

Stewart Whitson
Opportunity Solutions Project
785.409.8867
Senate Bill 394 Proponent



Senate Bill 394

Kansas State Legislature
Senate Committee on Federal and State Affairs

February 14, 2022

Stewart Whitson
Visiting Fellow
Opportunity Solutions Project

Chairman Olson, Vice Chairman Hilderbrand, and members of the committee,

Good morning, my name is Stewart Whitson, and I am a visiting fellow at Opportunity Solutions Project (OSP). OSP is a non-profit, non-partisan advocacy organization dedicated to advancing policies that reduce barriers to work and promote free and fair elections by making it easy to vote, but hard to cheat.

Thank you for hearing this legislation before your committee. I am submitting this testimony in support of Senate Bill 394.

The purpose behind S.B. 394 is simple: Election Day should be Election Day.

But, under current law, Election Day is not Election Day, it's three days after Election Day. That's because the deadline for mail-in ballots to be received by the county election office is not Election Day; it's three days *after* Election Day.

This is problematic for several reasons.

First, allowing ballots to be received days after the election can delay election results. Delay sows doubt. In 2020, we witnessed the problems and controversy caused when election results are delayed, with states across the country including Arizona, Georgia, Wisconsin, Pennsylvania, and Michigan experiencing such delays.¹ Allowing absentee ballots not received until three days after the election invites this delay and doubt into Kansas elections, and that's not good for Kansas or its voters. The simple change S.B. 394 would make would help alleviate this problem.

Second, ballots that don't arrive until three days after an election can seriously undermine voter confidence in the outcome of elections, especially in cases where a close race suddenly flips after Election Day based on a wave of absentee ballots counted after Election Day. We saw this play out in 2020 in Pennsylvania, Michigan, and Wisconsin, where vote totals early in the night on Election Day put Donald Trump in a commanding lead, only to have Joe Biden eventually win all three states days later, after all the mail-in ballots were counted.²

It's not hard for a reasonable person to understand why voters might question the veracity of the outcome when a sudden surge of votes for the underdog comes in at the eleventh hour. The fact that those votes come in from an area that was expected to favor the other candidate does not assuage the concern—it only makes it worse. Whether or not there is fraud, and whether the fraud is widespread enough to change the outcome of the election is irrelevant when there is something the state can do to significantly improve the situation. This bill is that “something” that you can do.

Requiring all mail-in ballots to be in the hands of the ballot counters no later than Election Day would surely help to alleviate the concerns of many voters—not all concerns, but certainly many of

them. Election integrity is not only about stopping fraud; it's also about promoting voter confidence in electoral outcomes. S.B. 394 would enable the legislature to do just that.

Third, creating a deadline other than Election Day can cause serious confusion to voters, leading people to narrowly miss their opportunity to have their vote count because they misunderstand the deadline. This, in turn, can not only erode voter trust in the outcome of elections, but it can also change the actual results, especially in close races decided by only a handful of votes.

In 2020, voters in Kansas saw this firsthand when more than 1,500 voters did not have their votes counted in the August primary because their ballot either arrived too late or wasn't postmarked by Election Day. These are two factors entirely out of the control of voters who may have, in fact, dropped their ballot into the mail on time on Election Day.³ Presumably, these voters believed that so long as they dropped their ballot into the mailbox on Election Day, their vote would count. They were wrong.

And these lost votes very well could have changed the outcome of the election, according to voting rights advocates in Kansas who have noted that five state legislative primary races were won by fewer than 50 votes.⁴

By making Election Day the deadline for mail-in ballots to be received by election officials, all of these challenges could be addressed. S.B. 394 would make clear to voters wishing to vote by mail that merely dropping the ballot into the mailbox does not guarantee the vote will be counted the way it would were it to be handed directly to an election official. For myriad reasons some voters will accept this risk, and perhaps they'll be motivated to get their ballot mailed a little earlier than they would otherwise. Other voters will decide to hand deliver their ballot if they find themselves too close to Election Day to trust the mail to deliver their ballot on time. Both positive outcomes. Regardless, the expectation will be clear to all, and fewer votes will be lost due to nothing more than confusion. Through S.B. 394, more votes will be saved, counted, and ultimately, more votes will matter.

Election Day should be Election Day. For all these reasons, I urge you to support Senate Bill 394.

Thank you for your time.

Stewart Whitson,
Visiting Fellow
Opportunity Solutions Project (OSP)

¹ Jon Ward, "Delayed election results present a boon to confusion and conspiracy theories," Yahoo! News (July 6, 2021), <https://news.yahoo.com/delayed-election-results-present-a-boon-to-confusion-and-conspiracy-theories-211540331.html>.

² Fredreka Schouten, "Why Mail-In Ballots in Michigan, Wisconsin, and Pennsylvania Were Counted so Late," CNN (November 4, 2020), <https://www.cnn.com/2020/11/04/politics/why-mail-in-ballots-were-counted-late-in-states-like-pennsylvania-and-michigan/index.html>.

³ Roxana Hegeman, "1,500 mail ballots arrived too late to count in Kansas," AP News (September 25, 2020), <https://apnews.com/article/election-2020-virus-outbreak-local-elections-kansas-elections-13745b19f5a9e3087e5a6b6f6e70148d>.

⁴ Ibid.