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STATE OF KANSAS

Testimony: SB351 (Opponent Written Only)

Senate Ethics, Elections & Local Government Committee
Wednesday, February 19, 2020

Chairwoman Bowers and members of the Committee:

SB351 would allow a person who is not currently registered to vote, to cast a provisional ballot on Election Day, and then mandate the county board of canvassers to count the provisional ballot unless it was not properly cast or if the voter has otherwise voted. Currently, voters who do not appear in a poll book must cast a provisional ballot and their ballot is counted only after the voter is deemed eligible to vote.

The Office of Secretary of State opposes SB351 as it is currently written. Existing state law requires that every person to be registered to vote at least 21 days prior to an election in order to be eligible to cast a ballot in any election (K.S.A. 25-2302). Allowing an unregistered individual to cast a ballot, and have that ballot counted, violates this law. SB351 mandates that a provisional ballot be issued to any person who is not on the poll book but who is otherwise qualified to vote. Currently, election board workers do not have the ability to determine the qualifications of voting at the polling place on Election Day. As a result, every person who shows up on Election Day is already provided a provisional ballot in every polling place in Kansas. All provisional ballots are reviewed by the county board of canvassers to make a final determination as to the disposition of the provisional ballot. The language of SB351 would result in county board of canvassers violating current state law as it relates to the registration of voters.

A broader interpretation of SB351 is that it would allow for election day voter registration. We would be remiss if we did not alert you to the significant administrative burden this would place on local election officials. Current state law does not accommodate same-day voter registration due, in part, to the inability of election officials to verify the eligibility of persons applying to register to vote. In addition, voters could be less likely to register to vote prior to an election if they know they can just show-up and have their ballot counted. This would make it difficult for state and local officials to ensure voter registration records are up to date. The bill would create administrative hurdles for county election officials and could increase the number of provisional ballots cast throughout Kansas.

In January, when Secretary Schwab appeared before this committee, he requested that any substantial changes to the administration of elections have an implementation date for after the 2020 elections. Our office is concerned this legislation could result in the state or counties being sued due to inconsistencies between the bill and existing state statute. As you already know, the Secretary of State was just sued as a result of legislation from the 2019 session and SB351 could open the office up to additional litigation. Furthermore, the possibility exists that county boards of canvassers, acting on the advice of their own legal counsel, could come to different conclusions on counting ballots due to the conflict in state law this legislation would present.

We respectfully recommend that if the committee wishes to advance this bill, to consider the following:

- Delay implementation to at least 2021 to provide local election officials with the opportunity to plan for potential administrative changes needed to comply with SB351

- Ensure SB351 fully accounts for other areas of state law so county board of canvassers and local elected officials are not held liable for unintentionally breaking the law to comply with the provisions of SB351
- Guarantee the bill accounts for verification of information contained on completed voter registration forms submitted at the polling locations
- Better articulate circumstances where an individual could cast their ballot under the provisions of SB351 (Example: Individual is registered in one Kansas county but moves and neglects to register to vote in their new Kansas county)

Thank you for the opportunity to testify on SB351.

Respectfully Submitted,

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