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STATE OF KANSAS

Testimony on SB445 (Oral Opponent)

Senate Committee on Federal and State Affairs
Thursday, February 17, 2022

Chairman Olson and members of the Committee:

Thank you for the opportunity to appear before you today to provide comments in opposition to SB445. SB445 amends K.S.A. 25-1124, which addresses some aspects of advance voting – both in-person or by advance by mail ballot.

SB445 appears to ban any type of ballot box, except the type referenced in K.S.A. 25-1124(a). The “ballot box” referenced in K.S.A. 25-1124(a) pertains only to advance in-person voting. In 1995, this provision was added to state the election code to permit the use of a special ballot box inside the county election office or satellite advance voting locations. This provision allows a paper ballot completed onsite by the voter – therefore not requiring a ballot envelope – to be deposited by the voter. This coordinates with provisions in K.S.A. 25-1122.

SB445 can be plausibly read in two ways. First, that it only pertains to ballot boxes used exclusively for paper ballots without an envelope. Alternatively, SB445 may be an indirect attempt to ban all secure mail ballot containers used in Kansas for ballots enclosed in an envelope, including:

- (1) Secure mail ballot containers at polling places where voters can drop off their advance by mail ballots in the required mail ballot envelope,
- (2) Secure mail ballot containers at county election offices and satellite advance voting locations where voters can drop off an advance by mail ballot in the required mail ballot envelope,
- (3) Secured containers at polling places used to hold provisional ballots, and
- (4) Drop boxes – secure mail ballot containers under the direct control of county election officials and used for over 25 years to allow voters a secure deposit for advance by mail ballots, in the required mail ballot envelope, directly into the hands of election officials.

Most importantly, SB445 undoes voter identification laws for advance by mail ballots. Without the security envelope accompanying the ballot, voter identification laws are eliminated.

Taking into account the increasing time for the United States Postal Service (USPS) to deliver ballots, without the option of a secure mail ballot container, many voters in possession of a mail ballot a week before the election could lose the ability to vote without the option of being able to deliver the ballot to an election official. In this scenario, the voter’s only alternative would be to vote provisional at a polling place.

As recently as October 2021, the USPS announced an increase in service standards by one or two days for first class mail traveling longer distances, which includes Kansas advance by mail ballots. In addition, there are significantly fewer postal facilities processing mail, including no facilities in Kansas. Lastly, over several years, voters have become familiar with secure ballot containers due to widespread public education campaigns conducted by election officials. A sudden ban of the usage of mail ballot containers could result in significant voter confusion.

The chain of custody for mail service is widely different than the chain of custody for a secure mail ballot container. Using the mail service, the ballot is placed in a post office box where it is transferred to the post office processing facility. From there, it is transferred to the post office delivery facility, picked up by a mail carrier, and delivered to the local election office. For the secure mail ballot container, however, the voter places the ballot in the secure container where two sworn bipartisan election staff pick it up and return it to the local election office.

In addition, as written, SB445 would create conflicts with other election statutes – particularly K.S.A. 25-1132, which would need to be addressed.

SB445 would reverse longstanding Kansas election law for delivering advance by mail ballots that have been proven to be secure and reliable for voters. In every election, every single mail ballot deposited in a secure mail ballot container is matched to the application submitted by a properly registered voter, with proof of voter identification, and undergoes signature verification on both the advance by mail ballot application and ballot envelope.

It is the recommendation of the Secretary of State's office to grant our agency the authority to regulate the use of, and set required security practices for, secure mail ballot containers. These regulations shall include the physical security of the containers, standards of the Americans with Disabilities Act, and ballot transfer processes.

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

Respectfully submitted,

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