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STATE OF KANSAS

House Committee on Elections

Testimony on Senate Bill 177

Secretary of State Kris W. Kobach

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Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify in support of Senate Bill 177. This bill would clarify existing law and would prohibit the public disclosure of the names of voters for a period from Election Day through the county's canvass and certification of the election. It would not prohibit the disclosure of names of advance voters.

I support this legislation for two reasons:

1. It will protect voters from unwanted post-election contacts from candidates.
2. It will protect county election officers from dealing with records requests during the busy time when they are preparing for the county canvass.

In recent years, county election officers have begun to receive requests for poll book information or copies of provisional ballot envelopes as candidates and their legal representatives prepared for possible recounts and election contests. My predecessors in the Secretary of State's office adopted a policy that these requests should not be fulfilled until after the canvass of the election. I concur with that policy.

In addition, federal law protects the confidentiality of information on a voter's ballot and about the ballot after the election. *See* 8 U.S.C. § 15482(a)(5)(B). The disclosure of the names of provisional voters would make it possible for anyone who has the disclosed list of names to call the relevant county's "free access system" to learn about the disposition of a provisional ballot that was cast by someone else.

A further concern with the disclosure of names arises in low-population counties when the number of provisional ballots is relatively small. The disclosure of the names of provisional voters in that scenario can compromise the confidentiality of the vote when all of the provisional ballots are cast for the same candidate in a particular race. Protecting the secrecy of every person's vote is one of the most important things that we do.

In 2012, a new category of provisional voters resulted from passage of the 2011 Secure and Fair Elections (SAFE) Act. Voters who failed to provide photo IDs when voting could provide IDs to the county election officer after Election Day in order to have their provisional ballots counted. This process is guaranteed by K.A.R. 7-46-1, which was adopted by my office. Some candidates requested the names of voters whose ballots were provisional due to the lack of photo ID with the intent of contacting the voters to assist them in providing their IDs to the county election office. We advised election officers not to comply with the request. Two lawsuits were filed in district court; one agreed with our position and one did not.

Most voters do not wish to be contacted by candidates after they have cast their ballots. They are through listening to radio and television ads and receiving campaign mailers. Providing provisional voters' names to candidates effectively extends the campaign period for six to ten days after the election. We have not - and we should not now - subject voters or county election officers to this added burden.

Also, it is important to note that provisional voters already receive notice of their option to provide photo ID to the county election office. They are handed a notice by a poll-worker at the time they vote. This is also required by federal law in the Help America Vote Act of 2002.

The Senate Committee on Ethics, Elections and Local Government amended the bill in several ways. We concur with these amendments. The Senate overwhelming passed SB 177 as amended by a vote of 29-10.

I urge the committee to report Senate Bill 177 favorably for passage to help ensure an orderly process for preparing for the county canvass and to protect voters from an unnecessary extension of the campaign season.

Thank you for your consideration.