



OFFICE OF THE  
STATE AUDITOR

August 17, 2017

Spencer J. Cox, Lieutenant Governor  
State of Utah  
350 State Street, Suite 220  
Salt Lake City, UT 84103

Dear Lieutenant Governor Cox:

Pursuant to your authority as the chief election officer of the state,<sup>1</sup> this letter addresses the Office of the State Auditor's observations of various aspects of the recently completed primary election held on Tuesday, August 15, 2017, for three counties with voters in the Third Congressional District (CD3). This letter details (1) our observations of election processes in each of these counties, (2) concerns with preserving ballot secrecy, and (3) a concern with the affiliation portion of the provisional ballot envelopes.<sup>2</sup> We also offer recommendations based on our observations.

### Primary Election Observations

Our observations involved the following activities over the course of a week-and-a-half span preceding and including election day:

- Review of applicable election code provisions and county-specific election policies and procedures
- Attendance at public logic and accuracy (L&A) demonstrations
- Discussions with county clerks and their staff
- Review of sample mail-in ballots<sup>3</sup> and accompanying materials
- Review of the costs associated with mail-in ballot materials and mailing
- Observation of mail-in ballot processing prior to poll closure at 8:00 p.m. MDT on election day, including the segregation of mail-in ballots in two counties wherein the wrong mail-in ballots were mistakenly sent to certain voters
- Observation of the final election results tabulation and reporting following the closure of polls at 8:00 p.m. MDT on election day

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<sup>1</sup> Utah Code § 67-1a-2(1)(c).

<sup>2</sup> Some provisions of the state election code (Title 20A) appear antiquated, failing to account for advances in automation. As such, we encourage a review and update of the associated code.

<sup>3</sup> The term "mail-in ballot" is substituted herein for the term "absentee ballot," which is the term used in the state election code. See, Utah Code § 20A-3-302.

In one of the counties where the wrong mail-in ballots were mistakenly sent to unaffiliated voters, we observed that poll workers physically segregated mail-in ballots received from unaffiliated voters from those received from registered Republican voters. Second, these poll workers tabulated mail-in ballots received from unaffiliated voters on a separate server from the server used to tabulate all other ballots. Third, internal logic programmed into the ballot counting software excluded votes cast by unaffiliated voters for the CD3 Republican Primary while still counting votes for municipal races. Finally, county officials assured us that the counting of mail-in ballots for unaffiliated voters would take place *after* the counting of mail-in ballots for Republican voters and all provisional ballots to ensure that unaffiliated individuals who wished to affiliate with the Republican Party on election day could vote provisionally in the CD3 race even if they had previously mailed in their unaffiliated mail-in ballot.

In another county, since CD3 mail-in ballots were sent only to unaffiliated voters in unincorporated portions of the county, none of the mail-in ballots received from unaffiliated voters in these unincorporated precincts were counted since there were no municipal contests on the ballot. In addition, the county had notified these unaffiliated voters of the option to affiliate with the Republican Party and vote at one of several physical polling locations on election day.

More generally, during our observation process, our team focused on county poll worker compliance with relevant portions of Utah Code § 20A-3-308, which governs the processing and counting of mail-in ballots, including “opening envelopes, verifying signatures, confirming eligibility of the ballots, and depositing [ballots] in a ballot box.”<sup>4</sup> County election personnel appeared to largely execute their duties with adherence to relevant portions of the state election code; however, we did observe some areas of concern regarding ballot secrecy and provisional ballot envelopes.

### **Concerns Regarding Ballot Secrecy**

The Utah Constitution states that, “All elections . . . shall be by secret ballot.”<sup>5</sup> We have two specific concerns with the election processes and materials observed which may indicate that insufficient protection was provided regarding the constitutional mandate to ensure a secret ballot.

First, an individual’s votes may be visible through the return envelope with or without the assistance of backlighting. Since a voter’s name and possibly address appear on the return envelope, it would be possible for anyone handling the return envelope to link an individual voter to that voter’s specific votes.

One of the counties reviewed provides a “security sleeve”<sup>6</sup> in which to enclose the mail-in ballot. This sleeve appeared to provide greater secrecy when enclosed within the return envelope; however, once removed from the return envelope, individual votes were legible through the sleeve. Although neither of the other two counties surveyed provide a similar

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<sup>4</sup> Utah Code § 20A-3-309(2)(b).

<sup>5</sup> UT CONST. art. IV, § 8, cl. 1; *see also*, Utah Code § 20A-3-102.

<sup>6</sup> This county calculated a cost-per-security sleeve of \$.03 for this primary election.

secrecy sleeve or envelope, one county did include a security pattern on the interior of the return envelope. However, despite this security pattern, votes were still visible through the return envelope with the aid of backlighting.

Second, one stage of the processing of mail-in ballots in one of the counties also adds to our concern regarding ballot secrecy. Following the verification of the validity of mail-in ballots received, the state election code requires that poll workers “remove the [mail-in] ballot from the envelope *without unfolding it or permitting it to be opened or examined*” before depositing the ballot into the ballot box.<sup>7</sup> This statutory prohibition appears to address the risk that unfolding or opening ballots may permit unlawful examination of ballots sufficient to link a particular voter’s identity to that particular voter’s selections on the ballot. However, our observation of this process in one county revealed two poll workers who—after removing mail-in ballots from return envelopes—*unfolded* and stacked those ballots *face up* in close proximity to their corresponding return envelopes showing voter names. In another county, we noted that while poll workers complied in substance with the aforementioned statute, it was possible for poll workers *and* poll watchers to see the voter name on the return envelope and, depending on how the ballot was folded, votes cast on the ballot when the poll worker removed the folded ballot from the return envelope.

Although we have no reason to suspect that any election official revealed “to any other person the name of any candidate for whom a voter has voted,” or that any election official communicated his or her “opinion, belief, or impression as to how or for whom a voter has voted,”<sup>8</sup> the process by which mail-in ballots were removed from return envelopes certainly increases the risk of such illegal disclosure.

### **Concern Regarding Provisional Ballot Envelope**

Finally, we noticed one area of concern regarding provisional ballot envelopes for two of the three counties sampled, each of which provided a provisional ballot envelope that lists the following affiliation options:

- Democrat
- Republican
- Constitution
- Unaffiliated (no party preference)
- Other (please specify)

However, the following additional political parties are currently registered in the State of Utah:

- Libertarian Party
- Independent American Party
- United Utah Party<sup>9</sup>

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<sup>7</sup> Utah Code §§ 20A-3-308(2)(c) (emphasis added).

<sup>8</sup> Utah Code § 20A-5-705(1).

<sup>9</sup> The Office of the Lieutenant Governor only recently certified the United Utah Party (“UUP”) as a political party on July 13, 2017, so election materials were likely printed prior to the UUP’s official recognition.

As demonstrated in Figure 1, below, two of the parties not included on the provisional ballot envelope have party memberships well in excess of the Constitution Party, which is listed.

Figure 1. Office of the Lieutenant Governor Party Membership Statistics (as of August 14, 2017)

Political Party	Membership Total (Active & Inactive)
Republican	715,177
Unaffiliated	600,393
Democratic	176,517
Independent American*	24,926
Libertarian*	13,531
Constitution	5,556
United Utah Party*	82

\*Not included on provisional ballot envelopes in two counties.

We are concerned with the disparate treatment of political parties on official election materials.

**Recommendations:**

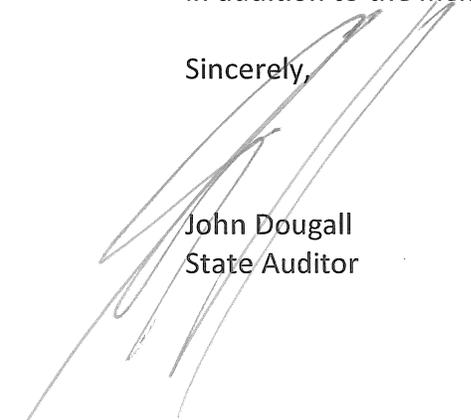
We recommend that steps be taken to ensure:

- the constitutional protection of a secret ballot; and
- the uniform treatment of political parties on the provisional ballot envelope.

The pending general election prompted our immediate disclosure of these primary election observations and associated recommendations. However, we are still engaged in a review of other aspects of the recent election process and will share any additional findings and recommendations at a later date.

Overall, we observed county officials executing the election in a professional and careful manner, with each county demonstrating concern for the integrity of the electoral process. We appreciate and acknowledge the cooperation and efforts of election officials and county clerks in addition to the members of the Lieutenant Governor’s State Elections Office.

Sincerely,



John Dougall  
State Auditor