

3/16/2023
HB2086
Opponent
Brett Anderson
Republican Precinct Committeeman

Chairman Thompson and Senators on the Federal & State Affairs Committee:

I am submitting my testimony on bill HB2086. I am in opposition to this bill. I believe this bill was packed with important statute revisions and additions wrapped in a cover of minor changes. I believe it needs to be split apart. There is too much to consider and research to blindly pass it as a package. The initial bill was labeled as a technical bill and one that removed/reworked obsolete wording. This bill has much more in it than that. I would urge all committee members to study this bill.

Here is a list of my concerns:

Section 1 (New)(a) “The secretary of state shall oversee the conduct of statewide elections in this state as the chief election officer and shall be responsible for assisting and advising county election officers in conducting elections in compliance with federal and state laws and rules and regulations.”

Concern I have a concern with the Secretary of State’s office inserting a statute saying they are the chief election officer. The power of the secretary of state is given to him by the legislature. I believe if Secretary Schwab wants to be the number one in charge, it needs to be a stand-alone bill and voted on by the legislature. Not wrapped up in a bill full of minor changes. The centralized power to one person over the elections is not a good idea. The power needs to stay with the county clerk or election commissioner.

Section 3 (New) “No county election office or any employee or agent thereof shall create, or permit any other person to create, or disclose to any person an image of the hard drive of any electronic or electromechanical voting system, optical scanning equipment or any other voting system that contains a hard drive component without the written consent of the secretary of state.”

Concern: It is the responsibility of the county clerk or election commissioner to ensure elections are free, fair, and safe. This goes for all aspects of the election process, including all computer equipment. If the county clerk or election commissioner cannot keep records or images of their equipment’s hard drives before, during, and after the election or software updates, then that is a problem. The problem arises when the computer equipment manufacturers install their updates after elections or software updates. It isn’t in the best interest of the people to have this in the hands of a third-party vendor that will not disclose this information because they say it is proprietary information. The tabulator is nothing more than a counter. If it has proprietary information, then it is more than a counter and that is a problem. This goes along with the old saying, trust but verify. This request for statute will lock out the clerks and commissioners from keeping their constituents safe. Look into Tina Peters, the county clerk and recorder from Mesa County Colorado. She made images of the hard drive

before and after the voting machine company's software update and found files were overwritten after the 2021 municipal election. You can see how and what happened in the documentary *Selection Code*. Why were the files overwritten? What were they trying to hide? Why is a machine that simply scans and counts proprietary?

You can watch Selection Code here: <https://rumble.com/v1h341f-special-screening-selection-code.html>

Section 41 K.S.A. 25-2703 (b) "No person other than judges, clerks and other election officers allowed by law, and those admitted for the purpose of voting, shall be permitted within three feet of the voting booths, of voting machines where they are used, if any, or of any table being used by the any election board, except by the authority of the supervising judge. The supervising judge may expand such distance beyond three feet as needed."

Concern: There is no reason to move poll workers and poll watchers any further outside of the three feet rule. With the concern of misconduct in our elections, moving the people watching further away only makes people wonder what they don't want you to see. You can't see much of anything from within three feet anyway. I have personal experience being both a poll worker and a poll watcher, so I am speaking from experience. Also, no distance was noted in their request. Does this mean the poll judge can put us 10 feet away? How about 50 feet away? Three feet is plenty.

Section 50 K.S.A 25-3005a "Precinct committeeman and precinct committeewoman were both removed from the list of authorized poll agents. You can see the strikethroughs in the bill."

Concern: Why were the precinct committeeman and committeewoman positions struck from the list? These people are duly elected or appointed. I would like to hear some discussion on why they felt the need to remove these people. From where I sit, there is no reason to remove them. I believe this is an attempt to remove power from the position of precinct committeeman or committeewoman. There have been other attempts in other states during this session to render the committeeman's position less effective. I believe Secretary of State needs to answer why he feels the need to remove them from this list.

Section 51 K.S.A. 2022 supp 25-3009 (b)(1) "The audit shall be performed manually and shall review all paper ballots or the corresponding ballot images selected pursuant to subsection (a). The audit shall be performed by a sworn election board consisting of bipartisan trained board members. The county election officer shall determine the members of the sworn election board who will conduct the audit."

Concern: The use of ballot images goes outside the chain of custody for keeping ballots secure. You should never use an image of a copy of a ballot. You do not know if the file has been compromised. You do not know if the ballot images shown are the corresponding images of the ballots cast for that election. There are no checks and balances for ballot images. A paper ballot goes into a locked box that is tagged, signed off on, and sealed. You then have to go through a process to unseal the box. There are none of those security procedures with ballot images. This ties back to the issue above where the county clerks and election commissioners are not allowed to look into the machines. There is no transparency in this process.

Two students from the University of Michigan in 2019 did a presentation at Defcon showing how to manipulate the images. You can watch that video here:
<https://www.youtube.com/watch?v=ja6J1wY2UNw> .

Section 63 K.S.A. 2022 supp 25-4414(2) “Accessing without authorization or facilitating the unauthorized access to electronic or electromechanical voting system equipment, electronic poll book equipment, computer programs, operating systems, firmware, software or ballots.”

Concern: This statute request coincides with my concern noted above with Section 3. It is the responsibility of the county clerks and election commissioners to keep the elections free, fair, and safe. Restricting these areas will further lessen their abilities to do their job. The county clerks need to be able to do their jobs and the machines need to be transparent.

Section 64 K.S.A. 25-4612 (2) “Accessing without authorization or facilitating the unauthorized access to optical scanning equipment;”

Concern: This statute request coincides with my concern noted above with Section 3. It is the responsibility of the county clerks and election commissioners to keep the elections free, fair, and safe. Restricting these areas will further lessen their abilities to do their job. The county clerks need to be able to do their jobs and the machines need to be transparent.

Section 66 K.S.A 25-4709 (b) “After reviewing a complaint and giving all inferences to the complainant, the secretary of state may dismiss the complaint without hearing if the complaint fails to allege facts that assert a violation of title III.”

Concern: I don't feel that a complaint can just be pushed aside and dismissed by one person, the secretary of state. If the process is meant to go before a board, then it needs to go before the board. Letting one person have the ability to dismiss gives too much power to one person.

In conclusion, please consider the concerns I have above. This bill is massive and rolls up important placement of powers in with small statute clean ups. It is much more than what Clay Barker quoted earlier this week in saying “It is primarily a clean-up bill that also addressed some issues that have arisen in the last 3 election cycles”. These requests from the Secretary of State's office need to be evaluated and determined on a much smaller bill. Blindly passing this as just a bill that is doing bill maintenance is wrong. Please take time to read this through this bill and educate yourself on these areas of elections.

Respectfully,

Brett Anderson
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Wichita, KS