

Affidavit of Rusty Clark, Assistant Secretary of the Oklahoma State Election Board

Questions to be answered as part of the investigation into Complain 2023-01

How does Oklahoma's voting system produce a record with audit capacity?

The record that is produced by the Oklahoma voting system which provides audit capacity is the paper ballot.

26 O.S. § 6-102.1 states that a "Ballot" means a printed **paper** document upon which votes for various offices or measures may be marked." Ballots used in our state are created using the software provided by Hart InterCivic. Each ballot created for an election is an individual file and has a unique barcode. The barcode is not used to track or tie a vote to an individual voter, but is generated to ensure that each ballot can be properly counted/tabulated by the escan device.

The only exceptions to voter hand-marked paper ballots is in the event that a voter (who has visual or physical disabilities) utilizes the ATI device to cast an audio ballot. In those circumstances, a record of such audio ballot is retrieved and printed from the election results storage device. The printed cast vote record report is sealed in an envelope and handed over to the Sheriff along with the other voted ballots to be secured as required by law. OAC 230:35-3-85.4. In the event of a recount or audit, the county election board uses the printed cast vote record of the ATI ballot to mark a substitute ballot to be inserted in the voting device or hand-counted as the case may be. OAC 230:35-3-85.1. The escan A/T and storage devices that are used as part of Oklahoma's voting system were not fashioned to retain digital images of the paper ballots, like many of the other systems used throughout the country may be programmed to do.

Because "ballot" is defined in Oklahoma law as a printed **paper** document upon which votes for various offices or measures may be marked; the recounting of said ballots is the only way to verify or "audit" the results of an election and the accuracy of our machines. Using the voting device's reports to conduct an audit or recount would only be regurgitating the same results. Manually recounting or auditing the actual hand-marked paper ballots is an independent verification of the results.

Each voting device does provide printed results at the county level (called Detail and Tally Reports). However, those printed results are generally only used as part of election night procedures when a county election board canvasses the returns from all precincts in the county and reports the results to the State Election Board. Neither Oklahoma law or the Administrative Code contemplate maintaining or utilizing the printed reports from the voting device as a part of a manual recount or audit.

Is the paper record mentioned above made available as an official record for any recount (or audit) conducted with respect to any election in which the voting system is used?

If so, how?

YES, the ballots are made available for recounts and audits, as required.

At the time of the recount or post-election audit, the ballots are unsealed and made available pursuant to the statute. 26 O.S. § 7-134. The post-election audit or recount would then be conducted according to state law, rules and the procedures established by the State Election Board. Recounts are conducted in a public meeting of the bi-partisan county election boards and follow rigorous counting procedures. Similarly, post-elections audits are open to the public, and both recounts and audit follow strict chain of custody requirements.

Does Oklahoma's voting system comply with the error rate standards established under section 3.2.1 of the voting systems standards issued by the Federal Election Commission which were in effect on the date of the enactment of the Help America Vote Act (2002)? Explain.

Yes. At least two independent testing facilities determined that the Hart InterCivic voting system that Oklahoma purchased meets the standards required by the 2002 Voting System Standards which are referenced in the Help America Vote Act. The Hart InterCivic system in use by the Oklahoma State Election Board was tested successfully thousands of times to the specification of near 1 error in 10,000,000 ballot positions, which is the highest end of the target error rate prescribed by 3.2.1 of the VSS. Use of the system in conducting elections and contests of elections in Oklahoma since deployment corroborate this.

Are cast vote records either necessary or required for the conduct of a recount or audit of an election using Oklahoma's voting system under state or Federal Law?

No. Neither the Oklahoma statutes nor the Help America Vote Act make any mention of so-called "Cast Vote Records" let alone their requirement to be maintained or used as part of the audit process.

In Oklahoma, a hand marked paper ballot is THE RECORD of the actual vote cast by the voter in the election. Absent the aforementioned process for printing and using the report of voter's ballot who utilized the ATI device, electronic CVRs are not necessary nor are they required by state statute or Federal Law for purposes of a recount or post-election audit

Voting systems that utilize voter-hand-marked paper ballots which are counted by optical scanner voting machines are considered the gold standard for elections conducted in this country.

Have individuals or organizations attempted to obtain cast vote records of previous elections in Oklahoma via open records Act?

Yes. We have received numerous near-identical requests for CVRs in the past year just like our counterparts across the country. Many of the requests, which were spurred on by recent instructions from people known for promoting baseless theories about election fraud, bombarded elections offices with cut-and-paste requests for so-called CVRs.

If so, were those provided? Explain.

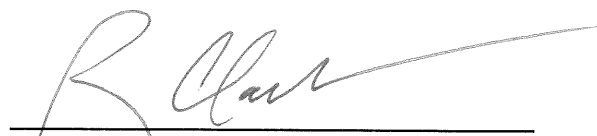
In Oklahoma, it was determined that to the extent that CVRs exist, they are not a public record, and, therefore, were not provided to those individuals. See the attached joint determination of the Secretary of the State Election Board and the CIO. The paper ballots (plus ATI printouts), which are the actual record of the votes cast in an election may only be unsealed per 26 O.S. § 7-134 are not made available to the public in order to ensure the security and integrity of the elections in Oklahoma.

Have any recounts or audits been conducted in this state during any of the elections held in 2022?

If so, please provide the results.

Yes. See the three attached audit reports from previous calendar year. These post-election audits along with the recount results continue to prove that Oklahoma's voting system which utilizes hand-marked paper ballots and the optical scanning devices, not only meet the requirements of HAVA, but provide accurate results.

Executed on this 23 day of January, 2023.



Rusty Clark
*Assistant Secretary of the Oklahoma State
Election Board*
Oklahoma City, OK

STATE OF OKLAHOMA)
) ss:
COUNTY OF OKLAHOMA)

On this 13th day of January, 2023, before me, JANA KOWALS,
the undersigned Notary Public in and for said County of Oklahoma and State of Oklahoma,
personally appeared Rusty Clark, to me known to be the identical person who subscribed his
name to the foregoing instrument and acknowledged to me that he executed the same as his
free and voluntary act and deed and for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written.

