

Kayla Koether's Argument in Support of the Contest for Iowa House District 55

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2501 Grand Avenue
Des Moines, Iowa 50312
ATTORNEYS FOR CONTESTANT
KAYLA KOETHER



29 Uncounted Votes

- Nine vote margin separating Mr. Bergan and Ms. Koether in House District 55 Election.
- USPS barcode contained on envelopes confirms 29 uncounted ballots were mailed before Election Day.
- Different counting standards in each of the counties in the district.

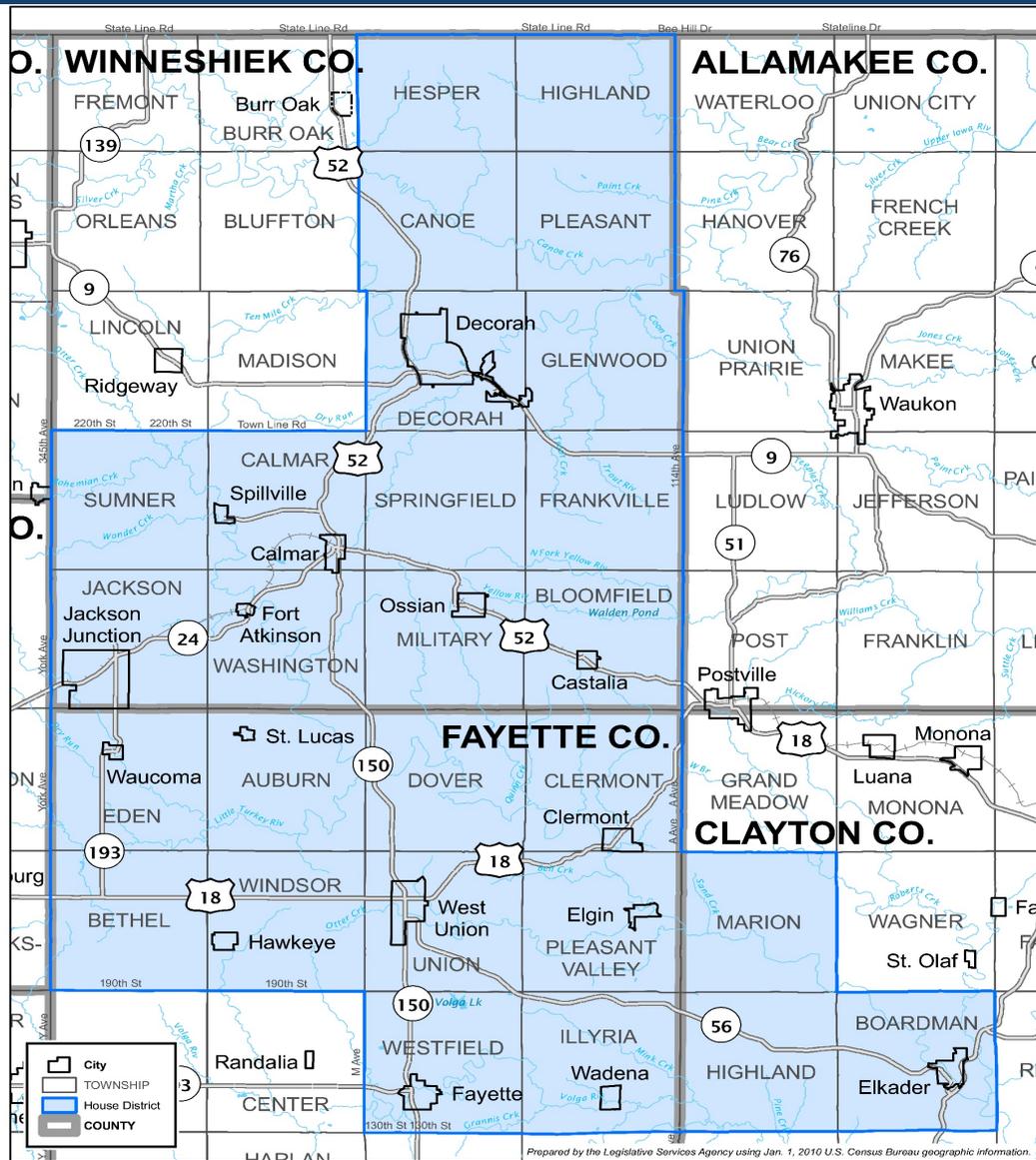


State Representative District 55 (Vote For 1)

[View Contest Detail](#)

Counties Reporting: **100 %**

	Percentage	Votes
REP  Michael Bergan	50.01%	6,924
DEM Kayla Koether	49.94%	6,915
Write-in	0.05%	7
		13,846



	City
	TOWNSHIP
	House District
	COUNTY

Prepared by the Legislative Services Agency using Jan. 1, 2010 U.S. Census Bureau geographic information.



Iowa House District 55

Effective Beginning with the Elections in 2012 for the 85th General Assembly



Auditors Improperly Count Some Ballots In House District 55, Nullify Others

By KATE PAYNE • NOV 14, 2018

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Local elections workers improperly counted some ballots in a tight legislative race, and were forced to nullify others to comply with state law. The moves could've made a difference in the contest, which has a margin of just seven votes.

THOMAS HAWK VIA FLICKR, CREATIVE COMMONS / [HTTPS://WWW.FLICKR.COM/PHOTOS/THOMASHAWK/1447162109/](https://www.flickr.com/photos/thomashawk/1447162109/)

Elections officials improperly counted ballots in Iowa's closest statehouse race. Despite the error, state officials say there's no way to undo it.

Fayette County Auditor Lori Moellers says elections workers there improperly included 12 last minute mail-in ballots in their count, even though the ballots were not postmarked, which is required by [Iowa Code](#). The move could have affected the outcome in northeast Iowa's House District 55 race.

From: **Williams, Dawn [SOS]** <Dawn.Williams@sos.iowa.gov>

Date: Thu, Nov 15, 2018 at 4:25 PM

Subject: RE: Request for Names of Fayette Ballots Postmarked & Not Postmarked

To: Kayla Koether <kayla@kaylaforiowa.com>

Good afternoon Laura. Attached is the list of absentee voters from Fayette County who returned ballots in District 55, received after election day that did not receive postal cancellation.

Dawn Williams

Director of Elections

Office of Iowa Secretary of State Paul D. Pate

(515) 281-0145

dawn.williams@sos.iowa.gov



sos.iowa.gov

R 11/06/2018 4242 04
502707245
4-DEW2
2475563
LIAM ALEXANDER MURPHY
METROPOST ONLY PERMITTED



NEOPOST
Postage
Paid by
US POSTAGE \$000.47
ZIP 52101
041M11281972

Return Affidavit Envelope

This envelope contains an official absentee ballot.

To the County Commissioner of Elections

WINNESHIEK COUNTY AUDITOR
201 W MAIN ST
DECORAH, IA 52101

RECEIVED

NOV 07 2018

Winneshiek County
Auditor

8210181775 0003

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

KAYLA KOETHER, in her individual capacity as the Democratic Nominee for the Iowa House of Representatives District 55, Plaintiff,	*	Case No. EQCE083821
v.	*	REPORT TO COURT
PAUL PATE, in his official capacity as Iowa Secretary of State; BENJAMIN STEINES in his official capacity as County Auditor for Winneshiek County, Iowa, Defendants.	*	

COMES NOW the Defendant and pursuant to Paragraph 4 of the Court's Order entered on December 3, 2018, Benjamin Steines, Winneshiek County Auditor reports:

1. The subject ballot envelopes marked as exhibits attached to the Plaintiff's petition have been examined by the US Postal Service (USPS).
2. As to the 33 ballots received for House District 55, Benjamin Steines received the following information from the USPS:
 - a. The following ballots were deposited with the USPS on November 5, 2018:
 - i. Exhibit Nos. 1 through 18; Exhibit Nos. 20 through 28; and, Exhibit Nos. 30 through 31;
 - b. Exhibit No. 19 was deposited with the USPS on November 6, 2018;
 - c. Exhibit Nos. 29, 32 and 33. USPS did not supply data for these envelopes.
3. The Defendant, Benjamin Steines, Winneshiek County Auditor, has retained the ballots as required by Paragraph 5 of the Court's Order of December 3, 2018.

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Iowa Code

53.17 Mailing or delivering ballot – (2) In order for the ballot to be counted, the return envelope must be received in the commissioner's office before the polls close on election day or be clearly postmarked by an officially authorized postal service or bear an intelligent mail barcode traceable to a date of entry into the federal mail system not later than the day before the election and received by the commissioner not later than noon on the Monday following the election.

Iowa Administrative Code

721-21.14(53) Intelligent Mail barcode (IMb) Tracing. A commissioner may choose to use Intelligent Mail barcode (IMb) Tracing (IMb Tracing) to determine when an absentee ballot has entered into the federal mail system as an alternative to a traditional postmark verification.

21.14(1) *Notice to state commissioner of elections required.*

- a. Prior to a commissioner's implementation of IMb Tracing for an election, notice must be sent to the state commissioner.
- b. A commissioner may not implement or discontinue the use of IMb Tracing while an election is open once absentee ballots have been mailed pursuant to Iowa Code section 53.8.
- c. The state commissioner may issue a waiver to paragraph "b" if a commissioner's ability to use IMb Tracing is impacted beyond the commissioner's control.

Iowa Code versus Iowa Administrative Code

Iowa Code § 53.17(2)

In order for the ballot to be counted, the return envelope must be received in the commissioner's office before the polls close on election day or be clearly postmarked by an officially authorized postal service or bear an intelligent mail barcode traceable to a date of entry into the federal mail system not later than the day before the election and received by the commissioner not later than noon on the Monday following the election.

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Iowa Code

57.5 Recanvassing in case of contest - The parties to any contested election shall have the right, in open session of the court or tribunal trying the contest, and in the presence of the officer having them in custody, to have the ballots opened, and all errors of the precinct election officials in counting or refusing to count ballots corrected by such court or tribunal.

“Unfortunately I am one of the unlucky 29 voters whose ballot has been set aside due to a lack of common sense. To my understanding there is a barcode that was printed on the envelope and that the US Postal Service has said that the barcode proves that the ballot was mailed on time. What is the issue?”

- Nancy Buchheit

Republican Voter Winneshiek County House District 55

“A few years ago we used to have a polling site right here in Frankville. Lack of funding closed it down, so now we have to go to Decorah. To get to the polling place is about 14 miles. With Lowell being disabled, it has been easiest for us since we lost the polling place here in town for us to vote absentee. I was devastated when I got the phone call that our votes hadn’t been counted since they weren’t postmarked. I was rather upset. We mailed them on time. It’s not my fault they didn’t get a postmark.”

- Laura Staake

Democratic Voter Winneshiek County House District 55

“My rights are being trampled. I just want it to be fair. The process is supposed to be a fair one. This is America... this isn't some third-world country where they burn ballots that they don't want counted. The Committee owes it to the people to count every vote. They can't justify not counting the votes.”

- Robert (Bob) Wilson

No Party Voter Winneshiek County House District 55