

MINUTES OF THE HOUSE ELECTIONS AND GOVERNMENTAL ORGANIZATION COMMITTEE

The meeting was called to order by Chairman Mike Burgess at 3:30 P.M. on February 13, 2007 in Room 231-N of the Capitol.

All members were present except:

Representative Mike Peterson- excused

Committee staff present:

Martha Dorsey, Legislative Research Department

Matt Spurgin, Legislative Research Department

Mike Heim, Revisor of Statutes Office

Maureen Stinson, Committee Assistant

Conferees appearing before the committee:

Rich Vargo

Rep. Tom Holland

Brad Bryant

Brian Newby

Ron Roberts

Kevin Siek

Others attending:

See attached list.

**HB 2357** Election commissioners; appointment by certain counties

Chairman Burgess opened the hearing on **HB 2357**.

Rich Vargo, Riley County Clerk and Election Official, testified in support of the bill (Attachment 1). He concluded that the scope of elections has increased so much due to the Help America Vote Act that elections and all of our many other responsibilities deserve and demand that a separation of the responsibilities must be divided to do a better job in all areas.

Written testimony in support of the bill was submitted by Don Merriman, Saline County Clerk (Attachment 2).

Chairman Burgess closed the hearing on **HB 2357**.

Chairman Burgess opened the hearing on **HB 2259**.

Rep. Tom Holland testified in support of the bill (Attachment 3). He explained that he proposed this legislation in response to highly publicized problems with electronic voting machines that lack paper audit trails.

Written testimony in support of the bill was submitted by Don Merriman, Saline County Clerk (Attachment 4).

Brad Bryant, Deputy Assistant Secretary of State, testified in opposition to the bill (Attachment 5). He explained that Congress is currently considering legislation to require VVPAT's. He said that there is a chance that if such a federal law passes, it will include funding, which will help alleviate the large fiscal note attached to HB 2259.

Brian Newby, Election Commissioner, Johnson County Election Office, testified in opposition to the bill (Attachment 6). He requested that if the committee moves ahead with legislation this year, that they be very specific regarding the use of the paper receipts as the official ballot of records for recounts.

Kevin Siek, Topeka Independent Living Resource Center, testified in opposition to the bill (Attachment 7). He requested a proposed amendment which would ensure that all citizens have the ability to cast a secret

CONTINUATION SHEET

MINUTES OF THE House Elections and Governmental Organization Committee at 3:30 P.M. on February 13, 2007 in Room 231-N of the Capitol.

ballot and verify the integrity of that ballot, including voters with disabilities.

Ron Roberts, Butler County Clerk, testified in opposition to the bill (Attachment 8).

Rep. Burgess closed the hearing on **HB 2259**.

**HB 2357**

Rep. Lane made a motion for the favorable passage of **HB 2357** and asked that it be placed on the Consent Calendar. Rep. Horst seconded the motion. The motion carried.

**HB 2332**

Rep. Sawyer made a motion for the favorable passage of **HB 2332**. Rep. Vickrey seconded the motion. Rep. Sawyer made a substitute motion to adopt an amendment that was requested by the Office of the Secretary of State. Rep. Vickrey seconded the motion. The motion carried. Rep. Sawyer made a motion for the favorable passage of **HB 2332** as amended. Rep. Vickrey seconded the motion. The motion carried.

**Substitute for HB 2129**

Rep. Vickrey made a motion to amend **HB 2129** by substituting a new bill to be designated as "**Substitute for HOUSE BILL NO. 2129**" to include language recommended by the Kansas Association of Broadcasters (Attachment 9). Rep. Lane seconded the motion. The motion carried. Rep. Lane made a motion for the favorable passage of **Substitute for HOUSE BILL NO. 2129**. Rep. Horst seconded the motion. The motion carried.

The meeting was adjourned.

The next meeting is scheduled for February 14, 2007.





CLERK'S OFFICE

Rich Vargo, MCC  
County Clerk  
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Manhattan, Kansas 66502-0109  
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**Testimony Before the House Elections and Governmental Organization Committee  
February 13, 2007**

I am Rich Vargo, Riley County Clerk and Election Official. I thank you for the opportunity to discuss allowing counties the option to appoint or elect an election commissioner as in House Bill 2357.

Riley County would like the State to allow counties the opportunity to have the option to appoint or elect an election commissioner. Some of my peers and I believe the appointment of an election commissioner in our counties, similar to that of Wyandotte, Sedgwick, Johnson and Shawnee Counties, would be beneficial to our public. I have been contacted by the Clerks and Election Officials from Leavenworth, Reno, Butler and Saline Counties who also support pursuing this legislation.

The dramatic increase in requirements to conduct voter registration and elections began in 1993 with the National Voter Registration Act (NVRA). The 2002 Help America Vote Act (HAVA) has made the administration of Federal, State and local elections increasingly complex. The laws election officials administer are constantly changing and more closely scrutinized than ever before. While many of these changes are helping develop better elections, as election officials we need the time and staff to dedicate to the election processes.

In Riley County the Clerk and Election Officials Office is responsible for the tax roll, certifying all public entities budgets, setting mill levies, assisting cemetery districts and townships with budgets, real estate information assistance, clerk to the Board of County Commissioners, homestead tax assistance, filing intangible tax forms, wildlife and parks permits, cereal malt beverage licenses, accounts payable, payroll, human resources, employee benefits, budget and finance and elections. Many of my peers that do not have election commissioners in their counties are responsible for the same public services as in Riley County. In Riley County we are very fortunate to have an excellent staff in all areas that assist with elections when asked. Even with that said I feel we could do a better job in all areas if elections were separate in another department. In talking with my peers, our worry is not only doing an adequate job on elections, but falling behind in our many other responsibilities.

In conclusion I believe the scope of elections has increased so much due to the Help America Vote Act that elections and all of our many other responsibilities deserve and demand that a separation of the responsibilities must be divided to do a better job in all areas. I am confident that allowing counties the option of appointing or electing an election commissioner would be a valuable tool in the State of Kansas to providing our constituents the level of service they deserve. Thank you for your time today.

House Elections & Gov. Org.

Date: 2-13-2007

Attachment # 1



## SALINE COUNTY CLERK

300 W. Ash St.  
P. O. Box 5040  
Salina, KS 67402-5040  
Phone (785) 309-5820  
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[www.saline.org](http://www.saline.org)

February 13, 2007

Honorable Mike Burgess  
Chairperson – Elections and Governmental Organization Committee  
and Committee Members

Re: H.B. #2357  
Written Testimony Only

Chairman Burgess and Committee Members:

As Saline County Election Officer and County Clerk, I am supportive of H.B. #2357 to amend K.S.A. 19-3419(b) to allow the Board of County Commissioners of any county to create the office of Commissioner of Elections. This change would be an option of the county.

With the passage of the Help America Vote Act in 2002, election processes have been changed and the related work has intensified. Most County Clerk's offices could do a better job in their regular duties, if the election process was placed under the office of Election Commissioner.

Thank you for your time and consideration.

Sincerely,

Donald R. Merriman  
Saline County Election Officer and County Clerk

DRM: //

House Elections & Gov. Org.  
Date: 2.13.2007  
Attachment # 2

STATE OF KANSAS



TOM HOLLAND  
REPRESENTATIVE 10TH DISTRICT  
HOME ADDRESS: 961 E. 1600 ROAD  
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E-mail: holland@house.state.ks.us  
1-800-432-3924

February 13<sup>th</sup>, 2007

TOPEKA  
HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
RANKING DEMOCRAT: TAXATION

MEMBER: HEALTH AND HUMAN SERVICES  
GOVERNMENTAL EFFICIENCY AND  
TECHNOLOGY

Chairman Burgess and Committee Members:

Good afternoon! My name is Tom Holland and I am the State Representative for the Kansas House 10<sup>th</sup> District serving the communities of south Lawrence, Baldwin City, Wellsville, and north Ottawa. I am here today to ask for your support of House Bill 2259.

Kansas is one of 15 states that use electronic voting machines in at least one jurisdiction that do not require a voter verified paper audit trail (VVPAT). A VVPAT is a device that produces a paper record of each electronic ballot that can be reviewed by the voter prior to submitting his / her ballot. HB 2259 would require county elections offices that use electronic voting machines to be equipped with a VVPAT no later than January 1<sup>st</sup>, 2008. The bill would also prohibit the Secretary of State from purchasing any electronic voting machines that do not include VVPATS and from spending any funds on electronic voting machines unless they are equipped with VVPATs.

I am submitting this legislation in response to highly publicized problems with electronic voting machines that lack paper audit trails, with the most recent event occurring in Sarasota, Florida where there were 18,000 undervotes in the Congressional election this past fall. In another example, a report on the May 2006 primary election in Cuyahoga County, Ohio from the Election Science Institute found the electronic voting machines' four sources of vote totals -- individual ballots, paper trail summary, election archives and memory cards -- didn't even match up. The totals were all different, and the report concluded that relying on the current system for Cuyahoga County's more than 1.3 million people should be viewed as "a calculated risk." And these problems are not simply recent phenomena; during the 2004 presidential election, one voting machine in a Columbus, Ohio, suburb reportedly added nearly 3,900 additional votes to President Bush's total. Officials caught the machine's error only because 638 voters cast presidential ballots at that precinct.

As elected officials to the Kansas Legislature, it is imperative that we do everything in our powers to restore the public's confidence in the voting process by helping to ensure that every vote cast is recorded accurately. Please join me in taking the appropriate stand by supporting HB 2259.

Thank you,

A handwritten signature in black ink, appearing to read "Tom Holland", written over a horizontal line.

Tom Holland  
State Representative - 10<sup>th</sup> District

House Elections & Gov. Org.  
Date: 2-13-2007  
Attachment # 3

Donate Now!



VoteTrustUSA

National Organizations

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BlackBoxVoting.com

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Verified Voting

VoterAction

Voters Unite

Voting Machines

ProCon.org

Where's The Paper

VoteTrustUSA does not speak for any of the listed organizations.

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**You Can Make A Difference!**

**Get Connected With Your Nearest Election Integrity Group!**

**If you're ready to get more directly involved in the fight for transparency and accountability, please click the link above to get involved!**

National Issues

Senate Rules Committee to Hold Hearing on Electronic Voting Problems of 2006 Election



By Rules Committee Media Release  
February 04, 2007

**Hearing Chaired by Senator Feinstein is first step in the Committee's efforts to address the hazards of electronic voting**

U.S. Senator Dianne Feinstein (D-Calif) announced that the U.S. Senate Rules and Administration Committee has scheduled a hearing on Wednesday, February 7 on "The Hazards of Electronic Voting - Focus on the Machinery of Democracy."

The hearing will focus on concerns related to the security and auditability of voting systems used in federal elections, with an emphasis on reported problems in the 2006 federal elections.

"One-third of voters cast their ballots in the 2006 midterm election using new electronic voting machines, and problems arose in various jurisdictions throughout the country. The most serious problem occurred in Sarasota, Florida, where there were 18,000 undervotes in the Congressional election and officials have been unable to account for what happened to these votes because there is no independent record," Senator Feinstein said.

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- Carter-Baker Commission

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"Just yesterday, Florida Governor Charlie Christ announced plans to abandon the touch-screen voting machines used in many of Florida's counties and adopt a system of casting paper ballots counted by scanning machines. Other states are considering similar plans.

It's time that Congress also considers such safeguards for all federal elections. We must do everything we can to restore confidence in the outcome of elections by helping to ensure that every vote cast by an American eligible voter is recorded accurately."

The following is a list of witnesses for the hearing:

Senator Bill Nelson (D-FL)

Representative Rush Holt (D-NJ)

Lowell Finley, Deputy Secretary of State, State of California

Brit Williams, Professor Emeritus, Kennesaw State University

Professor Dan Wallach, Rice University

Conny McCormack, Registrar-Recorder/County Clerk, Los Angeles County

Warren Stewart, Policy Director, Vote Trust USA

Connie Schmidt, President, Election Consulting Services, Spring Hill, KS

Michael Waldman, Executive Director, Brennan Center for Justice, NYU School of Law

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## Experts say changes in e-voting likely to come

by **Grant Gross, Computerworld**  
January 5th, 2007

(IDG News Service) Rules requiring independent audit mechanisms for electronic voting machines are likely coming, but the changes won't happen overnight, a group of advocates said Friday.

More than 18,000 undervotes in a still-disputed Florida congressional election from November show the need for independent audit mechanisms, said panelists at an event sponsored by several advocacy groups, including the Electronic Frontier Foundation and Common Cause.

"We're at this point ... where I believe there's a consensus that we need to do something," said Trey Grayson, secretary of state in Kentucky. "However, the consensus is ahead of the solution."

All but one of Kentucky's counties use e-voting machines without paper trails, and many local elections officials are opposed to making big changes, Grayson said. Kentucky has used e-voting machines since the 1980s, and only recently have some state residents questioned their security and reliability, he added.

While many e-voting security critics have called for printouts to back up e-voting results, printers currently in use have encountered problems in recent elections, said Courtenay Strickland-Bhatia, president and chief executive of the Verified Voting Foundation. Some printers have jammed, and with some e-voting machines printouts weren't easily accessible for voters who wanted to double-check their votes, she said.

But e-voting machines need audit mechanisms and a "transparent" design that allows voters to understand how votes are counted, she added. Without an audit mechanism, "it simply is not possible to know if a problem has happened" in an e-voting machine, she said.

Beyond audit mechanisms, states need to require random audits of machines, added Lawrence Norden, an e-voting security researcher and associate counsel at the Brennan Center for Justice at New York University. While 27 states currently require paper-trail mechanisms along with e-voting machines, only 11 states require voting officials to conduct audits matching the electronic results with the paper ones.

No e-voting machine vendors were represented at the event. In

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November, Michael Kerr, director of the Election Technology Council at the Information Technology Association of America (ITAA), said the election generally went smoothly. The ITAA, a trade group that represents e-voting machine vendors, expects voters to adjust to the new systems that many states adopted after paper ballot problems in the 2000 presidential election, he said.

E-voting vendors will build machines that include audit trails if that's what customers want, Kerr said in December, after the U.S. Election Assistance Commission (EAC) approved a testing and certification program for electronic-voting systems.

Also in December, the Technical Guidelines Development Committee, an advisory board to the EAC, voted to draft requirements for independently verifiable voting records to be used with e-voting machines.

But Thomas Hicks, a staffer with the U.S. House of Representatives Administration Committee, cautioned that it will be difficult to make wholesale changes in e-voting requirements in time for the 2008 presidential election. A more realistic goal would be audit mechanisms required by 2010 or 2011, he said.

Hicks said he expects to see paper-trail audit legislation introduced in the next two years. Lawmakers may also introduce a bill that would allow independent inspectors to see the source code of e-voting software, he said. Last month, a Florida judge rejected the request of Democratic House candidate Christine Jennings to inspect the source code of machines on which more than 18,000 people who voted in other races failed to cast a ballot in the House race. Jennings lost by 369 votes.

"If there was a car accident, [investigators] would want to look at the car itself to see what happened," Hicks said. "They wouldn't look to Ford or Toyota to say, 'This is what actually caused it'."

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## South Carolina: Close Votes Lead to Paper Trail Demands

by Associated Press, Augusta Chronicle  
November 19th, 2006

COLUMBIA - Close statewide and legislative races this year will bring renewed calls for paper voter records that can assure people their ballots reflect their wishes while providing tools to election officials and candidates challenging election outcomes.

"I'll bring it back up," state Rep. Todd Rutherford, D-Columbia, said.

Mr. Rutherford said pressing a button to vote leaves many with an uneasy feeling.

"When you go to an ATM, you at least have an option of getting a receipt" to review the transaction, he said.

"That's why adding machines have a tape on them," said Bill Nettles, a Columbia lawyer helping lead state Democratic Party recount efforts.

South Carolina is one of 15 states that don't provide paper records for voters to review as they cast their ballots, according to [VerifiedVoting.org](#).

South Carolina Election Commission chairman Butch Bowers said the state's electronic machines comply with the requirements of the federal Help America Vote Act passed after the 2000 presidential election that turned on hanging chads from Florida punch-card ballots.

On Wednesday, U.S. Rep. Rush Holt, D-N.J., called on Congress to approve his bill mandating a ballot paper trail for electronic voting after he said 18,000 votes went uncounted in a disputed Florida congressional race.

Mr. Holt called inaccuracy of electronic touch-screen voting machines "a direct threat to the integrity of our electoral system."

Georgia, the first state to go to an all electronic voting system in 2002, lacks a voter-verified paper trail. But Secretary of State Cathy Cox, an initial skeptic of the paper records, has been pushing for one. Voters in three counties there used machines on Nov. 7 that gave voters a chance to review paper printouts

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before casting their vote.

But that change won't be pushed in South Carolina by state election officials.

Unless federal or state law changes, paper records at polling stations "won't be a priority because, frankly, I think the machines are safe, secure and they produce an accurate count," Mr. Bowers said.

However, he says he is not "opposed to it in any way, shape or form."

Upgrading South Carolina's machines to provide paper records would cost \$11 million, Mr. Bowers said.

"We should have ordered them like that initially," Mr. Rutherford said.

From the Sunday, November 19, 2006 edition of the Augusta Chronicle

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## National: Watchdog Groups Report E-Voting Problems

by **Grant Gross, IDG News Service, Computerworld.com**  
November 7th, 2006

### Coast-to-coast problems involve flipped votes, machine failures

Problems with voting machines across the U.S. are being reported to watchdog groups, including significant problems of votes being incorrectly recorded Tuesday. Common Cause, a government watchdog group, received more than 14,000 calls to its voter hotline as of about 4 p.m. Eastern Standard Time, including hundreds of reports of "vote-flipping," where the machine's summary screen shows different results than what the voter wanted. The Common Cause hotline includes all kinds of voting problems, not just those with e-voting.

E-voting watchdogs saw significant problems with vote-flipping in the 2004 national election, and Verified Voting called for a national investigation then but was rebuffed, said David Dill, founder of Verified Voting and a computer science professor at Stanford University.

"Not surprisingly, we are experiencing the same problems," Dill said during a press briefing. "This kind of problem, I think it's a national disgrace."

Still, Common Cause officials said as of Tuesday afternoon, they were seeing fewer voting problems than they did in 2004. However, reports of e-voting problems could take days to surface, Dill said.

In Denver, voters encountered lines of more than two hours because of apparent problems with a voter-registration database. Voters there could cast their ballots at any voting location, but the voter rolls were apparently contained on just one overloaded database, said Pete Naismith at Common Cause in Colorado.

"It's the classic situation where too many cars are jammed onto one highway," he said.

The Colorado Secretary of State's office said it is monitoring the problems in Denver and advised voters to get to the polls early. The state Democratic party has asked a court to order that polls

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stay open an extra two hours because of the delays.

The election commissioner in Johnson County, Kan., dismissed sketchy reports that poll workers there were using hand lotion to keep voter cards from spitting out of machines. However, reports to that effect had it backwards, according to Election Commissioner Brian Newby. When a poll worker has used too much hand lotion, voter cards can get stuck in the machine that recodes them, but a simple reboot fixes the problem, he said.

"I'm amazed," he said of the reports regarding hand lotion. "It's urban legend."

Among the other problems reported as of 5 p.m. EST, according to Common Cause, the Election Protection 365 Web site and the Association for Computing Machinery:

- In one Indiana county, e-voting machines didn't turn on. In a second county, the machine activation cards weren't programmed properly.
- More than 2,000 calls to Common Cause's voter hotline came from Pennsylvania. There were reports in three counties of e-voting glitches, the group said.
- Election Protection 365 workers asked for extended voting hours because of numerous reports of machine failures and poll workers who were unable to operate voting machines. The county uses a combination of optical scan and e-voting machines, according to Verified Voting.
- There were reports of voting machine failures in parts of Florida and Utah.

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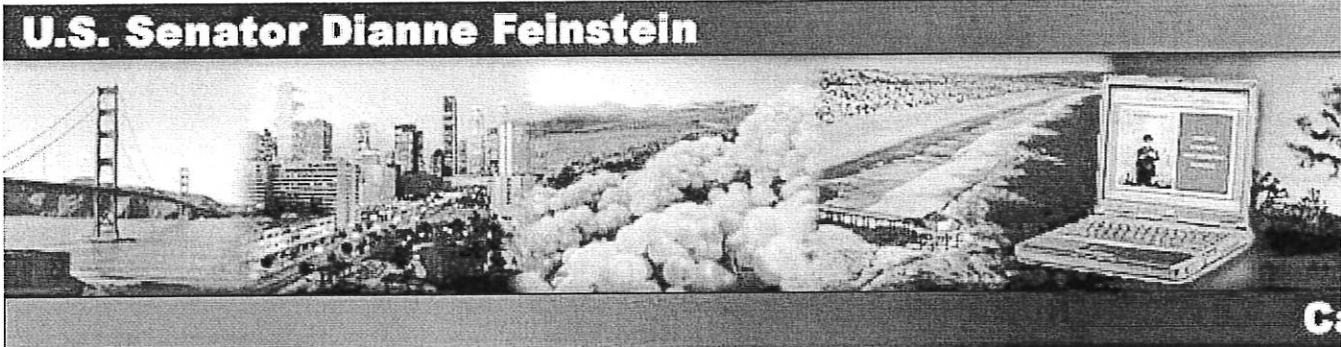
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## Senator Feinstein Seeks to Ensure Accuracy of Federal Elections

- Bill Would Require Paper Voting Records and Audits -

October 11, 2006

Print version

**Washington, DC** – U.S. Senator Dianne Feinstein (D-Calif.) today announced plans to introduce legislation to help ensure the accuracy of future federal elections by requiring that electronic voting machines include a paper record which can be verified by the voter and is subject to an independent audit to help ensure that the machines are secure from error.

**“Serious questions have arisen about the accuracy and reliability of new electronic voting machines, including concerns that they can be susceptible to fraud and computer hacking attacks unless proper security measures are taken,”** Senator Feinstein said. **“It is imperative that Congress does everything it can to help ensure that votes cast by American citizens are recorded accurately.”**

Senator Feinstein, a senior member of the Senate Rules Committee, said she planned to introduce the bill – *the Ballot Integrity Act of 2006* – as soon as Congress returns from the pre-election recess. And if no action is taken on the legislation, it will be reintroduced on the first legislative day of the new Congress in January.

The provisions of the legislation relating to paper records, audits and voting system integrity are similar to the bipartisan Voter Confidence and Increased Accessibility Act introduced by Rep. Rush Holt (D-N.J.) and cosponsored by 219 other House Members. But this bill also has several additional provisions, including a prohibition on a state’s chief election officer from participating on a political campaign committee on behalf of any federal candidate and measures to make it easier for military and overseas voters to send in absentee ballots.

**“Representative Holt and 219 other House Members realize the threat posed to our democracy by voting machines that may be unreliable, can be easily manipulated, and provide no paper trail,”** Senator Feinstein said. **“Today, I join them in this effort to ensure the validity of the votes cast by each and every American.”**

Senator Feinstein said she will seek Rules Committee hearings in the

Go

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coming year on the reliability of electronic voting machines, the importance of paper records and audits and other issues that undern with fair and accurate elections.

Flag Requests

Academy Nominations

The Commission on Electoral Reform, also known as the Carter-Bake Commission, has also endorsed voter-verified paper audit records for electronic voting machines, citing four reasons for its recommendatic

Intern Applications

Scheduling

- To increase citizens' confidence that their votes will be counted accurately.
- To allow for a recount.
- To provide a back-up in cases of loss of votes due to computer malfunction.
- To test – through random recount – whether the paper result is the same as the electronic result.

Casework

More California  
Resources

Grants & Federal  
Domestic Assistance

The Brennan Center Task Force on Voting System Security published comprehensive study of electronic voting machine vulnerabilities last summer, including a survey of hundreds of election officials around the country and categorized over 120 security threats to voting machines.

**"As electronic voting machines become the norm on Election Day, voters are more and more concerned that these machines are susceptible to fraud,"** said Lawrence Norden, chair of the Brennan Center Task Force, urging the House Administration Committee last month to pass legislation providing for audits of voter verified paper records and increased voting machine security. **"These machines are vulnerable to attack. That's the bad news. The good news is that we know how to reduce the risks and the solutions are within reach."**

**"A number of recent elections have been determined by a very small difference in votes, and a failure to have paper records that can be audited could ultimately call into question the validity of that election,"** Senator Feinstein said. **"Congress needs to act to help restore confidence in the outcomes of elections."**

A summary of the Ballot Integrity Act of 2006 follows:

- **Paper Records, Voter Verification and Audit:** Requires that voting machines produce a paper record that voters can verify and correct if necessary, after casting their vote. Also requires that the paper record be preserved and used in a mandatory, random audit.
- **Electronic Voting System Security:** Takes measures to prevent technological manipulation of electronic voting systems and requires that all voting system software be disclosed by the manufacturers, and certified by the Election Assistance Commission (EAC).
- **Campaign Activities by Election Officials:** Prohibits a chief state election official from serving on any political campaign committee of a candidate for Federal office, making any public comments in support of a candidate, or soliciting political contributions on behalf of any candidate for Federal office.
- **Military and Overseas Voting:** Makes it easier for overseas military voters to send in absentee ballot requests, absentee ballots and voter registration forms by prohibiting states from



refusing to accept ballots and registration forms due to non-essential requirements (such as size and stock of paper, and whether or not it is notarized).

- **Official Election Observers:** Grants all official, legitimate domestic and international elections observers unrestricted access to the election process, provided that they accept election rules, do not interfere with the election process, and respect the secrecy of the ballot.
- **Enforcement of HAVA Provisions:** Clarifies that individuals may pursue legal resolution of violations of the Help America Vote Act. Permanently extends the authorization of the Election Assistance Commission. Requires that contractors hired by the Commission (such as machine manufacturers) go through a public bidding process.

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## Bruce Schneier

### What's Wrong With Electronic Voting Machines?

By **Bruce Schneier**  
**OpenDemocracy**  
**November 9, 2004**

In the aftermath of the American presidential election on 2 November 2004, electronic voting machines are again in the news. Computerised machines lost votes, subtracted votes, and doubled some votes too. And because many of these machines have no paper audit trails, a large number of votes will never be counted.

While it is unlikely that deliberate voting-machine fraud changed the result of this presidential election, the internet is buzzing with rumours and allegations in a number of different jurisdictions and races. It is still too early to tell if any of these problems affected any individual state's election, but the next few weeks will reveal whether any of the information crystallises into something significant.

The US has been here before. After the 2000 election, voting-machine problems made international headlines. The government appropriated money to fix the problems nationwide. Unfortunately, electronic voting machines -- although presented as the solution -- have largely made the problem worse. This doesn't mean that these machines should be abandoned, but they need to be designed to increase both their accuracy, and peoples' trust in their accuracy.

This is difficult, but not impossible.

Before I discuss electronic voting machines, I need to explain why voting is so difficult. In my view, a voting system has four required characteristics:

1. **Accuracy.** The goal of any voting system is to establish the intent of each individual voter, and translate those intents into a final tally. To the extent that a voting system fails to do this, it is undesirable. This characteristic also includes security: It should be impossible to change someone else's vote, stuff ballots, destroy votes, or otherwise affect the accuracy of the final tally.
2. **Anonymity.** Secret ballots are fundamental to democracy, and voting systems must be designed to facilitate voter anonymity.
3. **Scalability.** Voting systems need to be able to handle very large elections. Nearly 120 million people voted in the US presidential election. About 372 million people voted in India's May 2004 national elections, and over 115 million in Brazil's October 2004 local elections. The complexity of an election is another issue. Unlike in many countries where the national election is a single vote for a person or a party, a United States voter is faced with dozens of individual election decisions: national, local, and everything in between.
4. **Speed.** Voting systems should produce results quickly. This is particularly important in the United States, where people expect to learn the results of the day's election before bedtime.

Through the centuries, different technologies have done their best. Stones and potshards dropped in Greek vases gave way to paper ballots dropped in sealed boxes. Mechanical voting booths, punch-cards, and then optical scan machines replaced hand-counted ballots. New computerised voting machines promise even more efficiency, and internet voting even more convenience.

But in the rush to improve speed and scalability, accuracy has been sacrificed. And to reiterate: accuracy is not how well the ballots are counted by, say, a punch-card reader. It's not how the tabulating machine deals with hanging chads, pregnant chads, or anything like that. Accuracy is how well the process translates voter intent into appropriately counted votes.

#### **Trust a computer to be inaccurate**

Technology gets in the way of accuracy by adding steps. Each additional step means more potential

errors, simply because no technology is perfect. Consider an optical-scan voting system. The voter fills in ovals on a piece of paper, which is fed into an optical-scan reader. The reader senses the filled-in ovals and tabulates the votes. This system has several steps: voter to ballot, to ovals, to optical reader, to vote tabulator, to centralised total.

At each step, errors can occur. If the ballot is confusing, some voters will fill in the wrong ovals. If a voter doesn't fill them in properly, or if the reader is malfunctioning, then the sensor won't sense the ovals properly. Mistakes in tabulation -- either in the machine or when machine totals get aggregated into larger totals -- also cause errors.

A manual system of tallying the ballots by hand, and then doing it again to double-check, is more accurate simply because there are fewer steps.

The error rates in modern systems can be significant. Some voting technologies have a 5% error rate, which means one in twenty people who vote using the system don't have their votes counted. A system like this operates under the assumption that most of the time the errors don't matter. If you consider that the errors are uniformly distributed -- in other words, that they affect each candidate with equal probability -- then they won't affect the final outcome except in very close races.

So we're willing to sacrifice accuracy to get a voting system that will handle large and complicated elections more quickly.

In close races, errors can affect the outcome, and that's the point of a recount. A recount is an alternate system of tabulating votes: one that is slower (because it's manual), simpler (because it just focuses on one race), and therefore more accurate.

Note that this is only true if everyone votes using the same machines. If parts of a town that tend to support candidate A use a voting system with a higher error rate than the voting system used in parts of town that tend to support candidate B, then the results will be skewed against candidate A.

With this background, the problem with computerised voting machines becomes clear. Actually, "computerised voting machines" is a bad choice of words. Many of today's mechanical voting technologies involve computers too. Computers tabulate both punch-card and optical-scan machines.

The current debate centres on all-computer voting systems, primarily touch-screen systems, called Direct Record Electronic (DRE) machines (the voting system used in India's May 2004 election -- a computer with a series of buttons -- is subject to the same issues).

In these systems the voter is presented with a list of choices on a screen, perhaps multiple screens if there are multiple elections, and he indicates his choice by touching the screen. As Daniel Tokaji points out, these machines are easy to use, produce final tallies immediately after the polls close, and can handle very complicated elections. They can also display instructions in different languages and allow for the blind or otherwise handicapped to vote without assistance.

They're also more error-prone. The very same software that makes touch-screen voting systems so friendly also makes them inaccurate in the worst possible way.

'Bugs' or errors in software are commonplace, as any computer user knows. Computer programs regularly malfunction, sometimes in surprising and subtle ways. This is true for all software, including the software in computerised voting machines.

For example:

In Fairfax County, Virginia in 2003, a programming error in the electronic-voting machines caused them to mysteriously subtract 100 votes from one candidate's totals.

In a 2003 election in Boone County, Iowa the electronic vote-counting equipment showed that more than 140,000 votes had been cast in the municipal elections, even though only half of the county's 50,000 residents were eligible to vote.

In San Bernardino County, California in 2001, a programming error caused the computer to look for votes in the wrong portion of the ballot in 33 local elections, which meant that no votes registered on

those ballots for that election. A recount was done by hand.

In Volusia County, Florida in 2000, an electronic voting machine gave Al Gore a final vote count of negative 16,022 votes.

There are literally hundreds of similar stories.

What's important about these problems is not that they resulted in a less accurate tally, but that the errors were not uniformly distributed; they affected one candidate more than the other. This is evidence that you can't assume errors will cancel each other out; you have to assume that any error will skew the results significantly and affect the result of the election.

### **And then there's security**

Another issue is that software can be 'hacked'. That is, someone can deliberately introduce an error that modifies the result in favour of his preferred candidate.

This has nothing to do with whether the voting machines are hooked up to the internet on election day, as Daniel Tokaji seems to believe. The threat is that the computer code could be modified while it is being developed and tested, either by one of the programmers or a hacker who gains access to the voting-machine company's network. It's much easier to surreptitiously modify a software system than a hardware system, and it's much easier to make these modifications undetectable.

Malicious changes or errors in the software can have far-reaching effects. A problem with a manual machine just affects that machine. A software problem, whether accidental or intentional, can affect many thousands of machines and skew the results of an entire election.

Some have argued in favour of touch-screen voting systems, citing the millions of dollars that are handled every day by ATMs and other computerised financial systems. That argument ignores another vital characteristic of voting systems: anonymity.

Computerised financial systems get most of their security from audit. If a problem is suspected, auditors can go back through the records of the system and figure out what happened. And if the problem turns out to be real, the transaction can be unwound and fixed. Because elections are anonymous, that kind of security just isn't possible.

None of this means that we should abandon touch-screen voting; the benefits of DRE machines are too great to throw away. But it does mean that we need to recognise the limitations, and design systems that can be accurate despite them.

Computer security experts are unanimous on what to do (some voting experts disagree, but it is the computer security experts who need to be listened to; the problems here are with the computer, not with the fact that the computer is being used in a voting application). They have two recommendations, echoed by Siva Vaidhyanathan:

1. DRE machines must have a voter-verifiable paper audit trails (sometimes called a voter-verified paper ballot). This is a paper ballot printed out by the voting machine, which the voter is allowed to look at and verify. He doesn't take it home with him. Either he looks at it on the machine behind a glass screen, or he takes the paper and puts it into a ballot box. The point of this is twofold: it allows the voter to confirm that his vote was recorded in the manner he intended, and it provides the mechanism for a recount if there are problems with the machine.
2. Software used on DRE machines must be open to public scrutiny. This also has two functions: it allows any interested party to examine the software and find bugs, which can then be corrected, a public analysis that improves security; and it increases public confidence in the voting process - if the software is public, no one can insinuate that the voting system has unfairness built into the code (companies that make these machines regularly argue that they need to keep their software secret for security reasons. Don't believe them. In this instance, secrecy has nothing to do with security).

Computerised systems with these characteristics won't be perfect -- no piece of software is -- but they'll

be much better than what we have now. We need to treat voting software like we treat any other high-reliability system.

The auditing that is conducted on slot machine software in the US is significantly more meticulous than that applied to voting software. The development process for mission-critical airplane software makes voting software look like a slapdash affair. If we care about the integrity of our elections, this has to change.

Proponents of DREs often point to successful elections as "proof" that the systems work. That completely misses the point. The fear is that errors in the software -- either accidental or deliberately introduced -- can undetectably alter the final tallies. An election without any detected problems is no more a proof that the system is reliable and secure, than a night that no one broke into your house is proof that your locks work. Maybe no one tried to break in, or maybe someone tried and succeeded -- and you don't know it.

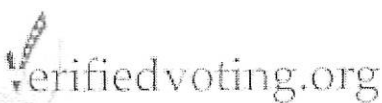
Even if we get the technology right, we still won't be finished. If the goal of a voting system is to accurately translate voter intent into a final tally, the voting machine itself is only one part of the overall system. In the 2004 US election, problems with voter registration, untrained poll workers, ballot design, and procedures for handling problems, resulted in far more votes being left uncounted than problems with technology.

If we're going to spend money on new voting technology, it makes sense to spend it on technology that makes the problem easier instead of harder.

up to Essays and Op Eds

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## HAS THIS HAPPENED TO YOUR VOTE?

January 7th, 2004

### FACT: ELECTRONIC VOTING MACHINES HAVE MISCOUNTED VOTES

There are well-documented cases when anomalies have happened with DREs and ballot processing machines. Votes have been changed right in front of the voter's eyes. Votes have been changed, by the machines, out of the sight of the voters. Voting machine vendors do not dispute these happenings; instead, they shrug their shoulders and claim that the problems have been fixed or that the problem was just a computer glitch.

Here is a useful handout

Listed below, we provide some of the instances where problems have been noted with electronic voting machines. How many others have gone undetected? We have no way of

knowing.

#### Missing Votes Break Florida Law!

(Follow this entire story here)

#### Broward County, Florida - January 6, 2004

In a Special Election for a vacated state House Seat, 134 voters' votes were not counted. They went to the polls, they signed in, and they went to the DREs; but their votes were never counted.

"It's incomprehensible that 134 people went to the polls and didn't cast votes," said Broward County Mayor Ilene Lieberman, who served on the canvassing board that oversaw Tuesday night's count.

(Source: *The Miami Herald*, 7 Jan. 2004; link)

A later article points out the problem election officials face: "The remaining 134 invalid ballots cannot be manually recounted because they were cast electronically on computerized voting machines and there is no written record of those votes." The former mayor remarked, "That tells me they picked a voting machine that doesn't follow the [law]." Florida law requires a manual recount if the winning margin accounts for less than one-fourth of one percent of the votes, as it does in this case with a margin of 12 votes. But without paper records a recount is impossible.

- Voting machine
- Call 1-888-SA
- Other Elec
- Call 1-866-OL
- Find Your I
- Vote411.org
- Election Tr
- 2006
- Verifier Da
- EIRS2004
- Reports
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National: U.S. Committee to Hazards of Elections on the Machine

**February 6,**  
National: Rep H.R. 811, the Increased Access

**January 10,**  
The Good News Voting Machine

**January 5, 2**  
Experts say it likely to come

**December 2:**  
GA: Voting machine elections director

**November 3:**  
California: Election from experts

**November 3:**  
NIST reaches conclusion: paper acceptable

**November 2:**  
National: Election Sought To Avoid

**November 2**  
Florida: Election

3-17

2/12/2007

And this wasn't the only electronic counting problem that day: "Julie Morrall, who finished fifth, lost a vote when officials discovered one ballot was actually an overvote, in which the voter selected more than one candidate, and a tabulation machine misread it."

(Source: *The Sun Sentinel*, 9 Jan. 2004; link)

**Mississippi Meltdown Results In Election Rerun...**

**Hinds County, Mississippi - November 2003**

Hinds County Tax Payers had spent \$1.6 Million for new AVS WINvote touch screen voting systems. The county trained their poll workers, deployed the new machines, and opened the polls at 7AM on November 4 for an important election. On the ballot was a full slate of candidates and issues, including a State Senate race and a County Tax Assessor race.

Almost immediately, the machines began to fail. Overheated systems, and the absence of a backup solution led to a long and frustrating day for poll workers and voters alike. This was followed by a 2-month debate that eventually resulted in exasperated candidates, and a new election being demanded by the Mississippi State Legislature.

Here is the story of the first election that has to be rerun in its entirety, because faulty touch screen election systems prevented the "will of the voters" from being accurately determined.

**The case of the "Jumping X"**

**Maryland - November 5, 2002**

Voters watched as they voted for the Republican candidate for governor and the "X" appeared beside the name of the Democratic candidate. The machines used were Diebold DREs with no paper ballot so the machines could not be audited. I pushed a Republican ticket for governor and his name disappeared, said Kevin West of Upper Marlboro. Then the Democrat's name got an "X" put in it.  
(Source: *The Washington Times*, 6 November 2002; *Glitches cited at some polls*)

**Fairfax County, Virginia - November 4, 2003**

Some voters watched as the "X" they put beside the name of Republican School Board Member, Rita Thompson, dimmed out and moved to her Democratic opponent. Ms. Thompson complained and one machine was tested. Surprised officials watched as the machine subtracted approximately 1 out of 100 votes for Ms. Thompson.

The machines used were Advanced Voting Solutions WINvote DREs that had just been purchased by the county as part of their move to become compliant with the new HAVA requirements.  
(Source: *The Washington Post*, Nov. 6, 2003; link)

Notice the similarities in these two incidents. The machines were from different vendors, but in both cases the problems were of the same type; the vote would mysteriously change right in front of the voters eyes. Of course there were no paper ballots, so correct audits of the ballots could NOT be accomplished.

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*"The core of democracy vote. Implies the notion private, the and that vote it was inter cast by the what we're pivotal moment democracy is being called question."*

Kevin Shell  
California S

**Result: Fairfax County Republican Committee refers to the experience with the new election equipment as "a bitter disappointment - at best," calls for Voter-Verified Paper Ballot!**

#### **A Strong Case for a Paper Trail**

**Are DREs the only machines to blame for problems? No!  
As evidenced by the following:**

In Snyder, Scurry County, Texas, in November 2002, an electronic glitch turned the election of two Scurry County Commissioners upside down. Tuesday night, it was thought that Republicans Robbie Floyd and Keith Hackfeld had won their races. However, Scurry County Clerk Joan Bunch said it was discovered that a defective computer chip in the county's optical scanner had misread the ballots and incorrectly given the two a landslide victory. After a hand count of the ballots and also a re-scan with a repaired scanner, it turned out that the two supposed winners had actually lost. The final numbers looked like this: Jerry House (D) 678 - Robbie Floyd (R) 436. Chloanne Lindsey (D) 512 - Keith Hackfeld (R) 336. The candidates were notified of the correction Wednesday morning.  
(Source: KTXS TV Nov. 2002; link)

This was a problem with optical-scan machines, so there was a paper ballot that could be recounted. In this case, the county election officials didn't wait for the new chip to be flown in; they did a hand count to back up anything that they did.

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**VOTER-VERIFIED PAPER AUDIT TRAIL LAWS & REGULATIONS (AS OF 9/20/06)**

22 states require voting machines to produce a VVPAT (AK, AZ, AR, CA, CO, CT, HI, ID, IL, ME, MO, MT, NV, NJ, NY, N WA, WV, WI)

5 states require paper-based ballot systems (MI, MN, NH, NM, VT)

Of the 22 states that require voting machines to produce a VVPAT, 17 use electronic voting machines in at least one AZ, AR, CA, CO, HI, IL, MO, NV, NJ, NY, NC, OH, UT, WA, WV, WI) while 5 do not use any electronic voting machines (OR).

15 states and the District of Columbia use electronic voting machines in at least one jurisdiction and do not require FL, GA, IN, IA, KS, KY, LA, MD, PA, SC, TN, TX, VA, WY)

7 states do not use any electronic voting machines and do not have any regulations requiring VVPATs (AL, MA\*, NE, Notes: Mississippi, does not require VVPATs but in the 77 counties that received electronic voting machines in 2005, the mac VVPAT.

Massachusetts is in the process of selecting an accessible voting system.

State	Law/Regulation	Summary
Alaska	<a href="#">Alaska Statutes § 15.15.032</a>	The director shall provide for a paper record of each electronically generated ballot that be reviewed and corrected by the voter at the time the vote is cast and used for a recount the votes cast at an election in which electronically generated ballots were used.
Arizona	<a href="#">SB1557</a>	An electronic voting system shall provide a durable paper document or ballot that visually indicates the voter's selections, that the voter may use to verify the voter's choices, that be spoiled by the voter if it fails to reflect the voter's choices and that permits the voter to a new ballot. This paper document shall be used in manual audits and recounts.
Arkansas	<a href="#">Act 654</a>	If the machine is a direct read electronic voting machine, it shall include a voter verified audit trail.
California	<a href="#">California Elections Code § 19250a</a>	On and after January 1, 2005, the Secretary of State shall not approve a direct electronic voting system unless the system has received federal qualification and includes an accessible voter verified paper audit trail.
California	<a href="#">Secretary of State press release</a>	Secretary of State Kevin Shelley approves Sequoia voting machines with VeriVote print
Colorado	<a href="#">Colorado Revised Statutes § 1-5-801 (1)</a>	On and after June 6, 2005, a political subdivision shall not acquire a voting system unless voting system is capable of producing a voter-verified paper record of each elector's vote
Connecticut	<a href="#">Public Act 05-188</a>	Any direct recording electronic voting machine approved by the Secretary of the State for election or primary held on or after July 1, 2005, shall be so constructed as to: Provide e elector with an opportunity to verify that the contemporaneously produced, individual, permanent, paper record accurately conforms to such elector's selection of ballot preferences, as reflected on the electronic summary screen, and to hear, if desired, an e description of such electronic summary screen, for the purpose of having an opportunity make any corrections or changes prior to casting the ballot.
Hawaii	<a href="#">Hawaii Statutes § 16-42</a>	No electronic voting system shall be used in any election unless it generates a paper ballot that may be inspected and corrected by the voter before the vote is cast, and every paper ballot is retained as the definitive record of the vote cast.
Idaho	<a href="#">Idaho Code § 34-2409 (6)</a>	For all elections conducted after 2004, no direct recording electronic voting device shall used unless the direct recording electronic voting device has a voter verifiable paper audit trail.
Illinois	<a href="#">Public Act 093-0574</a>	Upon completing his or her selection of candidates or public questions, the voter shall sign that voting has been completed by activating the appropriate button, switch or active area the ballot screen associated with end of voting. Upon activation, the voting system shall record an image of the completed ballot, increment the proper ballot position registers, and shall signify to the voter that the ballot has been cast. Upon activation, the voting system shall also print a permanent paper record of each ballot cast as defined in Section 24C-2; this Code. This permanent paper record shall either be self-contained within the voting

		device or shall be deposited by the voter into a secure ballot box. No permanent paper record shall be removed from the polling place except by election officials as authorized this Article. All permanent paper records shall be preserved and secured by election officials in the same manner as paper ballots and shall be available as an official record for any recount, redundant count, or verification or retabulation of the vote count conducted with respect to any election
Maine	<a href="#">LD1759</a>	All voting machines in the State must produce a physical ballot, equivalent or superior to that of a hand-cast ballot, that unambiguously reflects the intent of the voter and that each voter shall personally review and deliver to an official ballot box. Touch-screen voting machines must produce a legible, large-print ballot for verification by each voter of that voter's election choices before it is placed in the official ballot box. Each such ballot must also identify the individual machine that produced it while not identifying the voter.
Maine	H.P. 711	Except for accessible voting equipment that must be provided by 2006 in compliance with the federal Help America Vote Act of 2002 as provided in section 812-A, subsection 1, it must produce or employ permanent paper records of the votes cast that are able to be verified by individual voters before their votes are cast and that provide a manual audit capacity for each machine.
Michigan	Secretary of State Web site	Secretary Land announced on August 4, 2003 that arrangements will be made to convert all jurisdictions that still employ punch-card ballots, paper ballots and mechanical lever machines to updated optical-scan voting systems. The direct recording electronic (DRE) voting equipment in use in the State will also be replaced with optical-scan voting equipment under the program.
Minnesota	<a href="#">Minnesota Statutes § 206.80</a>	An electronic voting system may not be employed unless it: (7) provides every voter an opportunity to verify votes recorded on the permanent paper ballot or paper record, either visually or using assistive voting technology, and to change votes or correct any error before the voter's ballot is cast and counted, produces an individual, discrete, permanent, paper ballot or paper record of the ballot cast by the voter, and preserves the paper ballot or paper record as an official record available for use in any recount. (b) An electronic voting system purchased on or after June 4, 2005, may not be employed unless it: (1) accepts and tabulates, in the polling place or at a counting center, a marked optical scan ballot.
Missouri	Secretary of State press release	Building on Missouri's successful efforts to improve the elections process, Secretary of State Matt Blunt announced today that he is requiring any Direct Recording Electronic (DRE) systems that may be purchased by local election officials to produce a voter verified paper ballot.
Montana	<a href="#">Montana Code § 13-17-103</a>	A voting system may not be approved under 13-17-101 unless the voting system: (k) uses a paper ballot that allows votes to be manually counted, except as provided in subsection (2) (2) A direct recording electronic system that does not mark a paper ballot may be used to facilitate voting by a disabled voter pursuant to the Help America Vote Act of 2002, 42 U.S.C. 15301, et seq., if: (a) (i) a direct recording electronic system that uses a paper ballot has not yet been certified by the federal election assistance commission; or (ii) a direct recording electronic system that marks a paper ballot has not yet been approved by the secretary of state pursuant to <a href="#">13-17-101</a> ; and (b) the system records votes in a manner that will allow the votes to be printed and manually counted or audited if necessary.
Nevada	Secretary of state press release	Secretary of State Dean Heller announced at news conferences today in Reno and Las Vegas his decision to purchase for all Nevada counties Direct Recording Electronic (DRE) voting machines. In an unprecedented move, he also announced he is mandating that a voter-verifiable receipt printer be included on all newly purchased DRE machines for the 2004 election. In doing so, Heller becomes the first state election official to demand a voter-verifiable receipt before the 2006 election. He added that all existing machines statewide must add the printer technology by 2006.
New Hampshire	<a href="#">New Hampshire Statutes § 656:41</a>	The ballot law commission shall approve such voting machine or device in its discretion, and no voting machine or device shall be used in any election in this state unless it reads the voter's choice on a paper ballot and is of a type so approved by the ballot law commission.
New Jersey	<a href="#">New Jersey Statutes § 19:48-1</a>	By January 1, 2008, each voting machine shall produce an individual permanent paper record for each vote cast, which shall be made available for inspection and verification to the voter at the time the vote is cast, and preserved for later use in any manual audit. In the event of a recount of the results of an election, the voter-verified paper record shall be the official tally in that election. A waiver of the provisions of this paragraph shall be granted by the Attorney General if the technology to produce a permanent voter-verified paper record for each vote cast is not commercially available.

New Mexico	<a href="#">SB 295</a>	Requiring use of paper ballots for all voting systems.
New Mexico	New Mexico Statutes § 1-9-7.1	All voting systems used in elections covered by the Election Code shall have a voter verifiable and auditable paper trail; provided, however, that voting systems owned or used by a county on the effective date of this 2005 act that do not have a voter verifiable and auditable paper trail may be used until the first occurrence of the following: (1) sufficient federal, state or local funds are available to replace the voting system; or (2) December 1, 2006.
New York	New York State Consolidate Laws § 7-202 (j)	A voting machine or system to be approved by the state board of elections shall: retain a paper record of each paper ballot cast or produce and retain a voter verified permanent paper record which shall be presented to the voter from behind a window or other device before the ballot is cast, in a manner intended and designed to protect the privacy of the voter; such ballots or record shall allow a manual audit and shall be preserved in accordance with the provisions of section 222 of this chapter.
North Carolina	North Carolina Session Law 2005-323	With respect to electronic voting systems, that the voting system generate a paper record of each individual vote cast, which paper record shall be maintained in a secure fashion and shall serve as a backup record for purposes of any hand-to-eye count, hand-to-eye record or other audit. Electronic systems that employ optical scan technology to count paper ballots shall be deemed to satisfy this requirement. With respect to DRE voting systems, that the paper record generated by the system be viewable by the voter before the vote is cast electronically, and that the system permit the voter to correct any discrepancy between the electronic vote and the paper record before the vote is cast.
Ohio	Ohio Revised Code § 3506.10 (P)	On and after the first federal election that occurs after January 1, 2006, unless required sooner by the Help America Vote Act of 2002, if the voting machine is a direct recording electronic voting machine, it shall include a voter verified paper audit trail.
Oregon	<a href="#">Oregon votes FAQ</a>	We will be purchasing touch screen voting machines in 2006 in order to make it easier for disabled voters to vote with privacy. Each county will have two machines as an option for voters, and each machine will produce a paper record of the votes cast in case a recount is required. State law (258.211) requires hand recounts. Click here to read more about touch screens in Oregon . - Oregon law requires that election recounts be conducted by hand. Electronic voting devices to be used in Oregon must, therefore, produce a voter verified paper record of each vote cast.
Oregon	<a href="#">Oregon Statutes § 246.560</a>	A voting machine may not be approved by the Secretary of State unless the voting machine is constructed so that it: (h) Contains a device that will duplicate the votes cast by each elector onto a paper record copy. (i) Contains a device that will allow each elector to view their elector's paper record copy while preventing the elector from directly handling the paper record copy.
Utah	<a href="#">Utah Code § 20A-5-302</a>	For voting equipment certified after January 1, 2005, produce a permanent paper record of each vote shall be available as an official record for any recount or election contest conducted with respect to an election where the voting equipment is used; shall be available for the voter inspection prior to the voter leaving the polling place; and shall permit the voter to inspect the record of the voter's selections independently only if reasonably practicable commercial methods permitting independent inspection are available at the time of certification of the voting equipment by the lieutenant governor; shall include, at a minimum, human readable printing that shows a record of the voter's selections.
Vermont	<a href="#">Vermont Statutes § 2478 (e)</a>	No voting shall occur in any general election which does not use printed ballots.
Washington	<a href="#">Washington Code § 29A.12.085</a>	Beginning on January 1, 2006, all electronic voting devices must produce a paper record of each vote that may be accepted or rejected by the voter before finalizing his or her vote. The paper record may not be removed from the polling place, and must be human readable without the use of an interface and machine readable for counting purposes. If the device is programmed to display the ballot in multiple languages, the paper record produced must be printed in the language used by the voter. Rejected records must either be destroyed or marked in order to clearly identify the record as rejected.
West Virginia	<a href="#">West Virginia Code § 3-4A-9</a>	(A) Direct recording electronic voting machines must generate a paper copy of each voter's vote that will be automatically kept within a storage container, that is locked, closely guarded, and inaccessible to all but authorized voting officials, who will handle such storage containers and such paper copies contained therein in accordance with section nineteen of this article. (B) The paper copy of the voter's vote shall be generated at the time the voter is at the voting station using the

		<p>direct recording electronic voting machine.(C) The voter may examine the paper copy visually or through headphone readout, and may accept or reject the printed copy. (D) The voter may not touch, handle or manipulate the printed copy manually in any way.(E) Once the printed copy of the voter's votes is accepted by the voter as correctly reflecting the voter's intent, but not before, it will automatically be stored for recounts or random checks and the electronic vote will be cast within the computer mechanism of the direct recording electronic voting machine.(F) Direct recording electronic voting machines with a mandatory paper record shall be approved by the Secretary of State. The Secretary of State may promulgate rules and emergency rules to implement or enforce this subsection pursuant to the provisions of section five, article three, chapter twenty-nine-a of this code.</p>
Wisconsin	<a href="#">Wisconsin Act 92</a>	<p>If the device consists of an electronic voting machine, it generates a complete, permanent paper record showing all votes cast by each elector that is verifiable to the elector, by either visual or nonvisual means as appropriate, before the elector leaves the voting area, and that enables a manual count or recount of each vote cast by the elector.</p>

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## SALINE COUNTY CLERK

300 W. Ash St.  
P. O. Box 5040  
Salina, KS 67402-5040  
Phone (785) 309-5820  
FAX (785) 309-5826  
EMAIL [don.merriman@saline.org](mailto:don.merriman@saline.org)  
[www.saline.org](http://www.saline.org)

February 13, 2007

Honorable Mike Burgess  
Chairperson – Elections and Governmental Organization Committee  
And Committee Members

Re: H.B. #2259  
Written Testimony Only

Chairman Burgess and Committee Members:

As Saline County Election Officer and County Clerk, I am supportive of H.B. #2259 relating to the requirement of Voter Verifiable Paper Audit Trail (VVPAT) on electronic voting equipment. During the voting equipment selection process and the open houses that I conducted in Saline County, it became apparent that voters wanted a paper verification of votes cast. I selected the Election Systems and Software (ES&S) direct record electronic touch-screen machine with the Voter Verifiable Paper Audit Trail. Each unit added \$625.00 to the purchase price. During the November 7, 2006 General Election, the paper needed changing during the day, as each full roll of paper only held 85 ballots. (Replacement paper is \$1.85 per roll.) After each election the VVPAT paper is changed and stored for 22 months, which is the same as paper ballot retention.

If the state legislature would require this VVPAT, I believe there should be monies allocated to pay for this. Saline County expended a total of \$103,125.00 (165 machines x \$625.00).

I believe the voters of Saline County feel more confident in voting on our electronic machines with the VVPAT in place.

Thank you for your consideration.

Sincerely,

Donald R. Merriman  
Saline County Election Officer and County Clerk

DRM: /

House Elections & Gov. Org.  
Date: 2-13-2007  
Attachment # 4

**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 Elections and Governmental Organization**

**Testimony on House Bill 2259**

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

February 13, 2007

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify on behalf of the Secretary of State. We oppose passage of House Bill 2259 as an unnecessary and extremely expensive requirement for electronic voting equipment.

This bill contains the following provisions:

- It would require all electronic voting equipment to be equipped with voter verifiable paper audit trails (VVPATs) by January 1, 2008.
- It would allow VVPATs to be the basis for recounts.
- It would prohibit the Secretary of State from certifying any electronic voting equipment that does not include VVPATs.
- It would prohibit the Secretary of State from spending any money from any source on electronic voting machines, or any equipment related thereto, unless they have VVPATs.

While VVPATs have gained some appeal during the past two years among some segments of the voting public, many election administrators and others experienced with electronic voting equipment do not support VVPATs and oppose efforts to require them. VVPATs may become an integral part of electronic voting at some point in the future, but the technology is not yet mature and has not been tested adequately to apply it universally.

It should be pointed out that Congress is currently considering legislation to require VVPATs. There is a chance that if such a federal law passes, it will include funding, which will help alleviate the large fiscal note attached to House Bill 2259.

If House Bill 2259 passes, several thousand electronic voting devices owned by county governments in Kansas would have to be retrofitted by January 1, 2008, at a cost of approximately \$700 per unit. The total cost to counties would be an estimated \$2,399,600.

For these reasons and others listed on the attached page, we urge the committee not to pass House Bill 2259. Thank you for your consideration.

House Elections & Gov. Org.  
Date: 2-13-2007  
Attachment # 5

## **Voter Verifiable Paper Audit Trails on Electronic Voting Machines-- Points to Consider**

We offer the following points to support our argument against passage of legislation requiring VVPATs on electronic voting machines:

- The Help America Vote Act of 2002 (HAVA) requires at least one fully accessible, ADA-compliant voting device in each polling place to allow voters with disabilities, including the visually impaired, to vote a secret, independent ballot without assistance. Requiring a paper receipt on these devices negates this requirement in HAVA because voters with visual impairments cannot read the paper receipt.
- The existing Federal Election Commission Voluntary Standards require paper audit trails, which all Kansas electronic voting equipment has, but the standards do not require *voter verifiable* paper audit trails.
- Congress is considering federal legislation that would require VVPATs. We have been told there is a strong likelihood that a bill will pass. If it does, it might include funding to save the state and/or Kansas counties the cost of adding VVPATs to existing machines. Also, we should wait to see what standards and requirements for VVPATs are written into the federal legislation rather than writing state requirements now that may conflict with federal requirements.
- Electronic voting devices have been used successfully for 25 years, including 20 years in Kansas. There are no documented cases of lost votes caused by the machines.
- A voter could disrupt the process by fraudulently claiming the receipt was incorrect, thereby casting doubt on all votes cast on that machine.
- A voting system is a *system*, with security at all points in the electoral process. VVPATs are involved at only one point and do not enhance the overall security of the process.
- Our estimate of the fiscal impact of this legislation is that it will cost county governments approximately \$2,399,600 in calendar year 2007.

# Johnson County Election Office



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

## TESTIMONY BEFORE THE HOUSE ELECTIONS AND GOVERNMENTAL ORGANIZATION COMMITTEE

*Tuesday, February 13, 2007*

Thank you for allowing me to briefly address the committee regarding House Bill 2259.

I first addressed members of this committee on a similar bill in 2005 and much has changed since then. One thing that hasn't changed, however, is the financial impact upon Johnson County to retrofit our machines. The full impact in Johnson County includes the purchase of more machines and will cost as much as \$4 million. Retrofitting our existing fleet of 1,800 machines alone will cost in excess of \$1 million.

Since 2005, there has been much activity regarding Voter Verifiable Paper Audit Trails (VVPATs) in various states and at the federal level. Federally, it's a fair bet to assume that paper trail legislation will be passed in 2007 and some funding will be associated with that legislation. Therefore, I recommend that the Committee defer to federal activity that may accomplish the same objective as HB 2259, with funding, and update legislation next session to be compliant with federal legislation.

If the committee moves ahead with legislation this year, I respectfully ask that the committee be very specific regarding the use of the paper receipts as the official ballot of records for recounts. For instance, the bill includes the phrase "can be used for recounts." Please do not leave it up to political opponents, parties, or courts to determine when the receipts can be used for recounts, when they can't, and what occurs when paper jams result in receipts not being created for all ballots cast on machines.

Having just experienced an election contest with a margin of two votes, I can envision a hypothetical scenario under this bill where just three receipts jam and are not printed, and a recount of the paper receipts changing the outcome of an election simply because of printer failure. I don't believe that is the intent of this bill, but please be very specific in addressing use of the receipt. The best option, from my perspective, is to not make it the official ballot for recounts.

I stress from an elections integrity standpoint that Johnson County's touch-screen machines have performed well, and we have used touch-screen machines for 5 years. Our machines were built before VVPATs were invented, or even a concept, leading to the cost issue before us.

From an accuracy standpoint, I do not believe the VVPATs are necessary. If it is believed that voter confidence in the overall system may improve with VVPATs, our primary request is that the requirement for VVPATs be matched with proper funding. I believe the most prudent short-term approach is to await the disposition of federal legislation on this issue.

Thank you for allowing me to speak and I respectfully stand for questions.

House Elections & Gov. Org.  
Date: 2-13-2007  
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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## House Elections and Local Government Committee

Testimony on HB 2259 - Kevin Siek

February 5, 2007

Topeka Independent Living Resource Center, Inc., is a not-for-profit human and civil rights organization with a mission to advocate for a fully integrated and accessible society for all people with disabilities. Integration and Accessibility are important to our agency in all aspects of community life, including in the right to vote.

Last Legislative Session, members of our organization and other disability advocates in Kansas worked cooperatively with you to draft compromise language for HB 2808, which addressed the same Voter Verification Paper Audit Trail that is contemplated in the bill you are co-sponsoring in this Session, HB 2259. After much hard work to ensure that the rights of people with disabilities were not compromised in the process of creating a paper audit process for voting, we were disappointed to see that the language agreed upon from last Session was omitted from HB 2259.

Attached to our testimony is a copy of an excerpt of the relevant sections from the 2006 Session's Substitute for SB 143, which includes the language the parties had agreed upon last Session. We are asking the House Elections and Local Government Committee to replace the language in HB 2259 with the language advocates worked so hard to forge through last Session's negotiations.

The proposed language would ensure that all citizens have the ability to cast a secret ballot and verify the integrity of that ballot, including voters with disabilities. The equipment and technology that would ensure these fundamental rights for all citizens is readily available; we are asking for this Committee's leadership to ensure that these technologies are used to ensure that access to the voting process is available to all people equally.

We thank the Committee for the opportunity to participate in today's hearing. We would appreciate any opportunity to continue to work with the Committee and members to protect and support all citizens' right to cast a secret ballot and participate equally in all aspect of community life.

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

House Elections & Gov. Org.  
Date: 2-13-2007  
Attachment # 7

1 cards manually counted shall be added to the totals for the respective  
2 precincts or election districts.

3 (d) Advance voting ballots may be counted by the automatic tabulat-  
4 ing equipment if they have been ~~punched or~~ marked in a manner which  
5 will enable them to be properly counted by such equipment.

6 (e) The return printed by the automatic tabulating equipment, to  
7 which has been added the return of write-in and advance voting votes  
8 and manually counted votes, shall constitute the official return of each  
9 precinct or election district. Upon completion of the count the returns  
10 shall be open to the public. A copy of the returns shall be posted at the  
11 central counting place or at the office of the election officer in lieu of the  
12 posting of returns at the individual precincts.

13 (f) If for any reason it becomes impracticable to count all or a part  
14 of the ballots with tabulation equipment, the county election officer may  
15 direct that they be counted manually, following as far as practicable the  
16 provisions governing the counting of paper ballots.

17 Sec. 11. K.S.A. 25-4413 is hereby amended to read as follows: 25-  
18 4413. In the case of a recount, the ballots ~~or ballot cards~~ shall be re-  
19 counted in the manner provided by K.S.A. 25-4412 *and amendments*  
20 *thereto*.

21 Sec. 12. K.S.A. 25-4414 is hereby amended to read as follows: 25-  
22 4414. Electronic or electromechanical voting system fraud is: (a) Being  
23 in unlawful or unauthorized possession of ~~ballot cards, ballot labels or~~  
24 *voting equipment*, computer programs, *operating systems, firmware, soft-*  
25 *ware or ballots*; or

26 (b) intentionally tampering with, altering, disarranging, defacing, im-  
27 pairing or destroying any electronic or electromechanical system or com-  
28 ponent part thereof, ~~any ballot, ballot card or ballot label~~ *or any ballot*  
29 *used by such systems*.

30 Electronic or electromechanical voting system fraud is a severity level  
31 10, nonperson felony.

32 New Sec. 13. The secretary of state may adopt rules and regulations:

33 (a) For the use of electronic and electromechanical voting systems to  
34 count votes under the election laws of this state; and

35 (b) necessary for the administration of this act.

36 New Sec. 14. K.S.A. 25-4401 through 25-4414, inclusive, and  
37 amendments thereto, and sections 13 and 14, and amendments thereto,  
38 shall be known and may be cited as the electronic and electromechanical  
39 voting systems act.

40 Sec. 15. K.S.A. 25-1308 is hereby amended to read as follows:  
41 25-1308. (a) The secretary of state shall examine and approve the  
42 kinds or makes of voting machines, and no kind or make of voting  
43 machine shall be used at any election where voting machines are

1 authorized to be used unless and until it shall have been approved  
2 by the secretary of state and a statement thereof is filed in the  
3 office of the secretary of state.

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

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

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

15 (4) *No voter verified paper audit trail required under this subsection*  
16 *shall be used for the purposes of determining the outcome of any election*  
17 *conducted in the state of Kansas.*

18 (5) *As used in this subsection:*

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

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

27 **Sec. 16. K.S.A. 25-1310 is hereby amended to read as follows:**  
28 **25-1310. (a) A kind or make of voting machine approved by the**  
29 **secretary of state:**

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

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

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

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

43 (5) **must be so constructed as to prevent voting for more than**

1 one person for the same office except where the voter is lawfully  
2 entitled to vote for more than one person for that office;

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

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

10 (8) must provide facilities for “write-in” votes;

11 (9) must provide for voting in absolute secrecy in voting, except  
12 as to persons entitled to assistance;

13 (10) must be so constructed as to accurately account for every  
14 vote cast upon it;

15 (11) be provided with a “protective counter” or “protective de-  
16 vice” whereby any operation of the machine before or after the  
17 election will be detected;

18 (12) be provided with a counter which will show at all times  
19 during the election how many persons have voted; and

20 (13) be provided with a mechanical model illustrating the man-  
21 ner of voting on the machine, suitable for the instruction of voters.  
22 Voting machines approved by the state executive council shall con-  
23 tinue on the approved list of voting machines.

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

28 **New Sec. 17.** No funds received by the secretary of state from  
29 any source whatsoever shall be used for the initial purchase, up-  
30 grade, retrofit or equipping of any direct recording voting system,  
31 or any equipment related thereto, unless such voting system in-  
32 cludes or is equipped with an accessible voter verified paper audit  
33 trail as defined in K.S.A. 25-1308, and amendments thereto.

34 ~~Sec. 15.~~ **18.** K.S.A. 25-1307, 25-1308, 25-1309, 25-1310, 25-1311,  
35 25-1312, 25-1313, 25-1314, 25-1315, 25-1317, 25-1318, 25-1319, 25-  
36 1320, 25-1321, 25-1322, 25-1324, 25-1325, 25-1326, 25-1327, 25-1328,  
37 25-1329, 25-1330, 25-1331, 25-1332, 25-1333, 25-1334, 25-1335, 25-  
38 1336, 25-1337, 25-1338, 25-1339, 25-1341, 25-1343, 25-4401, 25-4403,  
39 25-4404, 25-4405, 25-4406, 25-4407, 25-4409, 25-4410, 25-4411, 25-  
40 4412, 25-4413 and 25-4414 are hereby repealed.

41 ~~Sec. 16.~~ **19.** This act shall take effect and be in force from and after  
42 its publication in the statute book.



January 13, 2007

Elections and Governmental Organization Committee  
Representative Burgess – Chairperson

Dear Committee Members:

Butler County would like to thank you for this opportunity to testify on behalf of House Bill 2259. Butler County would like to express its opposition to HB 2259, which would require voter verifiable paper trails (VVPATS) at election sites. The implementation of this bill would result in a large financial burden to Butler County government as well as slowing down the voting process at the poll sites. The direct costs associated with the program to Butler County are as follows:

- \$126,000 State Contract price for printers, without installation fees.
- \$144,000 40 additional IvoTronics (with printers) to help with additional lines
- Estimated \$2,600 Local labor for installation of printers in our existing machines.
- \$7.00 Per roll of paper for every 80 voters, would total \$1800 per election.

The primary concerns are that the printers would greatly slow down the voting process. Voters would spend more time voting, because they would be watching the printer record the selections. There would be additional confusion and questions, regarding the printer and printer receipts. Additionally when the printers run out of paper, the terminal shuts down. This puts fewer terminals in use at a time, which would also cause delays in the voting process, and will add longer lines. Once a printer is out of paper, a technician would be required to change the roll. Having VVPATS will require 3 to 5 additional technicians on the road Election Day keeping the rolls changed and the machines operating. It also adds about 12 lbs to the machines making them harder for poll workers to setup and for delivery crews to handle. Finally, the VVPATS will shorten operating time on batteries if there should be a power failure issue.

Butler County appreciates the opportunity to testify before this committee and hopes that you will take into consideration our opposition to this bill due to the economic burden this would create for our organization and the constituents of Butler County.

Sincerely,

Ron Roberts  
Butler County Clerk

Ron Roberts, County Clerk

House Elections & Gov. Org.  
Date: 2-13-2007  
Attachment # 8

RE: HB 2129

Submitted by:

Harriet Lange, KAB

Rep. Vickrey moved to accept

Proposed amended language for KSA 25-2407

this language as sub. for HB 2129.

AN ACT concerning elections; dealing with certain crimes; ~~repealing~~ amending K.S.A. 25-2407 and ~~repealing~~ the existing section.

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

Section 1. K.S.A. 25-2407 is hereby ~~repealed~~ amended to read as follows: 25-2407. Corrupt political advertising is:

(a) Publishing or causing to be published in a newspaper or other periodical any paid matter which ~~is designed or tends to aid, injure or defeat any candidate for nomination or election to public office expressly advocates the nomination, election or defeat of any candidate,~~ unless such matter is followed by the word "advertisement" or the abbreviation "adv." in a separate line together with the name of the chairman of the political or other organization inserting the same or the name of the person who is responsible therefor; or

(b) broadcasting or causing to be broadcast by any radio or television station any paid matter which ~~is designed or tends to aid, injure or defeat any candidate for nomination or election to public office expressly advocates the nomination, election or defeat of any candidate~~ unless such matter is followed by a statement which states: "Paid for" or "Sponsored by" followed by the name of the sponsoring organization and the name of the chairperson or treasurer of the ~~that the preceding was an advertisement together with the name of the chairman of the~~ political or other organization sponsoring the same or the name of the person who is responsible therefor; or

(c) publishing or causing to be published in a newspaper or other periodical any paid matter which is intended to influence the vote of any person or persons for or against any question submitted for a proposition to amend the constitution or to authorize the issuance of bonds or any other question submitted at an election, unless such matter is followed by the word "advertisement" or the abbreviation "adv." in a separate line together with the name of the chairman of the political or other organization inserting the same or the name of the person who is responsible therefor; or

(d) broadcasting or causing to be broadcast by any radio or television station any paid matter which is intended to influence the vote of any person or persons for or against any question submitted for a proposition to amend the constitution or to authorize the issuance of bonds or any other question submitted at an election, unless such matter is followed by ~~the~~ a statement which states: "Paid for" or "Sponsored by" followed by the name of the sponsoring organization and the name of the chairperson or treasurer of the ~~that the preceding was an advertisement together with the name of the chairman of the~~ political or other organization sponsoring the same or the name of the person who is responsible therefor.

Corrupt political advertising is a class C misdemeanor.

New Sec. 2. "Expressly advocate the nomination, election or defeat of a candidate" shall have the meaning ascribed to it in K.S.A. 25-4143 (h), and amendments thereto.

Sec. 3. K.S.A. 25-2407 is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

~~Attachment 8~~