

**Office of the Kansas Secretary of State**

**Report on Inquiry at  
Sedgwick County Election Commissioner's Office  
for the  
November 6, 2012, General Election**

December 21, 2012

**Background**

On election night November 6, 2012, and during the days immediately following the election, the Sedgwick County (hereinafter, "SGCO") Election Commissioner's office and Secretary of State's office received questions from the media, candidates, political parties, and members of the voting public about a delay in the reporting of election results after the polls closed on election day.<sup>1</sup>

Secretary of State Kris Kobach sent a task force of members of his staff to assess the cause of the delay in election night results and to identify possible remedies to the problem. The task force met with the SGCO Election Commissioner and with a representative of the vendor, Election Systems and Software (ES&S), that manufactures the tabulation and reporting software used by SGCO.

The task force included the following members:

Eric Rucker, Assistant Secretary of State;  
Ryan Kriegshauser, Deputy Assistant Secretary of State Legal Counsel and Policy;  
Brad Bryant, Deputy Assistant Secretary of State for Elections; and  
Bryan Caskey, Assistant State Elections Director.

On November 13, 2012, the task force met with the following individuals:

Tabitha Lehman, Sedgwick County Election Commissioner;  
Sandy Gritz, Deputy Election Commissioner; and  
Tim King, Election Systems and Software.

**Election Night Reporting**

The task force determined that the delay in reporting election night results was twofold. First, results were not posted on the county's web site as early as expected or as early as had been accomplished in prior years. Second, the first set of posted results indicated that they were

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<sup>1</sup> It is noted that election night reporting is not a statutorily dictated duty of either the Secretary of State's Office or the Sedgwick County Election Commissioner. However, because of the public interest involved, the Secretary of State and the county election offices have traditionally endeavored to report the election results on election night.

complete and that all precincts were included in the report (289 of 289). In fact, the first report included only advance vote totals and did not include a majority of the precincts.

### **Task Force Findings**

The task force identified the following findings with the concurrence of the SGO Election Commissioner.

#### **1. Vote totals for candidates and ballot questions were never incorrectly reported.**

The first reported election results posted on the web site late in the evening incorrectly indicated that all of Sedgwick County's precincts were included. In fact, this initial report included only advance ballot totals. The initial report was incorrect and gave the public the impression that the election results were complete. It is noted that the SGO Election Commissioner clearly told the press that the number of precincts reporting was incorrect and that the results included only partial returns.

Although the initial report was incorrect in the number of precincts reporting, the vote totals accurately reflected the advance ballot totals for all candidates and ballot questions. Subsequent reports issued by the Election Commissioner's office also correctly reported precinct-by-precinct totals until all precinct results were reported.

The task force has ultimately determined that the first report's indication that the results were complete was misleading but that the tabulation of votes was accurate throughout the tabulation process.

#### **2. The reporting error was not caused by a hardware or software problem.**

No voting software malfunction or ballot programming error led to the delay in reporting results on election night in the 2012 election. The vendor, ES&S, has independently verified this to be the case. The same voting equipment and software is used by many Kansas counties and jurisdictions across the United States. Any software malfunction would most likely have manifested itself in other jurisdictions if it existed.

Likewise, the manner in which the 2012 election ballot was programmed for the voting machines and ballot scanners was found to be correct.

#### **3. The error was caused by a preventable human mistake.**

It is common practice for county election offices to tabulate and report advance voting totals soon after the polls close on election night. County election offices subsequently report cumulative results as precinct totals are returned to the election office.

In many jurisdictions (including SGO), advance voting totals contain multiple precincts within the county. Generally, at least one advance ballot is cast in most if not all precincts in the jurisdiction. Consequently, when advance voting reports are completed, the totals, although preliminary, appear to indicate that most or all of the precincts in the county have reported their vote totals. This is because the software defaults to showing a precinct as reporting if an advance

ballot was cast in that precinct. This false impression may be prevented in the future by using one of two methods: (a) checking a box on the screen during tabulation, which prevents the report from indicating that all precincts have been reported, or (b) printing the report, manually redacting or obscuring the misleading precinct total, scanning the corrected report, and posting it on the web site. Neither of these methods was employed in SGCO before posting initial results on the web site. It is possible and advisable that the SGCO Election Commissioner follow one or both of these procedures in future election night reporting.

**4. The error was similar to a problem that occurred in reporting results on primary election night on August 6, 2012.**

The error described above in Paragraph 3 also had been made during the evening of the primary election held on August 6, 2012. Sufficient steps were not taken after the primary election to identify the cause of the problem in order to prevent the recurrence of the error in the general election.

**5. The election commissioner’s office is understaffed.**

The SGCO Election Commissioner’s office is not staffed commensurately with election offices in other Kansas counties. This resulted in a situation on November 6, 2012, in which too few employees were attempting to accomplish too many tasks simultaneously. Such an environment increases the probability of mistakes and makes it more difficult to identify and correct them in real time.

The conclusion that the SGCO election office is understaffed is supported by the following comparison to the other three Kansas counties with election commissioners:

<b>County</b>	<b>2010 Population</b>	<b>2012 Voter Registration</b>	<b>Number of Full Time Employees</b>	<b>Number of Part Time Employees</b>
Johnson	544,179	383,491	15	4
<b>Sedgwick</b>	<b>498,365</b>	<b>274,369</b>	<b>3</b>	<b>6</b>
Shawnee	177,934	110,322	8	0
Wyandotte	157,505	84,208	7	1

**6. The election commissioner’s office would benefit from additional training on the software that operates the voting equipment.**

The ballot programming and vote tabulation software used in SGCO is called Unity. It is manufactured by ES&S in Omaha, Nebraska. ES&S offers training to county election employees at a rate established in a state contract held by the Kansas Secretary of State. The SGCO Election Commissioner attended this training in 2009 but in a different capacity. Since that time, because of changes in staff, no SGCO Election Commission employee has had recent and extensive training in the Unity software suite. However, prior to changes in staff, at least one member of the SGCO Election Commission had updated Unity training.

Some Kansas counties using ES&S voting systems rely on the vendor to program their ballots and assist in tabulating their results. Other Kansas counties program their own ballots in-house using the Unity software. Of the counties who program their own ballots in-house, most pay for

the training of at least one staff person. It appears that SGC0 has been programming its ballots and tabulating votes without updated training and has, notably, done so successfully in 2012. However, having at least one person fully trained in the entire Unity software suite would increase efficiency and help to prevent reporting errors.

**7. The delay in election night reporting was due in part to the delayed return of ballots to the SGC0 election commissioner's office from some polling places.**

Ballots and memory cards containing election results were not returned to the SGC0 Election Office from certain polling places as quickly as anticipated. Memory cards must be delivered to the election office before precinct results can be tabulated and reported. The delayed delivery of some polling places' results caused the posting of returns to be delayed.

**8. No laws were broken and no written policies of the Secretary of State were violated.**

No state law requires the tabulation and reporting of results on election night, and there is no law, regulation, or policy that requires results to be posted at a particular time on election night. There are statutory requirements that ballots be counted and results tabulated in preparation for the meeting of the county board of canvassers. This canvass occurs six to nine days after the election. The Sedgwick County general election results were not posted as early as election observers or the public were accustomed to receiving them.

**Recommendations**

The task force presented its findings to Kansas Secretary of State Kris Kobach. The Secretary accepted the findings as presented and developed the following recommendations after discussions with his staff.

**1. The SGC0 Election Commissioner's office should work with County Commissioners and others to appropriately staff the office.**

The SGC0 Election Commissioner should develop a budget to include a request for budget authority to appropriately staff her office. The SGC0 Commission and County Administrator and others involved in the budgeting process should join in providing the necessary funding and appropriate resources to run the office. The determination of the levels of staffing should include the consideration of additional temporary personnel as needed during peak times immediately before and after major elections.

**2. Office duties within the Election Commissioner's office should be assigned to afford each staff member the ability to focus on and devote the time necessary to accomplish all essential administrative duties.**

It is common for staff members to be assigned multiple duties and responsibilities. Duties should be assigned by the Election Commissioner so that staff members are clearly aware of their specific responsibilities and their duties are clearly designated to maximize staff resources.

Election administration requires work to be completed against fixed deadlines. Specific tasks must be completed to accomplish major goals that occur during the weeks before an election. Tasks should be distributed among staff members so that they can accomplish them without

distraction or interruption. This recommendation assumes that Recommendation 1 has been accomplished and that staffing levels are adequate to facilitate the effective assignment of duties.

**3. Selected staff members should receive complete and intensive training from the vendor on the use of the software that operates the voting system.**

The election office budget should accommodate training on the software used for ballot programming and vote tabulation. The software is critical to the successful conduct of elections, and adequate training will help ensure that voters receive the correct ballots, that the intent of voters is properly interpreted, and that the results are tabulated and reported correctly. The Secretary of State's office offers this training free of charge through an annual endowment program associated with the Help America Vote Act of 2002.

**4. The SGC Election Office should contract for on-site election day support from the vendor for all regularly-scheduled elections for at least the next two calendar years.**

The Election Commissioner's office should retain on-site technical support from the vendor before, on, and after election day to assist in the tabulation and reporting of election results. This additional support should prevent misleading reporting errors on election night and throughout the canvassing process. Onsite technical support from the vendor is recommended for all regularly-scheduled elections for the next two years after the issuance of this report.

**5. The SGC Election Office should increase the amount of pre-election testing before future elections.**

State law requires a public test of the voting equipment before each election. In addition to the required test, it is recommended that the SGC Election Commissioner's office adopt a policy of conducting pre-election test runs of voting procedures to familiarize staff members with their respective tasks and to identify potential problem areas where additional attention or resources should be deployed.

**6. The Election Commissioner should take steps to post partial results as soon as possible after the polls close and to supplement the initial posting with cumulative reports with reasonable frequency.**

A standard practice used by many Kansas counties is to tabulate advance (early or absentee) vote totals and post them as soon as possible after the polls close. Advance ballots may be processed and ballots may be scanned before the polls close so that as soon as voting is concluded these votes may be tabulated and the first unofficial election results released to the public. Following the posting of the initial advance voting results, as the first precinct results are delivered to the election office, they should be grouped by precinct, tabulated, and added to the advance totals to produce a cumulative set of results for posting on the web site. This process should be followed throughout the evening with clear indications of how many precincts are included in each cumulative set of results.

**7. The Election Commissioner should obtain training on press and public relations.**

All public officials must communicate effectively with the press and public. There are individuals experienced in media and public relations who can provide basic guidance on successful communication techniques and improving the responsiveness of the office to public and media inquiries. Also, a meeting could be arranged between the Election Commissioner and

local media representatives to determine what their desires and expectations are and how best they may be met by the election office. Communication with the media in advance of major election events should be established. Some applicable principles of media relations are provided in the Kansas Election Standards. These guidelines are a product of both the Kansas Secretary of State and the National Association of Secretaries of State.

**8. The Election Commissioner should consider increasing the number of polling places on election day, especially during gubernatorial and presidential general elections.** Sedgwick County currently operates with fewer than one third the number of polling places it had ten years ago. A reduction in polling places was reasonable in light of tight budgets and an aggressive and successful advance voting program, which reduced the demand for election-day voting services. However, the number of polling places may have been reduced too far. This can contribute to longer voting lines, greater travel distances, and possible delays in the delivery of results to the election office on election night. It should be noted that increasing the number of polling places may require the acquisition of additional voting equipment. The county may apply to the Kansas Secretary of State's Office for financial assistance through the endowment program associated with the Help America Vote Act of 2002. Because increasing the number of polling places may require additional budgetary resources, this is something that should be considered in planning for future elections in gubernatorial and presidential election years.

### **Evaluation Period**

The Secretary of State will monitor progress in achieving the goals set forth in these eight recommendations from the issuance of this report through the spring elections in 2013. In May, 2013, the performance of the Election Commissioner's office will be reassessed. The reassessment will take into account the fact that some of the recommendations require cooperation from others and require resources provided by the county government.