the requirement to notify the voter of any under vote.

Pat Rahija, Wyandotte County Elections Office, appeared in opposition to the bill (Attachment 3). She explained that she supports the bill but would recommend an amendment to Sec. 10 (h) on page 7, line 30 of the proposed bill.

Karen Hartenbower, Lyon County Clerk/Elections Office, testified in opposition to the bill (Attachment 4). She expressed concerns with the portion of the bill pertaining to notification of under voting.

Chairman Vickrey closed the hearing on SB 132.

**SB 132**      **Elections-Optical scanning voting equipment**

Rep. Goico made a motion to adopt technical amendments, and to delete the provision which would have required notice when a voter casts fewer votes than authorized on the ballot. Rep. Lane seconded the motion. The motion carried.

Rep. Yonally made a motion for the favorable passage of SB 132 as amended. Rep. Beamer seconded the motion. The motion carried.

Chairman Vickrey opened the hearing on:

**SB 142**      **Elections; security of advance voting ballots**

Brad Bryant, Office of the Secretary of State, testified in support of the bill (Attachment 5). He said the intent of the bill is to enhance the security of the advance voting process by: (1) controlling the ballot application and delivery processes, and (2) requiring the county election office to check the signatures on most voters' ballot envelopes. He said, in addition, the bill updates the language in one statute to agree with similar amendments made in 2004 in other laws.

Pat Rahija, Wyandotte County Elections Office, testified in support of the bill (Attachment 6). She said their office received over 800 applications for advance ballots for the Presidential Election that were signed by someone other than the voter. She explained that the signatures on those applications were in no way similar to the voter's signature

CONTINUATION SHEET

MINUTES OF THE House Governmental Organization and Elections Committee at 3:30 P.M. on March 15, 2005 in Room 519-S of the Capitol.

of record.

Kevin Siek, Topeka Independent Living Resource Center, testified in opposition to the bill (Attachment 7). He said they are concerned that the signature comparison provision of the bill will have the unintended affect of disenfranchising some voters with disabilities.

Michael Donnelly, Disability Rights Center of Kansas, testified in opposition to the bill (Attachment 8). He said they do not support the use of signature comparison or limits on delivery of advance ballots as an appropriate deterrent for fraud.

Michael Byington, Kansas Association for the Blind and Visually Impaired, Inc., testified in opposition to the bill (Attachment 9). He explained that many elections officers and their employees are not expert in their knowledge or qualifications in handwriting analysis.

Chairman Vickrey closed the hearing on SB 142.

Chairman Vickrey opened the hearing on:

**SUB. SB 143 Sub for S 143 by Committee on Elections and Local Government-Elections; direct recording electronic voting systems**

Brad Bryant, Office of the Secretary of State, testified in support of the bill (Attachment 10). He said the bill was proposed to updated the laws governing the requirements and certification of direct recording electronic (DRE) voting systems, bring them into compliance with the Help America Vote Act of 2002 (HAVA), and repeal outdated laws in Article 13 of Chapter 25 that provided for lever machines and punch card ballots.

Brian Newby, Johnson County Elections Office, testified in support of the bill (Attachment 11). He said they see components of the voting experience as interdependent, and that the components include expectations around convenience of registration, convenience of voting, assurance of accurate results, assurance of timely results, communication of results and other voter information, and assurance that taxpayer dollars are neither overspent nor underutilized to provide for these components.

Michael Byinton, Kansas Association for the Blind and Visually Impaired, Inc., testified in support of the bill (Attachment 12). He said his organization is, generally, opposed to voter verified paper audit trails (VVPAT's). He explained that it might be acceptable if the VVPAT's were added strictly for voter comfort but not used for vote count purposes.

Michael Donnelly, Disability Rights Center of Kansas, testified in support of the bill (Attachment 13). He explained that the purpose of the bill is to empower Kansas to comply with the requirements of HAVA, specifically, the placement of accessible electronic voting systems in each Kansas polling place.

Kevin Siek, Topeka Independent Living Resource Center, testified in support to the bill (Attachment 14). He expressed concern at the possibility of an amendment to the bill to include language requiring a verifiable voter paper audit trail for electronic voting machines.

Karen Hartenbower, Lyon County Clerk/Election Office , testified in support to the bill (Attachment 15). She spoke against any possible amendment to include paper audit trails.

Rep. Tom Holland proposed an amendment to the bill (Attachment 16). He explained that the amendment, if enacted, would require that all electronic voting machines/Direct Recording Electronic (DRE) systems purchased after January 1, 2006 by the State of Kansas be able to generate a voter verified paper audit trail (or VVPAT).

Chairman Vickrey closed the hearing on SUB. SB 143.

**Approval of Minutes**

Rep. Yonally made a motion to approve the minutes of the February 3, 2005 and February 8, 2005 meetings. Rep. Oharah seconded the motion. The motion carried.

Chairman Vickrey adjourned the meeting.

The next meeting is scheduled for Thursday, March 17, 2005.



RON THORNBURGH  
Secretary of State



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STATE OF KANSAS  
House Committee on Governmental Organization and Elections

Testimony on Senate Bill 132

Brad Bryant, Deputy Assistant Secretary of State  
Elections and Legislative Matters

March 15, 2005

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify on behalf of the Secretary of State in support of Senate Bill 132. We urge the committee to pass this bill to bring the statutes governing the requirements and certification of optical scanning voting systems up to date and into compliance with the Help America Vote Act of 2002. We have also proposed a companion bill, Senate Bill 143, to update the laws governing electronic voting equipment.

Many of the laws cited in SB 132 have not been amended since 1982 and need to be revised to reflect the current state of technology and recognize the fact that the operating systems, firmware and software, as well as the hardware, must be considered when reviewing and certifying voting systems.

Section 1

This section revises definitions of terms related to optical scanning voting systems. It borrows standard definitional language from the Federal Election Commission's 2002 Voting Systems Performance and Test Standards.

One important change is the recognition of the two types of optical scanning systems—precinct count and central count—in Subsections (d) and (e).

Section 2

This section deletes language providing for the voters of a given county to petition and vote on whether to adopt a new voting system. This provision has not been used to our knowledge. The authority to make this decision should be left to the board of county commissioners and the county election officer, who are familiar with the needs of the county and the budget.

Section 3

This section amends the law to recognize the fact that voting systems include software and operating systems to tabulate votes. They are an integral part of any voting system.

Section 4

This section updates language governing the process for manufacturers to submit voting equipment to the Secretary of State for certification.

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Date: 3-15-05  
Attachment # 1

[Original Section 5]

NOTE: Section 5 was removed from SB 132 by the Senate. As originally proposed, the section would have removed a ten-year limit on county contracts for the purchase, lease or rental of voting systems. The Secretary of State does not oppose this amendment.

Section 5

This section updates language in the optical scan ballot design statute to allow the use of ovals instead of squares for the voter to make his/her marks. Most optical scanning systems use ovals.

NOTE: The Secretary of State proposes an amendment to Section 5. It is on the attached page.

Section 6

This section clarifies the law prescribing the process for instructing voters on how to mark an optical scan ballot.

Section 7

This section deals with the public testing of voting equipment before and after each election.

NOTE: The Secretary of State has proposed a technical amendment to this section on the attached page.

Section 8

This section requires the precinct election board to ensure that the number of ballots cast matches the number of voters who voted.

Section 9

This section updates the language defining the crime of fraud in optical scanning systems. Once again, the language of the law has been updated to reflect the fact that the systems incorporate operating systems, firmware and software, and unauthorized possession of or tampering with the system is a crime.

Section 10

This section deals with the general requirements of voting systems.

Subsection (c) has been revised to remove an unnecessary limit on the number of political parties which may appear on the ballot.

Subsection (g) has been revised in accordance with HAVA's so-called "second chance voting" requirement that a system must provide notification of overvotes.

Subsection (h) has been added to provide a general provision in Kansas law that all voting systems must meet the requirements of HAVA.

NOTE: The Secretary of State proposes an amendment to Section 10. It is on the attached page.

New Section 11

This section authorizes the Secretary of State to adopt rules and regulations for optical scanning voting systems.

We urge the committee to amend SB 132 as proposed and recommend it favorably for passage.

## Proposed Amendments to Senate Bill 132

The Secretary of State recommends the committee amend Senate Bill 132 in three ways.

### **Proposed Amendment #1**

1. Section 5, page 4, line 41:

Delete "At the bottom of" and replace it with "On".

This is proposed in order to allow more flexibility in printing ballots. It is important to have the box for the unique mark on the ballot to indicate it is an official ballot, but requiring the box at a specific location on the ballot is difficult for some ballot styles.

### **Proposed Amendment #2**

2. Section 7, page 5, line 43:

Delete the words "used" and "and ballot stubs". This should have been done in the original bill. Optical scan ballots no longer have stubs due to a law passed more than ten years ago.

### **Proposed Amendment #3**

3. Section 10, page 7, lines 29 and 30:

Delete the words "or fewer"

These words were included in the original version of SB 132 on the erroneous assumption that they were required by HAVA. HAVA does require the voter to be notified if the voter has overvoted, but notification is not required for undervotes. Many voters choose not to vote on one or more races on the ballot, and if the scanning and tabulation equipment stops each time it detects an undervote, kicks out the ballot and requires the voter to review it before proceeding, it will slow down the process unnecessarily.



## Shawnee County Commissioner of Elections

Elizabeth Ensley  
Election Commissioner  
Norine Staab  
Asst. Election Commissioner

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### M E M O R A N D U M

DATE: February 4, 2004  
TO: Representative Jene Vickrey, Chairman  
Committee on Governmental Organization & Elections  
FROM: Elizabeth Ensley  
Shawnee County Election Commissioner

**RE: SB 132**

Thank you for allowing me to appear in opposition to SB 132 in regards to optical scan tabulation machines. The issue that concerns me is the requirement to notify the voter of any undervote.

The way that the precinct count optical scanners work is that the system may be programmed to return ballots in certain situations. Currently, we have the ballot returned if the voter overvoted. Additionally, the machine will return a ballot if it cannot read it. This could occur if the voter does not use the pen provided or if he used an X or check mark. The voter must then void their ballot and return it to the election board and receive a new ballot.

There is another option, the board workers may unlock the front of the ballot box and press the Yes button to override the return function. The over-ride button is risky for several reasons. If there is more than one thing wrong with the ballot such as an overvote plus it is marked with checks, then the machine will not count anything. But this function would have to be used if voters did not want to vote on one race.

In spite of our best efforts at training, there will always be some board workers who do not understand the machine. My greatest fear is that board workers would seriously compromise the privacy of people's ballots by looking at the ballot in order to determine why it was returned. If the board workers do not read the message but just assume that the problem is an undervote, then they could cause the machine to not count a ballot.

The statistics indicate that returning undervoted ballots would be a significant problem. If only one person is on the ballot for a partisan race, 20% of the voters will not vote on that race (30% in a school race). If there is no name printed on the ballot, 95% of the voters do not vote on that race.

In August 2004, the Republican Party did not nominate anyone in three State Representative Districts (68 of 212 precincts) and 7 of 24 Township races. The Democrats did not nominate anyone in 16 out of 24 Township races and 225 of 386 Precinct Committee races. In November 2004, almost 20% of the voters did not vote on the retention of judges. That is one out of every 5 ballots.

However, these statistics do not mean anything. The trouble is that not all of the races that are left blank are on the same ballot. One voter may skip a Supreme Court Judge, but the next voter skips one of the state Judges. The result is that almost every ballot will be returned to the voter.

In other words, the requirement to notify the voter of an undervote would seriously delay voting, infringe on the voters privacy and greatly increase the number of ballots not counted.

Please remove the section regarding undervotes from this bill.

House Gov. Org. & Elections  
Date: 3-15-05  
Attachment # 2

## TESIMONY ON SB 132

**Pat Rahija**  
**Wyandotte County Election Commissioner**

I support SB132 with one exception. I would recommend an amendment to Sec. 10 (h) on page 7, line 30 of the proposed bill.

This bill as written would require optical scan voting equipment to notify the voter that he has cast more or fewer votes for such office than the voter is entitled to cast.

I **strongly support** notification to the voter if he has cast more votes than he is entitled to cast; however, I **strongly oppose** requiring notification of casting fewer votes than he is entitled to cast.

In the 2004 Presidential Election, only 171 voters did not vote for the office of President. However, notification of an undervote would have resulted in the optical scan equipment rejecting almost **15,000 undervoted ballots**. All voters do not vote on every race. Listed below are examples of the Supreme Court races:

Supreme Ct. Pos. 1: 12,820 undervotes  
Supreme Ct. Pos. 3: 14,114 undervotes  
Supreme Ct. Pos. 4: 14,294 undervotes  
Supreme Ct. Pos. 5: 14,494 undervotes

In the 2004 August Primary Election, we had 18 races that had no Republican candidates, which would have resulted in a maximum of **14,719** ballots being rejected and returned to the voter for inspection.

This will greatly slow down the voting process. It will further create an environment for election worker error. Each time a ballot is rejected, the election worker must ask the voter to examine his ballot. This will take several minutes. If the voter tells the election worker to cast the ballot as marked, the election worker must hold in the "yes" button on the voting equipment to override the system. My fear is that the election worker may accidentally press the "yes" button to an "overvote" or press the "no" button in error. The purpose of automated voting equipment is to reduce human error. **When the voting system is being manually over-ridden up to 15,000 times during the day, the potential for error is significantly increased.** Also, during the peak voting hours, it will create a line of voters waiting to insert their voted ballot in the machine.

In addition to possible election worker errors, there will be an increased probability of privacy violations. I have been working with election board workers for 10 years, and I have found that in the election worker's zeal to quickly help the voter, he often looks at the voter's ballot. Some voters don't care, but many become upset if their privacy to a secret ballot is violated.

I urge removal of the requirement to notify voters of an undervote.

House Gov. Org. & Elections  
Date: 3-18-05  
Attachment # 3



**KAREN K. HARTENBOWER**  
**LYON COUNTY CLERK/ELECTION OFFICIAL**  
**LYON COUNTY COURTHOUSE**  
**430 COMMERCIAL**  
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**620-341-3245**  
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**March 15, 2005**

Chairman Representative Jene Vickery and Committee:

I am writing in opposition to the portion of SB132 pertaining to notification of under voting. Lyon County has had experience with under voting notification. Our in-precinct tabulators can be programmed to kick the ballot back if the voter has under voted or turned in a blank ballot.

First I will address notification of a blank ballot. We had a special question election. There was a good percent of voters who came to vote and turned in a blank ballot. This was done because they did not have a preference but their dedication to vote every election. Some people were very unhappy with us that their ballot was kicked back. In essence we 'knew how they voted'. We never did that again.

Next I will address notification of under voting. We programmed the tabulators to kick back any under voted ballot in the August 2002 Election. Was it a fiasco! We had a total of 1% that went through the tabulator. Almost no Democrat ballot went through the tabulator because there were 2 state offices where no one was running in the Democrat position. Our local people did not know who to write in so those races were under voted and the ballot kicked back. Many people do not vote on constitutional amendments or resolutions. This would also make their ballot kick back. This really upset the voters. They thought they had done something wrong. The media had a field day and said the 'equipment was not working correctly'. I told them the equipment worked exactly as we had programmed it. It was my decision to kick back under voted ballots because I had heard this might be a requirement of HAVA. It is not a requirement of HAVA. I made sure our Congressmen knew of my experiment. I hope this helped keeping it out of HAVA requirements.

Our touchscreens give the voter a visual confirmation of their voting. The voter is notified of under voting and the touchscreens do not allow for over voting. The tabulator does not count any race that is over voted but counts the rest of the ballot.

Think about the last time you voted. Did you vote every issue?

Karen K. Hartenbower  
Lyon County Clerk/Election Official

House Gov. Org. & Elections  
Date: 3-15-05  
Attachment # 4

RON THORNBURGH  
Secretary of State



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STATE OF KANSAS  
House Committee on Governmental Organization and Elections

Testimony on Senate Bill 142

Brad Bryant, Deputy Assistant Secretary of State  
Elections and Legislative Matters

March 15, 2005

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify in support of Senate Bill 142. This legislation was proposed as an advance voting ballot security bill. It is intended to enhance the security of the advance voting process by: (1) controlling the ballot application and delivery processes, and (2) requiring the county election office to check the signatures on most voters' ballot envelopes. In addition, it updates language in one statute to agree with similar amendments made in 2004 in other laws.

Section 1

This section amends K.S.A. 25-1124, one of the advance voting statutes, to update language regarding voters with disabilities. This is consistent with provisions passed in 2004 Senate Bill 166. We propose these amendments to make the language in this statute agree with similar language in related statutes.

Section 2

This section accomplishes two things:

(1) Subsection (d) clarifies that only the voter may sign a ballot application form. In recent years we have received complaints in each election from voters who received advance ballots in the mail and did not apply for them. If a voter chooses to vote an advance ballot, he/she is free to apply for one, but if the voter wishes to vote at the polling place on election day, no one else should make the decision for the voter and apply for a ballot for them.

(2) Subsection (g) defines who may return an advance voter's completed, mailed ballot to the county election office. Previously the law allowed anyone to deliver a ballot upon request of the voter, but numerous cases from various areas in the state have arisen in which someone other than the voter returned the ballot, often not at the voter's request. As originally proposed, this bill would have specified that it should be the voter or a member of the voter's family who delivers the ballot or mails it.

NOTE: The Senate amended this section to remove the reference to the voter's family member and to require the voter to designate a person in writing if the voter wishes to have someone deliver or mail the ballot. The Secretary of State supports this amendment.

House Gov. Org. & Elections  
Date: 3-15-05  
Attachment # 5

### Section 3

As originally proposed, this section would require the county election officer to compare the signature on the returned ballot envelope to the registration records on file in the election office. The signature comparison requirement would not apply in cases where a ballot was cast in person in the election office or where a voter with a disability received assistance.

NOTE: The Secretary of State proposes the removal of Section 3 from the bill to allow time for further discussion on its provisions.

### Section 4

This section maintains the existing statutory requirement that an advance ballot is not counted if the statement on the envelope is not signed. As originally proposed in the Senate, new language in the bill would require a ballot to be challenged (made provisional) if the signature varies too widely from that on the registration records. The election office may contact the voter before the county canvass to determine if there is a reason for the signature variance. As is the case with all ballots, the county board of canvassers has the authority to determine the validity of the ballots.

NOTE: The Secretary of State proposes the removal of Section 4 from the bill to allow time for further discussion on its provisions.

We urge the committee to amend Senate Bill 142 as proposed and recommend it favorably for passage. Thank you for your consideration.

## TESTIMONY SB 142

### Pat Rahija Wyandotte County Election Commissioner

I am here in support of SB 142. This bill requires that the voter must sign the application for an advance voting ballot.

In 2004, we had over 800 applications for advance ballots for the Presidential Election that were signed by someone other than the voter. The signatures on those applications were in no way similar to the voter's signature of record.

Prior to the election, after advance ballots were mailed to voters, we received numerous calls from voters inquiring why they were mailed an advance ballot. We advised that we had a signed application. The voters denied signing such an application and were extremely upset.

We believe a significant number of the 1,024 advance voters who went to the polls on Election Day was attributable to voters receiving ballots they did not request. Those voters were further angered because not only did they not request a ballot, but now the law is also requiring them to vote a provisional ballot at the polls. In addition, those 1,024 provisional ballots had to be checked by the county election officer prior to the canvass to ensure that the voter had not voted his advance ballot.

We know most of those applications came from political groups doing door-to-door solicitations. Advance voting has become a very effective tool that is being used by candidates. However, advance voting was established for the convenience of the voter, not candidates or political parties; therefore, there must be safeguards in the law to protect voters.

Another section of the bill requires the county election officer to compare the signature on the ballot to the signature on the voter's registration application. This is another safeguard for the voter.

Since we received over 800 advance ballot applications signed by someone other than the voter, we have been checking signatures on advance ballots that are returned to our office. We believe this process was necessary to ensure that no fraudulent ballots were counted.

House Gov. Org. & Elections  
Date: 3-15-05  
Attachment # 6



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# Topeka Independent Living Resource Center

785-233-4572 V/TTY • FAX 785-233-1561 • TOLL FREE 1-800-443-2207  
501 SW Jackson Street • Suite 100 • Topeka, KS 66603-3300

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## Testimony on SB 142 Before the House Committee on Government Organization and Elections March 15, 2005

Chairman Vickrey and members of the committee, thank you for the opportunity to appear before you today. My name is Kevin Siek and I am a disability rights advocate for the Topeka Independent Living Resource Center. Our agency is a civil and human rights organization with a mission to advocate for justice, equality and essential services for all people with disabilities.

I am here today to provide testimony in opposition to SB 142. We are concerned that the signature comparison provision of this bill will have the unintended affect of disenfranchising some voters with disabilities.

Section 3 (b) and Section 4 (b) require that the voter's signature on the ballot envelope be compare with the voter's signature on the registration application to verify that the registered voter submitted the ballot. We believe that this step is unnecessary and creates an additional challenge to advanced voters that is not required for other voters.

This could easily disenfranchise voters with disabilities whose signature changes frequently because of the nature of their disability, such as people with rheumatoid arthritis, fibromyalgia and various neuromuscular diseases or visual impairments.

Should the committee decide this provision must remain in the bill, we believe that a process must be added which requires local election officials to verify, with the voter, that the ballot submitted is not the voter's ballot in order to disqualify that vote. Additionally, local election officials should be required to provide a record confirming how and when they contacted the voter.

House Gov. Org. & Elections  
Date: 3-15-05  
Attachment # 7

*Advocacy and services provided by and for people with disabilities.*



## Disability Rights Center of Kansas

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785.273.9661 ♦ 877.776.1541 (V/TDD)

785.273.9414 FAX ♦ www.drckansas.org

*info@drckansas.org*

Testimony to the House Governmental Organization and Elections Committee

March 14, 2005

Chairman Vickrey and members of the committee, my name is Michael Donnelly. I am the Director of Policy and Outreach for the Disability Rights Center of Kansas, formerly Kansas Advocacy and Protective Services (KAPS). The Disability Rights Center of Kansas (DRC) is a public interest legal advocacy agency, part of a national network of federally mandated and funded organizations legally empowered to advocate for Kansans with disabilities. As such, DRC is the officially designated protection and advocacy system for Kansans with disabilities. DRC is a private, 501(c)(3) nonprofit corporation, independent of both state government and disability service providers. As the federally designated protection and advocacy system for Kansans with disabilities our task is to advocate for the legal and civil rights of persons with disabilities as promised by federal, state and local laws. Those rights are promised in laws like the Americans with disabilities Act of 1990 (ADA), the Help America Vote Act (HAVA), and others. In fact, DRC is the recipient of the Protection and Advocacy for Voting Access program for Kansas.

I'm speaking today in opposition to SB 142. It is my understanding that the purpose behind SB 142 is prevention of fraud, especially abuses perpetrated in the advance balloting practices in Kansas. DRC agrees that fraud is unacceptable, in no way should DRC's opposition to SB 142 be seen as an endorsement of coercion or exercising of undue influence of a voter, or even fraudulent voting on a voters advance ballot.

DRC's opposition to SB 142 is based solely in the concern that the provisions of SB 142 will have an adverse impact on voters with disabilities. Here are the concerns.

House Gov. Org. & Elections

Date: 3-15-05

Attachment # 8

1. Page 3, line 7 reads, “(g) A voter may return such voter’s advance voting ballot to the county election officer by personal delivery or by mail. Upon request of the voter, a member of the voter’s family may return the advance voting ballot by personal delivery or mail.” Initially, this provision did not recognize that persons with disabilities may use someone other than a family member to assist them in getting their advance ballot submitted on time. Persons with disabilities use readers, personal assistants, roommates and others to address these needs. To limit the ability of a voter to transmit an advance ballot to only him or herself or a family member unnecessarily restrict that persons ability to submit their advance ballot. The Senate Committee amended this provision and we are supportive of their amendment.
2. Page 3, line 19 (Section 3 of the Bill) is of most concern to DRC and much of the disability community. Many people with disabilities experience cycles where their disability exacerbates or deteriorates and changes how they do lots of things, including how they sign their name. For others the signature changes depending on the type of document the might be signing and how accessible it is to them. Any provision that requires that an advance ballot envelope containing a signature that does not appear to match the signature on the voter’s registration card be challenged and made provisional will have a chilling effect on voters with disabilities. Statistically Kansas canvassing Boards rejected nearly one-third of all provisional ballots cast in the 2004 general election. (see attached Election report for more information) We fear that this provision will have a wide and adverse impact on Kansas’ voters with disabilities and increase the number of uncounted votes dramatically. That is unacceptable.

DRC and others in the disability community made recommendations regarding Section 2 which were not amended into the Bill and so DRC continues to oppose SB 142 and its inclusion of signature comparison language.

3. Section 4 (page 3, line 40) requires that an advance ballot for which the “*the envelope has not been signed*” be challenged and become a provisional ballot. It also states, “*If the signature on the envelope does not match the voter’s signature on the voter registration*

*records, such ballot shall be challenged in the same manner in which other votes are challenged.”* This problem with this provision is two-fold:

- a. It creates a new Kansas policy on challenging of ballots. Current law provides for a challenge on the basis of the voters eligibility or qualifications to cast a ballot. This new language provides for a challenge based on the appearance of the signature on the outside of the ballot envelope. That challenge is made without a clear standards or a precise method of comparison.
- b. This provision originally did not address how the voter would be informed of their rights to provide additional information to the county election official to ensure that their ballot is cast as intended. In fact, no follow-up was required at all. A voter whose ballot is challenged at the polls is informed of their rights as a provisional voter. The Senate Committee amended this section to require “*reasonable effort*” (line 30, page 3), but does not define reasonable effort.

As stated above, the disability community is also concerned about protecting the validity of elections. However, because of the problems identified above DRC is unable to support SB 142 as presented. The DRC is available and willing to work with the Committee on language that would make SB 142 more acceptable. DRC and members of the disability are prepared to offer a balloon amendment for SB 142 for consideration if the Committee chooses to retain the language on signatures proposed in Sections 3 and 4.

As stated above, DRC does not support the use of signature comparison or limits on delivery of advance ballots as an appropriate deterrent for fraud. We urge the 2005 legislature to recognize that signature comparison and limits on who can deliver advance ballots are not the best policy for Kansas voters. Provisions developed to curb fraud in elections must be balanced in way that does not deter qualified voters from voting, or inadvertently disqualify qualified ballots. SB 142, as written, creates deterrents and not incentives for Kansans to vote.



## 2004 General Post Election Report

County	Permanent	Permanent	Regular	Regular	Regular	Regular	Total	Total	In-person	Federal	Federal	Provisional	Provisional	Total		# of	Da
	Advance	Returned	by mail	by mail	In Person	In Person	Advance	Advance	Advance	Service	Service	Ballots	Ballots	Ballots	Polling	board	ou
	on list		requested	returned	requested	returned	Requested	Returned	begin	requested	Returned	Cast	Counted	Cast	Places	workers	Canvass
Allen	120	98	304	271	14	14	438	383	10/13/2004	41	29	155	99	5,976	12	45	Friday
Anderson	52	48	328	309	213	213	593	570	10/13/2004	16	7	28	16	3,940	7	53	Friday
Atchison	176	165	348	337	661	661	1,185	1,163	10/13/2004	47	43	207	162	7,279	18	68	Friday
Barber	66	59	182	175	155	155	403	389	10/13/2004	5	4	42	31	2,053	4	20	Friday
Barton	252	230	1,078	960	1,451	1,451	2,781	2,641	10/18/2004	59	42	192	160	11,857	26	115	Friday
Bourbon	204	190	330	294	302	302	836	786	10/13/2004	40	27	258	157	6,840	17	62	Monday
Brown	24	24	445	429	227	227	696	680	10/13/2004	35	32	147	101	4,636	10	59	Friday
Butler	308	264	3,031	2,860	792	792	4,131	3,916	10/13/2004	132	112	827	477	28,864	45	165	Monday
Chase	168	168	206	192	108	108	482	468	10/13/2004	8	7	30	13	1,514	1	21	Friday
Chautauqua	61	58	143	130	96	96	300	284	10/18/2004	8	5	44	39	1,980	9	65	Friday
Cherokee	241	222	636	587	168	168	1,045	977	10/13/2004	64	49	84	71	10,024	39	163	Friday
Cheyenne	21	21	187	175	304	304	512	500	10/19/2004	6	6	12	10	1,239	4	46	Friday
Clark	38	38	130	113	138	138	306	289	10/18/2004	3	2	32	20	1,347	4	19	Monday
Clay	142	124	163	153	572	572	877	849	10/13/2004	35	28	60	46	4,150	10	49	Monday
Cloud	85	78	359	344	200	200	644	622	10/13/2004	38	33	116	89	4,582	12	68	Friday
Coffey	81	77	216	206	377	377	674	660	10/14/2004	29	24	98	65	4,472	6	52	Monday
Comanche	5	5	61	51	60	60	126	116	10/18/2004	4	3	12	7	1,009	4	26	Friday
Cowley	373	310	702	654	493	493	1,568	1,457	10/13/2004	68	38	393	220	14,791	52	156	Monday
Crawford	652	542	1,233	1,073	247	247	2,132	1,862	10/13/2004	101	86	591	280	17,021	50	173	Friday
Decatur	40	40	97	90	65	63	202	193	10/14/2004	8	6	6	0	1,799	7	59	Friday
Dickinson	171	151	502	477	629	629	1,302	1,257	10/13/2004	58	38	219	137	8,922	17	70	Friday
Doniphan	40	37	190	171	129	129	359	337	10/13/2004	33	27	78	47	3,709	8	39	Friday
Douglas	336	300	6,170	4,772	4,661	4,655	11,167	9,727	10/13/2004	236	187	2,897	1,997	51,267	67	350	Monday
Edwards	23	22	97	94	77	77	197	193	10/13/2004	7	7	23	16	1,521	4	26	Monday
Elk	11	8	135	130	81	81	227	219	10/20/2004	2	1	18	7	1,545	7	36	Friday
Ellis	165	111	638	554	884	884	1,687	1,549	10/18/2004	59	40	333	246	14,116	31	103	Friday
Ellsworth	44	42	227	213	257	257	528	512	10/13/2004	12	12	28	22	3,152	9	45	Friday
Finney	97	87	334	307	619	619	1,050	1,013	10/14/2004	62	50	203	24	10,022	15	104	Monday
Ford	116	103	853	789	1,338	1,338	2,307	2,230	10/18/2004	38	32	421	263	9,264	5	55	Monday
Franklin	171	161	650	610	874	874	1,695	1,645	10/13/2004	33	22	272	159	11,646	22	94	Friday
Geary	185	160	264	245	425	425	874	830	10/13/2004	171	121	422	200	7,406	25	75	Friday
Gove	13	12	152	143	25	25	190	180	10/13/2004	3	3	22	19	1,506	6	50	Friday
Graham	15	15	99	90	128	128	242	233	10/13/2004	3	1	28	19	1,469	4	36	Monday
Grant	36	36	135	125	541	541	712	702	10/13/2004	7	7	113	94	2,815	1	14	Friday
Gray	81	73	182	165	208	208	471	446	10/13/2004	12	9	138	108	2,454	2	31	Friday
Greeley	7	7	26	23	96	96	129	126	10/13/2004	1	1	11	8	746	1	3	Friday
Greenwood	44	35	232	203	252	252	528	490	10/13/2004	14	13	84	47	3,307	7	54	Friday

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### 2004 General Post Election Report

County	Permanent Advance on list	Permanent Returned	Regular by mail requested	Regular by mail returned	Regular In Person requested	Regular In Person returned	Total Advance Requested	Total Advance Returned	In-person Advance begin	Federal Service requested	Federal Service Returned	Provisional Ballots Cast	Provisional Ballots Counted	Total Ballots Cast	Places Polling	# of board workers	D <sub>2</sub> of Canvass
Hamilton	0	0	164	157	380	380	544	537	10/14/2004	8	5	28	22	1,133	1	23	Friday
Harper	42	41	126	107	201	196	369	344	10/26/2004	10	7	44	32	2,982	3	33	Friday
Harvey	375	332	963	901	366	366	1,704	1,599	10/13/2004	83	67	355	266	15,035	32	123	Friday
Haskell	25	23	87	77	211	211	323	311	10/15/2004	8	7	22	4	1,599	2	18	Friday
Hodgeman	0	0	102	94	56	56	158	150	10/13/2004	1	0	13	3	1,211	2	12	Monday
Jackson	60	54	447	412	486	485	993	951	10/18/2004	20	15	111	87	5,972	10	44	Monday
Jefferson	31	26	542	512	273	273	846	811	10/13/2004	41	30	173	90	8,965	13	53	Friday
Jewell	27	17	31	29	24	24	82	70	10/14/2004	3	1	27	17	1,936	7	39	Friday
Johnson	5,239	4,415	36,372	34,011	62,325	62,325	103,936	100,751	10/13/2004	1,135	854	10,945	7,375	263,166	286	1,792	Monday
Kearny	16	15	85	73	148	148	249	236	10/14/2004	11	5	33	16	1,492	3	21	Friday
Kingman	6	3	75	75	316	314	397	392	10/18/2004	12	6	27	3	3,486	16	85	Friday
Kiowa	3	3	84	73	60	60	147	136	10/13/2004	3	3	38	29	1,594	5	31	Friday
Labette	193	168	514	463	174	174	881	805	10/13/2004	51	49	211	40	9,400	36	101	Friday
Lane	10	10	87	85	62	62	159	157	10/19/2004	0	0	11	11	1,019	2	18	Friday
Leavenworth	183	173	1,776	1,658	2,157	2,157	4,116	3,988	10/13/2004	371	303	847	601	27,738	36	164	Monday
Lincoln	53	50	156	139	114	114	323	303	10/19/2004	8	5	42	21	1,898	6	36	Friday
Linn	50	41	301	260	248	248	599	549	10/21/2004	15	12	193	141	4,830	14	43	Monday
Logan	71	66	225	209	73	74	369	349	10/13/2004	11	9	8	3	1,548	5	16	Friday
Lyon	77	68	597	555	2,116	2,116	2,790	2,739	10/13/2004	99	80	495	412	13,618	27	108	Friday
Marion	97	83	295	281	154	154	546	518	10/14/2004	28	24	169	123	6,222	16	66	Friday
Marshall	79	71	398	371	888	888	1,365	1,330	10/13/2004	29	23	144	80	5,245	6	48	Monday
McPherson	315	284	730	669	1,742	1,742	2,787	2,695	10/13/2004	79	56	447	327	13,645	18	65	Friday
Meade	39	37	103	96	262	262	404	395	10/13/2004	7	5	51	34	2,156	3	21	Friday
Miami	203	168	1,290	1,228	767	764	2,260	2,160	10/13/2004	40	34	407	206	14,008	19	102	Monday
Mitchell	113	96	252	234	251	251	616	581	10/13/2004	12	8	54	38	2,869	7	68	Friday
Montgomery	312	269	727	587	369	369	1,408	1,225	10/13/2004	88	66	514	256	14,478	47	141	Monday
Morris	99	91	226	215	311	311	636	617	10/13/2004	20	18	58	27	3,024	10	70	Friday
Morton	67	67	162	156	236	236	465	459	10/15/2004	2	2	31	17	1,617	4	16	Friday
Nemaha	40	37	452	409	218	218	710	664	10/14/2004	24	20	100	83	5,536	12	105	Friday
Neosho	104	90	357	302	122	122	583	514	10/13/2004	35	24	367	291	7,340	16	97	Friday
Ness	43	40	197	190	93	93	333	323	10/26/2004	5	2	28	26	1,873	11	68	Friday
Norton	78	70	183	177	107	107	368	354	10/13/2004	10	8	46	31	2,633	11	57	Monday
Osage	65	51	367	342	287	287	719	680	10/13/2004	21	19	238	153	7,624	12	82	Friday
Osborne	30	16	198	170	86	86	314	272	10/25/2004	7	5	44	32	2,452	10	26	Friday
Ottawa	38	33	290	274	128	128	456	435	10/13/2004	9	6	43	2	3,115	7	33	Friday
Pawnee	82	67	140	121	584	584	806	772	10/13/2004	21	15	61	44	3,153	4	87	Friday
Phillips	26	26	194	177	98	92	318	295	10/13/2004	8	7	61	52	3,156	11	39	Friday

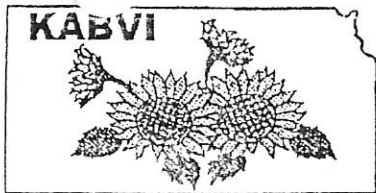
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### 2004 General Post Election Report

County	Permanent	Permanent	Regular	Regular	Regular	Regular	Total	Total	In-person	Federal	Federal	Provisional	Provisional	Total		# of	Da
	Advance	Returned	by mail	by mail	In Person	In Person	Advance	Advance	Advance	Service	Service	Ballots	Ballots	Ballots	Polling	board	of
	on list		requested	returned	requested	returned	Requested	Returned	begin	requested	Returned	Cast	Counted	Cast	Places	workers	Canvass
Ottawatomie	58	51	615	579	232	232	905	862	10/15/2004	49	34	217	111	9,002	9	85	Monday
Ratt	27	24	294	251	289	289	610	564	10/15/2004	22	18	97	66	4,547	12	50	Friday
Lawlins	50	47	161	146	183	183	394	376	10/21/2004	4	1	11	7	1,772	5	56	Friday
Leno	519	465	1,613	1,476	3,983	3,983	6,115	5,924	10/13/2004	133	126	553	355	27,042	36	187	Friday
Republic	20	20	222	205	130	130	372	355	10/13/2004	24	19	73	43	3,051	9	73	Friday
Rice	100	79	236	212	489	489	825	780	10/13/2004	29	20	83	56	4,354	8	42	Friday
Wiley	175	154	1,138	1,035	2,732	2,679	4,045	3,868	10/14/2004	359	271	793	382	21,465	26	140	Monday
Woods	49	49	152	149	93	93	294	291	10/15/2004	12	8	24	10	2,715	7	36	Friday
Wright	3	3	149	139	115	115	267	257	10/19/2004	8	5	12	3	1,836	9	72	Monday
Russell	163	157	384	367	178	178	725	702	10/13/2004	562	545	106	56	3,615	12	36	Friday
Maline	321	279	1,367	1,277	1,994	1,994	3,682	3,550	10/13/2004	121	94	626	409	23,833	46	173	Friday
Cott	88	81	272	230	244	244	604	555	10/13/2004	18	16	26	19	2,324	1	24	Friday
Edgwick	4,611	4,268	15,568	13,622	8,013	8,013	28,192	25,903	10/20/2004	964	746	11,201	8,797	181,626	209	1,005	Monday
Eward	146	125	209	161	1,449	1,449	1,804	1,735	10/13/2004	29	19	231	141	5,964	2	45	Friday
Hawnee	1,632	1,439	6,904	5,771	5,693	5,693	14,229	12,903	10/13/2004	413	321	1,912	1,595	82,784	187	596	Monday
Heridan	31	27	117	114	109	109	257	250	10/13/2004	10	9	10	0	1,431	6	29	Monday
Herman	90	82	176	169	538	538	804	789	10/19/2004	8	5	43	28	2,839	1	24	Friday
Hsmith	34	32	193	193	117	117	344	342	10/14/2004	7	6	32	5	2,436	5	30	Friday
Hafford	28	23	184	168	133	133	345	324	10/13/2004	2	2	23	12	2,212	5	36	Friday
Hanton	15	15	62	55	69	69	146	139	10/13/2004	4	2	20	17	980	3	11	Friday
Hevens	7	7	113	108	206	206	326	321	10/18/2004	9	9	28	26	2,269	2	38	Monday
Hunner	122	97	641	544	427	427	1,190	1,068	10/13/2004	51	36	266	154	10,679	14	133	Friday
Homas	50	50	228	192	447	447	725	689	10/18/2004	20	13	74	66	3,916	10	36	Friday
Hrego	42	38	177	166	253	253	472	457	10/19/2004	5	4	10	6	1,722	1	22	Monday
Habaunsee	62	56	252	218	36	36	350	310	10/14/2004	20	16	35	10	3,646	12	38	Friday
Hallace	21	18	110	93	114	114	245	225	10/13/2004	3	3	8	1	893	1	23	Friday
Hashington	51	45	280	264	159	159	490	468	10/13/2004	11	10	95	79	3,265	10	74	Friday
Hichita	12	12	81	75	46	46	139	133	10/19/2004	0	0	11	8	1,075	1	19	Friday
Hilson	171	143	349	320	330	330	850	793	10/13/2004	23	12	135	86	4,498	11	41	Friday
Hoodson	28	27	240	233	127	127	395	387	10/15/2004	9	7	14	6	1,795	4	44	Friday
Hvyandotte	2,065	1,910	8,425	6,438	2,051	2,051	12,541	10,399	10/13/2004	197	149	3,664	2,780	54,514	69	656	Monday
<b>Totals:</b>	<b>23,746</b>	<b>21,045</b>	<b>111,272</b>	<b>99,373</b>	<b>125,339</b>	<b>125,262</b>	<b>260,357</b>	<b>245,680</b>		<b>6,959</b>	<b>5,480</b>	<b>45,563</b>	<b>31,805</b>	<b>1,213,108</b>	<b>2,031</b>	<b>10,494</b>	

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# Kansas Association for the Blind and Visually Impaired, Inc.

P.O. Box 292, Topeka, KS 66601, (785) 235-8990  
603 SW Topeka Blvd, Suite 303, Topeka, KS 66603  
Toll Free in KS (800) 799-1499 ~ kabvi@earthlink.net-www.kabvi.org

March 15, 2005

TO: House Governmental Organization and Elections  
FROM: Michael Byington, President   
SUBJECT: opposition to Senate Bill 142 UNLESS AMENDED

The Senate did some good work on parts of this bill. An amendment which I suggested was added to Section two (g).

While I appreciate this consideration, it does not negate the completely unacceptable language in Sections three and four of the Bill.

**THE LEGISLATION NEEDS TO BE FURTHER AMENDED TO STRIKE SECTIONS THREE AND FOUR COMPLETELY.** Unless this is done, the Bill needs to be killed.

Using signature matches as the final arbiter as to whether a vote should be counted or not is simply unacceptable under any circumstances. Many elections officers and their employees are not expert in their knowledge or qualifications in handwriting analysis.

Many people who vote by mail, or vote from their homes and have their ballots hand delivered to the election officer, choose to vote in this manner because of disabilities or age related issues which make it difficult for them to leave their homes. Statistically, it is very likely that such individuals may have had a significant change in signature style subsequent to registering to vote. Signature changes often take place due to disability related issues or the aging process.

The Kansas Association for the Blind and Visually Impaired has long supported efforts to stamp out voter fraud. We do not want the voting rights of people who are disabled to be exploited. This is why we introduced the amendatory language which became the new language used in Section two (g). We want to insure that every ballot DELIVERED to an election officer on behalf of a disabled voter was really voted by that disabled voter and in reflection of the disabled voters desires and preferences. We also asked, however, and continue to ask, that all provisions concerning using signature matching as a validation tool be stricken from the bill. We cannot support the bill without this being done.

House Gov. Org. & Elections  
Date: 3-15-05  
Attachment # 9

The Senators who support signature matching, and the Secretary of State, in his previous support of signature matching, have been well intentioned. I have no doubt that it has been their desire to keep the voting process as pure and fraud-free as possible. Signature matching, however, as a vehicle to meet this goal, is a very flawed process.

Lets suppose that there was a candidate running who had very strong support among elderly and disabled voters, but only moderate support among younger, non-disabled voters. Let us supposed that the election turned out to be very close, but that an overwhelming percentage of disabled and elderly voters, many of whom voted by advance ballot, were in support of this candidate. The advance ballots could indeed determine the outcome of the election. If an elections officer has the specific power to determine that any signature they do not feel is a perfect match invalidates the ballot to which it is affixed, then that elections officer could effectively change the outcome of an election based on little or no scientific or actual evidence.

Using signature matching creates a much greater probability that valid ballots will be disqualified than it creates a workable system for catching fraudulent ballots. We are therefore asking you not to make the validity of advance votes less reliable by adopting any signature matching requirements.

It is my understanding that the Secretary of State originally supported signature matching. It is also my understanding that, after having contemplated the issue, however, the Secretary is suggesting that we wait on consideration of signature matching, and not do anything on this issue in too much haste. We appreciate the Secretary's consideration concerning this matter. Our organization thus certainly suggests that all signature matching provisions be pulled from this bill.

RON THORNBURGH  
Secretary of State



Memorial Hall, 1st Floor  
120 S. W. 10th Avenue  
Topeka, KS 66612-1594  
(785) 296-4564

STATE OF KANSAS  
House Committee on Governmental Organization and Elections

Testimony on Substitute for Senate Bill 143

Brad Bryant, Deputy Assistant Secretary of State  
Elections and Legislative Matters

March 15, 2005

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify on behalf of the Secretary of State in support of Substitute for Senate Bill 143. This bill was proposed by the Secretary of State to:

- (1) update the laws governing the requirements and certification of direct recording electronic (DRE) voting systems,
- (2) bring them into compliance with the Help America Vote Act of 2002 (HAVA), and
- (3) repeal outdated laws in Article 13 of Chapter 25 that provided for lever machines and punch card ballots.

Section 1

This section defines several terms related to electronic voting. It deletes references to ballot cards, labels and marking devices which are relevant only to outdated voting technology. The language we have proposed draws heavily from the Federal Election Commission's 2002 voluntary voting systems standards.

Section 2

This section removes language providing for a petition and election process for counties to change their voting equipment. We have not heard of this process ever being used. The decision as to what type of voting system to use, if any, should be left to the board of county commissioners and the county election officer, who know the needs of the county and the county's budget.

Section 3

This section would amend the general statute that requires certification by the Secretary of State to include operating systems, firmware and software in the process of reviewing voting systems. It is important that the law recognize the fact that automated systems are not limited to hardware.

Section 4

This section also deals with the review and certification process. It removes the requirement that certification hearings be conducted in the Capitol, although they may be done here. Since the

Secretary of State moved to Memorial Hall the hearings most often occur in our office there. Also, the proposed new language of Section 4 recognizes that voting systems must meet the requirements of state laws and federal laws such as HAVA.

### Section 5

Subsection (a) has been revised to remove an unnecessary limit on the number of political parties which may appear on the ballot.

Subsection (h) has also been revised to provide flexibility in the voting process. HAVA requires each polling place to have at least one fully accessible, ADA-compliant voting device to allow voters with disabilities to vote independent and secret ballots. However, if some voters with disabilities prefer to receive assistance from persons of their choice or from election board members, their right to receive assistance is preserved.

Subsection (k) requires all electronic voting systems certified for use in Kansas to meet the requirements of HAVA.

NOTE: The Senate amended Section 5 of SB 143 to remove the amendatory language of the original bill in KSA 25-4406(d). The Secretary of State is proposing the original language be restored. This proposal is included in the attached proposed amendments. The proposal would provide more flexibility in partisan primary elections. The voting system would be required to allow the voter to vote whichever party's ballot the voter is authorized to vote, recognizing the fact that federal courts have ruled Kansas' closed primary law unconstitutional. The Secretary of State proposed Senate Bill 134 to amend the unconstitutional statute, but it did not pass the Senate.

### Section 6

Complementing the language of Section 2 of the bill, Section 6 removes language referring to an election process to select voting systems for counties.

Subsection (d) has been added to authorize the Secretary of State to acquire electronic voting systems for counties to meet the requirement in HAVA that each polling place be equipped with at least one fully accessible voting device. Part of the federal funding appropriated by Congress for the implementation of HAVA will be spent on this.

NOTE: The Senate amended Section 6 of SB 143 by inserting the word "only" in line 42. This would limit the Secretary of State's use of federal funds to the purchase of fully accessible, ADA-compliant voting equipment. All other purchases of voting equipment would be done with county funds, as has always been the case. The Secretary of State supports this amendment. The funds that will be used to purchase ADA-compliant equipment have been received from federal appropriations to support the Help America Vote Act.

### Section 7

This section has been revised to remove language referring to paper ballots, labels, ballot cards, marking devices, and holes, and insert updated language consistent with the electronic display of ballots. It preserves the requirement that voting equipment be able to rotate candidates' names on ballots.

Subsection (d) preserves the requirement that sample ballots be provided at the polling place, which is required by HAVA and existing Kansas law, and that the sample ballots match the

ballots on the voting equipment.

#### Section 8

This section deals with the voting process.

Subsection (b) preserves the requirement that sample ballots be provided at the polling place, which is required by HAVA and existing Kansas law as mentioned in Section 7 above.

Subsection (c) is deleted. This subsection required the posting of voter instructions in addition to the instructions on the ballot. HAVA and another Kansas law already require the posting of voting instructions at the polling place, and the instructions appear on each ballot. References to ballot cards, punching and marking devices are deleted.

Subsection (d) is deleted. The requirement that voters receive instruction before voting is retained in the new language.

Subsection (f) is deleted. It deals with the process for a voter receiving a replacement ballot if the first one is spoiled or mismarked. This process is done on the voting device in an electronic or electromechanical voting system.

#### Section 9

This section deals with the public testing of voting equipment before and after each election. A public test is required in the county election office during the week before the election and again at the time of tabulation after the polling places close.

#### Section 10

This section deals with the procedure for closing the polling place and securing the voting devices when the polls close. It requires a check to ensure that the number of votes cast, including write-in votes, equals the number of voters on the poll book. References to ballot cards have been deleted.

If paper ballots are used at a location that normally votes on an electronic system, and ballots cannot be tabulated automatically using an optical scanner, they are required to be counted manually.

#### Section 11

In this section, a reference to ballot cards has been removed from a statute requiring a recount procedure.

#### Section 12

This section defines voting system fraud. It removes references to ballot cards and labels and includes voting equipment, operating systems, firmware, software and ballots.

#### New Section 13

This section authorizes the Secretary of State to adopt rules and regulations. This authority existed in Article 13 of Chapter 25, which Senate Bill 143 proposes to repeal.

#### New Section 14

This section provides a name for the series of laws governing electronic and electromechanical voting systems.



Section 15

This is the standard repealer section of the bill, but it should be pointed out that in addition to repealing the statutes amended by SB 143, it repeals all of Article 13 in Chapter 25, which provided for lever machines and punch card ballots. Lever machines have not been used in Kansas since 1995, and to our knowledge, punch card ballots have never been used. These systems are being phased out nationwide by HAVA.

Proposed Amendment

We propose a further amendment to Sub. SB 143 by the addition of the provisions of SB 134. The language and explanation are included on the attached page.

We urge the committee to amend Sub. SB 143 as proposed and recommend it favorably for passage. Thank you for your consideration.

## Proposed Amendments to Senate Bill 143

The Secretary of State recommends the committee amend Substitute for Senate Bill 143 in three ways.

### Proposed Amendment #1

1. Amend all of the language of Senate Bill 134 onto Senate Bill 143. The addition of Senate Bill 134 will:

(1) provide a vehicle for the Legislature to amend Kansas' closed primary statute because similar statutes have been declared unconstitutional by federal courts, and

(2) resolve a discrepancy between two laws regarding the deadlines for a voter to register and change party affiliations before an election.

In 1986 the United States Supreme Court struck down a Connecticut statute requiring voters in party primaries to be registered members of the political party. Tashjian v. Republican Party of Connecticut, 479 U.S. 208 (1986). The Republican Party of Connecticut wanted to invite independent voters to participate in the Republican primary; however, state law prohibited anyone other than members of the party. The Republican Party sued, arguing that the state law restricted its constitutional right of free association. The Supreme Court agreed, striking down the statute as unconstitutional. The Court noted “. . .the freedom to join together in furtherance of common political beliefs ‘necessarily presupposes the freedom to identify the people who constitute the association.’” Tashjian at 214, quoting Democratic Party of the United States v. Wisconsin, 450 U.S. 107, 122 (1981).

The Connecticut statute read as follows: “No person shall be permitted to vote at a primary of a party unless he is on the last-completed enrollment list of such party in the municipality or voting district. . . .” Conn. Gen. State. 9-431 (1985). Kansas has a similar provision in K.S.A. 25-3301, which reads as follows: “No voter shall be allowed to receive the ballot of any political party except that with which such voter is affiliated.” Based on the U.S. Supreme Court decision, the Kansas statute is unconstitutional. The state cannot require a closed primary; only the party can make that decision. If the state mandates a closed primary election, it violates the constitutional rights of the party.

### Summary of Senate Bill 134

#### Section 1

This section amends the wording of the advance ballot application form to allow a voter the option of requesting the primary election ballot of any party, rather than limiting the request to the ballot of the party with which the voter is affiliated. This is proposed to cover instances where one or more political parties choose to have open primaries.

#### Section 2

As a follow-up to Section 1, Section 2 instructs the county election officer to send the applicant an advance ballot of the party requested by the voter on the ballot application.

### Section 3

This section is the crux of the bill. It amends KSA 25-3301(a) so that instead of each voter in the primary being required to be officially affiliated with the party whose ballot he/she requests, each party is required to notify the Secretary of State by April 1 of the primary election year regarding which voters the party wishes to include in its primary.

Further, it amends KSA 25-3301(c) to allow each voter to either receive the ballot of the party with which the voter is affiliated or to receive the ballot the voter requests, depending on the rules adopted by each party.

### Section 4

This section resolves the discrepancy between the laws setting deadlines for voters to register and change party affiliations before each election. The bill simply changes the deadline for affiliating with a party, or changing one's affiliation, from 14 days before the election to 15 days before the election. This will put KSA 25-3304 in agreement with KSA 25-2311, which specifies that registration is closed for 14 days before election, which effectively establishes the 15<sup>th</sup> day as the last day to register.

### Section 5

This section is similar to Section 3 except it applies to the presidential preference primary. In this case, the deadline for parties to notify the Secretary of State regarding who may vote in the respective parties' primaries is December 1 preceding the presidential election year.

#### **Proposed Amendment #2**

2. Amend Section 5 of Sub. SB 143 to restore the language of the bill as originally proposed by the Secretary of State:

On page 4, Section 5, lines 19 and 20--

Strike the words "of the political party with which the voter is affiliated or, if not affiliated, according to the voter's declaration when applying to vote" and inserting "*for whom the voter is qualified to vote according to article 2 and article 33 of chapter 25 of the Kansas Statutes Annotated and amendments thereto*".

This amendment complements the language proposed above to allow political parties to determine who may vote in their respective primaries and strike unconstitutional language that dictates closed primaries to the parties.

#### **Proposed Amendment #3**

3. Add a section to Sub. SB 143 to revise the language of K.S.A. 25-3801, which deals with the election of party precinct committee men and women at the August primary. A draft of proposed language is attached to this testimony. The proposal would remove language from the existing law that limits voting on precinct committee positions to only members of the party and allows any voters the party has allowed to vote at the primary to also vote on precinct committee positions.

This amendment is needed to make all the laws governing the primary election consistent. Without this amendment, county election officers would be forced to print and distribute separate ballots for precinct committee elections and maintain separate lists of voters authorized to vote in the regular primary election and the election of precinct committee positions.

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[Signature]

# SENATE BILL No. 134

By Committee on Elections and Local Government

1-28

9 AN ACT concerning elections; relating to party affiliation; amending  
10 K.S.A. 25-3301, 25-3304 and 25-4502 and K.S.A. 2004 Supp. 25-1122d  
11 and 25-1123 and repealing the existing sections.  
12

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

14 Section 1. K.S.A. 2004 Supp. 25-1122d is hereby amended to read  
15 as follows: 25-1122d. (a) The application for an advance voting ballot to  
16 be transmitted by mail shall be accompanied by an affirmation in sub-  
17 stance as follows:

18 Affirmation of an Elector of the County of \_\_\_\_\_ and State of Kansas Desiring  
19 to Vote an Advance Voting Ballot

20 State of \_\_\_\_\_, County of \_\_\_\_\_, ss:

21 I, \_\_\_\_\_

22 (Please print name)

23 do solemnly affirm under penalty of perjury that I am a qualified elector of the \_\_\_\_\_  
24 precinct of the \_\_\_\_\_ ward, residing at number \_\_\_\_\_ on \_\_\_\_\_  
25 street, city of \_\_\_\_\_, or in the township of \_\_\_\_\_, county of \_\_\_\_\_,  
26 and state of Kansas. My date of birth is \_\_\_\_\_ (month/day/year).

27 I understand that if I have not previously voted in any election in this county and I have  
28 not previously submitted valid identification, I must provide one of the following forms of  
29 identification with this application in order to receive a ballot:

30 (1) A current and valid Kansas driver's license number or nondriver's identification card  
31 number; or

32 (2) the last four digits of my social security number; or

33 (3) a copy of a current and valid Kansas driver's license or nondriver's identification  
34 card, utility bill, bank statement, paycheck, government check, or other government docu-  
35 ment that shows my name and address.

36 I am entitled to vote an advance voting ballot and I have not voted and will not otherwise  
37 vote at the election to be held on \_\_\_\_\_ (date). My political party is I request the  
38 ballot of the \_\_\_\_\_ party (to be filled in only when requesting primary election  
39 ballots). I desire my ballots to be sent to the following address

40 \_\_\_\_\_  
41 \_\_\_\_\_

42 Signature of voter.

43 Note: False statement on this affirmation is a severity level 9, nonperson felony.

15  
17

(b) The application for an advance voting ballot to be transmitted in person shall be accompanied by an affirmation in substance as follows:

Affirmation of an Elector of the County of \_\_\_\_\_ and State of Kansas Desiring to Vote an Advance Voting Ballot

State of \_\_\_\_\_, County of \_\_\_\_\_, ss:

I, \_\_\_\_\_

(Please print name)

do solemnly affirm under penalty of perjury that I am a qualified elector of the \_\_\_\_\_ precinct of the \_\_\_\_\_ ward, residing at number \_\_\_\_\_ on \_\_\_\_\_ street, city of \_\_\_\_\_, or in the township of \_\_\_\_\_, county of \_\_\_\_\_, and state of Kansas. My date of birth is \_\_\_\_\_ (month/day/year).

I understand that if I have not previously voted in any election in this county and I have not previously submitted valid identification, I must provide one of the following forms of identification with this application in order to receive a ballot: a current and valid Kansas driver's license or nondriver's identification card, utility bill, bank statement, paycheck, government check or other government document that shows my name and address.

I am entitled to vote an advance voting ballot and I have not voted and will not otherwise vote at the election to be held on \_\_\_\_\_ (date). My political party is \_\_\_\_\_ (to be filled in only when requesting primary election ballots).

\_\_\_\_\_  
Signature of voter.

Note: False statement on this affirmation is a severity level 9, nonperson felony.

(c) An application for permanent advance voting status shall be on a form prescribed by the secretary of state for this purpose. Such application shall contain an affirmation concerning substantially the same information required in subsection (a) and in addition thereto a statement regarding the permanent character of such illness or disability.

(d) Any application by a former precinct resident shall state both the former and present residence, address, precinct and county of such former precinct resident and the date of change of residence.

Sec. 2. K.S.A. 2004 Supp. 25-1123 is hereby amended to read as follows: 25-1123. (a) When an application for an advance voting ballot has been filed in accordance with K.S.A. 25-1122, and amendments thereto, the county election officer shall transmit to the voter applying therefor one each of the appropriate ballots. Except as provided by subsection (b), the county election officer shall transmit the advance voting ballots to the voter at one of the following addresses as specified by the voter on such application: (1) The voter's residential address or mailing address as indicated on the registration list; (2) the voter's temporary residential address; or (3) a medical care facility as defined in K.S.A. 65-425, and amendments thereto, psychiatric hospital, hospice or adult care home where the voter resides. No advance voting ballot shall be transmitted by the county election officer by any means prior to the 20th day before the

election for which an application for an advance voting ballot ~~was~~ been received by such county election officer. If the advance voting ballot is transmitted by mail, such ballot shall be transmitted with printed instructions prescribed by the secretary of state and a ballot envelope bearing upon the outside a printed form as described in K.S.A. 25-1120, and amendments thereto, and the same number as the number of the ballot. If the advance voting ballot is transmitted to the applicant in person in the office of the county election officer or at a satellite advance voting site, such advance voting ballot and printed instructions shall be transmitted in an advance voting ballot envelope bearing upon the outside a printed form as described in K.S.A. 25-1120, and amendments thereto, and the same number as the number of the ballot unless the voter elects to deposit the advance voting ballot into a locked ballot box without an envelope. All ballots shall be transmitted to the advance voting voter not more than 20 days before the election but within two business days of the receipt of such voter's application by the election officer or the commencement of such 20-day period. In primary elections required to be conducted on a partisan basis, the election officer shall deliver to such voter the ballot of the political party of *requested by* the applicant.

(b) The restrictions in subsection (a) relating to where a county election officer may transmit an advance voting ballot shall not apply to an advance voting ballot requested pursuant to an application for an advance voting ballot filed by a voter who has a temporary illness or disability or who is not proficient in reading the English language.

(c) The county election officer shall compare the driver's license number, nondriver's identification card number, social security number or copy of other valid identification provided by a first-time voter to the voter registration list verified by the division of motor vehicles in accordance with federal law. If no identification information was provided by the first-time voter, or if such information does not match the information on the voter registration list, the county election officer shall not transmit an advance voting ballot.

Sec. 3. K.S.A. 25-3301 is hereby amended to read as follows: 25-3301. (a) ~~Each registered voter of this state who has declared a party affiliation as provided in this section or in K.S.A. 25-3304, and amendments thereto, shall be entitled to vote at every partisan primary election~~ *Each political party authorized to participate in the primary election as determined by subsection (b) of K.S.A. 25 202, and amendments thereto, shall determine which registered voters may receive such party's ballot in every partisan primary election. Each such political party shall notify the secretary of state in writing not later than 12:00 noon, April 1 \_\_\_\_\_ to the primary election on the first Tuesday of August in even-red years, or if such date falls on a Saturday, Sunday or holiday, then before*

10-8

1 12:00 noon of the next following day that is not a Saturday, Sunday or  
 2 holiday. Such notice shall specify whether registered voters who are not  
 3 affiliated with such political party may receive such political party's pri-  
 4 mary election ballot. No person entitled to vote in the primary election  
 5 shall be permitted to vote more than once.

6 (b) The county election officer shall prepare for each voting place at  
 7 each partisan primary election a party affiliation list, duly certified by such  
 8 officer, which clearly indicates the party affiliation of each registered voter  
 9 in the voting area who has declared a party affiliation. The registration  
 10 book prepared for a voting place pursuant to K.S.A. 25-2318, and amend-  
 11 ments thereto, may be used as such list, but no registration book prepared  
 12 for use at a voting place in an election other than a partisan primary  
 13 election or an election held at the same time as a partisan primary election  
 14 shall indicate in any manner the party affiliation of any voter. Such list  
 15 shall be delivered by the supervising judge to the voting place before the  
 16 opening of the polls.

17 (c) The party affiliation list provided for by subsection (b) shall be  
 18 used to determine the party affiliation of a voter offering to vote at a  
 19 partisan primary election and of a voter applying for an advance voting  
 20 ballot pursuant to K.S.A. 25-1122, and amendments thereto. ~~If a voter's~~  
 21 ~~party affiliation is not indicated on the party affiliation list, such voter~~  
 22 ~~shall state the voter's party affiliation in writing on a form prescribed by~~  
 23 ~~the secretary of state. A judge at the precinct polling place, or the county~~  
 24 ~~election officer or such officer's designee, shall give such voter a primary~~  
 25 ~~ballot of the voter's party affiliation, and such person thereupon shall be~~  
 26 ~~entitled to vote. Such a~~ *If a voter's party affiliation is not indicated on*  
 27 *the party affiliation list or if such voter has not declared affiliation with*  
 28 *a political party, such voter may state the voter's party affiliation in writ-*  
 29 *ing on a form prescribed by the secretary of state, or if permitted by rules*  
 30 *specified by a political party pursuant to subsection (a) of this section,*  
 31 *such voter may request the ballot of the political party of such voter's*  
 32 *choice. Any statement of party affiliation completed by a registered voter*  
 33 *pursuant to this subsection shall constitute a declaration of party affilia-*  
 34 *tion, and all such signed statements shall be returned to the county elec-*  
 35 *tion officer, who shall cause them to be recorded on the party affiliation*  
 36 *list.*

37 (d) ~~No voter shall be allowed to receive the ballot of any political~~  
 38 ~~party except that with which such voter is affiliated.~~

39 (e) Party affiliation statements shall be preserved for five years. The  
 40 county election officer may dispose of the statements in the manner ap-  
 41 proved for destruction of ballots as provided in K.S.A. 25-2708, and  
 42 amendments thereto.

43 (f) (e) The county election officer shall update party affiliation lists as

1 provided by rules and regulations of the secretary of state.

2 Sec. 4. K.S.A. 25-3304 is hereby amended to read as follows: 25-  
 3 3304. (a) Any person who has declared such person's party or voter affil-  
 4 iation in the manner provided by law shall be listed on a voter affiliation  
 5 list as a member of a registered political organization, or on a party affil-  
 6 iation list if a member of a recognized political party, unless the person's  
 7 name is purged or removed therefrom as provided by K.S.A. 25-3303,  
 8 and amendments thereto, or unless the person changes party or voter  
 9 affiliation as provided in this section.

10 (b) Any person, who, having declared a party or voter affiliation, de-  
 11 sires to change the same, may file a written declaration with the county  
 12 election officer, stating the change of party or voter affiliation. Such dec-  
 13 laration shall be filed not less than 14 15 days prior to the date of any  
 14 national, state, county or township primary election. The county election  
 15 officer shall enter a record of such change on the party or voter affiliation  
 16 list of such preceding primary election in the proper column opposite the  
 17 voter's name.

18 (c) Any person who has never declared a party or voter affiliation in  
 19 the county in which such person resides may file a written declaration  
 20 with the county election officer, stating the person's party or voter affil-  
 21 iation. Such declaration shall be filed not less than 14 15 days prior to the  
 22 date of any national, state, county or township primary election. The  
 23 county election officer shall enter a record of such declaration on the  
 24 party or voter affiliation list of the preceding primary election in the  
 25 proper column opposite the voter's name.

26 Sec. 5. K.S.A. 25-4502 is hereby amended to read as follows: 25-  
 27 4502. (a) ~~Every registered elector who has declared such elector's party~~  
 28 ~~affiliation with a political party eligible to participate in a state primary~~  
 29 ~~election shall have the opportunity to vote one vote at a presidential pref-~~  
 30 ~~erence primary election for such elector's preference for one person to~~  
 31 ~~be the candidate for nomination by such candidate's party for president~~  
 32 ~~of the United States or for "none of the names shown." Any registered~~  
 33 ~~elector who has not declared such candidate's party affiliation prior to the~~  
 34 ~~election may make such a declaration at the polling place, and thereupon~~  
 35 ~~shall be permitted likewise the opportunity to vote one vote at the pres-~~  
 36 ~~idential preference primary. Each political party authorized to participate~~  
 37 ~~in the primary election as determined by K.S.A. 25-202(b), and amend-~~  
 38 ~~ments thereto, shall determine which registered voters may receive such~~  
 39 ~~party's ballot in the presidential primary election. Each such political~~  
 40 ~~party shall notify the secretary of state in writing not later than 12:00~~  
 41 ~~noon, December 1, prior to the presidential primary election, or if such~~  
 42 ~~date falls on a Saturday, Sunday or a holiday, then before 12:00 noon of~~  
 43 ~~the next following day that is not a Saturday, Sunday or holiday. Such~~

1 notice shall specify whether registered voters who are not affiliated with  
2 such political party may receive such party's presidential primary election  
3 ballot. Each person entitled to vote in the presidential primary election  
4 shall be permitted to vote one vote for such elector's preference for one  
5 person to be the candidate for nomination by such candidate's party for  
6 president of the United States or for "none of the names shown."

7 A vote for "none of the names shown" shall express the preference for  
8 an uncommitted delegation from Kansas to the national convention of  
9 that elector's party. Preference shall be indicated by marking with a cross  
10 or check mark inside a voting square on the ballot at the left of the voter's  
11 choice, or by voting by using a voting machine.

12 (b) The name of any candidate for a political party nomination for  
13 president of the United States shall be printed on the ballots only if, not  
14 later than twelve o'clock noon, February 12 prior to the presidential pref-  
15 erence primary or, if such date falls on Saturday, Sunday or a holiday, not  
16 later than twelve o'clock noon the following day that is not a Saturday,  
17 Sunday or holiday:

18 (1) The candidate files with the secretary of state a declaration of  
19 intent to become a candidate accompanied by a fee of \$100; or

20 (2) there is filed in the office of secretary of state a petition in the  
21 form prescribed by K.S.A. 25-205, and amendments thereto, signed by  
22 not less than 1,000 registered electors, who are affiliated with the political  
23 party of such candidate as shown by the party affiliation list. The secretary  
24 of state shall determine the sufficiency of each such petition, and such  
25 determination shall be final.

26 Sec. 6. K.S.A. 25-3301, 25-3304 and 25-4502 and K.S.A. 2004 Supp.  
27 25-1122d and 25-1123 are hereby repealed.

28 Sec. 7. This act shall take effect and be in force from and after its  
29 publication in the statute book.

## 25-3801

### Chapter 25.--ELECTIONS Article 38.--POLITICAL PARTIES

**25-3801. Precinct committeemen and committeewomen; eligibility for office or candidacy; filling vacancies.** (a) At each primary election, the ~~members of the party~~ voters authorized to vote in each party's primary pursuant to K.S.A. 25-3301, and amendments thereto, residing in each precinct in each county of the state shall elect a man of their number as precinct committeeman and a woman of their number as precinct committeewoman. No person shall be eligible to be a candidate for or hold the office of precinct committeeman or precinct committeewoman of a party in any precinct unless such person actually lives, resides and occupies a place of abode in such precinct, and is in all other respects a qualified elector and is shown as a member of such party on the party affiliation list, in the office of the county election officer. Except as provided in subsection (b), any vacancy occurring in the office of precinct committeeman or committeewoman shall be promptly filled by appointment by the county chairperson, except that any vacancy which occurs because the party had no candidate at such primary election shall not be filled until the county central committee has elected or reelected its chairperson. Not later than three days after appointment of precinct committeemen and committeewomen, the county chairperson making the appointments shall notify the county election officer of such appointments. The county election officer shall make such appointments public immediately upon receipt thereof. As used in this act, "primary election" means the statewide election held in August of even-numbered years.

(b) When a convention is to be held under article 39 of chapter 25 of Kansas Statutes Annotated to fill a vacancy, no appointments shall be made under subsection (a): (1) After the county chairperson has received notice from the county election officer of a vacancy or a pending vacancy in a county elected office; or (2) after the county chairperson in each county, all or a part of which, is located within a legislative district has received notice from the secretary of state of a vacancy or a pending vacancy in a legislative office.

After the vacancy has been filled by a person elected at a convention held under article 39 of chapter 25 of the Kansas Statutes Annotated, any vacancy in the office of precinct committeeman or committeewoman shall be filled as provided by subsection (a).

**History:** L. 1972, ch. 129, § 1; L. 1990, ch. 130, § 3; L. 1999, ch. 64, § 1; L. 2001, ch. 81, § 8; July 1.



# Johnson County Election Office



**Brian D. Newby**  
**Election Commissioner**

TESTIMONY BEFORE HOUSE GOVERNMENTAL ORGANIZATION AND ELECTIONS COMMITTEE

*Tuesday, March 15, 2005*

Thank you for the opportunity to meet here again with you and speak regarding Senate Bill 143. As the Election Commissioner for the largest county in the State of Kansas and the county that has invested the most in electronic touch-screen voting equipment, I fully support the changes as proposed by the Secretary of State's office.

The changes are necessary to reflect the changes brought about by the Help America Vote Act. Further, the changes support enhancements to the overall voter experience in Johnson County and the State of Kansas.

As mentioned in previous testimony to this committee, we see components of the voting experience as interdependent. The components include expectations around convenience of registration, convenience of voting, assurance of accurate results, assurance of timely results, communications of results and other voter information, and assurance that taxpayer dollars are neither overspent nor underutilized to provide for these components. These components are like levers that are related, where changes in one area potentially negatively impact other areas.

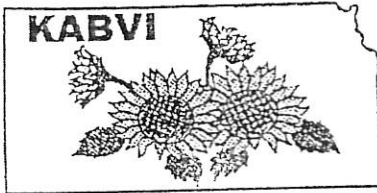
Beyond supporting the changes put forth in Senate Bill 143, I also ask that as the committee considers other election legislation, that the impact to all of the components of the overall voter experience be considered. Our staff is available to work with you and to help evaluate the continuum of the voting experience and consider reasonable benchmarks in all areas that counties in Kansas should target.

In the meantime, I ask that you support Senate Bill 143, appreciate the opportunity to speak with you today, and am available for any questions related to my testimony.

Thank you.

Brian D. Newby

House Gov. Org. & Elections  
Date: 3-15-05  
Attachment # 11



# Kansas Association for the Blind and Visually Impaired, Inc.

P.O. Box 292, Topeka, KS 66601, (785) 235-8990  
603 SW Topeka Blvd, Suite 303, Topeka, KS 66603  
Toll Free in KS (800) 799-1499 ~ kabvi@earthlink.net~www.kabvi.org

March 15, 2005

TO: House Governmental Organization and Elections  
FROM: Michael Byington, President  
SUBJECT: opposition to Senate Bill 143 IF AMENDED IN CERTAIN WAYS

Our organization does not have a major dog in the hunt with regard to this Bill as long as it remains in its current form. It is our understanding, however, that there is interest in adding provisions to it concerning voter verified paper audit trails (VVPAT)s

Our organization is generally opposed to VVPATs. Our reasons are as follows:

We were very involved with our National partner, the American Council of the Blind (ACB) in working for the adoption of the Help America Vote Act (HAVA) and the access provisions placed within HAVA. For blind, visually impaired, or otherwise non-print reading voters, HAVA means that, for the first time ever, many of us will be able to vote privately, not telling any other human being how we voted. We will be able to verify that we are voting as we intended through the speech output through earphones available on the accessible machines. This makes our vote independently cast for the first time, and that is pretty exciting.

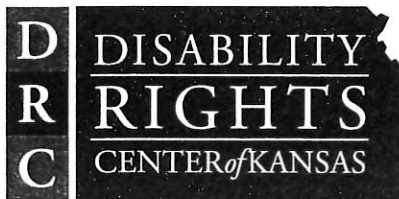
If the final arbiter of what votes are counted and what votes are not counted becomes a paper ballot printed out outside of the accessible process, then the blind voter has lost a modicum of the access as described above. We worked hard for that access and we do not want to give it up.

It might be acceptable if the VVPATs were added strictly for voter comfort, but could not be used for vote count purposes. In that case, however, I must question if the VVPAT process is really worth the cost. I understand the fiscal note on VVPATs in this State is about seven million.

Statistically, the new direct recording electronic voting machines (DRE)s are much more accurate than are either paper ballots or the old mechanical voting machines. With regard to the old, big as a full sized Buick, mechanical voting machines, I must point out that

House Gov. Org. & Elections  
Date: 3-15-05  
Attachment # 12

their lack of accuracy and potentials for mechanical trouble, were much greater than is the case with the new DRE machines. Yet there were not efforts to make the old, mechanical voting machines print out paper ballots.



EQUALITY ♦ LAW ♦ JUSTICE

## Disability Rights Center of Kansas

3745 SW Wanamaker Road ♦ Topeka, KS 66610

785.273.9661 ♦ 877.776.1541 (V/TDD)

785.273.9414 FAX ♦ www.drckansas.org

info@drckansas.org

### Testimony to the Governmental Organization and Elections Committee

March 14, 2005

Chairman Vickrey and members of the committee, my name is Michael Donnelly. I am the Director of Policy and Outreach for the Disability Rights Center of Kansas, formerly Kansas Advocacy and Protective Services (KAPS). The Disability Rights Center of Kansas (DRC) is a public interest legal advocacy agency, part of a national network of federally mandated and funded organizations legally empowered to advocate for Kansans with disabilities. As such, DRC is the officially designated protection and advocacy system for Kansans with disabilities. DRC is a private, 501(c)(3) nonprofit corporation, independent of both state government and disability service providers. As the federally designated protection and advocacy system for Kansans with disabilities our task is to advocate for the legal and civil rights of persons with disabilities as promised by federal, state and local laws. Those rights are promised in laws like the Americans with disabilities Act of 1990 (ADA), the Help America Vote Act (HAVA), and others. In fact, DRC is the recipient of the Protection and Advocacy for Voting Access program for Kansas.

I'm speaking today in support of SB 143 as presented. The purpose behind SB 143 is to empower Kansas to comply with the requirements of HAVA, specifically the placement of accessible electronic voting systems in each Kansas polling place. The disability community anxiously awaits the arrival of the day that each person, regardless of disability is given the opportunity to cast an unassisted, independent and private ballot.

DRC the amendment made by the Senate Committee in Sec. 5. K.S.A. 25-4406 (page 4) that allows certain voters to use assistance mirror that provided in K.S.A. 25-2909, "Any voter unable to mark such person's ballot by reason of *temporary illness*, disability, lack of proficiency

House Gov. Org. & Elections

Date: 3-15-05

Attachment # 13

in reading the English language or any voter 65 or more years of age may request assistance in voting.”

DRC is aware that there is some interest in the 2005 Legislature to require that all new DREs purchased and placed in Kansas polling places be equipped to produce a voter verifiable paper audit trail (VVPAT). As this Committee heard earlier in the session the disability community, including DRC opposes any VVPAT requirement that violates the civil rights of voters with disabilities. I have attached a memorandum distributed by the U.S. Department of Justice that attempts to address this issue. Basically, the memorandum makes it clear that VVPAT may be used for some purposes in an election. However, VVPAT can not be used as the final arbiter in an election, e.g., for a recount, if each vote produced in paper by the DRE can not be audited by the voter him or her self. In other words, the paper ballot would need to be made accessible to audited by the voter in an independent and private way, when that voter can not read the printed ballot because of disability. If the ballot is not made accessible to the voter with a visual impairment or other disability that affects the voters ability to read the ballot, and the ballot is used in a recount (for example) that would be a violation of title II of the Americans with Disabilities Act of 1990 (ADA) and HAVA itself.

Any requirement for VVPAT must be balanced against the civil rights of voters with disabilities. Kansas needs the accessible DREs in our polling places. Kansas must tread carefully with the VVPAT issue and not trample on the rights of Kansas voters with disabilities.

**WHETHER CERTAIN DIRECT RECORDING ELECTRONIC VOTING SYSTEMS  
COMPLY WITH THE HELP AMERICA VOTE ACT AND THE AMERICANS WITH  
DISABILITIES ACT**

*A direct recording electronic voting system that produces a contemporaneous paper record, which is not accessible to sight-impaired voters but which allows sighted voters to confirm that their ballots accurately reflect their choices before the system officially records their votes, would be consistent with the Help America Vote Act and with Title II of the Americans with Disabilities Act, so long as the voting system provides a similar opportunity for sight-impaired voters to verify their ballots before those ballots are finally cast.*

October 10, 2003

**MEMORANDUM OPINION FOR THE  
PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL  
CIVIL RIGHTS DIVISION**

This memorandum responds to your Office's request of August 12, 2003, for our opinion on whether a direct recording electronic ("DRE") voting system may, consistent with the Help America Vote Act and the Americans with Disabilities Act, produce a contemporaneous paper record, not accessible to sight-impaired voters, that allows voters to confirm that their ballots accurately reflect their choices before the system officially records their votes. Based on the information you have provided us, we conclude that this proposed voting system would be consistent with both Acts, so long as the DRE voting system provides a similar opportunity for sight-impaired voters to verify their ballots before those ballots are finally cast.<sup>(1)</sup>

I

Many states are expanding the use in elections of DRE voting systems, which allow voters to enter their choices on an electronic screen in the voting booth. The DRE machines also allow a voter to confirm his ballot before it becomes an officially recorded vote by providing a "summary screen" listing all of the voter's choices. After viewing the summary screen, the voter may either cast his ballot or else go back and make corrections. On newer DRE machines, an auditory component announces the ballot choices and the contents of the electronic summary screen, allowing sight-impaired voters to verify and cast their ballots without assistance and in complete privacy.

In response to concerns that the DRE voting systems may be vulnerable to tampering, the State of California is considering adopting DRE machines that would produce a contemporaneous paper record for each voter in addition to the electronic summary screen. *See* Letter from Randy Riddle, Chief Counsel, California Secretary of State, to Joseph Rich, Voting Section Chief, Civil Rights Division (July 8, 2003). This paper record would summarize the voter's choices, and would be printed before the voter finally casts his ballot. In some cases, the

paper record might also be preserved as a means to count votes in case of a recount or election contest. But in other cases, the paper record would serve solely to inform the voter of his choices before finally casting his ballot - serving the same function as the DRE electronic summary screen.

## II

Because the paper record produced by the DRE machines in question will not be produced in a format accessible to sight-impaired voters, you have asked for our opinion whether such a voting system would violate either the Help America Vote Act or Title II of the Americans with Disabilities Act. We will address each statute in turn.

### A

Under the Help America Vote Act of 2002 ("HAVA"), all "voting systems" used in an election for federal office must meet specified federal requirements by January 1, 2006. *See* 42 U.S.C.A. §§ 15481-85 (West Supp. 2003). One of these requirements is that voting systems "shall . . . permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted." 42 U.S.C.A. § 15481(a)(1)(A)(i). DRE voting systems comply with this mandate by providing a final summary screen before the voter asks the machine to officially record his vote, as well as an auditory component that informs sight-impaired and illiterate voters of the summary screen's contents. The production of a contemporaneous paper record is not necessary for the voting system to comport with section 15481(a)(1)(A)(i), but it does afford an additional means for a voter to verify his choices before casting his vote.

HAVA further provides that "[t]he voting system shall . . . be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides *the same opportunity for access and participation* (including privacy and independence) as for other voters." § 15481(a)(3)(A) (emphasis added). Some may object that sight-impaired voters will have no opportunity to access or use the contemporaneous paper records generated by DRE machines, as the paper record is not produced in Braille, and the DRE systems do not currently convert the paper into an audible format accessible to the sight impaired. We do not, however, believe that this feature contravenes section 15481(a)(3)(A).

What section 15481(a)(3)(A) requires is that each "voting system" be accessible to disabled persons in a manner that provides "the same opportunity" for access and participation that other voters have. We will assume for the sake of argument that the paper record produced by DRE machines is included as part of the "voting system" as defined in section 15481(b),<sup>(2)</sup> although we note that this is not entirely clear and may depend on precisely what functions the paper record serves beyond providing a means for voters to verify their ballots before they are cast.<sup>(3)</sup> But even if one indulges this assumption, the statutory issue would not be whether the *paper record* is accessible to the sight-impaired, but whether the *entire DRE voting system* is accessible in a manner that provides disabled voters "the same opportunity for access and participation" that other voters enjoy. § 15481(a)(3)(A). We must therefore evaluate a disabled person's opportunity

to participate in the voting system holistically, rather than scrutinizing his opportunity to access the system's discrete components or parts.

Furthermore, the use of the word "same" in section 15481(a)(3)(A) does not mean "identical"; if HAVA were read to require an identical opportunity for access and participation among non-disabled voters and voters with every type of disability, it would mandate the impossible. A serious disability will *necessarily* result in a voting experience that differs in some manner from that enjoyed by non-disabled voters. Nothing can be done, for example, to enable blind voters to visually interact with their ballot as sighted voters can. And we do not read HAVA to force all sighted persons to use voting technology with no visual dimension whatsoever (such as a voice-activated box that navigates voters through the ballot via a series of audible commands). That approach would not comply with section 15481(a)(3)(A) because such a voting system, in its efforts to produce "identical" opportunities among the sighted and the blind, would be entirely inaccessible to the hearing-impaired. What is more, equating the word "same" in section 15481(a)(3)(A) with "identical" would prohibit the very audio components in DRE voting systems that enable the sight-impaired to vote in privacy, because voters with other types of disabilities, such as the hearing-impaired, could not access these accommodations and would therefore lack an identical "opportunity" to participate in the voting system. We therefore construe the word "same" to mean "similar in kind, quality, quantity, or degree." *See* American Heritage Dictionary of the English Language 1539 (4th ed. 2000). So long as a disabled person can access and participate in the *essentials* of a voting system -- such as the ability to cast a ballot in privacy with a full opportunity to review the ballot before casting it -- his opportunity to access and participate in the voting system is sufficiently "similar in kind, quality, quantity, or degree" to that enjoyed by non-disabled persons. The fact that the precise *means* by which he may access and participate in those essentials differs from those available to non-disabled persons does not deprive him of the "same opportunity" to participate in the voting system -- if it did, no voting system could ever comply with HAVA.

So long as DRE voting systems provide sight-impaired voters with audio equipment that enables them to verify their ballots before they are cast, we conclude that the provision of a contemporaneous paper record to assist sighted voters in verifying their ballots does not run afoul of HAVA.<sup>(4)</sup> The essentials of such a voting system -- including the ability to verify one's ballot -- are available to disabled and non-disabled voters alike, giving them the "same opportunity" for access and participation under section 15481(a)(3)(A). Knowledge of the contents of the paper record is simply one of the *means* by which a sighted voter may verify his ballot before casting it, and DRE voting systems satisfy section 15481(a)(3)(A) so long as they provide a comparable means for sight-impaired voters to achieve this essential end.

It is true that sighted voters will have more than one method by which they may verify their ballot before casting it: they can view both the electronic summary screen as well as the paper record produced by the DRE machine. Sight-impaired voters, by contrast, can only listen to an audio description of the summary screen, and have no independent way of knowing the contents of the paper record before casting their vote. Nevertheless, we do not believe that providing a greater number of methods by which sighted voters can verify their ballots deprives blind voters of the "same opportunity" for access and participation in the voting system, so long as the means available to such disabled persons are adequate to ensure similar access to and participation in



the essentials of the voting system. The ability to verify one's ballot before casting it *is* essential, *cf.* § 15481(a)(1)(A)(i), but the availability of multiple techniques by which to do so is not. Disability accommodations often result in a greater range of methods by which non-disabled persons can accomplish their goals, yet such accommodations are not deemed to deny equal opportunities for disabled persons for that reason alone. Consider a building that provides both a set of stairs and a wheelchair ramp to its outdoor entrance. Non-disabled persons have more means to enter the building (they can use either the stairs or the ramp), while the wheelchair-bound person can use only the ramp. But no one would contend that such a building has deprived disabled persons of the "same opportunity" to access the building. That is because the essential requirement of access -- the ability to get to the front door -- is available to all. The means to achieve that end differ, and non-disabled persons have a greater number of options, but provision of the ramp suffices to provide disabled persons with a similar (though not "identical") opportunity. So too with the DRE voting systems, as you have described them.

## B

Title II of the Americans with Disabilities Act ("ADA") provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132 (2000). Only a "qualified individual with a disability" ("QID") -- defined as "an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity," § 12131(2) -- is protected by Title II.

The first task is to identify the relevant "service," "program," or "activity" at issue. This step is essential, because one cannot be a QID under section 12131(2) except in relation to a specific "service," "program," or "activity." A Title II complainant must show that he meets the essential eligibility requirements either to receive a "service," or to participate in a "program" or "activity," provided by a public entity. Without such a showing, there can be no violation of section 12132.<sup>(5)</sup>

A Title II complainant could plausibly assert that the paper record itself is a "service" that blind individuals are eligible to "receive." (The ADA does not define the term "services," but we will assume *arguendo* that "services . . . provided by a public entity" encompass the paper record produced by the DRE voting system.) All voters, disabled or not, receive the paper record any time they vote on a DRE machine, so there is no need to explore whether accommodations beyond the realm of reason are necessary to make such persons "eligible" to receive the paper record. *See* § 12131(2). This suffices to establish a sight-impaired voter as a QID under § 12131(2), but Title II is not breached unless the sight-impaired person is either denied the benefits of the paper record, or is subjected to discrimination by a public entity. *See* § 12132.

To the extent the paper record provides sighted voters with an opportunity to check their ballots, this does not deny a benefit to sight-impaired voters, because the DRE machines' auditory component already provides a means for such voters to verify their ballots before

casting them. But more importantly, given that *all* voters were fully capable of confirming their ballot before the advent of paper-producing DRE machines (either by viewing the summary screen, or using the machine's audio capacity), we do not think the paper record provides any "benefit" at all in this regard. *See* American Heritage Dictionary 168 (defining "benefit" as "an advantage; help; aid"). We reject any construction of the term "benefit" in section 12132 that includes the provision of a means to accomplish a task that all persons could fully and effectively perform without such provision. In cases where the paper record is used by election officials for auditing purposes, this "benefit" of the paper record is not withheld from sight-impaired voters -- all paper records, regardless of the voter's disability status, would be used in the event of a recount or election challenge and would protect the integrity of that voter's ballot.

A sight-impaired voter could also claim that voting is a "program" or "activity" in which he is eligible to participate. *See* § 12131(2). But however one defines the "benefits" of voting, we cannot see how the provision of a paper record denies these "benefits" to sight-impaired QIDs. Even if the paper record is utterly useless to sight-impaired voters, those voters still enjoy every "benefit" of voting that they would have had under the non-paper-producing DRE machines. One might contend that our understanding of the "benefits" of voting should vary depending on the technology employed, and that the "activity" of voting on a paper-producing DRE machine includes added "benefits" unknown to those voting on other equipment. But even under this approach, the only conceivable "benefit" that one might claim is denied to sight-impaired voters is the provision of multiple means by which to verify one's ballot. For the reasons explained above, we do not regard this as a "benefit" under section 12132. The Attorney General has emphasized that section 12132 does not require a public entity to make each of its existing facilities accessible to individuals with disabilities when administering a service, program, or activity, *see* 28 C.F.R. § 35.150(a)(1) (2003), which confirms our view that the failure to make each and every means of access or participation available to disabled persons is not the "denial of a benefit" under section 12132.

As to whether sight-impaired voters are "subject to discrimination" by a public entity that uses the DRE voting system: the DRE machines indeed treat sight-impaired voters differently, as they must engage an auditory component while voting, while sighted persons can simply look at the screen. Mere dissimilar treatment, however, does not by itself constitute "discrimination" under Title II. All disability accommodations treat the disabled differently than non-disabled persons, but section 12132 does not prohibit the very accommodations mandated by the ADA. *See* 28 C.F.R. § 35.130(c) ("Nothing in this part prohibits a public entity from providing benefits, services, or advantages to individuals with disabilities"). Rather, to be "subjected to discrimination" under section 12132, a QID must not only be treated differently, but the discrimination must also leave the QID worse off than if the dissimilar treatment had never occurred. *See Olmstead v. Zimring*, 527 U.S. 581, 599-601 (1999) (concluding that unjustified institutional isolation of persons with disabilities is "discrimination" under section 12132 because it "perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life" and "severely diminishes the everyday life activities of individuals"). We think that any dissimilar treatment of QIDs resulting from a public entity's decision to use handicapped-accessible voting equipment falls into the category of permissible accommodation, rather than impermissible "discrimination," under Title II of the ADA.

Sheldon Bradshaw  
Deputy Assistant Attorney General  
Office of Legal Counsel

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1. In so concluding, we are not sanctioning the use of any particular DRE voting system. Indeed, our understanding of how such systems will actually work is necessarily limited by the fact that most of them are still at the design stage. The addition (or elimination) of certain features, or their use in particular ways, may result in a voting system that does not provide a similar opportunity for disabled voters to access and participate in the voting system. As explained in greater detail below, such a system would be inconsistent with the Help America Vote Act.

2. Section 15481(b) provides:

In this section, the term "voting system" means--

(1) *the total combination of* mechanical, electromechanical, or electronic equipment (including the software, firmware, and documentation required to program, control, and support the equipment) that is used--

- (A) to define ballots;
- (B) to cast and count votes;
- (C) to report or display election results; and
- (D) to maintain and produce any audit trail information; and

(2) the practices and associated documentation used--

- (A) to identify system components and versions of such components;
- (B) to test the system during its development and maintenance;
- (C) to maintain records of system errors and defects;
- (D) to determine specific system changes to be made to a system after the initial qualification of the system; and
- (E) to make available any materials to the voter (such as notices, instructions, forms, or paper ballots).

42 U.S.C.A. § 15481(b) (emphasis added).

3. Paper would appear not to be "mechanical, electromechanical, or electronic equipment." While 42 U.S.C. § 15481(b)(1) includes in its reach all "documentation" used to "support" such equipment, we do not think it likely that a paper record whose *sole* function is to allow voters to verify their choices would be "used" for any of the purposes delineated in section 15481(b)(1)(A)-(D). Another possible category for such a paper record is section 15481(b)(2)(E), but it is important to emphasize that the "notices, instructions, forms, or paper ballots" referred to in section 15481(b)(2)(E) are not *themselves* part of the "voting system"; rather, the "practices and associated documentation" used to make these materials available to the voter are part of the voting system.

A paper record that would also be used for auditing purposes in the event of a recount or election challenge is more likely to be part of the "voting system" in section 15481(b)(1), because it would be used to "count votes," § 15481(b)(1)(B), as well as "to maintain and produce any audit trail information," § 15481(b)(1)(D).

This threshold issue will depend on the precise facts of each voting system, so we leave it for another day and assume, *arguendo*, that the paper record can be pigeonholed into one of the nine categories listed in 42 U.S.C. § 15481(b)(1)-(2).

4. This analysis assumes, of course, that the audio device, the summary screen, and the paper record are all reliable methods of verification.

5. At least one decision from a court of appeals has disclaimed any need to determine whether a government function can be characterized as a "service," "program," or "activity" when adjudicating Title II claims. *See Barden*

v. *City of Sacramento*, 292 F.3d 1073, 1076 (9th Cir. 2002) ("Attempting to distinguish which public functions are services, programs, or activities, and which are not, would disintegrate into 'needless hair-splitting arguments.'") (citation omitted). For the reasons explained above, this approach cannot be reconciled with the text of Title II. Nor can it be reconciled with *Zimmerman v. Oregon Department of Justice*, 170 F.3d 1169, 1174-76 (9th Cir. 1999), which *Barden* did not cite.



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# Topeka Independent Living Resource Center

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## Testimony on SB 143 Before the House Committee on Government Organization and Elections March 15, 2005

Chairman Vickrey and members of the committee, thank you for the opportunity to appear before you today. My name is Kevin Siek and I am a disability rights advocate for the Topeka Independent Living Resource Center. Our agency is a civil and human rights organization with a mission to advocate for justice, equality and essential services for all people with disabilities.

I am here today to provide testimony in support of the Substitute for SB 143. This legislation is necessary to bring our state law into compliance with the Help America Vote Act, which we certainly support.

However, we are concerned that there is talk of amending the bill to include language requiring a verifiable voter paper audit trail for electronic voting machines. We have concerns regarding the impact such an amendment would have on voters with visual impairments.

The U.S. Department of Justice has issued a Memorandum Opinion, which states:

*“A direct recording electronic voting system that produces a contemporaneous paper record, which is not accessible to sight-impaired voters but which allows sighted voters to confirm that their ballots accurately reflect their choices before the system officially records their votes, would be consistent with the Help America Vote Act and with Title II of the Americans with Disabilities Act, so long as the voting system provides a similar opportunity for sight-impaired voters to verify their ballots before those ballots are finally cast.”*

This opinion applies only to cases where the paper ballot is used as another means of verifying votes and does not include instances where the paper ballot would “be used for auditing purposes in the event of a recount.” In such a scenario, the voter who is visually impaired would be prevented from full and equal participation in the electoral process because the voter would be unable to cast a secret and independent vote since he or she cannot read the paper ballot.

We would not oppose the use of paper ballots in connection with electronic voting machines, but must oppose any legislation that would call for the use of paper ballots as the final arbiter in case of a recount unless it includes language that guarantees that such a ballot would be accessible to ALL voters, including those with visual impairments and that it would not interfere with their ability to cast an independent, secret ballot.

House Gov. Org. & Elections  
Date: 3-15-05  
Attachment # 14

***Advocacy and services provided by and for people with disabilities.***

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**March 15, 2005**

Chairman Representative Jene Vickery and Committee:

Today I am writing in support of SB143 but I have heard that the paper trail audit for voting equipment might be included in this bill and I am opposed to that. I have kept up on discussions on paper trails on voting equipment. Let me point out some of the flaws that happened in the 2004 Election in other states. When you have a large number of voters the spool of paper must be replaced several times. When the equipment runs out of paper the voting shuts down causing a backlog of voters. When the paper jams again this stops voting on the equipment until it is fixed, which happened with some of the enclosed spools. Some equipment gives the voter a receipt of how they voted. When people did not remove their receipt then the next voter saw how they voted. Where is the secrecy for that voter? In one state they had a ballot that was legal size front and back on 2 pages. To print out the receipt for each voter took up a lot of time causing long lines of voters. The paper trail disenfranchises the visually impaired voter who cannot read it anyway. When asked after voting most of the voters stated they did not even look at the paper audit. Some of this information I gathered from our IACREOT (International Association of Clerks, Election Officials and Treasurers) meeting in January where we heard from some Election Officials discussing the problems they had in 2004.

In Lyon County we have already purchased 33 Diebold Touchscreens. The cost of the Touchscreens is \$103,950 plus additional cost for manager cards, voter cards, etc. I have been told our equipment cannot be retro fitted with a paper trail attachment. Lyon County cannot afford to trash this equipment and replace them with newer ones.

Please do not include paper audit trails in SB143. You will be causing additional expense for the State and Counties as well as causing problems for all State Election Officials as well as the voters.

Karen K. Hartenbower  
Lyon County Clerk/Election Official

House Gov. Org. & Elections  
Date: 3-15-05  
Attachment # 15

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March 15<sup>th</sup>, 2005

Chairman Vickrey and members of the Governmental Organization and Elections Committee:

Good afternoon! My name is Tom Holland and I am the 10<sup>th</sup> District State Representative serving the communities of south Lawrence, Baldwin City, Wellsville, and north Ottawa.

Today I am here before you to speak in support of my amendment to Substitute for Senate Bill 143. This legislation, if enacted, would require that all electronic voting machines / Direct Recording Electronic ("DRE") systems purchased after January 1<sup>st</sup>, 2006 by the state of Kansas be able to generate a voter verified paper audit trail (or "VVPAT"). I believe that the ability of these voting devices to provide a paper audit trail is crucial to 1) being able to recover vote totals cast by voters in the event of machine failure or vote recording / vote reporting errors, and 2) provide the voting public assurance that every vote made on these machines has been recorded and recorded properly.

Since its original introduction as HB 2254, I have made changes to the legislation that address concerns previously expressed by those counties already operating DRE systems and the disabled community. The proposed legislation no longer requires retrofitting of this capability to existing DRE systems. Furthermore, the VVPAT is no longer designated as the official record in cases where a recount is performed. Please note that these changes should also totally eliminate the fiscal note as reported for the original bill.

Thank you,  
 Tom Holland  
 State Representative – 10<sup>th</sup> District

### Background

The following incidents demonstrate why a voter verified paper audit trail capability is so crucial to ensuring the legitimacy of U.S. elections:

- 1) Diebold Election Services, Inc.'s TSx system was used for electronic voting for the March 2<sup>nd</sup>, 2004 California Presidential Primary. The president of Diebold Election Services, Inc. subsequently admitted to security flaws and disenfranchising voters. On April 30<sup>th</sup> the Secretary of State decertified all touch-screen machines and recommended criminal prosecution of Diebold Election Services. The California Attorney General has joined a lawsuit against Diebold for fraudulent claims made to officials.

House Gov. Org. & Elections  
 Date: 3-15-05  
 Attachment # 16

- 2) During the November 2004 Presidential elections in Ohio, at least 25 electronic voting machines in Mahoning County transferred an unknown number of Kerry votes to Bush. These devices did not have a paper audit trail;
- 3) During the November 2004 Presidential elections in North Carolina, 4,438 votes for a state-wide agriculture commissioner's race failed to be recorded on a single electronic voting machine in Carteret County when poll workers failed to exchange memory cartridges on the machine when it reached its storage capacity. This device also did not have paper audit trail capabilities.

In the case of the North Carolina glitch, the significance of this malfunction proved to be extremely critical as the eventual winner of the agriculture commissioner race led by only 2,287 votes with over 3 million votes cast. The outcome of this race was ultimately determined only after the candidate having the fewer votes finally conceded the race, with the concession occurring 3 months after the actual election. Had the North Carolina machine been fitted with paper audit trail capabilities, this problem could have been resolved in a manner of hours.

Many electronic voting machines have not been designed with an auditable paper trail. Without one, it is extremely difficult, if not impossible, to confirm the machine's tabulated results. In addition, computer scientists have stated that some of these machines are not tamper resistant. Internal e-mails for one manufacturer even indicated that data files used in the machines were not password protected to prevent manual editing. It is also known that at least one voting machine model began counting backwards after it reached 32,000 votes. The manufacturer had supposedly known about this problem for two years but failed to correct the deficiency.

Five states currently have legislative statutes or administrative procedures that require their electronic voting machines produce a voter verified paper audit trail. Those states include California, Alaska, Ohio, Wisconsin, and Nevada. Colorado has passed a resolution indicating its desires to have its electronic voting machines fitted with VVPAT capabilities. In addition, another 21 states (including Texas, Arizona, and Utah) are presently considering enactment of this type of legislation.

The U.S. Congress is also weighing in on this issue. Senator John Ensign, R-Nevada, and a bipartisan group of legislators have introduced "The Voting Integrity and Verification Act". This legislation would require printed ballots that voters could check after using an electronic voting machine. Senator Ensign noted that his home state of Nevada required a voter verified paper audit trail for the 2004 election. "Not only did our election go off without a hitch, but voters across Nevada left the polls with the knowledge that their vote would be counted and that their vote would be counted accurately. Every American should have that confidence."

If Kansans are to have confidence in the voting process, it is imperative that we as responsible public officials implement prudent and reasonable measures to ensure that the will of the voters is properly recognized in each and every election. **The outcome of every Kansas race, be it a local race or a state-wide race, must be above reproach.** If we are to deploy electronic voting machines in Kansas, then we simply must make the process transparent and auditable by implementing voter verified paper audit trail capabilities with these machines.



## Proposed Amendment Senate Bill No. 143

Sec. . K.S.A. 25-1308. (a) Approval of machines by secretary of state required. The secretary of state shall examine and approve the kinds or makes of voting machines, and no kind or make of voting machine shall be used at any election where voting machines are authorized to be used unless and until it shall have been approved by the secretary of state and a statement thereof is filed in the office of the secretary of state.

(b) (1) *No electronic or computerized voting machine shall be approved for use in this state unless such electronic voting machine provides for a paper record of each electronically generated ballot that can be reviewed and corrected by the voter at the time the vote is cast.*

(2) (A) *No direct recording voting system purchased after January 1, 2006, may be used in this state unless such voting system has an accessible voter verified paper audit trail.*

(3) *Nothing in this subsection shall be construed as prohibiting the use of a direct recording voting system which does not have an accessible voter verified paper audit trail so long as such system was purchased prior to January 1, 2006.*

(4) *As used in this subsection:*

(A) *“Accessible” means that the information provided on the paper record from the voter verified paper audit trail mechanism is provided or conveyed to voters via both a visual and a nonvisual method, such as through an audio component; and*

(B) *“accessible voter verified paper audit trail” means a component of a direct recording electronic voting system that prints a contemporaneous paper record copy of each electronic ballot and allows each voter to confirm such voter’s selections before the voter casts such voters ballot.*

Sec. . K.S.A. 25-1310 is hereby amended to read as follows: 25-1310. (a) A kind or make of voting machine approved by the secretary of state:

(1) Must be so constructed as to provide facilities for voting for the candidates for nomination or election of at least seven different political parties or organizations;

(2) must permit a voter to vote for any person for any office although not nominated as a candidate by any political party or organization;

(3) must provide for voting on constitutional amendments, propositions or questions;

(4) must be so constructed that as to primaries where candidates are nominated by political parties it can be so locked from the outside that the voter can vote only for the candidates of the political party with which such voter is affiliated or, if not affiliated, according to such voter’s declaration when applying to vote;

(5) must be so constructed as to prevent voting for more than one person for the same office except where the voter is lawfully entitled to vote for more than one person for that office;

(6) must afford the voter an opportunity to vote for any or all persons for an office as such voter is by law entitled to vote for and no more, and at the same time preventing such voter from voting for the same person twice for the same office;

(7) must be so constructed that in presidential elections the presidential electors of any political party for presidential and vice-presidential candidates may be voted upon at the same time;

- (8) must provide facilities for “write-in” votes;
- (9) must provide for voting in absolute secrecy in voting, except as to persons entitled to assistance;
- (10) must be so constructed as to accurately account for every vote cast upon it;
- (11) be provided with a “protective counter” or “protective device” whereby any operation of the machine before or after the election will be detected;
- (12) be provided with a counter which will show at all times during the election how many persons have voted; and
- (13) be provided with a mechanical model illustrating the manner of voting on the machine, suitable for the instruction of voters. Voting machines approved by the state executive council shall continue on the approved list of voting machines.

*(b) In addition to the requirements of subsection (a), each electronic or computerized voting machine approved by the secretary of state shall meet the requirements of subsection (b) of K.S.A. 25-1308, and amendments thereto.*

New Sec. . No funds received by the secretary of state from any source whatsoever shall be used for the initial purchase, upgrade, retrofit or equipping of any direct recording voting system, or any equipment related thereto, unless such voting system includes or is equipped with an accessible voter verified paper audit trail as defined in K.S.A. 25-1308, and amendments thereto.

renumber, title and repealer changes

111:5-1-01Standards for voter verified paper audit trail.

(A) These standards have been developed by the secretary of state pursuant to Substitute House Bill 262, and shall regulate and govern the use of the voter verified paper audit trail system in direct recording electronic (DRE) voting machines in all elections governed by the Ohio Revised Code. These standards shall only apply to DRE systems for which an electronic record of the vote is created by the DRE. The standards in this document constitute a minimum standard of performance.

(B) Direct recording electronic voting machine means a voting machine that records votes by means of a ballot display provided with mechanical or electro-optical components that can be actuated by the voter, that processes the data by means of a computer program, and that records voting data and ballot images in internal or external memory components. Only for the purpose of complying with the accessibility requirements of Ohio Revised Code Section 3506.19, optical scan marking devices determined by the secretary of state to provide the same or substantially similar levels of accessibility, including non-visual accessibility, shall be considered direct recording electronic voting devices. A direct recording electronic voting machine produces a tabulation of the voting data stored in a removable memory component and a printed copy.

(C) "Voter verified paper audit trail" means a physical paper printout on which the voter's ballot choices, as registered by a direct recording electronic voting machine, are recorded. The voter shall be permitted to visually or audibly inspect the contents of the physical paper printout. The physical paper printout shall be securely retained at the polling place until the close of the polls on the day of the election; the secretary of state shall adopt rules under Chapter 119, of the Revised Code specifying the manner of storing the physical paper printout at the polling place. After the physical paper printout is produced, but before the voter's ballot is recorded, the voter shall have an opportunity to accept or reject the contents of the printout as matching the voter's ballot choices. If a voter rejects the contents of the physical paper printout, the system that produces the voter verified paper audit trail shall invalidate the printout and permit the voter to recast the voter's ballot. On and after the first federal election that occurs after January 1, 2006, unless required sooner by the Help America Vote Act of 2002, any system that produces a voter verified paper audit trail shall be accessible to disabled voters, including visually impaired voters, in the same manner as the direct recording electronic voting machine that produces it.

(D) General description

(1) Components: the voter verified paper audit trail (VVPAT) system shall minimally consist of:

(a) A voter verified paper audit trail writer (VVPAT-W): a device attached, built into, or used in conjunction with a direct recording electronic (DRE) unit. Such a device must minimally consists of:

(i) Printer: a device that will duplicate a voter's selections on the DRE onto a paper record copy.

(a) The system shall include one VVPAT printing device attached to or built into each DRE.

(ii) A paper record display unit: a unit that will allow a voter to view his or her paper record copy while preventing the voter from directly handling the paper record copy.

(iii) Paper: the paper used to produce the voter verified paper audit trail shall be sturdy, clean, and resistant to degradation.

(b) A voter verified paper audit trail record storage unit (VVPAT-S): a device that stores cast and spoiled paper record copies.

(c) These devices may be integrated as appropriate to their operation.

(d) A VVPAT may not be used with any voting equipment that contains any radio frequency (RF) transmit or receive capability, or, any other wireless communication device.

(e) A VVPAT may not be used with any voting equipment beyond the physical confines of the polling place, except when used outside a polling place in a self-contained manner to allow for curbside or functioning similar voting.

(2) Operation:

(a) VVPAT systems may be designed in various configurations. In all such devices, upon completion of selecting his or her contest choices on the DRE, the voter shall have the ability to verify his or her selections on a paper record copy. During the verification, the voter shall either accept or reject the choices represented on the paper record copy. Upon the completion of the verification process, both the electronic record and the paper record copy shall be stored and retained.

(b) Any system that produces a voter verified paper audit trail shall be accessible to disabled voters, including visually impaired voters, in the same manner as the direct recording electronic voting machine that produces it.

(3) Maintenance: VVPAT system design shall permit routine maintenance in a manner that prevents the risk of undetected tampering or unauthorized altering of certified system components during routine system maintenance.

(E) Design requirements

(1) General

(a) Use of electronic and paper ballot records

(i) Every electronic record must have a corresponding paper ballot record copy.

(a) The paper ballot record copy must be printed and the voter must have the opportunity to verify that record prior to the final electronic record being recorded.

(b) A unique DRE and unique VVPAT device identifier must appear on each individual paper ballot record produced, without revealing the identity of the voter who cast the ballot.

(ii) For any recount of an election in which ballots are cast using a direct recording electronic voting machine with a voter verified paper audit trail, the voter verified paper audit trail shall serve as the official ballot to be recounted.

(iii) In the case of a difference between the electronic record and the paper record copy, the paper record copy shall govern, unless there is clear evidence that the paper record copy is inaccurate, incomplete or unreadable as defined in the system procedures.

(iv) The voter verified paper audit trail shall be preserved in the same manner and for the same time period as paper ballots are preserved under section 3505.31 of the Revised Code.

(b) Privacy: The VVPAT system shall be designed to allow every voter to review, accept or reject his/her paper record copy privately and independently and shall comply with federal and state privacy requirements.

(c) Secrecy: The VVPAT system shall be designed to ensure secrecy of votes so that it is not possible to determine which voter cast which paper record copy and shall comply with federal and state secrecy requirements.

(d) Readability:

(i) The VVPAT system shall be designed to maximize the ease in which the voter may review, accept or reject his/her paper record copy

and shall comply with federal and state readability requirements.

(a) The headline must be printed in no smaller than twenty-five point type. If the headline is printed in less than twenty-five point type, then it cannot be printed in less than nine point type and the machine must include a magnification capability to read the type as if it were thirty point type.

(b) The ballot language, explanation and arguments must be printed in no smaller than nine point type and no larger than eighteen point type.

(c) The ballot typeface must be times new roman, arial, myriad, or its equivalent.

(ii) The voter verified paper audit trail shall be capable of being optically scanned for the purpose of conducting a recount or other audit of the voting machine and shall be readable in a manner that makes the voter's ballot choices obvious to the voter without the use of computer or electronic codes.

(e) Accessibility: The VVPAT system shall be designed to allow access for disabled and limited literacy voters to privately and independently use the VVPAT and shall comply with federal and state accessibility requirements.

(f) Language accessibility: The VVPAT system shall be designed to allow each voter to verify their vote on a paper record copy in the same language they voted in on the DRE and shall comply with federal and state requirements.

(g) Security: The VVPAT system shall be designed to prevent tampering with either the VVPAT system or the paper record copy, and shall comply with federal and state security requirements.

(h) Capacity: The VVPAT system shall be designed with a combined capacity to ensure that an adequate amount of all the paper record, ink, toner, ribbon or other like supply units in a precinct will accommodate all voters using the DRE's with VVPAT-W within the precinct.

(i) The VVPAT system shall be designed to ensure that poll workers will not be required to add paper record, ink, toner, ribbon or other like supply units to the VVPAT-W, more than once, during the polling hours.

(i) Integrity:

- (i) The VVPAT system must be designed to prohibit the production by any direct recording electronic voting machine of anything that legally could be removed by the voter from the polling place, such as a receipt or voter confirmation.
- (ii) The VVPAT system must provide a low supply warning to provide a poll worker the opportunity to add paper, ink, toner, ribbon or other like supply before the supply item runs out.

  - (a) In the event a supply warning occurs as a voter is casting a ballot, the VVPAT must safeguard the secrecy of the ballot by preventing the poll worker from reading the VVPAT ballot.
  - (b) After the poll worker has filled the supply, the system shall allow the voter to review their VVPAT ballot without having to recast their ballot.
- (j) Capability: The VVPAT device should draw its electrical power from the DRE.

  - (i) When not plugged into an AC power source, the battery used to power the DRE must also power the VVPAT.
  - (ii) The battery must provide sufficient power to supply both the DRE and VVPAT device for at least two hours, or federal and state standards, which ever is more stringent.

(2) Paper record copy

- (a) Security: Security protections shall be built into the paper record copy and/or VVPAT-S to prevent tampering. This provision shall apply to paper record copies before, during and after printing.
- (b) Readability: The paper shall be designed so as to make the paper record copy readable by voters and election officials and shall comply with state readability requirements.
- (c) Retention: The voter verified paper record copy shall be retained by the elections official for the same period of time as mandated by state law for the retention of paper ballots for that election.

(3) Printer

- (a) Security: The printer shall be physically secure from tampering. The paper record copy and the image created by the VVPAT-W on the paper

record copy shall be designed to withstand storage requirements as outlined in these standards and state requirements.

(b) Readability: The image created by the printer shall be designed to allow a voter to review his or her paper record copy privately and independently.

(i) The headline must be printed in no smaller than twenty-five point type. If the headline is printed in less than twenty-five point type, then it cannot be printed in less than nine point type and the machine must include a magnification capability to read the type as if it were thirty point type.

(ii) The ballot language, explanation and arguments must be printed in no smaller than nine point type

(iii) The VVPAT must be printed using black ink, toner, or chemical agent on white paper.

(iv) The VVPAT must be printed using typeface/font of times new roman, arial, myriad, or its equivalent.

(v) The VVPAT must be printed using a paper weight of no less than fifteen pounds.

(c) Printed information

(i) Offices/Issues: The image created by the VVPAT-W shall include every contest that is displayed to the voter on the DRE review screen including write-ins and undervotes.

(ii) Provisional ballot: The image created by the VVPAT-W shall be clearly identifiable in the case of a provisional ballot.

(iii) Spoiled ballot

(a) The image created by the VVPAT-W shall be clearly identifiable in the case of a spoiled paper record copy. The clearly identifiable spoiled paper record copy shall be shown in the paper record display unit to allow the voter to acknowledge the paper record copy has been spoiled. The VVPAT system shall be designed to prevent a paper record copy from being spoiled after the voter has verified that paper record copy and has cast his/her ballot.

(b) The voter shall have the opportunity to affirmatively spoil their paper record copy no more than two times. An error in



recording or printing a paper record copy not caused by the voter shall not be counted as a spoiled paper record copy.

(c) Upon spoiling their paper record copy the voter shall be able to modify and verify selections on the DRE without having to reselect all of their choices.

(d) Before the voter causes a third and final paper record copy to be printed, the voter shall be presented with a warning notice that the selections made on screen will be final and the voter will see and verify a printout of their vote, but will not be given additional opportunities to change their vote.

(d) Language accessibility

(i) The VVPAT-W shall be capable of producing an image in all alternative languages for which the DRE is certified.

(ii) The paper record copy shall be printed in English and in the alternative language when used by a voter to cast their vote on the DRE.

(4) Paper record display unit

(a) Security: The paper record display unit shall allow the voter to inspect the paper record copy without physically handling the paper record copy and shall be physically secure from tampering.

(b) Readability: The paper record display unit shall provide adequate visual space to allow the voter to privately and independently inspect the paper record copy. A paper record copy shall be readable from the same position and posture used for voting on the DRE. The voter shall have the ability to view both the review screen on the DRE and the paper record copy in the display unit simultaneously. If the paper record copy cannot be viewed in its entirety in the paper record display unit at one time, then the voter shall have the opportunity to verify the entire paper record copy prior to either the electronic record or the paper record copy being stored and recorded.

(i) Covering: Any protective covering intended to be transparent shall be in such condition that it can be made transparent by ordinary cleaning of its exposed surface.

(c) Accessibility: The VVPAT components must conform to federal and state accessibility requirements.

(i) This shall include, but is not limited to, an audio component.

(a) The audio component must accurately relay the information printed on the paper record copy to the voter.

(5) Paper record storage unit

(a) Security: The paper record storage unit shall be designed to prevent tampering.

(b) Secrecy: The VVPAT system shall be designed and proper procedures put in place to ensure the printed ballot audit trail is stored in a manner to ensure secrecy of votes so that it is not possible to determine which voter cast which paper record copy.

(c) Capacity: The combined capacity of all the paper record storage units in a precinct must be enough to accommodate all voters using the DREs within the precinct.

(F) Procedure requirements

(1) Update: Testing and certification, pre-election, election and post-election procedures for each DRE voting system shall be updated to reflect the use of the VVPAT. These updates include, but are not limited to:

(a) Testing and certification

(i) Testing: The VVPAT system shall conform to federal and state testing requirements. Required testing shall include, but not be limited to, functionality, security, durability, longevity and accessibility testing.

(ii) Certification: The VVPAT system must be certified for use by the state of Ohio in conjunction with the rest of the voting system with which it is intended to be used.

(iii) Configuration: The VVPAT system shall not, at any time, contain or use undisclosed hardware or software. The only components that may be used in the system are components that have been tested and certified for use in the state of Ohio.

(b) Pre-election procedures: The VVPAT system components must be integrated into existing local logic and accuracy testing requirements.

(c) Election procedures

(i) Malfunctions

(a) The vendor shall provide written recommendations for how to investigate and resolve malfunctions including, but not limited to, misreporting votes, unreadable paper records, paper or ribbon jams, low-ink, low paper, misfeeds and power failures.

(b) The vendor shall include written recommendations for how to recover votes in the case of malfunction to assure a ballot is properly recorded and stored.

(ii) The vendor shall include written recommendations for if the voter does not complete the verification process for their paper record copy.

(iii) The system shall prevent any further attempt to cast a ballot until an election judge has reset the VVPAT/DRE after correcting a malfunction.

(d) Post election procedures

(i) Written procedures shall reflect the use of the paper record copies in the required full manual recount as defined under state requirements.

(ii) The vendor shall include written recommendations for how the secrecy of votes will be ensured.

(iii) The vendor shall include written recommendations for how a discrepancy between an electronic record and its corresponding paper record copy shall be identified, investigated and resolved.

(a) The vendor shall include written recommendations for determining what constitutes clear evidence that a paper record copy is inaccurate, incomplete or unreadable.

(G) In order to provide the secretary information pertinent to the implementation of the voting machines and the security of the voting machines, the individual voting machine vendors must meet the following requirements:

(1) Vendors shall produce all documentation describing materials, equipment, programs, and procedures, including source codes, scripts, and data files, required to develop, install or operate any software, firmware or hardware used in the voting system.

(2) Vendor shall produce the following documents submitted to or resulting from the federal testing and qualification or re-qualification process regarding

voting systems:

- (a) The technical data package as defined in voting systems standards 2002 (VSS-2002), Volume II, Section 2, or teh current voting systems standards.
- (b) Within thirty days of testing, Vendor shall furnish secretary with all test reports in the vendor's possession, both published final and intermediate statue reports showing discovered deficiencies and resolution steps.
- (3) Vendor shall produce the following documents relating to each hardware, software and firmware version for any component of the voting system: detailed change logs, hardware change records or logs, test records relating to the changed components, and documents describing the effects of the changes.
- (4) Vendor shall execute and deliver to the secretary of state an authorization in a format reasonably acceptable to vendor and independent testing authorities, to enable the secretary of state to obtain information about the status of federal testing and qualifications of vendors voting systems proposed to be used in Ohio.
- (5) Vendor shall notify, within two business days, the secretary of state of problems encountered in Ohio and other jurisdictions, whether upon completion of testing or in an actual election, which vendor concludes would reasonably create an impediment to obtaining certification.
- (6) Vendor shall maintain in good working order, provided the following are subjected only to normal wear and tear and proper usage, one working version of vendor's voting system, a server containing election management system and peripherals proposed to be used in any Ohio election.
- (7) Vendor shall provide the secretary a statement identifying the voting system supplied and affirming that each voting system is state certified at the time of vendor's statement.
- (8) Vendors shall implement the following security measures:
  - (a) Replace hard-coded supervisor passwords with dynamic passwords, and provide directions and training to enable election officials to change these passwords if election officials choose to do so.
  - (b) Use secure data transmissions between touchscreen terminals and the server.
  - (c) There shall not be security keys and the encryption code shall be

programmable by county.

(9) Vendor shall notify secretary of state and the counties, where the vendors system is in use, of any security patches or other software upgrades that vendor recommends to be installed on the server. Vendor shall notify the secretary of any security patches which vendor recommends not be used.

Effective:

R.C. 119.032 review dates:

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Certification

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Date

Promulgated Under:	119.03
Statutory Authority:	3501.05
Rule Amplifies:	3501

**WHETHER CERTAIN DIRECT RECORDING ELECTRONIC VOTING SYSTEMS  
COMPLY WITH THE HELP AMERICA VOTE ACT AND THE AMERICANS WITH  
DISABILITIES ACT**

*A direct recording electronic voting system that produces a contemporaneous paper record, which is not accessible to sight-impaired voters but which allows sighted voters to confirm that their ballots accurately reflect their choices before the system officially records their votes, would be consistent with the Help America Vote Act and with Title II of the Americans with Disabilities Act, so long as the voting system provides a similar opportunity for sight-impaired voters to verify their ballots before those ballots are finally cast.*

October 10, 2003

**MEMORANDUM OPINION FOR THE  
PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL  
CIVIL RIGHTS DIVISION**

This memorandum responds to your Office's request of August 12, 2003, for our opinion on whether a direct recording electronic ("DRE") voting system may, consistent with the Help America Vote Act and the Americans with Disabilities Act, produce a contemporaneous paper record, not accessible to sight-impaired voters, that allows voters to confirm that their ballots accurately reflect their choices before the system officially records their votes. Based on the information you have provided us, we conclude that this proposed voting system would be consistent with both Acts, so long as the DRE voting system provides a similar opportunity for sight-impaired voters to verify their ballots before those ballots are finally cast.<sup>(1)</sup>

I

Many states are expanding the use in elections of DRE voting systems, which allow voters to enter their choices on an electronic screen in the voting booth. The DRE machines also allow a voter to confirm his ballot before it becomes an officially recorded vote by providing a "summary screen" listing all of the voter's choices. After viewing the summary screen, the voter may either cast his ballot or else go back and make corrections. On newer DRE machines, an auditory component announces the ballot choices and the contents of the electronic summary screen, allowing sight-impaired voters to verify and cast their ballots without assistance and in complete privacy.

In response to concerns that the DRE voting systems may be vulnerable to tampering, the State of California is considering adopting DRE machines that would produce a contemporaneous paper record for each voter in addition to the electronic summary screen. *See* Letter from Randy Riddle, Chief Counsel, California Secretary of State, to Joseph Rich, Voting Section Chief, Civil Rights Division (July 8, 2003). This paper record would summarize the voter's choices, and would be printed before the voter finally casts his ballot. In some cases, the paper record might also be preserved as a means to count votes in case of a recount or election contest. But in other cases, the paper record would serve solely to inform the voter of his choices

before finally casting his ballot - serving the same function as the DRE electronic summary screen.

## II

Because the paper record produced by the DRE machines in question will not be produced in a format accessible to sight-impaired voters, you have asked for our opinion whether such a voting system would violate either the Help America Vote Act or Title II of the Americans with Disabilities Act. We will address each statute in turn.

### A

Under the Help America Vote Act of 2002 ("HAVA"), all "voting systems" used in an election for federal office must meet specified federal requirements by January 1, 2006. *See* 42 U.S.C.A. §§ 15481-85 (West Supp. 2003). One of these requirements is that voting systems "shall . . . permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted." 42 U.S.C.A. § 15481(a)(1)(A)(i). DRE voting systems comply with this mandate by providing a final summary screen before the voter asks the machine to officially record his vote, as well as an auditory component that informs sight-impaired and illiterate voters of the summary screen's contents. The production of a contemporaneous paper record is not necessary for the voting system to comport with section 15481(a)(1)(A)(i), but it does afford an additional means for a voter to verify his choices before casting his vote.

HAVA further provides that "[t]he voting system shall . . . be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides *the same opportunity for access and participation* (including privacy and independence) as for other voters." § 15481(a)(3)(A) (emphasis added). Some may object that sight-impaired voters will have no opportunity to access or use the contemporaneous paper records generated by DRE machines, as the paper record is not produced in Braille, and the DRE systems do not currently convert the paper into an audible format accessible to the sight impaired. We do not, however, believe that this feature contravenes section 15481(a)(3)(A).

What section 15481(a)(3)(A) requires is that each "voting system" be accessible to disabled persons in a manner that provides "the same opportunity" for access and participation that other voters have. We will assume for the sake of argument that the paper record produced by DRE machines is included as part of the "voting system" as defined in section 15481(b),<sup>(2)</sup> although we note that this is not entirely clear and may depend on precisely what functions the paper record serves beyond providing a means for voters to verify their ballots before they are cast.<sup>(3)</sup> But even if one indulges this assumption, the statutory issue would not be whether the *paper record* is accessible to the sight-impaired, but whether the *entire DRE voting system* is accessible in a manner that provides disabled voters "the same opportunity for access and participation" that other voters enjoy. § 15481(a)(3)(A). We must therefore evaluate a disabled person's opportunity to participate in the voting system holistically, rather than scrutinizing his opportunity to access the system's discrete components or parts.



Furthermore, the use of the word "same" in section 15481(a)(3)(A) does not mean "identical"; if HAVA were read to require an identical opportunity for access and participation among non-disabled voters and voters with every type of disability, it would mandate the impossible. A serious disability will *necessarily* result in a voting experience that differs in some manner from that enjoyed by non-disabled voters. Nothing can be done, for example, to enable blind voters to visually interact with their ballot as sighted voters can. And we do not read HAVA to force all sighted persons to use voting technology with no visual dimension whatsoever (such as a voice-activated box that navigates voters through the ballot via a series of audible commands). That approach would not comply with section 15481(a)(3)(A) because such a voting system, in its efforts to produce "identical" opportunities among the sighted and the blind, would be entirely inaccessible to the hearing-impaired. What is more, equating the word "same" in section 15481(a)(3)(A) with "identical" would prohibit the very audio components in DRE voting systems that enable the sight-impaired to vote in privacy, because voters with other types of disabilities, such as the hearing-impaired, could not access these accommodations and would therefore lack an identical "opportunity" to participate in the voting system. We therefore construe the word "same" to mean "similar in kind, quality, quantity, or degree." *See American Heritage Dictionary of the English Language* 1539 (4th ed. 2000). So long as a disabled person can access and participate in the *essentials* of a voting system -- such as the ability to cast a ballot in privacy with a full opportunity to review the ballot before casting it -- his opportunity to access and participate in the voting system is sufficiently "similar in kind, quality, quantity, or degree" to that enjoyed by non-disabled persons. The fact that the precise *means* by which he may access and participate in those essentials differs from those available to non-disabled persons does not deprive him of the "same opportunity" to participate in the voting system -- if it did, no voting system could ever comply with HAVA.

So long as DRE voting systems provide sight-impaired voters with audio equipment that enables them to verify their ballots before they are cast, we conclude that the provision of a contemporaneous paper record to assist sighted voters in verifying their ballots does not run afoul of HAVA.<sup>(4)</sup> The essentials of such a voting system -- including the ability to verify one's ballot -- are available to disabled and non-disabled voters alike, giving them the "same opportunity" for access and participation under section 15481(a)(3)(A). Knowledge of the contents of the paper record is simply one of the *means* by which a sighted voter may verify his ballot before casting it, and DRE voting systems satisfy section 15481(a)(3)(A) so long as they provide a comparable means for sight-impaired voters to achieve this essential end.

It is true that sighted voters will have more than one method by which they may verify their ballot before casting it: they can view both the electronic summary screen as well as the paper record produced by the DRE machine. Sight-impaired voters, by contrast, can only listen to an audio description of the summary screen, and have no independent way of knowing the contents of the paper record before casting their vote. Nevertheless, we do not believe that providing a greater number of methods by which sighted voters can verify their ballots deprives blind voters of the "same opportunity" for access and participation in the voting system, so long as the means available to such disabled persons are adequate to ensure similar access to and participation in the essentials of the voting system. The ability to verify one's ballot before casting it *is* essential, *cf.* § 15481(a)(1)(A)(i), but the availability of multiple techniques by which to do so is not. Disability accommodations often result in a greater range of methods by which non-disabled

persons can accomplish their goals, yet such accommodations are not deemed to deny equal opportunities for disabled persons for that reason alone. Consider a building that provides both a set of stairs and a wheelchair ramp to its outdoor entrance. Non-disabled persons have more means to enter the building (they can use either the stairs or the ramp), while the wheelchair-bound person can use only the ramp. But no one would contend that such a building has deprived disabled persons of the "same opportunity" to access the building. That is because the essential requirement of access -- the ability to get to the front door -- is available to all. The means to achieve that end differ, and non-disabled persons have a greater number of options, but provision of the ramp suffices to provide disabled persons with a similar (though not "identical") opportunity. So too with the DRE voting systems, as you have described them.

## B

Title II of the Americans with Disabilities Act ("ADA") provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132 (2000). Only a "qualified individual with a disability" ("QID") -- defined as "an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity," § 12131(2) -- is protected by Title II.

The first task is to identify the relevant "service," "program," or "activity" at issue. This step is essential, because one cannot be a QID under section 12131(2) except in relation to a specific "service," "program," or "activity." A Title II complainant must show that he meets the essential eligibility requirements either to receive a "service," or to participate in a "program" or "activity," provided by a public entity. Without such a showing, there can be no violation of section 12132.<sup>(5)</sup>

A Title II complainant could plausibly assert that the paper record itself is a "service" that blind individuals are eligible to "receive." (The ADA does not define the term "services," but we will assume *arguendo* that "services . . . provided by a public entity" encompass the paper record produced by the DRE voting system.) All voters, disabled or not, receive the paper record any time they vote on a DRE machine, so there is no need to explore whether accommodations beyond the realm of reason are necessary to make such persons "eligible" to receive the paper record. *See* § 12131(2). This suffices to establish a sight-impaired voter as a QID under § 12131(2), but Title II is not breached unless the sight-impaired person is either denied the benefits of the paper record, or is subjected to discrimination by a public entity. *See* § 12132.

To the extent the paper record provides sighted voters with an opportunity to check their ballots, this does not deny a benefit to sight-impaired voters, because the DRE machines' auditory component already provides a means for such voters to verify their ballots before casting them. But more importantly, given that *all* voters were fully capable of confirming their ballot before the advent of paper-producing DRE machines (either by viewing the summary screen, or using the machine's audio capacity), we do not think the paper record provides any

"benefit" at all in this regard. *See* American Heritage Dictionary 168 (defining "benefit" as "an advantage; help; aid"). We reject any construction of the term "benefit" in section 12132 that includes the provision of a means to accomplish a task that all persons could fully and effectively perform without such provision. In cases where the paper record is used by election officials for auditing purposes, this "benefit" of the paper record is not withheld from sight-impaired voters -- all paper records, regardless of the voter's disability status, would be used in the event of a recount or election challenge and would protect the integrity of that voter's ballot.

A sight-impaired voter could also claim that voting is a "program" or "activity" in which he is eligible to participate. *See* § 12131(2). But however one defines the "benefits" of voting, we cannot see how the provision of a paper record denies these "benefits" to sight-impaired QIDs. Even if the paper record is utterly useless to sight-impaired voters, those voters still enjoy every "benefit" of voting that they would have had under the non-paper-producing DRE machines. One might contend that our understanding of the "benefits" of voting should vary depending on the technology employed, and that the "activity" of voting on a paper-producing DRE machine includes added "benefits" unknown to those voting on other equipment. But even under this approach, the only conceivable "benefit" that one might claim is denied to sight-impaired voters is the provision of multiple means by which to verify one's ballot. For the reasons explained above, we do not regard this as a "benefit" under section 12132. The Attorney General has emphasized that section 12132 does not require a public entity to make each of its existing facilities accessible to individuals with disabilities when administering a service, program, or activity, *see* 28 C.F.R. § 35.150(a)(1) (2003), which confirms our view that the failure to make each and every means of access or participation available to disabled persons is not the "denial of a benefit" under section 12132.

As to whether sight-impaired voters are "subject to discrimination" by a public entity that uses the DRE voting system: the DRE machines indeed treat sight-impaired voters differently, as they must engage an auditory component while voting, while sighted persons can simply look at the screen. Mere dissimilar treatment, however, does not by itself constitute "discrimination" under Title II. All disability accommodations treat the disabled differently than non-disabled persons, but section 12132 does not prohibit the very accommodations mandated by the ADA. *See* 28 C.F.R. § 35.130(c) ("Nothing in this part prohibits a public entity from providing benefits, services, or advantages to individuals with disabilities"). Rather, to be "subjected to discrimination" under section 12132, a QID must not only be treated differently, but the discrimination must also leave the QID worse off than if the dissimilar treatment had never occurred. *See Olmstead v. Zimring*, 527 U.S. 581, 599-601 (1999) (concluding that unjustified institutional isolation of persons with disabilities is "discrimination" under section 12132 because it "perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life" and "severely diminishes the everyday life activities of individuals"). We think that any dissimilar treatment of QIDs resulting from a public entity's decision to use handicapped-accessible voting equipment falls into the category of permissible accommodation, rather than impermissible "discrimination," under Title II of the ADA.

Sheldon Bradshaw  
Deputy Assistant Attorney General  
Office of Legal Counsel

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1. In so concluding, we are not sanctioning the use of any particular DRE voting system. Indeed, our understanding of how such systems will actually work is necessarily limited by the fact that most of them are still at the design stage. The addition (or elimination) of certain features, or their use in particular ways, may result in a voting system that does not provide a similar opportunity for disabled voters to access and participate in the voting system. As explained in greater detail below, such a system would be inconsistent with the Help America Vote Act.

2. Section 15481(b) provides:

In this section, the term "voting system" means--

(1) *the total combination of* mechanical, electromechanical, or electronic equipment (including the software, firmware, and documentation required to program, control, and support the equipment) that is used--

- (A) to define ballots;
- (B) to cast and count votes;
- (C) to report or display election results; and
- (D) to maintain and produce any audit trail information; and

(2) the practices and associated documentation used--

- (A) to identify system components and versions of such components;
- (B) to test the system during its development and maintenance;
- (C) to maintain records of system errors and defects;
- (D) to determine specific system changes to be made to a system after the initial qualification of the system; and
- (E) to make available any materials to the voter (such as notices, instructions, forms, or paper ballots).

42 U.S.C.A. § 15481(b) (emphasis added).

3. Paper would appear not to be "mechanical, electromechanical, or electronic equipment." While 42 U.S.C. § 15481(b)(1) includes in its reach all "documentation" used to "support" such equipment, we do not think it likely that a paper record whose *sole* function is to allow voters to verify their choices would be "used" for any of the purposes delineated in section 15481(b)(1)(A)-(D). Another possible category for such a paper record is section 15481(b)(2)(E), but it is important to emphasize that the "notices, instructions, forms, or paper ballots" referred to in section 15481(b)(2)(E) are not *themselves* part of the "voting system"; rather, the "practices and associated documentation" used to make these materials available to the voter are part of the voting system.

A paper record that would also be used for auditing purposes in the event of a recount or election challenge is more likely to be part of the "voting system" in section 15481(b)(1), because it would be used to "count votes," § 15481(b)(1)(B), as well as "to maintain and produce any audit trail information," § 15481(b)(1)(D).

This threshold issue will depend on the precise facts of each voting system, so we leave it for another day and assume, *arguendo*, that the paper record can be pigeonholed into one of the nine categories listed in 42 U.S.C. § 15481(b)(1)-(2).

4. This analysis assumes, of course, that the audio device, the summary screen, and the paper record are all reliable methods of verification.

5. At least one decision from a court of appeals has disclaimed any need to determine whether a government function can be characterized as a "service," "program," or "activity" when adjudicating Title II claims. *See Barden*

v. *City of Sacramento*, 292 F.3d 1073, 1076 (9th Cir. 2002) ("Attempting to distinguish which public functions are services, programs, or activities, and which are not, would disintegrate into 'needless hair-splitting arguments.'") (citation omitted). For the reasons explained above, this approach cannot be reconciled with the text of Title II. Nor can it be reconciled with *Zimmerman v. Oregon Department of Justice*, 170 F.3d 1169, 1174-76 (9th Cir. 1999), which *Barden* did not cite.

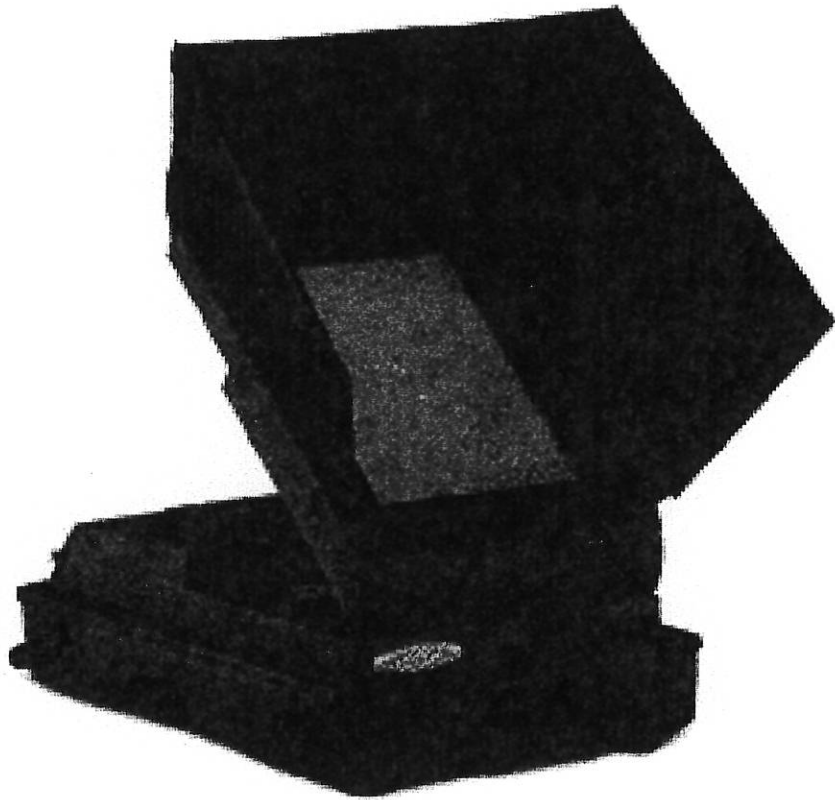
Approx. \$4,200 if included  
Approx. \$4,000 basic price



# AVC Edge

EDGE FEATURES & SPECIFICATIONS • AVC EDGE FEATURES & SPECIFICATIONS





## AVC Edge

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**Sequoia make the process of casting the ballot perfectly plain, simple, and secret."**

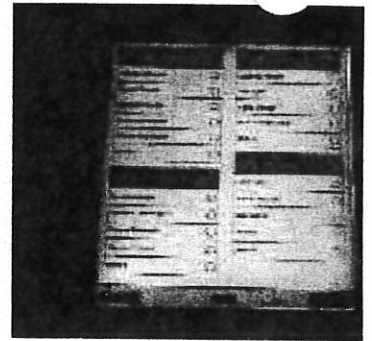
### **VOTER-FRIENDLY FEATURES:**

The AVC Edge, is simply the most accessible voting system ever designed • Instructions and prompts guide users through all phases of operation. Navigation within the ballot is accomplished with scroll buttons, to move forward and backward, and the Contest Box, which enables voters to quickly move to any part of the ballot. • Voters can verify their selections and change their vote at any time before they cast their ballot. Votes are immediately confirmed on-screen with green check marks, a selections can be reviewed at a glance by using the Review Button. One touch of the Return Button allows voters to resume voting. • Overvoting is not a possibility on the AVC Edge, eliminating spoiled or rejected ballots. • Large typeface on the 15" LCD touch-screen makes ballots easy to read. • Wheelchairs are easily accommodated by adjusting the screen's height. No other adjustments are necessary. • The Audio Voting feature allows the AVC Edge, to serve blind voters and people who have difficulty reading. • Ballots in multiple languages\* are available on the Edge. Allowing a voter to simply choose the preferred language on the first screen, the ballot is then presented in that language until the voting process is complete.

## -Unmatched Security

The AVC Edge, provides nothing less than 100 percent accuracy, privacy and security.

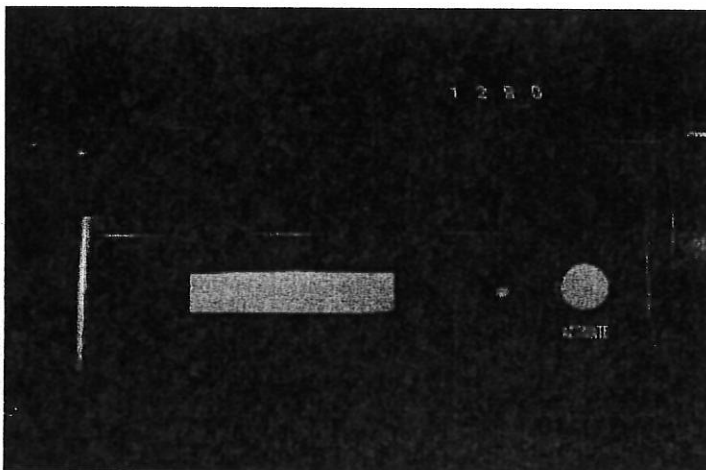
- The Audit Trail provides an unalterable electronic record of all votes cast during an election. This record is redundantly stored in the AVC Edge, and on the Results Cartridge. Additionally, a chronological Event Log records the time, date, and nature of all significant system activity. Both the Audit Trail and Event Log can be printed after polls close.
- Voter privacy is ensured in two ways. Externally, built-in side panels keep selections private. Internally, vote records are electronically randomized, so votes cannot be traced to a specific voter.
- The Edge performs mandatory Pre-Election Logic and Accuracy Tests for election verification and public oversight of ballot integrity. Optional Post-Election Logic and Accuracy Tests can also be performed.
- Additionally, the Edge's Background and Power Up Diagnostics provide continuous verification of system integrity.
- High-volume Vote Simulation tests can be automatically conducted before and/or after an election.
- The AVC Edge, and its components were built for superior reliability, longevity, and security. Its design utilizes the same time-tested security features as our AVC Advantage, - the leading DRE voting machine.



## AVC Edge Features

The Edge, in tandem with other Sequoia systems, automates some of the most tedious aspects of election administration, smoothly delivering your Elections Office into the 21st Century.

- WinEDS, the "Elections Database System for Windows" is Sequoia's client-server based computer network system. WinEDS is used to administer all phases of the election cycle, create electronic ballots for the AVC Edge, and tally early voting, as well as official election and absentee votes. WinEDS provides a flexible, easy to use reporting and information processing tool for the election administrator.
- Ballot set up is accomplished in-house. After election information is entered, ballots are generated by the central system automatically.
- Auto Activation eliminates the need for the poll worker to manually activate each ballot. The AVC Edge, automatically activates when a smart card is inserted by the voter, selecting the correct ballot and any other options that were incorporated into the card. After activation, the card is disabled by the AVC Edge, to stop any attempt by the voter to use it to vote twice.
- Electronic Write-Ins eliminate the problem of interpreting voter intent. Write-ins are recorded electronically and stored redundantly in the AVC Edge, and in the Results Cartridge. The write-in votes are transferred automatically, with all other votes, to the central Election Database System (WinEDS). Write-in votes for each jurisdiction can also be printed after polls close.
- Early Voting is another option provided by the AVC Edge, which can support thousands of precincts and ballot styles to accommodate jurisdiction-wide early voting on a single machine.





## Quality Design

Sequoia designed the AVC Edge, for ease of use in every stage of its life, from storage and maintenance to transportation and set up.

- The Edge is easy to transport. Its self-contained case is portable for easy delivery to and from the polls. An optional storage cart further facilitates transportation and storage.
- Set up is fast and simple. Poll workers need no electronics knowledge to operate or maintain the AVC Edge,. There is no assembly or confusing wiring required at the polling site. Error messages are easy to understand for quick and simple troubleshooting.
- Economical Storage: The Edge's small, compact case can stack for storage. An external plug allows batteries to be charged without opening the case. Each unit also has an external outlet so that several machines can be plugged into one outlet during storage or service.
- Multiple Screen Types: Electronic display technology is changing at a very fast pace. A goal in our design effort was to ensure that the AVC Edge, would not require costly future upgrades to take advantage of new features and functionality.
- Memory: The AVC Edge, utilizes solid state memory for information storage and the transfer of information to and from the central set up and tabulation system. The AVC Edge, uses only high-reliability solid-state memory for ballot and vote storage. No mechanical disk drives are used because they are unreliable and prone to fail ure in conditions that voting machines must operate, like during and after temperature extremes, shock and vibration, or long storage times.
- The Edge is FEC Certified. Election officials and voters can rely on the quality and components that go into each AVC Edge,.



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## ADDITIONAL FEATURES :

### **POLL WORKER MESSAGE CENTER**

A small message screen on the back of the AVC Edge, gives poll workers key information, including messages on the election state (e.g. pre-, mid-, or post-election) and the condition of the machine (e.g. in-use and error messages). It also displays the public and protective counter, that is, a count of all votes made on machine during an election as well as the total votes cast in the lifetime of the machine.

### **CONSOLIDATION**

Machines within a precinct can be accumulated onto one cartridge and the totals for the precinct printed at the polling site. Individual machine totals can also be printed from each AVC Edge.

### **CURBSIDE VOTING**

Accommodate curbside voting easily by transporting the self-contained AVC Edge, to the voter in their car. Under these circumstances, the AVC Edge, can operate under battery power.

### **OPTIONAL MACHINE LEGS**

Provides the voter with proper height of the voting machine without the need for tables. Easy set up for the poll workers.

### **STORAGE CART**

A specially designed storage/transportation card can be used for warehouse storage and transportation of the units to and from the polling place. Each cart holds up to five AVC Edge, units.

### **AUDIT TRAIL**

Provides an unalterable, randomized electronic record of all votes cast during an election. This record, or ballot image, is redundantly stored in the AVC Edge, and the Results Cartridge. A chronological Event Log records the time, date, and nature of all significant system activity. The Audit Trail and Event Log may be printed after polls close.

### **LANGUAGE OPTIONS**

The AVC Edge, supports multiple languages on a single ballot style. Multiple language ballots can be arranged in a number of ways on the AVC Edge, depending on the number of languages required and whether or not the additional languages use the same character set as English. A voter language selection page can be presented after the ballot is activated. After the voter chooses the preferred language, the ballot is presented in that language until the vote is cast.

### **ACTIVATION FEATURES :**

#### **CARD ACTIVATOR UNIT**

Before a citizen can vote, the AVC Edge, requires each voter to insert a card processed by the Card Activator. After establishing the voter's identity and party affiliation (if applicable), the poll worker activates a card using this unit. The voter then takes the card and inserts it into the AVC Edge.. Once that vote is cast, the card is disabled from voting until the poll worker activates it again. **AUTO ACTIVATION:** This feature eliminates the need for poll worker to manually activate the ballot for the voter. The AVC Edge, automatically activates when a smart card is inserted by the voter,

selecting the correct ballot and any other options that were incorporated into the card. After activation is successful, the card is disabled by the AVC Edge, to stop any unauthorized attempt to use it again.

#### **OPTIONAL MANUAL ACTIVATION**

The AVC Edge, gives the option of manual activation, as a back-up to the auto activation system.

### **TECHNICAL FEATURES :**

#### **FULL SERVICE AND SUPPORT**

Each Edge is backed by Sequoia's highly-trained technical support staff. We provide rapid shipment of component modules.

#### **LONG USEFUL LIFE**

Minimal service and maintenance is required.

#### **MODULAR DESIGN**

The AVC Edge, is modularly designed for easy component replacement or system upgrades.

### **PHYSICAL SPECIFICATIONS :**

#### **DIMENSIONS**

Self-contained case is 26" x 17" x 10". Both the optional legs and the two-hour battery packs are contained within the case.

#### **OPERATOR CONTROLS**

The AVC Edge, contains manual controls for power on/off, polls open/close, ballot activate button, optional printer power, and on/off-line switches.

#### **POWER**

Operates on 110v AC as well as 13v DC. It automatically switches to DC back-up power in the event AC power is lost -- without interrupting operation.

#### **Three levels of battery back-up exist in the AVC Edge.:**

- 1.The AVC Edge, has one standard internal two-hour back-up battery that is recharged when the machine is plugged into AC power.
- 2.There is an optional second two-hour back-up battery that is recharged when the AVC Edge, is plugged into AC power.
- 3.There is an optional external 16-hour battery pack.



Address

[www.sequoiavote.com](http://www.sequoiavote.com)