

HOUSE ELECTIONS COMMITTEE
CHAIRMAN REP. SCHWAB
TESTIMONY SB 177

Chairman and Committee:

This testimony is in opposition to SB 177. SB 177 changes state law to say that those who vote provisional ballots may not be identified until following the final canvass of the election. This change could cause many more ballots to be thrown out than under current law. That would be a travesty.

WHY THERE SHOULD BE ACCESS TO PROVISIONAL BALLOT VOTER NAMES

There are a large number of provisional ballots cast each election. There were over 2000 provisional ballots cast in Shawnee County in 2012 alone. Many voters do not understand the process of provisional balloting. They may not know why they were made to vote a provisional ballot or what that means, and in some cases they are made to vote a provisional ballot in error. The provisional ballot is the “fail-safe” provision to protect their vote. SB 177 will simply cause more ballots to fail.

In 2012, for reasons of lack of photo ID alone, over 1300 Kansas citizens were made to vote a provisional ballot. 787 of those citizens’ votes were ultimately not counted. Because I requested and received the names of those voters who had been made to vote provisional ballots in House District 54, more voters had their votes counted. The people need advocates to work through the provisional ballot process. Here are some of the things I ran into in working with voters on their provisional ballots:

1. Voters did not understand what kind of photo ID would count. Poll workers were inconsistent across the state in accepting forms of ID. Here are examples related to voter ID issues alone and provisional ballots:
 - a. Poll workers rejected IDs because the address on the ID didn’t match the poll books. The photo ID does not have to have a matching (or any) address.
 - b. IDs that should have been accepted (i.e., military ID, public university ID) were rejected by some poll workers, creating provisional ballots that ultimately were not counted.
 - c. Poll workers rejected a temporary drivers license (the paper receipt you get when you renew your driver’s license), even though the voter had the old driver’s license in hand.
 - d. A voter refused to show his ID as a form of protest. He left the polls believing that signing the affidavit and filling out a provisional ballot would allow his vote to count. If I had not contacted him and told him he had to actually provide an ID, he would have lost his vote.
 - e. A voter’s driver’s license was suspended. He filled out a provisional ballot but thought his vote would be lost because he had no other valid ID. I went through his identification with him and found a city bus pass with his photo. I helped him get it faxed to the county election office and his vote counted.
 - f. Two elderly gentlemen in Osage county at a nursing home voted on election day but had no ID. The county clerk worked with the nursing home and families but could not find IDs for them before the canvass date. Even though their ballots did not count this year, they have been identified and we can work to get them IDs before the next election. Without getting access to their names, the result would be the same in the next election.

- g. In Marion county, three residents of a nursing home under the age of 65 took expired drivers licenses to the polls to vote. The white resident was allowed to vote a regular ballot. The Mexican-American voter and the Hawaiian-born voter were made to vote provisional ballots which were ultimately thrown out.
2. Students out of state who had inadvertently put their school address on the outside of their mail-in envelopes were told they had to send in an affidavit of address prior to the close of polls on election day. This was not true. They had until the canvass date. I helped them get the affidavits in on time once I verified with the county election office that they indeed had until the canvass date. I have no idea how many other students' votes were lost due to the wrong information sent out by the county election office.
3. Policies across counties are inconsistent and voters don't know what the rules are. One county allowed third parties to help bring in photo IDs and resolve issues with provisional ballots. Another county said that only the voters themselves could provide needed documentation to the county election office. One county required photo IDs to be provided by the Friday after the election. Voters should have been given until Monday following the election in that county. In Shawnee County, the election commissioner recognized that problems with the new system at the Department of Motor Vehicles caused some new voter registrations to not be transmitted to the county. They followed up on some voters' complaints that they had registered at the DMV, and some voters' ballots were counted upon investigation into that problem. I would bet that not all counties looked into that issue for the voters.

This list could go on and on, but I hope you get the point. Every single person I called about helping make their provisional ballot count thanked me for my help. Most had no idea what to do. Some of us, whether candidates or not, want to be advocates for voters of provisional ballots because the counties and poll workers are inconsistent, and because voters don't understand the process. It is important that every citizen's vote counts. Election offices don't have time to help every provisional voter and they don't even get the rules right all the time.

THE CASE IN COURT

Realizing the negative impact photo ID had on the primary election, I asked the Shawnee County Election Commissioner for a list of those whose votes had been discounted in the 2012 primary for issues with photo ID. Commissioner Ensley told me that I could not get those names after the canvass date, because they were sealed. She said that if I asked for the names of the provisional voters between the election date and the canvass date in November, she would provide that list as had been past practice.

Even before the November election I started the process of requesting the names of provisional voters, not realizing that my own race might come into play in a close count. I asked the new Shawnee County Election Commissioner after the November 6 election for the list of provisional voters in House District 54 and was told that the Secretary of State would not allow it. Per state law, I petitioned a District Court judge for the names and got them. The Secretary pursued the case to federal court and we are still in proceedings there, but the federal judge did order the release of those names.

SUPPRESSION, NOT PRIVACY, IS THE ISSUE

I must clarify that even though the Secretary of State intervened to help defeat me in 2012, and even though it may appear he was denying access to the provisional ballots to try and stop me from winning a close race, I don't believe that SB 177 is necessarily about my race. I believe there is a much larger issue at hand – hiding evidence of the negative impact of the SAFE Act on Kansas elections. If no one can get access to the names of those citizens whose votes were thrown out, then it is harder to collect evidence to challenge the SAFE Act in court. It's as simple as that.

There is an issue regarding consistency between courts. Provisional voters in Osage, Shawnee, and Douglas counties were able to get help and make their votes count. Voters in Sedgwick County were denied that help. But the answer is not to block all courts from allowing advocates to help. The answer is to open the access to the names of those who have provisional ballots in the name of civil rights. It is not even clear that SB 177 does not prevent the county election officers from contacting voters of provisional ballots to try and help them, as the name of a voter may inadvertently be disclosed during that process. That would also be a travesty.

SB 177 is not about protecting voter privacy. Releasing the names of provisional voters has been common practice in the past. And if the Secretary were really concerned about voter privacy, he would not have "outed" a non-dead voter for potentially voting while dead in a news conference. I suspect that voter would have appreciated some privacy. The Secretary already argued before a federal judge that federal law prevented disclosure of the names of those voting provisional ballots. The federal judge made it plain that the Secretary's interpretation of federal law was incorrect and ordered the release of the names of provisional voters to both me and my opponent.

No one is asking voters how they voted. That is not the point. The point is helping people so their votes count. If we say that even one fraudulent vote is too many, then we should agree that having hundreds of ballots thrown out in one election is a disaster. Democracy is best served when more citizens' votes are counted. Don't allow the Secretary of State to disenfranchise more voters to protect one bad law with another bad law. Let's fail safe on the side of the voters.

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