

LEGISLATIVE UPDATE



Volume 7, Issue 7

NOVEMBER 11, 2014

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ELECTION DAY POST-MORTEM

On Election Day, as voters were going to the polls, many believed the Roberts-Orman race would be a toss-up and the Democrat would win the Governor's race. This followed months and months of polls predicting close races and the challengers defeating the incumbents. But that's not at all how it turned out—the Republicans swept all of the races and by a much larger margin than predicted. The Secretary of State's Office offered an unofficial estimate that 864,109 people voted, which would be about 49.5% of the state's registered voters. Let's look back at the races and see what happened—Why were the polls wrong? How much money was spent on the races? And, where do we go from here?



Governor Brownback on Election Night.

The polls

Based on the polling data leading up to Election Day, it was clear that Governor Brownback and Sen. Pat Roberts were on the verge of defeat. But, the polls were dead wrong. Sen. Roberts defeated independent Greg Orman by 10 percentage points and Governor Brownback put up a respectable four-point victory against Democrat Paul Davis, who had led in almost every poll since July.

Chapman Rackaway, a professor of political science at Fort Hays State University, told the *Kansas City Star* this week that as elections near, a phenomenon called "herding" happens with polling firms. Rackaway pointed to Fox News. Fox's polls showed Davis and Brownback tied in early October, but then later in the month showed Davis with a comfortable six-point lead.

"As it gets close to the election it's almost like groupthink kicks in and a herd mentality. They want to be close to each other, so if they're wrong, they're no more wrong than everybody else," Rackaway said. "Turns out Fox should have stayed the course because their earlier polls were probably more accurate. So that's why you saw this clustering and that's why you saw Davis' numbers particularly jump up a little bit."

Rackaway blamed Orman's underperformance on the lack of a get-out-the-vote machine, saying, "He had a crew. He had a staff. But he didn't have the infrastructure of a full state political party organization like Democrats did and Republicans did," he said. "Orman didn't have enough resources, people, what have you, to say here are the people we need to get out and vote for us on Election Day."

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ELECTION DAY POST-MORTEM

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The polls also failed to accurately predict the behavior of specific groups of voters. A poll from Survey USA and KSN-TV that came out the week before the election showed voters over the age of 65 favoring Davis over Brownback by a 10-point margin. But according to exit poll data, collected by the National Election Pool, this group of voters came out in favor of Brownback more so than any other group by a margin of 56% to 42%.

Brownback's campaign manager, Mark Dugan accused newspapers and "the state's partisan academics" of exaggerating Davis' support. He told the *Kansas City Star*, "We had a very sophisticated and complex voter modeling program that we invested a lot of time and energy in. And we spent a good portion of our resources focusing on getting our voters to the polls," Dugan said.

Patrick Miller, an associate professor of political science at the University of Kansas who studies polling, said polls always underestimate one party. He said in 2012 polls underestimated Democratic voters in the presidential election. This year they underestimated the Republican vote in Kansas and nationwide. He said that according to responses to exit poll questions, the pre-election polls accurately gauged voters' feelings about issues like Obamacare and same-sex marriage, but what they failed to do was accurately predict how Republicans would vote. A higher percentage of Republicans stayed with the incumbents in Kansas than expected, he said.

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Winners of statewide races

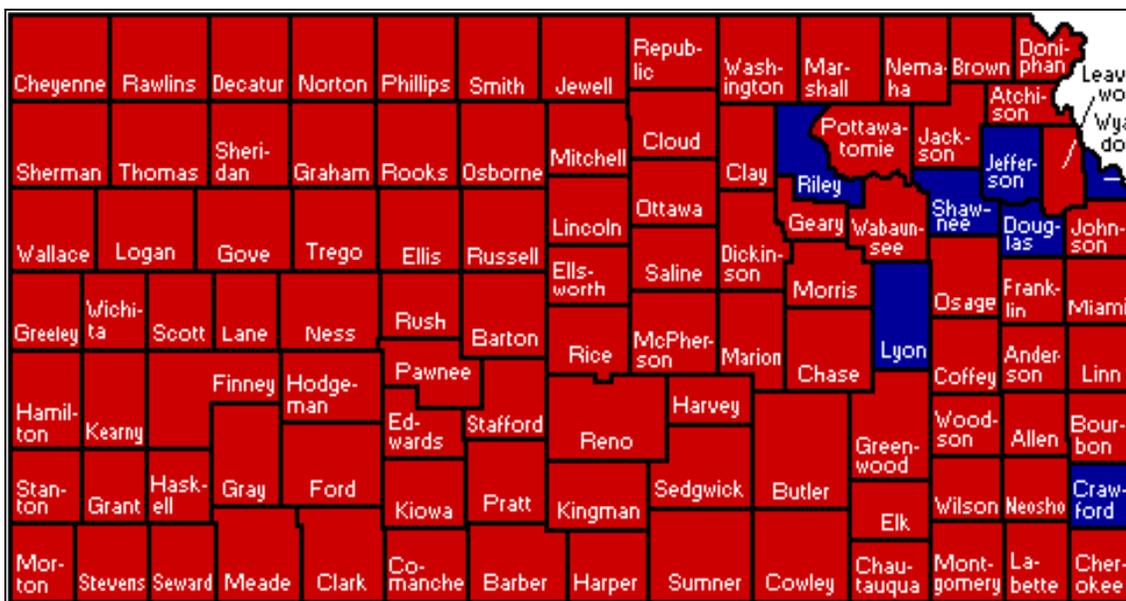
Attorney General
Derek Schmidt (R) defeated A.J. Kotich (D), 67% to 33%

Secretary of State
Kris Kobach (R) defeated Jean Schodorf (D), 59% to 41%

State Treasurer
Ron Estes (R) defeated Carmen Alldritt (D), 62% to 38%

Insurance Commissioner (open race)
Ken Selzer (R) defeated Dennis Anderson (D), 62% to 38%.

WHICH COUNTIES DID BROWNBACK WIN?



**Red = Brownback
Blue = Davis**

Governor won every county except Riley, Shawnee, Jefferson, Douglas, Lyon, Wyandotte, and Crawford counties.

In 2010, Governor Brownback beat the Democrat challenger, Sen. Tom Holland, 63% to 32%. He only lost Douglas and Wyandotte counties.

ELECTION DAY POST-MORTEM

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The money

The Senate race energized the Republican base and brought a flood of money from the national Republican Party and various independent groups to mobilize voters for Roberts. Brownback also benefited from \$4 million in spending from the Republican Governors Association, which ran a series of attack ads against Davis.



Political and special interest groups spent nearly \$17 million in Kansas starting in September on Sen. Roberts' race. Groups spent nearly \$10 million on activities supporting Roberts or opposing independent challenger Greg Orman, according to information compiled online by the Federal Election Commission. Groups spent about \$6.8 million supporting Orman or opposing Roberts. Most of the money — more than \$13 million — went to television advertising.

"This is unusual for us, not just for political strategists and party operatives, but for voters," Kelly Arnold, the GOP's state chairman, told the Associated Press this week. "This kind of money was spent in Kansas because of the importance of the race."

The U.S. Supreme Court in January 2010 struck down restraints on such spending. But, for comparison, there was less than \$6,200 reported during the competitive GOP primary for the U.S. Senate that year won by Jerry Moran, who then had an easy general election race. Kansas had no Senate race in 2012. The FEC data show that groups also spent \$1.1 million during Roberts' primary race this year against tea party challenger Milton Wolf, most of it to help Wolf. The total for both the primary and general election this year in Kansas is \$17.9 million.

The future

What do these elections mean for the future of Kansas? The Associated Press argued this week that the Governor's victory didn't signal overall voter approval for the tax cuts enacted by legislators at his urging, according to exit polling data released this week. A survey of 2,027 voters for The Associated Press and television networks said that 53% of those surveyed felt the tax cuts had mostly hurt the state, while 41% thought they'd mostly helped. The polling by Edison Research had a margin of error of 4%. However, others believe the Governor's victory was validation of the governor's policies.

House Speaker Ray Merrick, a Stilwell Republican and Brownback ally, said the budget is the Legislature's top issue next year and promised to protect core services. But Merrick added, "We don't have a revenue problem; we have a spending problem."

Brownback's administration already has said it is working to find budget savings and has identified \$101 million worth. "I don't anticipate major changes to budget or to tax policy," said Brownback spokeswoman Eileen Hawley.

And state Rep. John Rubin, a conservative Shawnee Republican, said the GOP-dominated Legislature will be looking to reduce spending. "We will continue to enact tax policy and spending restraints to grow the economy and grow jobs," he said Wednesday.



LEGAL RAFFLES

Voters approved an amendment to the state constitution in Tuesday's election. The measure allows nonprofit, religious, veterans and other organizations to hold raffles as fundraisers. But organizations won't be allowed to sell raffle tickets through electronic gambling or vending machines or contract with professional lottery or raffle companies to operate their contests. Legislators sought to allow such contests by law in 2013, but Republican Gov. Sam Brownback vetoed the measure, seeing a violation of the state constitution.

The constitution originally prohibited all forms of lotteries. Under existing Kansas law, raffles are essentially private lotteries. Kansas now has a state lottery and state-owned casinos, but they are permitted under a 1986 amendment making an exception to the overall ban on lotteries.

Lawmakers will now write the statutes regulating raffles during the 2015 Legislative Session. Lawmakers will consider several items including:

- The cost of a raffle license.
- How often an organization can conduct raffles.
- Will all organizations need a raffle license if the prize value is minimal?
- Will the sale of raffle tickets be taxable?
- Can organizations make their own tickets or do tickets need to be purchased from a licensed distributor?

The Kansas Department of Revenue will oversee the licensing and regulation of raffles. The new regulations would likely not take effect until July 2015.



STATE OPENS BUSINESS FILING CENTER

Kansas Secretary of State Kris Kobach and Governor Sam Brownback unveiled a new, consolidated business registration website. The website was touted as a way to simplify and consolidate necessary state registrations for starting a new business, including registration with the state and tying into Kansas Department of Revenue information on tax implications of that business start-up. The Kansas Department of Labor is expected soon to be linked into the site so business openers can arrange for worker compensation and unemployment insurance and such. Governor Brownback said the new site will make it easier for Kansans and others to start businesses here, and will probably save them money on some initial legal and accounting services they may need. [Check out the site!](#)

HUNTING PROVIDES REVENUE FOR KANSAS

The Kansas Department of Wildlife, Parks and Tourism announced earlier this month hunters contributed more than \$600 million to the state's economy last year, and they're hoping to increase that figure with a campaign to attract hunters from out of state. Kansas has more than 1.5 million acres open to public hunting, and state officials want to make sure that hunters throughout the country know what the state has to offer, said assistant agency secretary Linda Craighead. The agency plans to use national print, television and digital media to promote Kansas as a primary spot for the outdoors to continue an increase in the state's revenue. Craighead said out-of-state hunters and fishermen account for 60% of the money going to the state coffers.



KANSAS REVENUES

The Consensus Revenue Estimating Group met on Monday, November 10, to forecast state tax collections for the current and upcoming year, which will require \$278 million in cuts by June to balance the budget. Stark assessments by the panel of experts indicate a state reserve fund that four months ago contained \$379 million will be completely wiped out. In addition, the forecasters said, Kansas lawmakers must remove \$435 million more from a \$5.9 billion budget to keep the government out of the red in the upcoming fiscal year.

The Legislature and Governor must achieve a balanced budget mandated by the Kansas Constitution. The Governor's Office told the media on Monday updated projections would spur the executive branch's creation by January of budget and policy recommendations. Administration officials have been working on options to curtail spending. "Our primary focus will be to curtail growth in state spending through additional efficiencies and policy proposals while continuing our focus on growing the economy and creating private sector jobs," spokeswoman Eileen Hawley said.

The consensus estimating group determined revenue estimates for the current fiscal year had to be immediately depressed by \$205 million below projections released in April. The state's revenue picture is expected to improve by only \$42 million in the next fiscal year and by \$65 million in the subsequent 12-month period, the analysts said.

When lawmakers convene for the next annual session in January, budget wrangling will be exacerbated by decisions during the 2014 session to appropriate \$300 million more than anticipated to be received in revenue this fiscal year. That election-year spending was to have been covered by reserves in the treasury. A wrinkle in the process is a pending decision by the Kansas Supreme Court in a lawsuit challenging constitutionality of the state's approach to financing public education statewide.

Raney Gilliland, director of the state's nonpartisan Legislative Research Division, said the state's revenue stream was influenced by tax policy as well as conditions in the agriculture, manufacturing and energy sectors in Kansas and the nation. Crop commodity prices, job layoffs at Sprint and elsewhere as well as the sliding price of crude oil all leave an imprint, he said.

In addition, news was released on October 31 that October tax-only receipts were \$23 million below projections for the month, putting state revenues down \$46.5 million below estimates for the four-month-old fiscal year—2.6% below estimates. Individual income tax receipts for October, at \$153.2 million, were down \$26.8 million or 14.9% below estimates of about \$180 million. The October receipts—largely withholding from paychecks—were \$33.7 million or 18% less than last October's receipts, and the fiscal year-to-date receipts of \$677.58 million were \$80 million less, or 10.6%, than estimates and \$84 million or 11% less than this time last year.

Revenue Secretary Nick Jordan said, "The primary reasons for the shortfall...were increased refunds and lower balance-due payments from extended returns." Jordan said larger refunds—about \$9 million more than last year at this time—appear to be the result of taxpayers with investment income over-paying estimates last year.

Notice: UI assessments

By November 30th the Kansas Department of Labor (KDOL) must issue unemployment insurance (UI) assessments to all Kansas employers. Over the last 6 years, Kansas legislators have artificially held down UI rates as they work to reform the system and restore the trust fund to solvency. While restoring the fund is still in progress, during the 2013 session, legislators increased the wage base assessment from the first \$8,000 in employee wages to \$12,000 effective in 2015. This upcoming year Kansas employers will pay their assessed UI rate on the first \$12,000 in each employee wages, and therefore, should expect an increase in the amount they will have to pay. While this is not the most ideal situation, the goal is to restore and bring stability back to the trust fund. If you have any questions about your 2015 UI assessments, please visit KDOL's website <https://www.dol.ks.gov/GetKansasBenefits.aspx> or contact Natalie Bright at natalie@brightcarpenter.com.

CHANGES IN THE HOUSE

House Speaker Ray Merrick, R-Stilwell, called the election historic. He also signaled what the agenda would be for the newly expanded Republican caucus and how it would handle a projected budget shortfall.

“I’m celebrating Tuesday’s historic election but also immediately looking toward our main focal point for the 2015 session, which is the state budget. We don’t have a revenue problem, we have a spending problem,” Merrick said in a statement. “I plan to work with our newly expanded caucus to ensure the state lives within its means while continuing to protect core services like education and public safety.”

The 2015 Kansas House—barring the possibility of a seat or two changing after county canvassing boards meet—will now have 97 Republicans and 28 Democrats. The 2014 Legislature had 92 Republicans and 33 Democrats serving in the House. On Monday, November 10, during the county vote canvassing, Rep. Ed Trimmer, D-Winfield, gained a 17-vote lead over his challenger Larry Alley, R-Winfield, who was declared the winner on Tuesday. These votes will be recounted.

The 2015 House will have 20 new members—two Democrats and 18 Republicans—who didn’t serve during the 2014 Kansas legislative session; that includes three people who previously served legislative terms. That contrasts with the 2013 House, which had a whopping 55 new members, including five who had previously been legislators.

The 2015 GOP tilt in the House is the biggest in decades, and it now appears that the Democrat/moderate Republican pool may be about 53 votes, which likely means that second-term Governor Brownback isn’t going to have to shave his proposals much to get them passed into law. This will be one of the most conservative Legislatures in a long time.

There were 4 party changes in the House seats:

- **District 3:** Rep. Julie Menghini, D-Pittsburg, defeated 51% to 49% by relatively moderate Republican Chuck Smith, in a 130-vote win.
- **District 41:** Republican Tony Barton, Leavenworth, defeats Democrat Nancy Bauder for the seat being retired by 2 ½-term Rep. Melanie Meier, D-Leavenworth, who is being deployed with the military.
- **District 56:** Republican Lane Hemsley defeats Rep. Virgil Weigel, D-Topeka, by 40 votes.
- **District 88:** Republican Joseph Scapa, Wichita, unseats one-term Rep. Patricia Sloop, D-Wichita, by a 48-vote margin. Sloop beat one-term Rep. Scapa by 441 votes in 2012.

Canvassing and vote recounts will continue this week to finalize results.

The elections will have some effect on the House leadership. It is expected that House Republican leadership will be decided December 1, and committee assignments will soon follow. House Speaker Ray Merrick will be challenged by Rep. Virgil Peck, R-Tyro. On the Democrats side, the position for House Minority Leader will be decided between Rep. Tom Burroughs, D-Kansas City, Rep. Jim Ward, D-Wichita, and maybe others.

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