



Testimony in Support of S. 331

Post-Election Random Audits

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Joint Committee on Election Laws

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Nearly all precincts in Massachusetts use electronic voting equipment to conduct elections. Electronic equipment, however, are subject to programming errors and mechanical flaws that can affect the outcome of an election. This provision of the bill would implement a mechanism for discovering potentially result-altering errors in the hardware and software of electronic voting machines, thereby protecting the integrity of our electoral system. There are many examples in Massachusetts of errors or malfunctions by electronic voting equipment that have caused votes to be miscounted:

- Methuen, 2009: AccuVote ballot scanner failed to read six ballots and the city clerk reported that the machines regularly jam and fail to count ballots.¹
- New Bedford, 2008: AutoMark ballot-marking machines could not process Republican primary ballots.²
- Abington in 2008: Out of 1255 votes cast in a city proposition, the scanner counted 4 votes wrong.³
- Taunton in 2008: A memory card problem in Ward 4 required votes from that ward to be counted and recorded separately, which forced the city clerk to create a new form to specifically accommodate Ward 4 returns.⁴

¹ J.J. Huggins, *Jammed Voting Machine Misses Six Ballots in Close Race*, EAGLE TRIBUNE, Nov. 9, 2009, available at <http://www.eagletribune.com/local/x546148507/Jammed-voting-machine-misses-six-ballots-in-close-race>.

² Steve Urbon, *Ballot Glitch a Mystery*, SouthCoastToday.com, Sept. 10, 2008, <http://www.southcoasttoday.com/apps/pbcs.dll/article?AID=/20080910/NEWS/809100332>.

³ Robert Carrol, *Recount affirms: Abington Approves Another*, BOSTON GLOBE, May 18, 2008, available at http://www.boston.com/news/local/articles/2008/05/18/recount_affirms_abington_approves_another_override/.

⁴ Charles Winokoor, *Local Vote for Hillary, Mitt*, TAUNTON GAZETTE, Feb. 7, 2008, available at <http://www.tauntongazette.com/news/x1224705221>.

If an audit process had been in place prior to these elections, these malfunctions may have been detected long before 2008 and 2009.

Audits are conducted on a regular basis by all good businesses because they reveal accounting errors and ensure adherence to company policies. Similarly, election audits are important because they allow election administrators to check that electronic voting machines have properly and accurately counted all ballots. They can determine the existence and extent of a malfunction and identify errors in ballot counting mechanisms. Furthermore, they provide election officials with concrete data that enables the correction of systemic problems in results or procedures, including how blank votes and over-votes are counted. Because the electronic voting machines that are used in Massachusetts are manufactured by the same company, any insight learned in one precinct could be utilized by elections officials throughout the Commonwealth. Post-election audits can and have picked up improper programming, faulty ballot design, problems with ballot marking, and the like. At a very low cost, audits will also provide voters and elected officials a sense of security and the ability to detect fraud. Even if fraud does not exist, the procedure instills confidence and has caught discrepancies in machine tallies and actual ballots that were not caught in the pre-test of machines. Audits help states identify features needed in new voting machines, saving money when states retire old machines (many of the machines in Massachusetts are nearing the end of their useful lives). *25 states and the District of Columbia conduct a post-election audit.* California has been doing them for 30 years. This is not a new or radical proposal. It is a sensible one.

In June 2010, MassVOTE and Common Cause audited one randomly selected precinct in Shrewsbury. The examination of all 1,007 ballots cast in that precinct during the 2010 special election for U.S. Senate revealed that 1,002 ballots were correctly counted. On the remaining five, the voters had mismarked their ballots. But their intent, in all five cases, seemed clear. Unfortunately their votes were recorded as blanks. This highlighted that new machines could be improved to detect less precise markings but also in the meantime.

In terms of cost, Minnesota's statewide audit in 2006 has been estimated at \$24,500 to \$27,000 (for 202 precincts out of 4,192). In North Carolina's first audit when a single race was examined on ballots in 260 precincts, the average cost was \$65 per precinct. In Massachusetts, we estimate the cost around \$400-600 per precinct audited (2 tally clerks for 1-2 days). As only 63 precincts will be selected at random in a 3% audit, the cost would be about \$31,500. In reality, audits go very quickly and the cost could be even less. Other states use HAVA money and we could use it too (we have approximately \$50 million sitting in a bank that has been there for 7 years). Using a small amount of this money for audits will not hinder its usage for other current priorities. It is true that the State's HAVA committee would have to be convened and asked to make this change. This is not a difficult task.

S311 would also establish a procedure that would facilitate public confidence in the audit process. The bill provides that precincts will be selected randomly. This would assure the public that elections in all precincts are potentially subject to an audit. Furthermore, by selecting all of

precincts at a single ceremony, observers could verify that precincts are truly chosen in a random manner.⁵ It also employs a statistical method of selecting the precincts to be audited based on the closeness of the race. When there is a high margin of victory—over 15% only a total of 13 precincts would need to be selected for the audit. These numbers are based on a statistical model of 95% confidence rate in the outcome of the election. When the race is tighter, the number escalates to ensure that counted number of votes accurately reflect the voters intent. Statistical audits are being piloted in California and Cuyahoga County Ohio and are considered to be the gold-standard of auditing procedures.

Post-election audits are an important method for protecting the integrity of the voting system. We therefore respectfully urge you to give this bill a favorable report.

⁵ Brennan post-election audits, 10-11