

RESPONSE TO THE ELECTION AUDITS & ELECTION SECURITY REPORT

On November 15th, 2023, the Government Operations Interim Committee met to hear and discuss among other things, the Report to the Lieutenant Governor's Office, entitled "**Election Audits and Election Security Report**". This report was a directive to the Lt. Governor as set forth in HB 448 during the 2023 Legislative Session.

The Lieutenant Governor commissioned the services of Political Scientists Damon Cann (Utah State University), Quin Monson (Brigham Young University) and Leah Murray (Weber State University) to spearhead this report.

The following is a response to their report.

Steve Aste along with his associate, Roy Piskadlo, have been working on ways to improve our election system in Utah since 2020. Over the course of the past 13 months. Steve and Roy have travelled throughout the state as they have arranged in-person meetings with elected officials that are responsible for conducting our elections. They have now met with County Clerks and Board of Canvass Members in 25 of Utah's 29 counties. The total number of county clerks they have met with is nineteen (19), over twice the number that the political science professors have met with, in addition, they have met with numerous BOC Members, often the entire Board. They have gained a wealth of knowledge concerning Utah Elections.

The Utah Election Code 20A is 463 pages in length, this code refers to Utah Code 63G numerous times, in addition to other codes and regulations. The Election Code and all its references are burdensome, cumbersome, contradictory and overbearing, very few county clerks have read it, and those that have do not understand what the code is asking of them. Steve and Roy have found no Board of Canvass Members that have read the Election Code. It is estimated that less than 5% of Utah the State Legislature Members have read the Utah Election Code 20A in its entirety. By contrast, the supreme law of the land, the United States Constitution, is only 45 pages in length.

As a prefaces to this analysis of the **Election Audits and Election Security Report**, it should be pointed out, that when a person (Lt. Governor) is charged by another body (Utah Legislature), with the duty of critiquing and analyzing themselves and/or their work product and methodology, then it can only logically follow that an independent third party be selected by someone other than the person being analyzed. In this instance, the Lieutenant Governor's office selected and paid for the 3 political science professors to critique and scrutinize her and the election process that she herself oversees and is responsible for. This is an inherent conflict of interest and will almost always result in information that is skewed or tamed to appease the employer due to ongoing and future employment and financial considerations.

EXECUTIVE SUMMARY CHALLENGED

The **Election Audits and Election Security Report** suggests that the biggest problem facing election integrity in the state is likely due to voter ignorance or lack of understanding of the election system. As previously stated,; Utah’s Election Code 20A is 463 pages in length and refers to several other codes on numerous occasion, including Title Code 63. Our State Election Officers, Staff and Lawmakers do not understand the code and security practices, it would reasonably follow, that the voters would also have great difficulty in understanding it as well. This fact is not due to ignorance, rather, it is due to the complexity and bloated nature of the Code itself. An election system that is transparent, less complex, and burdensome would prove to be the key to voter knowledge, confidence and ultimate acceptance and trust.

This summary suggests that the state of Utah employs a “strong election audit practice”, the fact is, Utah Election Code 20A does not so much as trouble itself with providing a definition of what an “audit” is. Utah Title Code 63G-2-103 defines an audit (not election audit specific) as a systematic examination of program procedures and operations for the purpose of determining their effectiveness, economy, efficiency, and compliance with statutes and regulations. While Webster’s Dictionary defines and audit as, in part, “a thorough examination and evaluation”. A spot check of 0.19% percent of the ballots (Salt Lake County 2020 Presidential Election) is anything but robust and thorough audit.

This report asserts that Utah currently has a “number of strong election practices in place, that they have been strongly developed and implemented and, in many cases, stronger than those of many other states”. The report further asserts that our signature validation process is reasonably strong. Finally, the report suggests that the biggest challenge facing our elections and there integrity, is likely the ignorance of the voter.

As described by Cann, Monson & Murray (CMM), within the introduction of this report, the research considered election integrity broadly. The fact of the matter is, that this report is entirely inadequate in its scope and inaccurate in its conclusions.

Utah Election System- There are 4 main components to our election system.

- Voter Registration
- Voter Validation
- Tabulation
- Reporting

REGISTRATION

E.R.I.C.

Any election must first include vetted registered voters, voter rolls and a reliable data collection system that can maintain, update, and provide a clean and accurate accounting of actual voters. The state of Utah has contracted out its voter registration database to a private system that was first developed in 2012 called the Electronic Registration Information Center (E.R.I.C.) that is centrally located in Washington DC. In 2020, 32 states were using E.R.I.C, since that election 10 states have opted out of the system due to state's contract issues as ERIC forbids disclosure to the public of the voter registration information it gathers—information paid for by taxpayer dollars.

According to PILF, concerns about alleged partisanship on the part of ERIC, lack of transparency, and resistance to needed reforms of its policies and procedures, have caused the legislatures of Alabama, Florida, Iowa, Louisiana, Missouri, Ohio, West Virginia, Virginia, and Texas to opt out of membership. Serious questions remain as to how all of our personal information is being used. A thorough examination of E.R.I.C. would require an entirely separate report and **yet it was not even mentioned in the Election Audits and Election Security Report!** Utah is one of the remaining states that continues to use E.R.I.C.

PILF is a national law firm wholly dedicated to election integrity, the fight against lawlessness in American elections, and preserving the constitutional framework of those elections.

Utah Election Code 20A-5-901 **Voter registration audit** requires that an annual audit shall take place and include a random selection of at least .02% of the active registered voters statewide; and at least one active registered voter from each county. This small percentage is not a large enough sampling to determine with any reasonable certainty the accuracy of the registration records in the state. The .02% requirement represents less than 1 registered voter in some of Utah's smaller counties.

Mail-In Ballots

There can be no argument against the fact that mail-in ballots have made our elections more convenient. There can also be no argument against the fact that mail-in ballots have made our elections less secure and have increased the likelihood of fraud substantially.

20A-3a-401 Custody of voted ballots mailed or deposited in a ballot drop box Disposition -- This section of the Utah Election Code governs ballots returned by mail or via a ballot drop box.

- Poll workers shall open return envelopes containing manual ballots that are in the custody of the poll workers.
- The poll workers shall, first, compare the signature of the voter on the affidavit of the return envelope to the signature of the voter in the voter registration records.

- The poll workers shall determine whether the signatures correspond, that the voter is registered to vote in the correct precinct, whether the voter has already voted in the election.
- If the voter is required to provide valid voter identification; and whether the voter has provided valid voter identification.

With all the discussion and controversy surrounding mail-in ballots it is difficult to ascertain why this critical component of our voting system **was not addressed in Election Audits and Election Security Report**. While many believe in-person, paper ballots at the precinct level would be ideal, many also believe that mail-in ballots are here to stay. With this in mind, it should be of critical concern to address some of the following vulnerabilities with Mail-In ballots.

- Ballot Box Stuffing
- Mailbox Stuffing
- Ballot Harvesting
- Assurances as to who is receiving, filling out and returning the ballots.
- Numerous other vulnerabilities

The Utah Legislature has taken steps to place surveillance cameras on our Drop Boxes. Since the vast majority of mail-in ballots are deposited at USPS mailboxes, should we not also place surveillance cameras on the tens of thousands of USPS mailboxes throughout the state? Clearly this is not a reasonable solution. The legislature believed that the potential for fraud was relevant enough to implement legislation and the funding necessary to surveil Drop Boxes and yet over 90% of actual drop off points go entirely unchecked. Bad actors, would avoid Drop Boxes entirely and deposit all extra ballots in the U.S. Mail.

Again, this, among the other numerous vulnerabilities, was **not addressed** in the **Election Audits and Election Security Report**. It is factually impossible to conduct an audit to determine the “actual” winner of an election when the fundamental systems to conduct the election itself are inherently flawed. The Utah State Legislature must implement a robust third-party verification system to ensure the accuracy and validity of our elections.

HB 172 allowed for Utah counties to conduct elections entirely by mail, it is interesting to note, that by 2020 the entire state began using mail-in ballots almost exclusively, followed by legislation in 2021 requiring all municipalities to conduct elections by mail as well. It is now required that all elections **shall** be conducted **primarily** by mail (Utah Election Code 20A-3a-202 1a). To prohibit each county from conducting their elections primarily in person, at their discretion is beyond reason, it serves only to further centralize power from a government that is already far too distant from its citizens.

Chain of Custody

2022 HB 313 grants rule making authority to the Lieutenant Governor for the implementation of certain procedures such as ballot security, ballot processing and ballot counting procedures. Ballot security and storage is addressed to some extent in this report, however, only after the ballots are returned to the election officials following the mail-in ballot procedure. What happens when the ballots are mailed out through the USPS up until time the ballots are once again in the possession of our election officials? If we can admit nothing else concerning this, I am certain that we can be intellectually honest enough to admit that the chain of custody has been broken.

By contrast, if we as voters make the choice to vote in person, we are first asked to show identification, we sign a ledger and we proceed to the voter booth alone. **(See 20A-3a-203 Voting at a polling place)**. Once we have completed our check-in requirements and prior to voting we are not allowed to invite others to our voting machine, to go outside or to go back home or to work for a few days. We are required to cast our vote then and there. This ensures that it is us voting, this is done to preserve the integrity of the vote, to keep the chain of custody intact.

It is easy to see that the ultimate loss of chain of custody is to mail Hundreds of Thousands of ballots out via the USPS, with no real idea of who is receiving them. The number of ballots that are mismanaged is impossible to know. Chain of custody and storage is very important when the election officials have the ballots back in their possession, it is equally as important that we have assurance that the chain of custody is maintained while out of the election official's custody.

Signature Verification

“Voter verification is a critical component of any election system. It is important to know that the individual casting the ballot is indeed the same individual legally registered to vote.” – CMM, Research Team for the Election Audits and Election Security Report. Reliance on election volunteers with little to no training is an entirely unacceptable practice to ascertain or verify whether a signature is authentic or not. I volunteered to be an election worker for the most recent Utah elections, I worked between the hours of 8:30 AM – 5:00 PM on November 20th, 22nd & 23rd of 2023 at the Salt Lake County Clerks Election Center on 2100 South State Street. I had discussions with other volunteers on several occasions during my time working there. On two of those occasions, I had discussions with individuals, specifically 2 volunteer election workers that were tasked with signature verification duties. I asked each of these individuals if they had any training in the field of signature verification or authentication of a signature. One individual responded that they had only watched a 20 – 30 video on the subject and the other individual responded by saying that they had watched a video earlier that day of approximately 30 - 40 minutes in length. I asked each of them how they scored on the test that was given to ensure that they qualified to verify signatures for our elections. Both volunteers responded that there was no test and the video was the full extent of each of their training. I asked each of them of their confidence level in matching signatures based on this training to which one answered, “not very confident” and the other replied “I really don’t know”.

Ladies and Gentlemen of the legislature, it is clear, we cannot rely on signature verification as an assurance of free and fair elections. This does not instill confidence with the voters that chain of custody is maintained with our mail-in ballot system which quite likely will result in some undetermined level of fraudulent activity. An additional 2- 4 hours of training as suggested by this report, simply could not provide the level of expertise necessary to ensure the authenticity of the signatures on the ballots. If signature verification is to be used for something as sacred as our ballots, cast for the candidates that will represent the people, then a highly trained Forensic Signature Analyst must be employed to carry out this very important function and not simply the “man off the street”. There simply are not enough Forensic Signature Analysts available to reasonably carry out such a task, therefore, we should explore more reasonable and reliable methods to secure our votes, such as unique voter identification numbers, finger printing, 2 factor authentication and **third party non conflicted election certification**.

Runbeck’s Agilis Election Mail Sorting and Processing System

The function of the Agilis machine is to slice open the outer envelope that the ballot is contained in, it also scans and extracts the voter’s signature and compares it to the record(s) that the county has on file. The display screen should produce a high-resolution image of the ballot that is placed aside a signature on record for the voter, it can then be examined by one of the “Election Signature Verification Experts” (20-30 minute video training). The Agilis machine has the ability to scan the signature for verification compared against the signature on file. While no argument will be made for or against the high-quality resolution capabilities of the Agilis machine, a very strong argument can be made for the quality of the signature capture machines used within the state to obtain the voter’s original signature. In this case, a system is only as strong as its weakest link. Half measures are entirely unacceptable when it comes to the validity of our elections.

The Agilis machine is “Pre-programmed” by the election offices at an undisclosed sensitivity rating. The claim as been made that these machines quickly and accurately verify signatures. Quickly is quantifiable, accurately is not. The report does not explain if the accuracy assertion claim has been analyzed by one of the 30-minute video trained, untested Signature Analysts or some other source. The acceptable parameters of this “pre-programmed” sensitivity have not been disclosed by the **Election Audits and Election Security Report**.

The machine specification explains that it can perform this function with as many as 18,000 ballots /hour. The Agilis machine is a computer that contains computer software to run its operating system. Like any computer, the software code is written and can be re-written by computer software experts. Procedures must be adopted to ensure that signature scanning functions are not tampered with.

Signature verification isn’t an objective comparison but a sliding scale that can be manipulated by election officials. The machine uses an algorithm to compare variance in the signature. If the machine says the signatures match, then a ballot is counted without any further review. The manufacturer recommends starting out at a 50 on a 0 to 100 scale.

Voter Identification Numbers that are unique to the individual will eliminate the need for signature verification.

TABULATION MACHINES

Dominion and ES&S Tabulation Machines

This is the section of the report that should have a detailed analysis of the tabulation machines used in Utah's election process. But since it was not addressed in the **Election Audits and Election Security Report**, I will only provide 3 comments, they are as follows;

1. The Dominion and ES&S machines are highly controversial and would require a lengthy independent analysis to determine their viability, accuracy, reliability and the computer components that they actually possess.
2. The State of Utah has signed an agreement with the manufacturers of the tabulation machines which prohibits anyone but the manufacturers themselves from examining the machines. The stated reason is that it is proprietary information. (This has not been confirmed as fact. A GRAMA request to the Lieutenant Governor's office would be required to obtain a copy of this contract to review its contents).
3. Numerous photographic images are available of the inter-workings and components of the Dominion and ES&S tabulators. These images show definitive evidence of the existence of modems. Modems are a component used to connect a device to the internet.

Post-Election Tabulation Audit

The Lieutenant Governor's office theoretically randomly selects 1% or 1000 ballots (whichever is smaller) to conduct a post-election audit. In Salt Lake County 1000 ballots represent 0.19% of the ballots cast in the 2020 presidential election. (Source: Salt Lake County Clerk's Office) This minuscule sampling is not adequate to determine a risk-limit mitigation factor that is acceptable by any measure.

As the **Election Audits and Election Security Report** determined, all forms of a risk-limiting audit would involve a substantial increase of current capability and cost for a reasonable and accurate determination as to whether our elections are accurate. The system that is currently being used is entirely inadequate.

The report also suggests that the state will need to carefully weigh the benefits of conducting a thorough audit against the financial cost. As the state of Utah's legislative body, it is your fundamental obligation as representatives of the people to ensure, regardless of the expense, that the rightfully elected candidate is in fact the individual that assumes office. To fall short of this would result in consequences and monetary expense to this state and nation that is exponentially higher than any amount of money could ever be. There is nothing more fundamentally important in this country than free and fair elections.

STORAGE OF BALLOTS AND ELECTION RELATED MATERIALS

Ballot storage is to be 22 months as per Federal Law.

Obviously, precautions must be taken to ensure that these records are stored in a safe and secure place, protected from deterioration or intrusion.

It is interesting to note that in the state of Utah the records seem to be meticulously kept, yet no one can gain access to them. Numerous GRAMA requests have been made to acquire these records and yet they are not provided. If the state of Utah truly wants to provide the voter with confidence in our election system, they should begin with ordering the release of these records, anything less will be seen as an effort to hide the truth and deceive the public.

REPORTING

The procedures in which the results of our elections are reported seems to be an often overlooked, yet very important component of the election process.

In Utah elections, the county reports the election totals to a company in Barcelona, Spain by the name of "Scytl". "Scytl" then consolidates the election results information and puts out an election report via the county's website. It is interesting to note the similarities between county websites in numerous counties across this nation. That is because "Scytl" or their United States affiliate "clarity elections" creates the websites for these counties. Scytl also acquired the American company SOE Software ("Supervisors of Elections") in 2012.

The fact that we entrust our election reporting to a foreign entity is beyond comprehension. The **Election Audits and Election Security Report** fails to address this critical component of our election system.

The state of Utah and every other state in this nation should discontinue use of any and all foreign entities with respect to our elections!

This response was not meant to be all inclusive regarding the problems we face with the election system in Utah. The intent was to demonstrate the superficial and inaccurate nature of the **Election Audits and Election Security Report**. There is a great deal of work to be completed to ensure the elections in Utah are transparent and reliable. **Currently they are not!**