TO: GAE Committee, Connecticut General Assembly
CC: Connecticut Secretary of the State, Denise Merrill

Re: Response/Correction to Secretary Merrill’s Testimony on S.B. 540

Chairs and Members of the Committee,

Secretary of the State Denise Merrill submitted written testimony\(^1\) opposed to S.B. 540, for the public hearing on 2/27/2017. Secretary Merrill’s sole objection to the bill is based on a clear misunderstanding of the text of the bill.

Note that the Secretary had only a single objection to one part of S.B. 540. The Secretary did not object to two common sense proposals in the bill:\(^2\):

- That standards be set in law to require common sense minimum standards for the security of polling place voted ballots. The standards in S.B. 540 are similar to the unenforceable provisions in the Secretary’s Official Audit Procedures.
- That all aspects of the post-election audits be open to public verification with effective notification to the public.
- Other than the one objection the Secretary expressed no concerns with S.B. 540’s provisions for publicly verifiable, manual verification of machine audits.

An objection based on a misunderstanding of S.B. 540: The Secretary’s testimony incorrectly stated that the S.B. 540 requires the posting of ballot images online. In fact, S.B. 540 bill does not require the release of ballot images to the public and does not require the posting of ballot images online.

S.B. 540 requires the release of Cast Vote Records (CVRs) to the public present at a machine audit, with no requirement for online posting. CVRs are not ballot images. They do not include stray marks by voters. They are data records, one record for each ballot that contains the digital interpretation of the votes on the ballot i.e. numbers indicating which bubbles on the ballot were filled in. They are totaled to determine the votes for each candidate or question in the audit.

In the paper included in my testimony, CVRs are described:

“In a machine-assisted audit, the retabulation system produces an interpretation of votes on each ballot (a Cast Vote Record, or CVR) that can be matched with that ballot. The CVRs are exported from the retabulation system. Observers verify that these exported CVRs produce the same electoral outcome(winners, etc.) as the voting system. Then observers compare a random sample of actual ballots against the corresponding CVRs.”

\(^1\) [https://www.cga.ct.gov/2017/raedata/tmv/2017SB-00540-R000227-Merrill,%20Denise%20W,%20Secretary%20of%20the%20State-State%20of%20CT-TMY.PDF](https://www.cga.ct.gov/2017/raedata/tmv/2017SB-00540-R000227-Merrill,%20Denise%20W,%20Secretary%20of%20the%20State-State%20of%20CT-TMY.PDF)

\(^2\) My testimony, including text of the proposed bill: [https://www.cga.ct.gov/2017/raedata/tmv/2017SB-00540-R000227-Weeks,%20LutherCTElectionAudit-TMY.PDF](https://www.cga.ct.gov/2017/raedata/tmv/2017SB-00540-R000227-Weeks,%20LutherCTElectionAudit-TMY.PDF)
There is no law in Connecticut exempting CVRs from the Freedom of Information Act. A quick survey of election officials and advocates indicates that CVRs for entire elections or audits are regularly provided to requesters in the states of AZ, NY, CO and SC. In SC, they are published online.

Perhaps S.B. 540 could be improved by including a definition of Cast Vote Record.

These misunderstandings could have been avoided if the Secretary or her Office had accepted the Citizen Audit’s repeated written and verbal requests over the last two years to be at the table in specifying and reviewing electronic audit procedures prior to their implementation.

Please consider the benefits S.B. 540 would provide toward trustworthy elections and public confidence in our government. Failing that, the 2015 law allowing for unverifiable machine audits should be repealed.

Sincerely,

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PS: Although it is irrelevant to S.B. 540 we disagree with the Secretary’s interpretation that voted ballots or ballot images are exempt from Connecticut’s Freedom of Information Act (FOI). We are not aware of an explicit exemption in Connecticut statutes. To our knowledge, FOI of ballots has never been tested before the FOI Commission or in court. We are aware of several states where allots and ballot images are subject to FOI.