



Avoiding a Loss Is Not a Win SB1 Is Not a Win

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Right off the bat, the alarm bells start ringing in my head when I read in **Section 1.03** that *“the legislature finds that: (6) providing for voter access and increasing the stability of a constitutional democracy ensures public confidence in the legitimacy of public officers chosen by election.”* Neither confidence nor legitimacy can be found in our elections if our own lawmakers believe that we are a constitutional “*democracy*” and if they believe they can plug up enough holes in mail ballots, early voting, voter registration, and faux audits to overcome the major attack points in our computer-based electronic voting systems. Do we know who really owns the companies who sell us these electronic voting systems, who is on their boards, or what is in their lease agreements? Do we really know everything about the actual software code to ensure that no backdoors are open or that no options for ignoring duplicate votes or options for deleting selected batches of votes exist?

SB1 is a 76 page bill that assumes that our elected officials and the bureaucratic agency over elections will do the right thing. SB1 completely ignores the intrinsic vulnerability of electronic systems of any kind, especially voting systems. Major industries, large enterprises, large military and governmental institutions, and local municipalities all get hacked, even with their almost unlimited budgets, top tier personnel, their best and brightest at their beck and call to write so called “unhackable” software programs. If they can’t do it, then why should we expect Navarro County Elections Department to do it?

Not to be too pessimistic, let’s give credit where credit is due. **Section 1.0015** is a good start: *“It is the intent of the legislature that the application of this code and the conduct of elections be uniform and consistent throughout this state...”* In previous years, the Secretary of State would issue waivers in some counties, but not others. Bravo for seeking to put everyone under the same procedures. If Section 1.0015 included criminal penalties for those who did not conduct elections uniformly and consistently throughout this state, it would be a real win.

Section 87.103 (a) is another possible win: *“The early voting electronic system ballots counted at a central counting station, the ballots cast at precinct polling places, and the ballots voted by mail shall be tabulated separately [from the ballots cast at precinct polling places] and shall be separately reported on the returns.* This provision adds another level of granularity to help candidates’ recounts or data analyses.

Section 4.15 addresses a massive amount of errors in the system logs where votes exceed ballots cast. In past elections, the election managers could simply select “use results” over and over. Making that more difficult should be accomplished in **Section 4.15 (f)** *“The presiding judge of the central counting station shall provide and attest to a written reconciliation of votes and voters at the close of tabulation for Election Day...”* If you can trust the fox guarding the hen house, then kudos for another step in the right direction. Only time will tell.

Article 10.01 of SB1 repeals **Section 127.201 (f)** of the Election Code allowing the *Secretary of State to waive “PARTIAL COUNT OF ELECTRONIC VOTING SYSTEM BALLOTS BY GENERAL CUSTODIAN”.* **Section 7.04 of SB1 amends Section 276 of the Election Code by adding Section 276.019** *“A public official or election official may not create, alter, modify, waive, or suspend any election standard, practice, or procedure mandated by law or rule in a manner not expressly authorized by this code.”* The glaring omission is that no criminal penalties are attached to these crimes. While the level of risk is increased to the wrong doer, the fear of punishment is not.

Senator Bob Hall gave us a victory by codifying into law a procedure that was required in many counties, including Dallas County, but not actually prescribed by the State Legislature: **SECTION 3.06** amends **Section 61.002 of the** Election Code to require zero tapes and result tapes (election day only) to be printed: **(a)** *Immediately before opening the polls for voting on the first day of early voting and on election day, the presiding election judge or alternate election judge shall confirm that each voting machine has any public counter reset to zero and shall print the tape that shows the counter was set to zero for each candidate or measure on the ballot.* The biggest disappointment with this section is that it DOES NOT require vote results to be printed at the close of Early Voting. Add that to the 4 day gap between Early Voting and Election Day and we have been given a huge window of opportunity for electronic manipulation of vote results to take place undetected, with no paper trail for a forensic audit. We must demand that our legislature eliminate this gap!

Article 2 in SB1 makes an admirable attempt to clean up voter registration procedures and voter rolls, but it appears to be a lot of motion with little or no impact as long as the electronic computer vulnerabilities are not addressed. Furthermore, we must watch the Secretary of State's rule making process to make sure this section does not get watered down. And we must be ever vigilant to look for stealth ways to manipulate the voter rolls.

In Section 3.03, "the secretary of state shall provide for an audit of the voting system equipment [direct recording electronic voting units] before and after the election, and during the election to the extent such an audit is practicable."

Nothing is practicable during the election, so don't get your hopes up that an audit would take place. Allowing the Secretary of State (SOS) to select who does the audit, who is chosen to be audited and what are the terms of the audit is like two wolves and a duck deciding what's for dinner!

Section 3 also provides for a register of spoiled ballots and the creation of a checklist for election judges, but many counties already had these tools. What's new here?

Section 3.09 goes overboard in expanding hours and days for voting opportunities. Where is the data to show the necessity for these additions?

Section 3.13 (f-1) *Notwithstanding any other provision of this section concerning the location of temporary branch polling places, in an election in which countywide polling places are used, the commissioners court of a county shall employ the same methodology it uses to determine the location of countywide polling places to determine the location of temporary branch polling places.* This section should be red flagged as a potential backdoor to legalize countywide voting. We want precinct only voting for better accountability and easier auditing. The county wide voting area was a top down decision, not resulting from an outcry of the citizenry. Temporary branch polling places are used to target a particular voting population with the intention of skewing the results of the races on the ballot. We see no legitimate need for temporary branch polling places.

Section 3.14 addresses changes in the composition of the Early Voting Ballot Board, reducing the extra board from 2 to 1, with the presiding judge getting to pick this 3rd member. What a nice way to ensure the tie goes to the Democrat presiding judge. (The party whose candidate wins in the gubernatorial race gets to choose the judges for early voting.)



Skipping a lot of pages in the bill, we find a potential win in Section 127.009, but the untrained computer novice can't be too sure.

Sec. 127.009. ELECTRONIC DEVICES IN CENTRAL COUNTING STATION. (a) *A counting station manager and the presiding judge of the counting station shall develop a protocol under which any electronic device inside a central counting station that is necessary to count votes is equipped with software that tracks all input and activity on the electronic device.* Can this software be bypassed? Are the counting station managers and presiding judges qualified to develop a protocol to track input and other activity on the electronic devices? According to the one cyber expert, this Section would be stronger if it included a requirement that the EMS server be imaged immediately after an election by an independent forensic agency and the image be kept for 22 months. Any software updates within the 22 month period would require a re-imaging.

Section 127.1232 requires video surveillance for counties with a population of 100,000 or more. Three stars for this provision, but shame on the legislators for taking away the provision in the original SB7 (from the Regular Session) that would have allowed poll watchers to video/record with their own device.

Speaking of poll watchers: some provisions strengthen the rights of poll watchers to actually watch, see, hear, and even trail a car if need be. **Section 4.09** makes more specific the particular ways an offense can occur against a poll watcher, including making it a Class A misdemeanor to obstruct a watcher. But this win is a wash. The original SB7 made it a felony, the Democrats (or was it a Republican?) made it a Class B misdemeanor, but then it went back to its original level of Class A. Nothing gained; nothing lost. Avoiding a loss is not a win.

Another loss for the poll watcher comes in the form of a possible win for the candidate, should the candidate take advantage of this newly given standing. Not allowing the poll watcher to have standing is wrong on so many levels, but perhaps the candidate will take step up on the poll watchers' behalf.

Sec. 33.063. RELIEF. *The appointing authority for a watcher who believes that the watcher was unlawfully prevented or obstructed from the performance of the watcher's duties may seek:*

- (1) *injunctive relief under Section 273.081, including issuance of temporary orders;*
- (2) *a writ of mandamus under Section 161.009 or 273.061; and*
- (3) *any other remedy available under law.*

If the poll watcher is personally harmed, then the poll watcher should have standing to sue in court. Depending upon a candidate to take the time and the money to sue on behalf of their poll watcher is not fair to the poll watcher.

Another major loss to the poll watcher is found in *Sec. 33.008. "The secretary of state shall develop and maintain a training program for watchers."* Past experience leads one to believe that the SOS' training program will do more to create fear of committing a crime while poll watching than to create boldness based on knowing the rights of the poll watchers. This provision is a major no-go.

The worst nightmare for a poll watcher is the new requirement to take an oath. Heretofore, poll watchers had no prescribed duties, so an oath would be inappropriate. Under *Section 4.06 (h) "Before accepting a watcher, the officer presented with a watcher's certificate of appointment shall require the watcher to take the following oath, administered by the officer: I swear (or affirm) that I will not disrupt the voting process or harass voters in the discharge of my duties."* This oath creates a new opportunity for perjury, unless a second poll watcher were assigned to be an eye witness to protect the first. Doubling the manpower needs for poll watchers is out of the question. Asking them to take an oath is reprehensible. Who gets to decide that the watcher is "harassing" a voter? Or "disrupting" the process? The fox is guarding the hen house once again.

It appears that the Secretary of State has more regulatory authority over the poll watchers with this new bill and no penalties on themselves if they do not follow the law. *Chapter 276* defines the crimes in the Election Code, but does not assign penalties to the SOS for committing the crimes. Was this negligence intentional or ignorance? Either way makes the legislators look bad.

Subchapter J. Randomized Audits is almost as bad as a previous bill referring to risk limiting audits. The complete absence of a thorough forensic audit is deafening; the convoluted limits on who gets audited is absurd, and the conflict of interest with the SOS making the rules about the audits is scary. See for yourself:

Sec. 127.351. RANDOMIZED COUNTY AUDITS. (a) Immediately after the uniform election date in November of an even-numbered year, the secretary of state shall conduct an audit of the elections held in four counties during the previous two years. (b) The secretary of state shall select the counties to be audited under Subsection (a) at random, except that: (1) two of the counties selected must have a total population of less than 300,000; (2) two of the counties selected must have a total population of 300,000 or more; and (3) a county selected in the most recent audit cycle may not be selected in the current audit cycle. (c) A county selected to be audited may not pay the cost of performing an audit under this section. (d) The secretary of state shall adopt rules as necessary to implement this section.

Another major deficit in SB1 concerning audits is that SB1 does not prevent county election departments from signing contracts with election system vendors that disallow forensic audits or that allow their so-called “proprietary” software to be hidden from inspection. What is so proprietary about tallying votes? Are they protecting their fractional voting algorithms or their options to count duplicate batches and throw out selected batches?

Sec. 121.004 COMMUNICATIONS WITH VOTING SYSTEMS VENDOR PUBLIC INFORMATION starts well, but ends badly. Go to (3) (b), highlighted in bold below, and ask yourself if this exception makes you feel better about our ability to audit our elections.

(a) Except as provided by Subsection (b), a written letter, e-mail, or other communication, including a communication made confidential by other law, between a public official and a voting systems vendor:

- (1) is not confidential;
- (2) is public information for purposes of Chapter 552, Government Code; and
- (3) is not subject to an exception to disclosure provided by Chapter 552, Government Code, other than Sections 552.110 and 552.1101, GovernmentCode.

(b) written letter, e-mail, or other communication between a public official and a voting systems vendor is excepted from disclosure under Chapter 552, Government Code, if the communication discloses information, data, or records relating to the security of elections critical infrastructure. This paragraph seems to be too much of an out clause, keeping everything confidential. The election system vendors have been hiding behind the “our software is proprietary, so you can’t see it”, so they will use letter (b) to prevent disclosure of any and all communications.

Perhaps the most egregious failure in SB1 bill is the reduction of criminal penalties from a 2nd Degree Felony to a Class A Misdemeanor, **Sec. 9.03**, page 72-73, changing **Election Code 64.012** for the following:

- ineligible voting
- duplicate voting
- voting a ballot belonging to another
- fraudulent marking of ballots



This change was done behind closed doors at the last minute with almost no one knowing about it. Was this amendment part of a deal with the Democrats? Are the Republicans so unconcerned about election integrity that they don't want to deter people from cheating?

For a quick snapshot from yet another set of eyes, read the following reasons for concern about the future of our election process:

Potential upsides:

Sec. 2.05

- Removes registered "voters" who claimed exclusion from jury duty due to being foreign nationals.
- Requires comparison of SOS and DPS citizenship records.

Sec. 4.14 Modifies Election Code 127.1301

- Bans use of storage devices in central count optical scanners.

Downsides:

Sec. 2.04 Unlawful voting

- Modified Election Code 15.028 Unlawful Voting
- Appears to specify no penalty

Sec. 3.03 Audit

- No definition of "audit".
- For example: Does the Vote Roster Count match the Ballot Count?
- Still refers to "ballot marking devices". No definition. Usually means computer printed "vote".

Sec. 3.09 Early Voting

- Early Voting should be eliminated. It allows cheaters time to figure out how many votes they need to adjust.

Sec. 3.17 Central Counting Computers

- What is described in EMINENTLY HACKABLE. Complex window dressing.

Sec. 3.18 Video cameras in central count

This is EMINENTLY HACKABLE. Complex window dressing.

Sec. 4.01 Watchers

- Poll watchers are only able to catch very small numbers of retail voting fraud. The smart guys will not be visible.



- The best way to prevent polling place fraud is:
- Require hand marked paper ballots and manually tabulated ballots with nothing more than a 4 function calculator.
- Confirm manual vote roster count equals the ballot count.
- Post vote rosters online.
- Post manual poll books online.
- Post polling location ballot count by race.
- Allow manual recount by precinct if requested.

Sec. 4.08 Modifies Sec.A33.0605. OBSERVING DATA STORAGE SEALING AND TRANSFER.

- The only data that should be transferred from the polls to central count is ballot count by race, the vote roster totals, and the actual hand marked paper ballots No flash drives.

Sec. 5.02 Modifies Election Code Sec. 84.002

- This is a huge loophole that allows foreign residents to request mail-in ballots.
- Mail-in ballots should only be allowed for US Military, foreign stationed bureaucrats, and elderly who provide solid proof of their identity and some simple ability, (Do Alzheimer's patients have a constitutional right to vote. What prevents a "helper" from voting for a comatose patient?)

Sec. 5.04 Mail-in Ballot Request

- The ban on 3rd parties is nice, but there is no penalty.

Sec. 5.08 Modifies Sec. 86.002, Election Code

- "No record associating an individual voter with a ballot may be created."
- I see NO technical means to separate the ballot from the voter's identity.

Sec. 5.11 Signature Verification

- Modifies Election Code Sec. 87.027
- I see no way this can be anything but a political slugfest.
- Solid verification is not possible.
- **Mail-in ballots must be minimized.**

Sec. 5.17 Modifies Election Code Sec. 87.103

- **Early voting is a major fraud opportunity.** The daily results give a hacker the information needed to just eeks out a win without causing too much suspicion to overshooting with the cheat.

Sec. 7.04 Vote Harvesting

- Modifies Election Code Sec.276.15.
- There are so many exceptions, **this crime is almost impossible to prosecute.**


OTHER:

"Residence" appears to still not be defined. (Dallas has thousands of "voting residents" who actually reside in foreign countries.) Only exceptions should be active duty servicemen and possibly civil service officers posted out of the country.

Now that SB1 is signed into law, we must get all eyes on the Secretary of State during the rule making process! Like a dog on a bone, we must show up for every SOS rule making meeting. We need to start now banging on Keith Ingram's office to find out when the rule making starts, what is the notification procedure, how does the public get to add input (to get the rules we want). We must read every draft with a fine tooth comb. SOS rule making must not operate in the dark. The SOS must feel our intense scrutiny. Let's become order givers, not order takers!

In my humble opinion, SB1 is a bill that was doomed from the beginning. We have reason to believe that our legislators were told not to address the problems with computers in our electronic voting system. Hence, SB1 does nothing to address the monster in the room and it only nibbles around the edges with a lot of motion and very little effect. As said before, the major attack vectors were not addressed. Legalese abounds while the Secretary of State gets to make the rules for what the implementation actually looks like. The **lack of intense oversight** coupled with **insufficient forensic audits** with complete access to equipment & software and **limited penalties** associated with crimes is jarring. **Poll watchers' risk levels go up** while the **Secretary of State's risk level goes down**. Implementation is always the wild card. All that glitters is not always gold. Proverbs 11:22 "Like a gold ring in a pig's snout is a beautiful woman without discretion." This proverb calls us to be discerning, looking beneath the exterior. Look beneath the glittering exterior of SB1's 76 pages of smoke and mirrors. Keep fighting for what we need to secure our elections!

We asked the legislators to give us secure elections with:

- hand-marked paper ballots**
 - hand counted tabulation**
 - NO Computers, NO wireless capability even if it's "turned off"**
 - limited EV, no gap with election day**
 - strict limits on mail ballots**
 - unlimited audit-ability and complete access to all equipment and processes**
 - numbering of ballots (it's in the Texas Constitution)**
 - printed result tapes at the end of EV**
 - precinct only voting**
 - no waivers by the Secretary of State**
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We did not get any of these things in SB1. Some of the tweaks are nice, but we wouldn't need any of those "tweaks" if we didn't have computer-based election systems and if we could go back to hand counts of vote tallies. Some of the legislators' attempts to guard mail ballots are nice, but they didn't go nearly far enough. Ignoring Early Voting and the gap between it and Election Day is a devastating loss, as is failing to require numbered ballots. Even printing vote result tapes is a no-brainer! Bottom line, every computer and wifi network is remarkably hackable. What are our legislators thinking??

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