

Proponent Testimony on Senate Bill 351
Senate Committee on Ethics, Elections and Local Government

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Chair Bowers, Members of the Committee,

I've been studying the topic of rejected provisional ballots in Kansas for 18 months. Each of you have a disturbing number of constituents who voted in the 2018 general election, but never had their votes counted. There were over 29,000 provisional ballots cast in that election. Three out of four were counted, but over 7,500 provisional ballots were not.¹

Provisional Process

A provisional ballot, formerly known in Kansas as a challenged ballot, is given to a voter when there is any question about eligibility. The process involves the voter showing their photo ID, writing their name in the poll book, signing the poll book, completing a voter registration application, being given an envelope that states the reason their vote is provisional, having their registration attached to that envelope, marking a ballot, placing the ballot in the envelope, and having the envelope sealed. After election day, the election officer groups provisional ballots by category and researches them. Counties have up to 13 days to determine which provisional votes count and to hold the election canvass.²

Counted Ballots

The largest category of counted provisional ballots comes from a 1996 law that allows Kansans who moved within a county, but did not re-register to cast a provisional ballot and have it count.³ This added onto existing statute under 25-2316c that allows Kansans who had a name change, but did not re-register to cast a provisional ballot and have it count.

Uncounted Ballots

The overwhelming majority of rejected provisional ballots occur in similar circumstances to those that are protected from the 21-day cutoff under 25-2316c, but statute is narrowly written forcing election officials to reject thousands of otherwise eligible Kansans votes.

In 2018, there were 6,173 Kansans who were disenfranchised because they are excluded from protections under 25-2316c. The biggest portion being Kansans who are already registered to vote in Kansas, but have moved across a county line. You can move 30 miles across a county and have your vote counted, but if you move 30 feet across the county line it is rejected.

¹ “2018 Election Administration and Voting Survey” U.S. Election Assistance Commission

² Kansas Election Standards

³ L. 1996, ch. 187, § 12, K.S.A. 25-2316c(b)

There are Kansans ineligible to register before the 21-day cut off, but eligible to vote on election day such as those whose civil rights are restored after completing the terms of a felony conviction or those being sworn in as U.S. citizens. There are Kansans disenfranchised by bad or negligent actors such as those who run a voter registration drive, but never turn the registrations into the election office. There are Kansans who do not know that there's a preemptive cut off date to participate which was only extended from 2 to 3 weeks in 2012.

One of the most concerning areas of disenfranchisement is bureaucratic error. In 2016, it came to light that the Secretary of State's online voter registration system had technical problems and an unknown number of registrations were lost.⁴ That year Douglas county independently tracked the issue and found over 50 people in their county alone who did in fact attempt to register, but the system never processed them onto the poll books. Further, the DMV registration system has a history of voter registration transaction errors. In fact, the category of people registering at the DMV, but not showing up in the poll books is so common it's listed within the Kansas Election Standards. It's listed under ballots not to count.

Kansans who cast a provisional ballot in any of these circumstances will have the registration form they completed with their ballot processed. They will be given "voter credit" making it so that when they look up their record it tells them they voted. It doesn't tell them it was rejected.

SB 351 A Simple Solution to Protect Kansas Citizens

As complex as the problem is, the solution is simple. SB 351 is under the same statute dealing with provisional ballots related to counting in-county moves and name changes. It makes it so that a Kansan whose name does not appear on the poll book will do exactly what they do today. Nothing changes for poll workers. The only thing that changes is the vote is counted as long as the voter was qualified to vote at the voting location and there's no other reason to reject it.

Election Security

I do want to add a brief note on election security. U.S. intelligence agencies found that voter registration databases are being targeted for cyber attacks and in fact some states were breached to the point that "cyber actors were in a position to, at a minimum, alter or delete voter registration data." Such alterations would prevent people from appearing accurately in the poll book. The intelligence agencies concluded this was in preparation to undermine confidence in the voting process.⁵ SB 351 would protect Kansans from being disenfranchised by such a cyber attack. In this regard, SB 351 is an urgent matter of national security.

SB 351 is about trust in our democratic republic. This is an opportunity to ensure Kansans that if they show up to vote their vote will be counted. I urge you to pass out SB 351 favorably.

I'm happy to stand for any questions. Thank you.

⁴ "Kansas election officials threw out thousands of ballots" Topeka Capital-Journal 01/14/2017

⁵ "Russian Targeting of Election Infrastructure During the 2016 Election" U.S. Senate Select Committee on Intelligence 5/8/2018