

**Brennan Center for Justice  
Written Testimony in Support of Senate Bill 313  
Election Law – Postelection Tabulation Audits – Risk-Limiting Audits**

**Submitted to the Education, Energy, and the Environment Committee**

**February 24, 2025**

The Brennan Center submits this testimony in support of SB 313, “an act concerning Election Law – Postelection Tabulation Audits – Risk-Limiting Audits.” The Brennan Center is a national nonpartisan law and policy institute affiliated with NYU School of Law that seeks to improve our systems of democracy and justice.<sup>1</sup> The Brennan Center has a long history of partnering with election administrators, legislators, and other elected officials at the local, state, and federal levels to reform and improve our elections and election administration. **The Brennan Center strongly supports adoption of risk-limiting audits in Maryland.**

Post-election tabulation audits, of which risk-limiting audits are one type, are a critical tool for detecting ballot-counting errors, discouraging fraud, and improving the security and reliability of – and confidence in – both machine and hand counts in elections. Reliable post-election audits are conducted in a transparent manner by impartial election officials, often in bipartisan teams, according to pre-determined rules, with a documented process to ensure security of voting equipment, maintain chain of custody of voted ballots, and protect voters’ personal information. By providing a post-election check on election outcomes, post-election tabulation audits increase voter confidence. In this age of election denialism and skepticism about election outcomes, tabulation audits are an especially important tool.

Risk-limiting audits are the gold standard of post-election tabulation audits. Risk-limiting audits are designed to detect unintentional errors, intentional attacks, and any other causes that result in tabulation errors leading to an incorrect election outcome. In straightforward terms, a risk-limiting audit is an easy and efficient method for double-checking the election outcome. By hand counting a statistically meaningful sample of the votes cast, the risk-limiting audit can determine whether the original vote tally matched the correct outcome.

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<sup>1</sup> The Brennan Center is a nonpartisan law and policy institute that works to strengthen the systems of democracy and justice so they work for all. The opinions expressed in this testimony are only those of the Brennan Center and do not purport to convey the views, if any, of the New York University School of Law.

One of the differences between a traditional tabulation audit and a risk-limiting audit is in the *sample*: Risk-limiting audits rely on statistical principles to determine the random sample of ballots that need to be examined and counted by hand to provide evidence that election outcomes are accurate. In plain terms, more ballots are examined by hand in a close race, while a race with a larger margin requires fewer ballots to be examined. If testing of the sample is consistent with the preliminary outcome, it is almost certain that the initially declared winner won the race. If, on the other hand, the sample has substantial discrepancies with the original tally, then more ballots are sampled until there is enough evidence to provide the desired level of confidence in the declared election result, or until all the ballots have been manually counted.

Risk-limiting audits are one of the critical measures necessary to secure elections and a key component of a broader cybersecurity defense.<sup>2</sup> They can be conducted publicly and can provide voters with confidence that a counting error or malicious attack has not changed the election outcome. As a risk-limiting audit has the capacity to detect whether any outcome-determinative interference has occurred, routine risk-limiting audits are highly recommended by numerous security experts as a method of protecting the integrity of elections. Political scientists, statisticians, and election-security experts have all lauded the benefits of post-election, risk-limiting audits.<sup>3</sup>

Beyond Brennan Center's strong endorsement of risk-limiting audits as a best practice in election administration, it is worth highlighting a few key aspects of SB 313. First, the bill creates a timely post-election tabulation audit that relies on paper ballots rather than ballot images. Experts widely recognize that paper ballots are one of the most important security measures that states can adopt because voters can easily verify that their ballot accurately reflects their choices.<sup>4</sup> Election administrators and the public can be confident that any particular paper ballot (as opposed to digital images created by software) accurately reflects a voter's intent. Because voters' paper ballots provide the most trustworthy record of voters' intentions, an audit relying on them should be performed soon after the election.

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<sup>2</sup> Brennan Center for Justice et al., *Securing the Nation's Voting Machines: A Toolkit for Advocates and Election Officials*, May 31, 2018, <https://www.brennancenter.org/publication/securing-nations-voting-machines>; Brennan Center for Justice, "National Security, Tech, and Election Officials to States: Best Practices Should Guide How New Voting System Security Funds Are Spent," April 23, 2018, <https://www.brennancenter.org/our-work/analysis-opinion/national-security-tech-and-election-officials-states-best-practices>.

<sup>3</sup> Mark Lindeman and Philip B. Stark, "A Gentle Introduction to Risk-limiting Audits," *Security & Privacy, IEEE*, no. 10 (March 16, 2012): 42-49, <https://www.stat.berkeley.edu/~stark/Preprints/gentle12.pdf>; Philip B. Stark, *An Introduction to Risk-Limiting Audits and Evidence-Based Elections*, Department of Statistics, University of California, Berkeley, July 2, 2018, <https://www.stat.berkeley.edu/~stark/Preprints/lhc18.pdf>; Lawrence Norden and Christopher Famighetti, *America's Voting Machines at Risk*, Brennan Center for Justice, September 15, 2014, <https://www.brennancenter.org/publication/americas-voting-machines-risk>.

<sup>4</sup> Derek Tisler & Turquoise Baker, *Paper Ballots Helped Secure the 2020 Election – What Will 2022 Look Like?*, Brennan Center for Justice (May 10, 2022), <https://www.brennancenter.org/our-work/analysis-opinion/paper-ballots-helped-secure-2020-election-what-will-2022-look>.

Second, this bill specifies the timing of the risk-limiting audit to occur before certification of election results.<sup>5</sup> This is important because, if the audit detects the likelihood of counting errors (and therefore the possibility that the outcome is inaccurate), those errors can be effectively addressed. Similarly, with this timing, risk-limiting audits can confirm the electoral outcome for the public and perform the confidence-building and remedial functions for which it is intended.

Finally, and relevant to any reconsideration of an election outcome, Brennan Center understands new subsection (b)(5) within the bill to have a very specific meaning that may not be readily understood upon a facial reading. New subsection (b)(5) states, “If a risk-limiting audit finds that the election outcome determined by the electronic count is incorrect, the official result of the election shall be altered to match the outcome determined by the risk-limiting audit.” Notably, this language does *not* mean that the election outcome will be modified by reliance on a count and comparison with the risk limiting audit’s initial sample alone. Rather, when the initial risk-limiting audit sample detects the likelihood of tabulation problems, the audit will continue to be expanded –including to a full count of paper ballots. Thus, if the risk-limiting audit “finds the election outcome determined by the electronic count is incorrect,” it will be because of the escalation of the audit *to a full count* that identified the contrary outcome. This is the exact role a post-election tabulation audit should play.

For these reasons, Brennan Center urges this body to vote in favor of SB 313.

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<sup>5</sup> S. 313, 2025 Sess. § 1(b)(4)(ii) (Md. 2025), <https://mgaleg.maryland.gov/2025RS/bills/sb/sb0313F.pdf>.