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STATE OF KANSAS

Testimony on SB321 (Oral Neutral)

Senate Federal and State Affairs Committee
March 23, 2023

Chairman Thompson and Members of the Committee:

Thank you for the opportunity to provide written testimony on SB321. The Secretary of State's Office is neutral on this legislation but wishes to bring attention to the magnitude of changes this bill would have on voters, election administrative processes, political party practices, and the potential precedent set in conducting a state-run presidential primary.

In Kansas, it is a function of the state party to assign delegates to presidential candidates at the national convention to select the state's presidential nominee. Such delegates are chosen via caucus or convention by political parties. Kansas started this party run practice as early as 1860, with a few years as exceptions.

In fact, a U.S. Supreme Court case named *Democratic Party of United States v. Wisconsin ex rel. La Follette* specifically held that a state cannot mandate or control the method used to "determine the allocation of votes cast by the State's delegates at the National Convention." Therefore, should this bill become law, theoretically the party could still determine how to allocate its delegates to the national convention regardless of the presidential preference primary voter outcome. Such an election would be non-binding.

In 2015, the Kansas Legislature struck statutory authorization for the state to conduct a presidential preference primary. With the many changes this bill requires, voters would have a different experience in the presidential primary than they would in a primary or general election. These changes may create voter confusion about election processes at a time when we are all striving to ensure voter confidence in the election process. Some significant changes that this bill proposes include:

- 1. Additional Spending:** Our office is in the process of surveying all 105 counties for a concrete price tag of the cost of a presidential preference primary. While the survey is underway, our office can estimate this additional election to be a multi-million-dollar expenditure.
 - Funding Issue- Many counties have set or are in the process of setting their election budgets for 2024 which does not contemplate a third election in 2024. The bill provides a reimbursement mechanism; however, the funding source is unclear.
- 2. Timelines:** SB321 contains several election date changes that only apply to the presidential preference primary that are not consistent with other even-year election timelines. This may cause voter confusion.
 - Voter Registration- This bill sets the voter registration deadline to 31 days prior to the election. That violates federal law, which sets a mandatory maximum 30-day deadline before an election.
 - Advance Ballot- This timeline changes. We have seen voter confusion lead to litigation in other states.
 - Party Affiliation - The bill changes the deadline for affiliating with a political party, potentially limiting the right for unaffiliated voters to participate in this election.
 - County Canvass- This bill does not allow enough time for counties to canvass because the timeframe is from 1978, before the advent of provisional ballots.
- 3. Administrative Processes:** Currently party rules determine many factors of voter input. This bill takes away a core party function and redirects it to county election offices.
 - Post-Election Audits- Counties conduct a post-election audit following every election to ensure integrity, but not with this election.

Of note, this bill has some litigation vulnerabilities. With the recent appeals court ruling, the threat of litigation for election law has been heightened.

Thank you for the opportunity to provide written testimony to the Committee.

Respectfully,

Clay Barker

Clay Barker
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