



**STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL**

KRIS W. KOBACH
ATTORNEY GENERAL

MEMORIAL HALL
120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.AG.KS.GOV

Testimony of Attorney General Kris Kobach on S.B. 208

**Committee on Federal and State Affairs
February 20, 2023**

Chairman Thompson and members of the committee:

I come before you today not only as the Kansas Attorney General, who shares prosecutorial authority for enforcing Kansas election crimes, but also as the former Kansas Secretary of State, who oversaw Kansas elections for eight years. Fraud involving the harvesting of large numbers of absentee (or “advance”) ballots is a real thing, and drop boxes make this form of voter fraud extremely easy to accomplish. For that reason, I urge you to pass SB 208, albeit with some amendments.

Kansas law limits the number of ballots one person can return to an election office. According to K.S.A. 25-2437(a)(1)(c), “No person shall transmit or deliver more than 10 advance voting ballots on behalf of other voters during an election.” When that election crime is committed, it is the Attorney General’s responsibility to prosecute. However the existence of unmonitored ballot drop boxes makes that crime nearly impossible to prosecute. I will say more about that later, but first let’s consider the crime of ballot harvesting itself.

While there is widespread debate about how much election fraud occurs, there is one form of election fraud that indisputably has occurred with great regularity. That is ballot harvesting. With this crime, the perpetrator harvests large numbers absentee ballots—either by intercepting them at the mailboxes of voters, buying them from voters, or offering to deliver them. He then delivers those ballots in large batches, usually

intentionally failing to deliver ballots that he believes that were voted against his favored candidate. Ballot harvesting has become more prevalent in recent decades with the widespread use of absentee ballots across the country.

There can be no disputing that this form of fraud exists, is common, and has been used to steal a congressional seat. Look no further than North Carolina's 9th Congressional District election in 2018 when a ballot harvesting scandal changed the outcome of the election. Republican operatives used a ballot harvesting scheme to fraudulently elevate the number of votes for the Republican nominee for the seat, Mark Harris. A political operative working for Harris's campaign named Leslie McCrae Dowless Jr. paid local workers \$125 for every 50 mail-in ballots they collected in Bladen and Robeson counties and turned in to him. He and his operatives altered some ballots, delivered some as is, and may have excluded those ballots cast for the Democrat, Dan McCready. The scheme worked, and Harris narrowly defeated the Democrat Dan McCready by 905 votes.

However, the North Carolina State Election Board discovered the fraud and voted unanimously to hold a special election. The leaders of both parties in Congress concluded that the election had been stolen through ballot harvesting. Democrat Speaker of the House Nancy Pelosi said the following: "This is bigger than that one seat. This is about undermining the integrity of our elections. ... What was done there was so remarkable, in that that person, those entities, got away with that."

A special 2019 election was held after the fraudulent election, with a different Republican--Dan Bishop—facing off against Dan McCready. Bishop won the seat in what has been a historically Republican leaning district. The operatives in question were arrested and charged for mishandling ballots. The ringleader, McCrae Dowless, eventually plead guilty.

The fact that Kansas has not yet seen a ballot harvesting scheme the size of the one in North Carolina's 9th Congressional District does not mean we should pretend that it will never happen. It is a form of fraud that works particularly well in urban and suburban areas where large numbers of voters are concentrated.

Why Ballot Drop Boxes Facilitate Illegal Ballot Harvesting

Kansas law makes the delivery of more than ten ballots a crime. But as a practical matter, this crime is unenforceable as long as unmonitored drop boxes exist in Kansas. There is no way to detect someone who has delivered 20 ballots, or 200 ballots, if they can simply drop them in unmonitored drop boxes. In contrast, if there is not a person at the county clerk's office observing who drops off the ballots, it is likely that they will notice a person dropping off more than ten ballots.

Opponents of this bill will liken drop boxes to mail boxes and suggest that drop boxes are no worse than allowing the delivery of advance ballots through the mail. However, that argument is a weak one for two reasons. First, the cost of postage makes a large ballot-harvesting scheme using the postal service cost-prohibitive. Second, using the U.S. Postal Service to accomplish election fraud constitutes federal mail fraud, which raises the possibility of federal prosecution and adds another disincentive.

If unmonitored drop boxes are eliminated in Kansas, there is a reasonable chance that illegal ballot harvesting can be prosecuted and prevented. If ballot drop boxes are not eliminated, the Kansas law against ballot harvesting will be unenforceable and meaningless. For that reason, I urge you to support SB 208. I would, however, suggest a few amendments.

Suggested Amendments

- Give the county the option to use only one monitored drop box in the election office, or none. A county should not be compelled to have a drop box. In some smaller counties, the clerk's office personnel receive ballots and that is all that is necessary. Currently the term "shall" is used in section 1(a). It should be "may."
- Delete the erroneous language in section 1(e). Section 1(a) states: "[s]uch remote ballot box shall be locate inside the county election office." However, section 1(e) states: "'Remote ballot box' does not include any ballot boxes located in a county election office..." That language in section 1(e) appears to be a mistake. It should be deleted.

Thank you.

Kris W. Kobach