



Restoring Integrity and Trust in Elections

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Description of Testimony: “Proponent Testimony”

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Chairman and Members of the Committee:

Thank you for the opportunity to provide written testimony in support of Senate Bill 394. Restoring Integrity and Trust in Elections (RITE) is an organization dedicated to ensuring the rule of law in election administration. Mail ballot verification is central to our mission because it helps ensure the security of and voter confidence in our elections. It is also a topic I have closely studied for over 15 years, first as Deputy Secretary of the Virginia State Board of Elections, and now as an election attorney representing organizations like RITE who are dedicated to preserving mail voting safeguards through litigation and policy advocacy.

No excuse advance voting by mail is a statutory creation, not a constitutional right, and how advance mail ballots are distributed, returned, and verified is left to legislative determination. Kansas, like many states, has chosen to permit most voters to vote by mail by enacting a comprehensive statutory scheme that carefully balances this generous access with security measures, specifically one that confirms the voter casting the ballot is the same voter to whom the ballot was issued. Kansas, like other states, has adopted signature verification for its confirmation process.

SB 394 makes clear that this safeguard is not incidental, but rather integral and inseparable from the broader statutory advance voting by mail process.

Courts have recognized that where a legislature has chosen to authenticate mail ballots through signature verification, the survival of the larger statutory scheme is dependent on it remaining in effect. In *Vet Voice Foundation v. Griswold*, a Colorado district court considered and rejected the contention it could sever Colorado’s signature verification from its universal mail-ballot framework. The court found that signature verification was “essential and pervasive” throughout the statutes governing mail voting. Removing it, the court reasoned, would impermissibly force courts either to rewrite the law to supply an alternative verification method or to allow the counting of ballots without meaningful authentication.¹

¹ *Vet Voice Found. v. Griswold*, No. 2022CV33456 (Colo. Dist. Ct. Jan. 3, 2024) (Order on Motion for Determination of Law), <https://riteusa.org/wp-content/uploads/2024/01/ORDER-ON-MOTION-FOR-DETERMINATION-OF-LAW.pdf>.

Senate Bill 394 formalizes a similar legislative judgment long assumed: Under Kansas law, mail voting is authorized only so long as the verification mechanism selected by the Legislature remains enforceable, and that the system should not and will not continue by default in a materially altered form if a court permanently invalidates the mechanism.

This determination reflects sound public policy. Those challenging signature verification naively contend that a simple sworn statement is sufficient to ensure the integrity of the process. In other words, Kansas should rely on an honor system. That is insufficient given that, regardless of the prevalence of voter fraud, “when it does occur, absentee ballots are often the method of choice.”² Whether it occurs in Bridgeport, Connecticut,³ Miami, Florida,⁴ North Carolina’s Ninth Congressional District,⁵ or elsewhere, “it should go without saying that a [s]tate may take action to prevent election fraud without waiting for it to occur and be detected within its own borders.”⁶

Many states have thus recognized that relying on a simple sworn statement to verify identity is insufficient to ensure their systems’ integrity and voter confidence and have adopted more robust verification requirements. These include requiring voters to provide a copy of their identification when returning a mail ballot, or list some type of unique identifier such as Driver’s License number or last four digits of a social security number on their ballot return envelope. Other states like Arizona, Colorado, Washington, California, and Illinois take Kansas’s approach and require signature verification combined with a reasonable cure period.

SB 394 also ensures federal requirements remain unaffected. The bill expressly preserves absentee voting required by federal law, including for uniformed service members and overseas citizens. The bill is limited to state-created mail voting and does not attempt to displace or narrow federally-mandated eligibility.

Finally, SB 394 does not restrict access to the courts or penalize constitutional challenges. It simply states how Kansas will administer elections if a court renders the state’s chosen mail ballot verification method unenforceable. Legislatures routinely amend or repeal statutory programs in response to judicial decisions that affect their operation. And here, the bill ensures that any change to the availability of mail voting occurs transparently, taking place only upon publication of notice by the Secretary of State in the Kansas Register.

² The American Voting Experience, Presidential Commission on Election Administration (Jan. 2014), <https://perma.cc/7WAX-6BVM>.

³ Amelia Nierenberg, *Election Fraud Is Rare. Except, Maybe, in Bridgeport, Conn.*, N.Y. Times (Jan. 21, 2024), <https://www.nytimes.com/2024/01/21/nyregion/joe-ganim-john-gomes-bridgeport-mayor-election.html>.

⁴ Judge Orders New Miami Mayoral Election, CNN (Mar. 4, 1998), <https://www.cnn.com/ALLPOLITICS/1998/03/04/miami.mayor/index.html>.

⁵ Associated Press, *Plea Agreements Reached by 4 in NC Congress Ballot Probe*, WUNC (Sept. 26, 2022), <https://www.wunc.org/politics/2022-09-26/plea-agreements-reached-by-4-in-nc-congress-ballot-probe>.

⁶ *Brnovich v. Democratic Nat’l Comm.*, 594 U.S. 647, 686 (2021).

Election systems depend on procedures that voters and officials alike understand and trust. When those procedures cannot be enforced, the Legislature must decide whether the system remains workable. SB 394 reflects such a decision. For these reasons, RITE supports Senate Bill 394 and urges the Committee to advance it.

Thank you for considering RITE's views on this important legislation. I am available at JustinRierner@RITEUSA.org if you need any additional information.

Respectfully,

/s/

J. Justin Rierner
President & CEO,
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