

Opponent Oral Testimony on House Bill 2190

House Committee on Elections

Davis Hammet – Loud Light Civic Action

February 7, 2023

Chair Proctor, Members of the Committee,

Sec. 08 – Provisional Data Closure – Undermining Election Transparency & Accountability

Access to elections data is critical in building confidence in the elections process, identifying potential problem areas, and developing recommendations for improvements. The voter registration file, vote history, and details on vote method facilitate this with the Secretary even offering subscriptions for daily files related to advance voting details. However, Secretary Schwab has uncharacteristically fought, often through illegal means, to block access to an essential part of this data – data regarding provisional ballots.

Provisional ballots are the tens of thousands of ballots cast that are challenged in some manner and are reviewed to determine if they may be counted. Most provisionals come from administrative errors such as a poll worker missing a voter's name in the poll book and will ultimately be counted. Others will go uncounted for a wide variety of reasons – reasons I've been trying to better understand for years. Provisional data is necessary to understand why ballots are or are not counted. It can expose areas of concern ranging from improperly trained poll workers to unconstitutional state or county procedures.

Since the 2018 Republican primary, I've been involved in three successful lawsuits regarding access to provisional ballot data. This new transparency shined a light on issues and helped move the state to begin adopting improvements such as contacting voters with alleged signature issues to reduce the number of ballots being wrongfully, and likely unconstitutionally, rejected.

Blocking access to provisional ballot data is irresponsible and dangerous. Such darkness will allow conspiracies around elections to flourish, and debunking such conspiracies will be rendered impossible. Any concern that may be raised around provisional data use may be resolved through improved procedures and communication by the Secretary. Simply blocking access only raises suspicion and leaves a feeling that something is being covered up. A highly undesirable outcome given this relates to ballots being rejected.

The legislature should be going in the opposite direction on this. We need greater transparency regarding provisional ballots. Legislators and the people of Kansas should have a clearer grasp of why ballots are deemed provisional, and why they are ultimately counted or not. Frankly, a breakdown of provisional data should be a part of the statewide canvass report and the Secretary should produce provisional details with pride to show how properly run each election is.

Opponent Oral Testimony on House Bill 2190

House Committee on Elections

Davis Hammet – Loud Light Civic Action

February 7, 2023

Sec. 06 – Governmental Website – Inaccessibility & Undefined Concepts

Much of this section is undefined and unclear of scope. How far reaching is the definition of “governmental agency?” What denotes an “official governmental website?” In this instance it can’t be “.gov” given that several counties and even the Secretary of State maintains websites without such a domain. What does it mean for an “entity to affiliate with a government agency?” What is a “joint voter registration plan?” How does this impact free speech rights of entities?

The voter registration website maintained by the Secretary of State is discriminatory in that it denies registration to anyone without a current license issued by the Kansas DMV. The site was not mobile optimized until very recently, yet even with that update it did not begin to address broader access issues. Any nefarious activity in the facilitation of voter registration is a felony crime of voter registration suppression (KSA 25-2421a), and information used to register to vote including the form itself becomes public record immediately. This section does not facilitate improvements in registration access, but rather reduces options for individuals discriminated against by the design of the Secretary’s current online registration system.

Sec. 01 & 09 – Broad Language Criminalizing Poll Monitors & Unintentional Interference

Sec. 09(a)(1)(B) broadens the language for what constitutes intimidation of a voter to include “monitoring... a voter at a polling place.” It’s unclear how sweeping this is.. Does this ban nonpartisan poll monitor programs? Does this conflict with federal law authorizing Department of Justice poll monitoring?

Sec. 01(a)(1) creates a broad crime of “otherwise interfering in the discharge of such election official’s duties” which is especially unclear in meaning and scope because Sec. 01(a)(3) limits the same exact activity, but only in connection to threats, coercion, and intimidation.

Sec. 07 & 08 –Email Addresses – Inappropriate Exemption

Social security numbers and driver’s license numbers are exempt from public records because they facilitate identity theft. Expanding this exemption to cover email addresses is outside the purpose of protecting Kansans from identity theft and serves no clear purpose. If Kansans complain about receiving political emails it is much more likely their email was acquired through political campaigns selling and trading email lists than through Kansas public records.

I recommend this committee oppose HB2190. Thank you. I’m happy to stand for any questions when appropriate.