

CANVASSING KANSAS

An Update on Election News from Kansas Secretary of State Ron Thornburgh

September 2004

CANVASSING KANSAS

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Primary Election Wrap-up

The August 3, 2004 primary election was a success due to the efforts of the county election officers and election board workers across the state of Kansas. Election workers faced a lot of changes, mostly brought about by the Help America Vote Act (HAVA), there was some uncertainty about the election due to a late lawsuit over the closed/open status of the primary, and there was an unexpectedly high level of turnout to make things more interesting.

This election represented several firsts:

- The first primary in Kansas that was not a closed primary
- The first major election under the new HAVA rules, including voter identification
- The first election since renewed emphasis was placed on polling place accessibility

Turnout

Turnout in the primary was a pleasant surprise, because 473,862, or 29.8%, of 1,591,428 registered voters cast ballots. There was a strong advance voting turnout in many areas of the state, more than an average number of contested primaries, and several significant special questions on the ballot in large counties.

Before each election, Secretary of State Ron Thornburgh holds a press conference to make a prediction of turnout. On July 30, he predicted 430,000 voters would turn out on August 30, which would have been 27% of the total of 1,591,428 registered voters at the time. That would have been a modest increase of 4,500 voters from the 2000 primary. When the counting was done, 43,000 additional voters had cast ballots. Since 1990, turnout in the primary has ranged from a high of 43% in 1992, to a low of 26% in 2002. Not all voters are eligible to vote in the primary because only the Democratic and Republican parties hold primaries in Kansas.

Please see **Primary**, page 8

New County Clerk in Smith County

Sharon Watkins is officially the new county clerk in Smith County. Many of us already know Sharon because she has been in the clerk's office for a year. Sharon's predecessor, Lela Rogers, resigned on May 28, 2004, and Sharon was officially appointed by the governor on June 14, 2004. She joined the clerk's office in September 2003, having moved over from the treasurer's office where she had worked since 2000.

Sharon lived in a lot of places before settling in Smith County. Born in Michigan, she lived in Ohio, Indiana, Illinois and Iowa before settling in Portis 27 years ago. She is married to Clark Walters, postmaster in Portis, and has two children and one grandchild. Her oldest child, a daughter, is married with a child of her own. Her son is a student at Washburn University in Topeka.

Her main hobby is quilting, which she seems to be pretty good at. She has taught quilting classes in France and hopes to return there again next year for a repeat performance.

Sharon reports that she loves being county clerk. Although politics is not her favorite thing, she has gotten past the pure politics and successfully conducted several elections. The November general will be the next big test. Although Sharon was somewhat inexperienced when she took over, she has benefited greatly from being able to learn from her fellow county clerks. She is grateful to her colleagues for helping her when she needed it.

We want to welcome Sharon into the elections community, and we all look forward to working with her in the future, because, having no opposition in the primary or the general election, she expects to be elected to her first full term.

Polling Place Closures Generate Interest

Kansas law assigns the task of operating polling places to the county election officer. The CEO designates which sites will be used as polling places in the county for a given election and equips, staffs and operates them. The list of sites often changes from election to election, sometimes due to scheduling conflicts or denial of permission by the owner/manager of the site.

In 2004, it was anticipated that more polling places than usual would be moved and consolidated due to several factors:

- The freeze on precinct boundary changes before and after the U.S. census and redistricting ended.
- Polling place accessibility requirements in HAVA would create additional expenses.
- HAVA-compliant electronic voting machines, scheduled for deployment in 2006, would be more affordable with fewer polling places.

This was discussed in an article in a previous issue of this newsletter (See *Canvassing Kansas*, September 2003, page 4.)

The process of opening, closing, moving and consolidating polling places received additional attention during the 2004 legislative session as Secretary of State Ron Thornburgh was providing HAVA updates to the House and Senate elections committees. He told committee members that precincts might be consolidated into fewer polling places, and some sites could be moved, due to the implementation of HAVA and the other factors listed above. Some legislators were interested in assessing the scope and nature of changes in polling places in their respective districts.

A proviso was added to the 2004 omnibus appropriations bill [House Substitute for Senate Bill 536, page 16, subsection (h)] requiring the Secretary of State to report to the Budget Committee on July 15, 2004, and again on October 15, 2004, the names, locations and reasons for any polling place closures. The first report was made July 15 and covered the period January 1, 2004, through July 15; the second report will be made on October 15 and will cover the period July 15 through October 15, 2004. Because counties are responsible for opening, equipping, managing and, if necessary, closing polling places, the Secretary of State surveyed CEOs to collect the information to make the report to the Legislature.

Although there were differences among CEOs in the interpretation of the terms “moved” and “closed,” the report provided an overview of the process of designating polling places. According to the statewide report, 257 polling places were moved during the period from January through mid-July, and 125 were closed. The official number of polling places operating on primary election day was not available at the time of this writing, but in 2002 there were approximately 2,400 polling places. Using that figure, the July 15 report of sites moved and closed represented approximately 15.9% of the total. The average number of changes per county was 3.6. There were 37 counties (35.2%) that made no changes to their polling places.

The survey will be conducted again in October for the October 15 report to the Budget Committee.

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RON THORNBURGH Kansas Secretary of State

Dear Fellow Election Officers:

First of all, thank you and congratulations on a successful primary election. I know it wasn't the easiest election; in fact it was probably one of the most difficult in many years. HAVA is changing the way elections are conducted across the nation, and many of the HAVA changes went into effect for the first time in August, including voter identification, changes in provisional voting, and required training for CEOs and poll workers. HAVA will continue to change the face of elections for the next several years.

We also had a curve thrown at us in Kansas with the uncertainty over whether we would have the traditional closed primary or an open primary. As you know, after all the legal wrangling we ended up with a hybrid—a closed Republican primary and a semi-open Democratic primary. I know this caused confusion among voters and made your job of training poll workers much more difficult.

We have passed the first test, but we have an even bigger test before us with the November general election. The level of scrutiny will increase greatly because this is the first presidential election since the infamous 2000 election, it is the first general election under HAVA, and the presidential race is shaping up to be a close one again.

You may have heard me say this before, but it's worth repeating: I am proud to work with a group of CEOs who are so hard working and adaptive to change. Through all of the changes, lawsuits and uncertainty there has been one consistent factor: your dedication to serving the Kansas voter. Let's all keep working together through the next few months and finish out another successful election year. Please let me know how we in the Secretary of State's office can help.

Sincerely,

A handwritten signature in black ink that reads "Ron".

RON THORNBURGH
Secretary of State

New Voting Equipment Certified

Several voting equipment certification meetings have been held in the Secretary of State's office during the past several months.

In September, 2003, the Secretary of State certified upgrades to the MicroVote Infinity DRE system. The new upgrades are Version 5.03. Further upgrades are possible before the November 2004 general election. MicroVote DRE equipment is currently used in Sedgwick and Butler counties.

A certification meeting was held June 16, 2004, for consideration of the AccuPoll Version 2.3.14 DRE system, Model AVS-1000-A. The AccuPoll system is marketed by AmCad. The Secretary of State granted conditional approval to the system. It will receive full certification when it has been used in an official election in a jurisdiction in the United States. As of this writing it has not been used in an official election because AccuPoll is a relatively new company and the system has only recently been approved by the independent testing authorities certified by the National Association of Secretaries of State and the National Association of State Election Directors.

The AccuPoll was the first system brought to Kansas with a built-in voter verifiable paper trail system. It produces a printed receipt showing the voter's actions on each race or question on the ballot. The paper trail component is a new feature that some manufacturers are adding to their electronic system in response to recommendations from certain parts of the voting public.

It is not required by federal law or voting standards nor by state law, but some people's loss of confidence in purely electronic voting systems has produced a demand for paper trail functions. Other manufacturers are researching and developing paper trail add-on components for those states and localities that require them.

A certification meeting was held August 10, 2004, for consideration of upgrades to the Diebold Election Systems AccuVote TSX Touch Screen DRE voting system, firmware version 4.5.1. This was an improvement on the Model TS-R6 Touch Screen already certified in Kansas and used in Johnson and Lyon counties. The TSX will eventually replace the TS-R6. It incorporates a number of improvements in the way the voter interacts with the machine. It does not include a built-in paper trail, but it does accommodate an add-on component if desired. This is one of the first few systems that has been qualified by an independent testing authority under the 2002 FEC Standards. Most equipment has been qualified under the 1990 Standards, which were replaced by the 2002 Standards.

A certification hearing was held June 3, 2004, for consideration of a new DRE system offered by Election Systems and Software (ES&S). The iVotronic system represents improvements on the Votronic DRE system already certified in Kansas. Some questions raised in the meeting have been submitted to ES&S for answers. Certification of the system is pending.

Federal Write-in Absentee Ballot

There may be many CEOs in Kansas who have never dealt with a FWAB, but more than one CEO received FWABs in the August primary election. FWAB stands for Federal Write-in Absentee Ballot. The Federal Voting Assistance Program, which oversees federal services voting, has for many years recommended that states broaden their use of the FWAB. In Kansas the use of FWABs is limited because no state laws address the issue and because Kansas laws contain other provisions to assist federal services voters in the timely transfer of ballots. The FWAB is used when time is too short for normal ballot transmission, but Kansas allows the recommended 45 day ballot distribution period as well as the faxing of federal services ballots, which in most cases eliminates the need for the FWAB.

According to the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the FWAB is a special ballot that allows overseas voters to write in their candidate preference for President, U.S. Senate, and U.S. Representative in a general election. If the voter does not know the name of the candidates, the voter may instead write in the political party he or she wishes to vote for.

UOCAVA requires Kansas to recognize a FWAB submitted in a general election for a federal office if the following conditions are satisfied by the citizen submitting the FWAB:

1. The citizen is located overseas.
2. The citizen has applied for a regular absentee ballot early enough, so that the request is received by the local election official at least 30 days before the election.
3. The citizen did not receive the requested regular absentee ballot in a timely manner.

If you receive a valid FWAB, which satisfies these three conditions, federal law requires the ballot to be counted.

UOCAVA allows a citizen who submits a FWAB and later receives a state absentee ballot to also submit the state absentee ballot. In a situation where you receive both a FWAB and a state absentee ballot from a citizen you will count the state absentee ballot and disregard the FWAB.

Federal Write-in Ballot
Continued on page 8

Electoral College

Each presidential election year generates a high level of interest in the voting public. This is especially true when the presidential contest is close, as in 2000, and as this year is shaping up to be. In 2000, the difference in the popular vote totals for George W. Bush and Al Gore was in the mere hundreds of votes in several key areas of the nation, producing a period of more than a month when the nation did not know who would be the eventual winner of the election.

Whenever the race is close it focuses attention on the Electoral College, which is a feature of American presidential elections embedded in the U.S. Constitution as the result of a famous compromise when the Founding Fathers could not agree on the method of selection of the top job in our system of government. (See *Canvassing Kansas*, December 2000, page 6.)

Unlike other offices on the ballot, the winner of the presidency is the candidate who receives the most Electoral College votes, not necessarily the most popular votes. One aspect of the Electoral College is that it often exaggerates the margin of victory: candidates sometimes win with large majorities in the Electoral College while their popular vote margins were much smaller. Consider the past several elections and note the disparity between the popular vote percentages and Electoral College percentages:

<u>Year</u>	<u>Candidate</u>	<u>Popular Vote</u>	<u>%</u>	<u>Electoral Vote</u>	<u>%</u>
2000	Al Gore (D)	50,999,897	48.4	266	49.4
	George W. Bush (R)	50,456,002	47.9	271	50.4
1996	Bill Clinton (D)	47,402,357	49.2	379	70.4
	Bob Dole (R)	39,198,755	40.7	159	29.6
1992	Bill Clinton (D)	44,909,889	43.0	370	68.9
	George H. W. Bush (R)	39,104,545	37.5	168	31.2
1988	Michael Dukakis (D)	41,016,000	45.7	111	20.6
	George H. W. Bush (R)	47,946,000	53.4	426	79.2

There are 538 total Electoral College votes: each state has one vote for each U.S. Senate seat (2 per state) and each U.S. House of Representatives seat (based on population). A simple majority of 270 Electoral College votes is required to win the presidential election. Sometimes an elector abstains or casts a vote for a candidate who did not win the state's popular vote, so the totals shown above might not always total 538.

One of the more notable elections where the Electoral College vote exaggerated the winner's margin was the 1984 election when Ronald Reagan had a 17 million vote margin in the popular vote (54 million to 37 million) over Walter Mondale, but won 525 Electoral College votes (97.6%) to Mondale's 13 (2.4%).

Several elections in the 1800s produced Electoral College winners who had not won a majority of the popular vote, but the Constitution was not amended to abolish or alter the Electoral College, as some had recommended. Now we have added the 2000 election to that list, but no serious effort to change the Electoral College has resulted to date. Some experts are predicting a close vote in this year's presidential election which might produce more calls for changes to the Electoral College system.

After the 2000 election, Secretary Thornburgh appointed a commission to study the Electoral College and make recommendations for reform on either a state or national level. (See *Canvassing Kansas*, March 2001, page 4.) At the end of the discussion, the panel did not recommend any substantive reforms of the College such as abolishment or alterations in the way votes are cast, but it did recommend further study of the concept of using the popular vote results to determine the winner if no candidate received a majority in the Electoral College. The panel also recommended that binding Electors to vote the way their state's voters had voted should be considered on both a national and state level. Currently neither federal laws nor Kansas laws bind Electors to vote the way the popular vote indicates, although 26 states do have laws binding Electors' votes.

If the 2004 results create renewed interest in changing the Electoral College, it will not be known until mid-December, after the official Electoral College votes are cast. According to federal law, the Electors meet in each state capital and cast the official votes for president and vice president on the "first Monday after the second Wednesday in December" after the general election. In 2004 that date falls on December 13.

HAVA Update

Here's an update on the latest HAVA activities.

Polling Place Accessibility

For many months the SOS office and CEOs, with the help of the state ADA coordinator and the Kansas Commission on Disability concerns, have been working to improve access to polling places. HAVA requires that all voters have physical access to the polling place and to the ballot. The process started with each county surveying all polling places to determine what improvements needed to be made in order to provide accessibility. The results reflected a wide range of needs.

Parking, paths of travel, doors and signs are a few examples of areas that needed improvement prior to the primary election. The SOS office offered a bid for vendors and products that could make polling places accessible on Election Day. The approach was to find products that could be used on Election Day, but not be permanent fixes. Using federal money to make permanent fixes to polling locations didn't seem to be an option considering polling places are not owned by the counties and at any time, could be closed and not used for election purposes.

The products used are as follows:

- Portable parking sign sets – set includes a rubber base, fiberglass pole, sign with the international symbol of accessibility, “van accessible” sign and all the necessary hardware to put the set together
- Orange traffic cones – the cones were used in locations that did not have van accessible parking spaces. By placing cones appropriately, two parking spaces were used as one van accessible space
- Big Bell Ballot Call – a wireless door bell that was placed in locations that may have heavy doors or where poll workers were not close to doors that voters enter in order to vote. The button (complete with a large, international symbol of accessibility) was placed on the door and the chime was placed near the poll worker so they could respond when a voter pushed the button
- Threshold ramps – small ramps that were used in doorways that had high thresholds or bumps
- Folding ramps – ramps ranging from 2-5 feet in length that were used in locations that did not have curb cuts or that had a step that would otherwise prohibit some voters from gaining access to the polling place
- Leveron door handles – handles that were used on round door knobs. The lever was placed over existing door knobs enabled voters to open doors with a closed fist

The SOS office is surveying counties to learn how the products worked and determine whether additional products may be necessary to better improve polling place access. The SOS office anticipates ordering more products prior to the general election to further improve polling access. The SOS received neither administrative complaints nor informal inquiries after the primary regarding accessibility issues.

State Plan

HAVA requires that states submit material changes to state plans each year to the EAC. Once the EAC receives the updates, they are required to publish the pages in the Federal Register for 30 days. Once that is done states are eligible to receive requirements payments. Kansas has received the first payment and is working to receive the second payment.

The SOS office held a meeting with the Kansas Election Reform Advisory Council on July 9 to review the State Plan and get input from the council on necessary updates and changes. The SOS office provided an update on HAVA activities to the council and handed out copies of the new plan. Members of the council were asked to review the plan and make recommendations and approve the new plan.

On July 13, the plan was published on the SOS website for 30 days and available for public comment. On August 19, the SOS sent those pages of the new state plan that contained material changes (13 pages) to the EAC. The EAC publishes the plans in the Federal Register for 30 days, whereupon the states will be eligible to receive requirements payments.

CVR

As reported earlier, a lot of work was done this past year on designing the new central voter registration (CVR) system. As a result of the work done by CEOs and others involved in the process, the SOS was able to enter final negotiations with a single vendor in June. The negotiations has taken longer than planned, but as of this writing we are near agreement on the major issues. We hope to make an announcement soon, building and testing the software will begin immediately.

There will continue to be a need for involvement from CEOs. There will be opportunities to volunteer on committees to test the software at various times this fall. The testing phase is crucial to a successful deployment.

Voting Equipment Work Group

The SOS is in the process of appointing members of the work group on voting equipment. This group will serve over the next year to develop policies and design the process for the procurement and deployment of electronic voting equipment to comply with HAVA in 2006. This equipment must be fully accessible to voters with disabilities.

FVAP Introduces IVAS: Interim Voting Assistance System

The Federal Voting Assistance Program (FVAP) is charged with implementing the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), which is a federal law guaranteeing voting rights and establishing voting procedures for active military personnel and their spouses and for non-military citizens living outside the United States.

The FVAP makes annual recommendations to state election officials on ways to facilitate federal services voting. Their recommendations have led to the requirement that ballots be distributed beginning 45 days before the election and the authorization for ballot applications and ballots to be faxed to reduce transmission time. They have recommended the states accept ballots via email in instances where federal services voters lack access to fax machines. This has been allowed in Kansas in certain instances on a case-by-case basis.

Due to the number of personnel currently deployed overseas, the FVAP has asked states to implement a new initiative called the Interim Voting Assistance System, or IVAS. IVAS is an online absentee ballot request and delivery system.

The federal services voter would follow these steps:

- Visit the IVAS web site where the voter is authenticated as a federal services voter
- Complete an electronic version of the Federal Post Card Application, which is automatically emailed to the county election officer
- If the CEO approves the ballot application, the voter is notified
- Visits the IVAS web site to download an absentee ballot

The CEO would follow these steps:

- Visit the IVAS web site and register with a user name and password
- Process ballot applications from federal services voters
- Upload ballots in .pdf format to IVAS web site
- Match voters with appropriate ballots

Secretary of State Ron Thornburgh has consented to participate in the IVAS process and encourages all CEOs to coordinate with his office to ensure that all federal services voters who wish to vote will be enabled to do so. More information will be sent from the SOS office to each county election office.

IRS Withholdings and Election Board Workers' Pay - Update

The federal government from time to time has enacted legislation exempting election board workers' pay from various types of withholding as an incentive to assist in recruiting workers. Although we have not been informed of any new exemptions recently, there has been discussion, and some confusion, about what the current rules are.

There have been articles in previous issues of this newsletter concerning this topic. See *Canvassing Kansas*, June 2002, June 1998, March 1998, and June 1995.

If an election board worker earns \$600 or more in a calendar year, that income must be reported, but income taxes do not have to be withheld. Social Security and Medicare taxes do not have to be withheld on a board worker's pay up to \$1,200 in a calendar year.

Some of the exemptions required state legislation to enact the provisions. For more information one may read the Internal Revenue Service rulings which are disseminated by the IRS occasionally.

Vote! Kansas - Update

The Vote! Kansas program is set to get underway very soon. This program will be formally introduced by Secretary Thornburgh in September and run through the general election. The program is designed to educate voters on the changes being implemented to the election process as a result of HAVA and changes in state law. The other purpose is to encourage voting in the general election.

Four brochures were recently sent out and include: A Guide to Voting in Kansas, A Guide to Provisional Voting, A Guide to Voting Accessibility, and A Guide to the HAVA Complaint Procedure. These brochures will soon be available in braille upon request by a voter to the Secretary of State's office. Upon formally launching the program, Secretary Thornburgh will visit various Kansas communities to talk about the program. A website is also available that can be accessed at www.voteks.org.

In addition, a T.V. campaign will begin around October 18 that will focus on the importance and encouraging voting. The Secretary of State's office has put out an RFP and will work with a media company to develop the commercials. The commercials will air statewide.

Vote! Kansas is a very exciting initiative and we hope you will take advantage of what the program has to offer. Please stay tuned for more information on this program as we get closer to the general election.

Primary

From page 1 Since 1908, Kansas law has prescribed a closed primary, meaning only voters affiliated with the Republican Party may vote in that party's primary, and only Democrats may vote in the Democratic primary. This changed in 2004, when, as the result of a federal lawsuit, the Democratic Party held a semi-open primary. An Oklahoma case in the Tenth Federal Circuit, *Beaver et al. v. Clingman et al.*, resulted in a ruling that states cannot dictate which voters may vote in a party's primary election, so the Kansas law that restricts primary voting to voters affiliated with either the Democratic or Republican Party is unconstitutional.

Because of the ruling, Secretary of State Ron Thornburgh wrote the state chair of each party asking whether the party wished to open its primary to non-affiliates. Both chairs responded that they would allow unaffiliated voters to vote in the primary without first having to affiliate with the party. Lawsuits were filed challenging that decision in the Republican Party, claiming the chair had not followed the party's bylaws and constitution in making the decision to open the primary. The Democratic party's decision was not challenged.

The result of the lawsuits was that the Republican primary remained closed and the Democratic primary was open to unaffiliated voters.

The resulting hybrid primary election required county election officers to retrain election board workers to conduct the primary according to the new rules. All indications are that the retraining was effective and voters and election officials were able to adapt to the change. No subsequent challenges have been raised to date.

Legislation is expected in the 2005 session to change state laws to comply with the court rulings.

New HAVA Rules

Several aspects of election administration that have been changed due to HAVA were in effect for the first time in the primary election:

- First-time voters in each county were required to provide identification
- The right to cast a provisional ballot was guaranteed, and each provisional voter received information explaining how to find out, free of charge, whether the provisional ballot counted and, if not, why
- County election officers received mandatory training on conducting elections, and they were in turn *required* for the first time to train their election board workers
- The renewed emphasis on accessibility for voters with disabilities brought about by HAVA resulted in more accessible polling places

Open Primary

Polling Place Accessibility

Under HAVA, the Secretary of State has received approximately \$210,000 in federal grant funds to improve accessibility to the voting process for voters with disabilities. Before the primary election, approximately \$162,000 was spent to purchase products such as ramps, door handles, parking signs and cones to temporarily improve accessibility at polling places on election day. Much of the remaining money is being spent in preparation for the general election.

Election Night Tabulation

The process of collecting unofficial election-night results from all the counties and reporting to the press and public was very similar to the past several elections. It was a very successful operation, and the results were completed earlier than expected. In the primary election 15 county election offices reported their results to the Secretary of State by phone, 46 reported by fax, and 44 reported electronically via the Internet.

One new feature this year is an interactive map on the SOS web site at www.kssos.org/ent. The map allows the user to click on a county and instantly display the up-to-date results for national and state offices that pertain to that county. Each county begins the evening colored white on the map, then turns light blue when partial results have been reported, then turns dark blue when the county makes its final report. Further enhancements are planned for the general election when much attention will be focused on the presidential election.

New Web Site Launched

Before the primary election the Secretary of State's office launched a new web site, www.voteks.org, designed to provide election information to voters. The site contains dates and deadlines, procedures for registering and requesting and advance ballot, and other information pertinent to voting in Kansas. Some of the information also has been disseminated in printed brochures.

Keep in mind that a FWAB can be used by any overseas citizens covered by UOCAVA. Under UOCAVA the term "overseas citizen" means a U.S. citizen who resides outside the U.S. yet is qualified to vote in Kansas. This definition includes military personnel who are deployed overseas and civilians living abroad.

Also note that the Federal Post Care Application form serves as both an application to register to vote and a request for an absentee ballot. Accordingly, if a soldier submits a FPCA and does not receive an absentee ballot in a timely manner the citizen may use a FWAB instead.

In summary, federal law requires you to count a FWAB submitted by an overseas citizen who requested a state absentee ballot and did not receive the ballot on time.

Federal Write-in Ballot

From page 4