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STATE OF KANSAS

Testimony on SB209 (Oral Neutral)

Senate Committee on Federal and State Affairs
Thursday, February 16, 2023

Chairman Thompson and members of the Committee:

Thank you for the opportunity to provide comments on Senate Bill 209. Our office is neutral on this legislation but wishes to address several technical issues.

SB209 would remove the provision in K.S.A. 25-1132(b) allowing advance by mail ballots postmarked by 7:00 p.m. on Election Day and received by the county election office by the last postal delivery on the third day following the election to be counted. The Kansas legislature added the provision in 2017 in response to reports from the United States Postal Service that the standard time to deliver first-class mail would be 5-7 business days. It also moved the cutoff for requesting an advance by mail ballot earlier in the process, from the last Friday before the election to no less than seven days before the election.

State law requires voters to submit a request for an advance by mail ballot before every election. After receipt and approval of such request, the county election office mails the advance by mail ballot to the voter beginning 20 days before the election. The last day to submit a request for an advance by mail ballot is seven days before the election. Considering this short timeframe, the legislature authorized advance by mail ballots postmarked by Election Day and received within three days following the election to be counted.

Approximately 97 percent of all ballots cast are counted and reported on election night; 2.5 percent of all ballots counted are provisional ballots that are considered and counted at the county canvass; .25 percent are advance by mail ballots received on Election Day and write-in or other ballots that must be counted by hand; and .25 percent of all ballots counted are advance by mail ballots that are received within the three-day grace period.

SB209 would not affect Kansans voting through the federal voting assistance program (UOCAVA), i.e., members of the armed forces, their eligible family members, and U.S. citizens residing outside of the United States. The ballots for these voters are transmitted 45 days before the election and have alternative means of ballot submission. UOCAVA ballots are required to be received by the close of polls on Election Day to be counted.

Kansas voters temporarily living out of state that do not qualify for the federal voting assistance program (e.g., college students) may have difficulty returning their advance by mail ballot by Election Day without the use of UPS or FedEx delivery.

In 2016, as part of the federally mandated Election Assistance Commission post-election survey, each county reported numerous data points. From those, our office determined about 1,500 mail ballots were received sometime after Election Day. Following the 2022 general election survey, our office determined that about 3,547 ballots were received after 7:00 p.m. on Election Day. Please note that not all 3,547 ballots may have been counted for various reasons. Instead, this is an estimated quantity received during the three days following Election Day.

Please note the following:

1. The vote totals reported on our website following Election Day during the three-day grace period do not directly reflect the number of ballots received during that period (e.g., a ballot received Monday may not be processed until Wednesday after the election).
2. The number of ballots received in the three-day period will be greater than the corresponding votes counted, as some of the ballots will be rejected for various reasons, such as no postmark.
3. The number of ballots received in the 2020 general election cannot be compared with 2022 for two reasons: first, 2020 was a presidential year, which has a higher turnout compared to a non-presidential year; second, 2020 saw a

higher use of advance by mail ballots due to the COVID-19 pandemic, which increased from the usual 15 percent of all ballots cast to 35 percent of all ballots cast.

Lastly, voters may use a ballot drop box as a method of returning their advance by mail ballot. At 7:00 p.m. on Election Day, ballot drop boxes are locked and no additional ballots may be submitted. Should SB209 become law, we respectfully request that ballot drop boxes remain widely available to voters as a secure and accessible method to return their advance by mail ballot.

Thank you for the opportunity to provide comments to the Committee.

Respectfully submitted,

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