



Kansas

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## SB 209 Opponent Testimony – Written Only

**Aileen Berquist, Policy Director**  
**American Civil Liberties Union of Kansas**

**House Elections Committee**  
**Thursday, March 9, 2023 – 218-N**

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Committee Chair and Members of the Committee,

My name is Aileen Berquist and I am the Policy Director for the ACLU of Kansas. We are a nonpartisan, non-profit organization that works to preserve and strengthen the civil rights and liberties of every person in Kansas. Thank you for the opportunity to present testimony today.

The ACLU of Kansas opposes the passage of SB 209. This bill is one of many election-related bills introduced this session that limits the voting rights of Kansans or tampers with a well-functioning electoral system because of unsubstantiated concerns about the integrity of our elections. The current 3-day grace period is necessary to allow voters, the USPS, and election clerks much needed flexibility to ensure all votes are appropriately counted.

### **Kansas Elections are Safe**

The 2020 election was a triumph for civic engagement: despite a crushing pandemic, a record number of citizens cast their vote in the most secure election in United States history.<sup>1</sup> In 2022, there was no evidence that any voting system deleted or lost votes, changed votes, or compromised any races.<sup>2</sup> In Kansas, our own Secretary of State, Scott Schwab, has consistently defended the integrity of our elections, saying we are one of the best states at preventing election fraud. And yet, for multiple sessions, we have seen dozens of bills introduced that would limit access to voting for thousands of Kansans—supposedly with the intent to make our elections safer, but mostly stemming from unfounded conspiracy theories and misunderstandings about how our elections are conducted.

### **Final Results on Election Day are a Bad Idea and Probably Impossible**

Election results are not final until weeks after Election Day because we have a **thorough and rigorous process to safeguard the integrity of our elections**. The rallying cry that “Election Day should be Election Day” and therefore Kansas should remove the 3-day grace period is nonsensical. It is based on the belief that it is possible and desirable to have final results on election night and that the progressive changing of unofficial results in the days and weeks

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<sup>1</sup> <https://www.pewresearch.org/fact-tank/2021/01/28/turnout-soared-in-2020-as-nearly-two-thirds-of-eligible-u-s-voters-cast-ballots-for-president/>

<sup>2</sup> <https://www.cisa.gov/news/2022/11/09/statement-cisa-director-easterly-security-2022-elections>

following the election is a sign of a broken system. The reality is that it is logistically impossible to appropriately and accurately count the volume of ballots cast in each election on Election Day and, in fact, the changing of election results after the election is a sign that the system is working.

Kansas's Election Standards set in place multiple levels of counts and checks to ensure that no votes are lost and that only appropriate ballots are counted. This includes a canvass at the precinct level, which counts votes and includes a review of damaged ballots and write-in votes. Then another canvass takes place at the county level, which includes tabulating the precinct level vote tallies and making "all final decisions about voter intent on mismarked ballots, write-in votes, and provisional and challenged ballots"<sup>3</sup> These two steps can take up to two weeks, at which point the county tallies are sent to the Secretary of State, who then compiles all county-level results and presents them to the state board of canvassers. This board of canvassers, including the Governor, Attorney General, and Secretary of State, finalizes the results of the election in a meeting "which by law must take place by the first day of the next month following an election."<sup>4</sup> In short, unofficial results of an election changing throughout the month after an election is not only normal, but also necessary to ensure an accurate tabulation of all eligible ballots.

### **Thousands of Kansans Rely on the 3-Day Grace Period**

Kansans relied heavily on vote by mail during the 2020 election: 459,229 people voted early by mail out of 1,375,125 ballots cast.<sup>5</sup> Of those ballots, 32,367 arrived after election day—during the 3-day grace period.<sup>6</sup> That is almost the entire population of Leawood. If this bill had been law during the 2020 elections, it would have been responsible for disenfranchising a city's worth of Kansas voters.<sup>7</sup>

### **The Postal Service Requires Time**

Mail does not always arrive when expected. Even before the COVID-19 pandemic and the closing of local mail sorting centers, this was the case. And this reality does not point to a conspiracy or evidence that our postal service is not secure—it is simply a reality of the complex system that gets our mail where it needs to go. At any time, a natural or manmade disaster could limit the ability of this system to work efficiently. We need flexibility to ensure that all validly cast votes are counted.

### **Defend Democracy: Keep Voting Accessible and Discount Conspiracy Theories**

This body should not be in the business of making voting harder for Kansans. Limiting safe, accessible avenues for ballot return is an attack on our constitutionally protected right to vote and is an absolutely unnecessary interference of this body into what our state's own top election official says is a safe, fraud-free process. We ask that you not pass this bill out of committee. Indeed, if the committee wishes to take action on the issue of the grace period, we would call for

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<sup>3</sup> Kansas Election Standards, Chapter III: Canvassing, <https://sos.ks.gov/elections/election-standards/Kansas-Election-Standards-Chapter-III-Canvassing.pdf>

<sup>4</sup> Kansas Election Standards, Chapter III: Canvassing, <https://sos.ks.gov/elections/election-standards/Kansas-Election-Standards-Chapter-III-Canvassing.pdf>

<sup>5</sup> <https://sos.ks.gov/elections/elections-statistics.html>

<sup>6</sup> <https://sos.ks.gov/elections/elections-statistics.html>

<sup>7</sup> Detailed statistics on the 2022 general election were not yet available at the time of this hearing.

that period to be *lengthened* rather than eliminated. We encourage the committee to focus on legislation that will expand voting access to Kansans and strengthen our voting systems by listening to and empowering local election officials.