

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT

Minutes of the 3rd Meeting of the 2021 Interim

August 26, 2021

Call to Order and Roll Call

The third meeting of the Interim Joint Committee on State Government was held on Thursday, August 26, 2021, at 2:30 PM, at the Kentucky State Fair in the Expo Center. Representative Kevin D. Bratcher, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Robby Mills, Co-Chair; Representatives Jerry T. Miller, Co-Chair, and Kevin D. Bratcher, Co-Chair; Senators Ralph Alvarado, Denise Harper Angel, Christian McDaniel, Morgan McGarvey, Michael J. Nemes, Wil Schroder, Adrienne Southworth, Damon Thayer, and Phillip Wheeler; Representatives John Blanton, Adam Bowling, Jennifer Decker, Jim DuPlessis, Joseph M. Fischer, Jim Gooch Jr., Derrick Graham, Richard Heath, Samara Heavrin, Mary Beth Imes, DJ Johnson, Matthew Koch, Derek Lewis, Scott Lewis, Savannah Maddox, Patti Minter, Kimberly Poore Moser, Jason Nemes, Tom Smith, Pamela Stevenson, Nancy Tate, James Tipton, Ken Upchurch, Russell Webber, and Buddy Wheatley.

Guests: Representative Josh Branscum; Representative Patrick Flannery; Representative Matt Lockett; Jared Dearing, Karen Sellers, and Taylor Brown, State Board of Elections; Chris Cockrell, Kentucky County Clerk's Association (KCCA); Kenny Barger, Madison County Clerk; Jason Denny, Anderson County Clerk; Frank Friday, office of the Jefferson County Clerk; Mark Meckler and Mary Jo Wedding, Convention of States Action; Theresa Camoriano, Louisville Tea Party; Chase Martin and Bryan Sunderland, Foundation for Government Accountability; and Trey Grayson, Frost Brown Todd LLC.

LRC Staff: Michael Callan, Alisha Miller, Daniel Carter, Shannon Tubbs, and Peggy Sciantarelli.

Recognitions in Memorium

Representative Koch called for a moment of silence in honor of U.S. service members who died today during the Afghanistan evacuations. Representative Miller asked for a moment of silence in memory of former state Representative Larry Brent Yonts, who passed away on August 20.

Approval of Minutes

A motion to approve the minutes of the July 20 meeting was adopted without objection.

Update—21RS HB 574, AN ACT relating to elections and making an appropriation therefor.

Representatives Jennifer Decker, James Tipton, and Josh Branscum discussed HB 574, which was enacted during the 2021 Regular Session. The following staff of the State Board of Elections participated in the discussion: Jared Dearing, Executive Director; Karen Sellers, Assistant Executive Director; and Taylor Brown, General Counsel. The following county officials were also guest speakers: Chris Cockrell, Montgomery County Clerk and President of the Kentucky County Clerk’s Association (KCCA); Jason Denny, Anderson County Clerk and First Vice President of KCCA; Kenny Barger, Madison County Clerk; and Frank Friday, Government Affairs Director, office of the Jefferson County Clerk.

Representative Decker said it was her goal—and the goal of her co-sponsors Representative Branscum and Representative Tipton—to strengthen the integrity of elections in Kentucky and boost voter confidence in the electoral system. They intend to offer another bill to prohibit Kentucky’s voting system from being connected to the internet or any other external network. Responding to a question, Representative Decker confirmed that no voting system in the Commonwealth is currently capable of that type of connection, but she and her co-sponsors want to assure voters that such connectivity is prohibited in Kentucky.

Representative Branscum said that HB 574 is probably the most comprehensive election reform that has occurred in a long time, and he was pleased to be able to help develop the legislation, along with Representative Decker, Representative Tipton, the State Board of Elections, county clerks, and the Secretary of State and his staff. He said that those closely involved with the legislation met recently to discuss its implementation and current status and to consider possible needed refinements. They look forward to additional discussions during the interim in anticipation of the 2022 legislative session.

Representative Tipton thanked Representative Decker and Representative Branscum for the opportunity to work with them on HB 574. He said the legislation is not a “re-write” but is an attempt to identify areas that can be strengthened and improved.

Mr. Dearing said that immediately after passage of HB 574 the process of creating emergency regulations began. It was felt that emergency regulations were needed because of concern about possible special elections. The emergency regulations promulgated new policies and practices to enable county clerks to maintain elections and create election plans—and to work with the State Board of Elections, the Secretary of State, and other stakeholders during that process. He said that Kentucky is fortunate to have some of the

best local election administrators in the country. Also, Kentucky was able to pass election law in an overwhelmingly bipartisan manner. As requested by the Board of Elections, HB 574 provides for the use of risk-limiting audits, a type of post-election audit that allows attorneys and the state to work together and randomly sample a sufficient number of paper ballots to ensure confidence in policies and procedures. This provision will hopefully be implemented in time for the 2022 mid-term elections.

When Representative Nemes asked about the requirement for the Attorney General to audit a random sampling of six counties after a re-election, Mr. Dearing said that process is outside the purview of the State Board of Elections, which is not an investigative body. The statutes governing that process are dealt with by the Attorney General's office, in conjunction with KCCA. The audits usually look at absentee ballots to determine whether there are allegations of fraud. Holistically, they may also look at the entire election based on criteria set forth by the Attorney General's office.

In response to Representative Graham, Mr. Dearing described the post-election analysis process. He confirmed that the process is handled internally by Kentucky officials who are responsible for holding and administering elections. He said that, by codifying it in law, the legislature has allowed for a very transparent process—which includes public viewing of the randomization for pulling the ballots, the sample sizes, and how ballots are pulled at the county level. Over the last four years the Board of Elections has been updating counties to a fully paper-based system. During the presidential election cycle, they were able to move all counties to a paper-based system. Ballot marking devices are still an important part of the process, to ensure that voters with disabilities are able to cast ballots effectively. Some counties may utilize machines that cannot receive a paper record—mostly using them for accessibility purposes—but they are still on a paper-based system. Mr. Dearing emphasized the importance of continuing to fund the elections system as critical infrastructure, in order to ensure security, transparency, and access to the ballot.

The county officials made brief opening statements. Mr. Cockrell said that with the HB 574 structure in place, county clerks have been in the learning process and are at the point now where they are starting to “see it form together.” Many are working with the school boards and with local government entities. Mr. Denny said that Kentucky's elections last year were some of the most successful ever seen on the voting center model. Clerks want to build on that success. Mr. Barger emphasized the importance of making it known that voting equipment in the counties is not connected to the internet. Mr. Friday said that Jefferson County has about 200 voting locations. He spoke of the importance of having sufficient voting centers and the benefit of allowing “no excuse” early voting.

Representative Bratcher spoke of the importance of working together in a bipartisan manner. He said the efforts of Representative Wheatley and others who worked with Representatives Decker, Tipton, and Branscum were much appreciated.

Senator Thayer said he carried HB 574 in the Senate and encouraged bipartisan support for the bill. He is hearing talk of changes to HB 574, and he cautioned that any follow-up legislation should be only for purposes of “clean up.” He would oppose any additional policy changes, especially regarding increasing the number of days of early voting. Because he understand that some voters are unable to get to the polls on election day, he reluctantly agreed to provide for three days of early voting in HB 574. In response, Mr. Cockrell said that county clerks are not contemplating any extension of early voting days. They are not considering any major changes in the future—only “cleanup.”

Responding to questions from Representative Smith, Mr. Cockrell, Mr. Denny, and Mr. Barger explained the absentee voting process. Mr. Cockrell said that the online portal increases security and is less cumbersome for county clerks. The online portal is a secure measure to ensure that the mail-in “excuse” ballot is for the right person. He noted that it is a felony to lie on an absentee ballot application.

Senator Thayer said that the 2020 election involved once-in-a-lifetime pandemic voting procedures devised by two people—the Secretary of State and the Governor. He stated that decisions about the manner in which an election is held belong to the General Assembly. He also suggested that “mail-in voting” should correctly be called “absentee voting” in order to avoid the possible negative connotation associated with the term “mail-in voting.”

Representative Nemes said he trusts Kentucky’s county clerks and believes they run honest elections. He said it is important to have integrity in elections—and also the perception of integrity. Many of his constituents who are acting in good faith do not trust elections. He inquired about the post-election audit of six counties. Mr. Denny said Anderson County had the highest turnout this year of any county and was chosen for the post-election audit. The processes in other counties are like those in Anderson County. He described the various audit procedures, which includes an accuracy check of the machines and certification of accuracy by the county board of elections.

Representative Nemes said that 24 counties in Kentucky had been identified as having potential election anomalies. He believes those anomalies can be explained, but he and Senator Julie Raque Adams, on behalf of their constituents, have written a letter to the Attorney General, asking for a random audit of six of the 24 counties that were identified. They did not include Anderson County.

Representative Nemes said he believes Governor Beshear won the election in 2019. However, some TV viewers saw numbers transpose on the TV screen, raising questions for voters about the legitimacy of the election. Mr. Cockrell said that, to the best of his knowledge, it was just an accident and was corrected in the live feed. Also, vote totals reported by the media are unofficial until they are certified. Mr. Dearing emphasized that

news media report data from different sources. They do not certify elections and are not involved in the certification process.

Representative Stevenson thanked the county officials for their work during the pandemic. She said that election law is not about making it easier to campaign for office—it is about making sure that democracy is available to all who are legally certified to vote. Discussion concluded, and Representative Bratcher thanked the speakers.

Convention of States (COS) Project

The guest speakers representing COS were Representative Matt Lockett; Mary Jo Wedding, Kentucky State Director, Convention of States Action; and Mark Meckler, President of Citizens for Self-Governance and President of Convention of States Action. (There was a contingent of COS supporters present in the audience.) Theresa Camoriano, a patent attorney and President of the Louisville Tea Party, gave opposing testimony.

Representative Lockett said when he was asked to carry a bill about COS and an Article V convention, his reaction was an absolute “yes.” He said when the country carries almost a \$30 trillion debt, it is time for the states to step in and say that enough is enough. The federal government has acted in an irresponsible manner. The COS website states that the root of the frustration felt by citizens across America is that the federal government does whatever it wants and that citizens can do nothing about it. It is a systemic problem that requires a systemic solution. A convention of states to propose constitutional amendments is the solution—the people’s final check on Washington, DC, to be exercised through state legislators. The COS project resolution seeks to do this by using a tool given to the states in Article V of the U.S. Constitution. It calls for an Article V convention to propose amendments that impose fiscal restraints on the federal government, limit the power and jurisdiction of the federal government, and limit the terms of office for its officials and members of Congress.

Ms. Wedding spoke in support of the COS project. She said it is part of a state legislator’s responsibility to call a constitutional convention. The COS petition has 35,000 signers who believe that defending the Constitution is also defending their liberty. She said there are some conservative citizens who do not wish to sign the petition but remain supporters of Article V.

Mr. Meckler urged the committee members to support a constitutional convention. He said that 72 percent of all Americans are dissatisfied with the federal government. They feel that it is too big and does too much. He said Article V of the US Constitution gives states the power to call a Convention of States to propose amendments. The only argument he hears against calling a convention is that it would be a “runaway” convention that would put the entire constitution at risk. He said that is false. It takes 34 states to call a convention and 38 to ratify any proposed amendments. The COS website states that “the convention

would only allow the states to discuss amendments that limit the power and jurisdiction of the federal government, impose fiscal restraints, and place term limits on federal officials.”

Ms. Camoriano spoke in opposition of calling a convention. She said that people have a false sense of security if they believe that a “runaway” convention could not happen. The Constitution already reins in the federal government. The problem is that people today are ignoring the Constitution. The upside of an Article V convention is zero—it would not make people respect the Constitution. The downside is huge. There would be no end to the problems that could result from an Article V convention. It would be a total unknown that would risk the loss of people’s First Amendment, Second Amendment, and other rights. She is sympathetic to those who want an Article V convention but suggested taking a better path. She proposed three “R’s”—remember, respect, and rebuild: remember that everyone needs to pull together to make the country work; respect the life, liberty, and property of everyone; and respect the Constitution and the rule of law. She asked the committee members to not support the calling of an Article V convention.

Representative Bratcher said he has respect for the COS project and also for the Louisville Tea Party. He thought it would be helpful to hear from both sides in order to have an understanding before moving forward.

Representative Tipton said he understands that there are other Article V convention groups. He asked how many states have adopted the COS resolution. Mr. Meckler said there are three primary groups promoting an Article V convention. Currently, 15 states have passed the COS resolution in both chambers, another eight states have passed it in one chamber, and 49 states have filed the resolution. COS is the only group that has a national grassroots movement, with 35,000 supporters in Kentucky, more than five million nationally, and about 1,000 people currently joining the movement each week.

Responding to comments from Representative Nemes, Ms. Comariano said she shares the frustration and is sympathetic to it. The country is divided, and an agreement to an amendment to the Constitution would not happen. What is needed is for the country to rebuild so that people understand that fiscal responsibility has to be the law of the land. The US Constitution is the best in the world, and she does not want to chance “ripping it up.” In response, Mr. Meckler explained why COS is confident that an Article V convention would not be a “runaway.”

Senator Alvarado questioned why the founders of the Constitution would have provided for an Article V convention if they were fearful of what would happen. Ms. Comariano said she is afraid of what might occur and that there is good reason for concern. There has never been an Article V convention to amend the Constitution. It has been talked about in history but rejected because people feared a “runaway” convention. Mr. Meckler spoke briefly in rebuttal.

Representative DuPlessis said he believes there is wide agreement that federal spending is out of control, but he cautioned that law should be legislated based on fact, not fear. He said he does not know whether COS is correct but that he is not going to be dictated to because he is afraid. Discussion concluded, and Representative Bratcher thanked the speakers.

Discussion of “Zuckerbucks”

The guest speakers were Representative Patrick Flannery; Chase Martin, Legal Affairs Director, Foundation for Government Accountability (FGA); and Bryan Sunderland, FGA State Government Affairs Director. Their testimony included a PowerPoint presentation. Chris Cockrell and Trey Grayson, Legislative Agent for KCCA, were asked later to participate in the discussion.

Representative Flannery said that he and Representative Bratcher had agreed that the issue of Zuckerbucks is a topic that should be discussed. He introduced the speakers from FGA. (Note: The Chan Zuckerberg Initiative, spearheaded by the wife of Facebook founder Mark Zuckerberg, was a large funder of the Center for Technology and Civic Life, which awarded grants—or “Zuckerbucks”—to election offices across the country.)

Mr. Sunderland said that FGA is a nonprofit public policy organization that focuses on integrity in social programs and elections and on limited government that is accountable to the people. He and Mr. Martin appreciate the opportunity to address the committee regarding an important issue—the integrity of the election system and the danger of outside financial influence on the operation of elections. While all of the details remain unclear, private funding of election operations is a threat that FGA strongly believes needs to be addressed.

Mr. Martin said that in 2020, Facebook CEO Mark Zuckerberg and his wife spent nearly \$400 million to fund election activity across the country. They did it through government—local election officers in the states. He said elections are a sacred part of democracy, and public elections should be financed by public money. Private money should be reserved for campaigns and advocacy outside the election system. Mr. Martin said that about \$400 million was granted to more than 2,500 jurisdictions in nearly every state. In order to know how the money was spent and where it was targeted, FGA sent out more than 840 individual public record requests and compiled more than 1,100 documents, including grant award letters and reports. About \$200 million was funneled to state election offices in 37 states.

Mr. Sunderland said that “Zuckerbucks” influenced the election in a partisan manner. Most concerning was that the money was spent on electioneering and other things that had nothing to do with COVID-19 or protecting voters. FGA’s research found that an incredibly small amount was spent on COVID-related equipment. In Arkansas’ Pulaski County, election officials went into schools during the pandemic to register 18-year olds

to vote, as part of a Democrat voter registration drive, using a half million dollars of “Zuckerbucks.” In Wisconsin, Democrat activists with direct ties to the Zuckerberg-funded foundation were actually given the key to the ballot storage facility. In Ohio, “Zuckerbucks” were used to pay staff \$3,500 to police Facebook posts and to pay off an \$8,100 Verizon phone bill. It was found that numerous jurisdictions took “Zuckerbucks” without spending them—Miami Dade County, for instance.

Mr. Martin said that “Zuckerbucks” followed Democrats. The counties that received the most money were won by Hilary Clinton in 2016 and by Joe Biden in 2020. In Pennsylvania, 92 percent of the funds went to Democrat strongholds. In Pennsylvania in 2020, the average county won by Donald Trump that received “Zuckerbucks” received about \$1.12 per registered voter, whereas the average county won by Joe Biden received \$4.99 per registered voter. Georgia received \$31 million in “Zuckerbucks” for the general election, and Biden-winning counties received \$7.13 per registered voter, with Trump-winning counties being granted just \$1.91 per registered voter.

Mr. Sunderland said the good news is that this year several states have banned private funding of elections. Four more states are considering a ban this year. In Louisiana, a bill was sent to the governor but was vetoed. At least 15 states this year have moved to fix this problem, but there is a long way to go, with 35 more states still exposed to the threat, including Kentucky. Mr. Sunderland said that FGA has an extensive research library on this topic, and it is updated on a weekly basis.

Responding to comments from Representative Heavrin, Mr. Sunderland said FGA had not done research on how “Zuckerbucks” affected the Commonwealth of Kentucky. The clerks’ association provided several legislators some information indicating that 43 Kentucky counties applied for and received the grant funding. He agreed with Representative Heavrin that the issue should be bipartisan. He said FGA worked on a bill in Tennessee this year that passed with bipartisan support, even though that state had only one county with an instance of misspending. It is FGA’s position that public elections should be funded with public dollars. Representative Heavrin said she trusts Kentucky’s county clerks but thinks it would be useful information and important to know more about how they used the grant funding.

Representative Miller asked whether FGA has or could obtain an accounting of the amounts received by the 43 Kentucky counties and how the funds were used. Mr. Sunderland said that FGA’s extensive research initially focused on some of the key states. He believes the clerks’ association has offered to discuss how the funds received by Kentucky were used, from their perspective.

Representative Wheatley asked about the legality of the private funding. Mr. Sunderland said that information volunteered by the clerks’ association was that 43 counties applied for and received the grant money, but he does not have an accounting of

how they spent it. Mr. Cockrell said the “Zuckerbucks” came in the form of a grant and that his county, Montgomery, applied for and received \$15,000, which was used to pay precinct workers. Mr. Grayson, KCCA’s legislative agent, said that when he was Secretary of State, Kentucky received a private grant to build a website to facilitate voting for military and overseas voters, and it was not questioned at the time. He believes it is illegal to accept private grants for elections, but it depends on how they are set up. The grants to the 43 counties were funneled through the county clerk offices and fiscal courts. Representative Wheatley said he believes the funds were received with bipartisan support. When he asked whether there are other nonprofit organizations researching the issue of “Zuckerbucks,” Mr. Martin said not to his knowledge.

Representative Tipton asked whether any state or the federal government has looked into “Zuckerbucks” as an election finance issue. Mr. Sunderland said some states have questioned whether it should be regulated like election finance, and some have banned it altogether. Laws are written differently in states, depending upon the circumstances, but lawmakers have overwhelmingly indicated to FGA that elections should be financed by public dollars.

Responding to Senator Alvarado, Mr. Greyson confirmed that a total of \$1.6 million was received by the State Board of Elections. Senator Alvarado said it would be interesting to have a breakdown of the amounts received by each county.

Mr. Dearing said that the State Board of Elections in a public meeting had discussed utilization of the grant money. It was used primarily to advertise changes in the manner of election during the pandemic and how voters could vote safely. A bipartisan group of board members and stakeholders decided how the funds were to be spent. He noted, too, that Kentucky had no reports of community spread of COVID-19 during the election cycle.

There were no further questions. Representative Bratcher thanked the speakers, and the meeting was adjourned at 4:48 p.m.