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CASE NUMBER: 2020-CV-000343

THIRD JUDICIAL DISTRICT
SHAWNEE COUNTY DISTRICT COURT
CIVIL DEPARTMENT

LOUD LIGHT & DAVIS HAMMET,	)	
Plaintiffs,	)	
	)	**Case No.** 2020-CV-000343
v.	)	**Div. No.** __3___
SCOTT SCHWAB, Kansas Secretary of State, in his official capacity,	)	
Defendant.	)	

PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF THEIR MOTION FOR PRELIMINARY INJUNCTION

COME NOW Plaintiffs, by and through their undersigned counsel, and submit the following Reply Memorandum in Support of Plaintiffs' Motion for Preliminary Injunction. For the reasons identified below, Plaintiffs request that this Court grant their motion for preliminary injunction in its entirety.

ARGUMENT

A temporary injunction is necessary to remedy the irreparable injuries that will be inflicted on Plaintiffs if they are denied the provisional ballot voter data that they are entitled to under the Kansas Open Records Act (KORA). The provisional ballot voter data that Plaintiffs seek is time-sensitive in light of the upcoming primary election. Plaintiffs urgently need the requested records to help voters who cast provisional ballots during the 2018 general election—particularly advance mail ballot voters who may not know that they voted provisionally[1]— cure any underlying problem

[1]Under Kansas law, advance mail ballots that are challenged for reasons such as a mismatched signature or incorrect driver's license number are made provisional. K.S.A. 25-1136(a) ("Whenever the judges determine that the form accompanying an advance voting ballot is insufficient, or that the voter is not a registered voter, or the challenge is

before the August 4, 2020 primary. Moreover, Plaintiffs and other nonprofit organizations will be requesting this data in order to help voters cure provisional ballot defects between the August 4, 2020 primary elections and county canvasses which begin on August 10, 2020. Defendant Schwab opposes Plaintiffs' request for a temporary injunction for two primary reasons. First, Defendant Schwab worries it might be illegal to disclose the requested information— a position he had such little confidence in that he held Plaintiffs in limbo for nearly 300 days rather than issue an outright denial. Second, he argues that Plaintiffs will not be irreparably harmed because he has saved the automatically deleting information to be accessed later—completely ignoring Plaintiffs' compelling reasons for obtaining the data prior to the August 4th primary.

As discussed more fully below, Plaintiffs have substantially shown that no state or federal law prohibits the disclosure of the requested data under KORA. Plaintiffs have also shown that saving the information for disclosure at a later date will not repair the harm caused by depriving them of data they need to fulfill their mission before August 4, 2020. Nor is such a delay in furtherance of the public interest.

I. THE RELIEF PLAINTIFFS REQUEST NEED NOT PRESERVE THE STATUS QUO FOR THIS COURT TO ISSUE A PRELIMINARY INJUNCTION, BUT NEVERTHELESS IT DOES.

A temporary injunction is "an equitable remedy designed to prevent irreparable injury by prohibiting or commanding certain acts." *Nat'l Compressed Steel Corp. v. Unified Gov't of Wyandotte County/Kansas City*, 272 Kan. 1239, Syl. ¶ 2, 38 P.3d 723 (Kan. 2002). The purpose of a temporary injunction is not merely to preserve the status quo, as Defendants suggest, but also to prevent irreparable injury until a case can be adjudicated on the merits. *Steffes v. City of*

otherwise sustained, the advance voting ballot envelope shall not be opened. In all such cases, the judges shall endorse on the back of the envelope the word provisional and state the reason for sustaining the challenge."); Kansas Election Standards Manual, II-49 ("If a signature comparison raises a question as to the validity of the ballot, the ballot may be challenged (made provisional) and referred to the county board of canvassers for determination of its validity").

Lawrence, 284 Kan. 380, 394, 160 P.3d 543 (Kan. 2007) ("the purpose of a temporary or preliminary injunction is not to determine any controverted right, but to prevent injury to a claimed right pending a final determination of the controversy on its merits"). Accordingly, Defendant Schwab cannot shield himself from an injunction by simply arguing that withholding the requested data is the "status quo."

Even if a preliminary injunction were only available to preserve the status quo, ordering Defendant Schwab to disclose provisional voter records would satisfy that condition. In preliminary injunction cases, status quo refers to the "status quo ante" or the "last peaceable uncontested status existing between the parties before the dispute developed." *Schrier v. Univ. of Colo.,* 427 F.3d 1253, 1260 (10th Cir. 2005); *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft,* 389 F.3d 973, 1013 n.2 (10th Cir. 2004) ("courts of equity have long issued preliminary injunctions requiring parties to restore the status quo ante"). Here, the status quo ante is not the current situation (i.e. that provisional ballot data is withheld). *See O Centro*, 389 F.3d at 1013 ("'Status quo' does not mean the situation existing at the moment the lawsuit is filed"). Prior to the initiation of this case, the provisional ballot voter information Plaintiffs have requested has been made open for inspection by over 60 counties. Moreover, prior to June 23, 2020, Defendant Schwab had not barred the provisional ballot voter information Plaintiffs requested from disclosure. The records Plaintiffs requested were not closed from inspection before Defendant Schwab issued his denial on June 23, 2020. Thus, the last peaceable uncontested status between the parties is that the provisional ballot data was accessible under KORA.[2]

[2] Notably, Defendant has indeed conceded that the provisional ballot report data Plaintiffs seek are public records disclosable by Defendant under KORA unless Defendant identifies a legal barrier to disclosure. Mem. in Opp. at 6.

II. PLAINTIFFS HAVE DEMONSTRATED AN OVERWHELMING LIKELIHOOD OF SUCCESS ON THE MERITS.

A. Defendant Conveniently Ignores that Every Single Court Across the United States to Address the Question—Both State, Federal, and Including This Court Itself—Has Held that the Help America Vote Act (HAVA) Cannot Prevent the Public Disclosure of Provisional Ballot Voter Lists.

It is ironic that even as Defendant proclaims at length that the Help America Vote Act (HAVA) "unambiguous[ly]" forecloses the names of provisional ballot voters and the reasons their ballots were marked provisional, he cannot identify a single case that has *ever* held that HAVA prevents this disclosure. *See* Mem. in Opp. at 6-8. Indeed, this Court and every other state and federal court across the country to have considered the question of provisional ballot voter lists under HAVA has reached precisely the opposite conclusion. *See Mah v. Bd. of County Commissioners of Shawnee County*, No. 12-cv-1214 (Shawnee Cty. Dist. Ct. Nov. 9, 2012) (this Court ordering disclosure of the list of provisional ballot voters—i.e. voters whose votes did not count—finding HAVA did not bar disclosure), *affirmed after removal by Mah v. Shawnee County Comm'n*, No. 12- 4148-JTM, 2012 U.S. Dist. LEXIS 163248, at *8 (D. Kan. Nov. 15, 2012) (ordering disclosure of the names of provisional ballot voters under HAVA over the objection of the Kansas Secretary of State); *Northeast Ohio Coalition for the Homeless v. Husted*, No. 2:06-CV-896, 2016 U.S. Dist. LEXIS 10790, at *9-*10 (S.D. Ohio Jan. 29, 2016) (authorizing disclosure of provisional ballot envelopes that necessarily disclose the names of provisional ballot voters and the reason their ballot was designated provisional despite HAVA); *Washington State Republican Party v. Washington State Democratic Central Committee*, No. 04-2-36048-0 SEA, Memorandum and Order at 2 (Wash. Sup. Ct. Nov. 16, 2004) (same);[3] *see also* OHIO ATT'Y GEN.

[3] Decision available at Verified Petition Ex. C.

OP. NO. 2011-012 (June 2011) (holding the same under state statute implementing HAVA).[4] If anything, it has been unambiguous both to this Court and to all other courts that HAVA does not prohibit the disclosure of provisional ballot voter lists.

Defendant's misapprehended interpretation of the law stems from a fundamental misunderstanding of the exclusive purpose of HAVA Section 302(a)(5)(B)—which is to create a free access system for voters. That free access system is designed so that only the voter can check the status of their individual ballot, but this restriction only applies specifically to the free access system that is the sole subject of the statutory provision. *See* 52 USCS § 21082(a) ("The appropriate State or local official shall establish and maintain reasonable procedures necessary to protect the security, confidentiality, and integrity of […] *the free access system established under paragraph (5)(B)* […] Access to information about an individual provisional ballot shall be restricted to the individual who cast the ballot") (emphasis added). The House Conference Committee Report to which Defendant cites yields precisely the same reading, intending that "the voter (and no one else) be able to ascertain whether the ballot was counted (and if not, why not) *through a free-access system*" (emphasis added). It would be altogether implausible and bizarre to read a categorical restriction on the disclosure of provisional ballot voter lists in a statute that only has to do with one telephonic voter access system.

This is of course the reading that has ultimately carried the day. *See Husted*, 2016 U.S. Dist. LEXIS 10790, at *9-*10. In *Husted*, the court held "Nothing in the plain language of [HAVA] suggests that the voter who cast the provisional ballot is the *only* entity that may ascertain whether her ballot was counted. Further, the implications of that interpretation would be absurd. Indeed were the voter the only entity with access to such information, all oversight of the process of ballot

[4] The Attorney General Opinion is available at: https://www.ohioattorneygeneral.gov/getattachment/80c35d77-da1b-4c6d-8a70-19d2b4234fb3/2011-012.aspx.

handling, including judicial oversight, would be rendered impossible." *Id.*; *see also Mah*, 2012 U.S. Dist. LEXIS 163248, at *4. As previously noted, other provisions of federal law actually *require* public disclosure of provisional ballot information, and this Court should not—for the first time anywhere—adopt a reading of HAVA that would conflict with other federal laws.[5]

Defendant's sole response to Plaintiffs' controlling authority from this very Court and others is that those decisions are wrongly decided or purport to say something different then they do. *See* Mem. in Opp. at 9-10. Of course, it is difficult to misinterpret these cases when each resulted in court-compelled public disclosure of provisional ballot voter lists. *See Mah*, 2012 U.S. Dist. LEXIS 163248, at *9; *Husted*, 2016 U.S. Dist. LEXIS 10790, at *10; *Washington State Republican Party*, Mem. and Order at 2. Furthermore, to the extent Defendant invokes *Mah*, he is correct that the case specifically declared that the names of all provisional ballot voters are not protected under HAVA.[6] *See Mah*, 2012 U.S. Dist. LEXIS 163248, at *9. In other words, HAVA does not stand in the way of the public's right to know whose vote did not count during an election.

Although Defendant takes solace that the Court in *Mah* did not specifically address disclosure of the specific reasons a provisional ballot was not counted, the Court was at best dismissive of the previous Secretary of State's attempts to characterize failure to register or a

[5] Provisional ballot voter lists would be open to inspection under the National Voter Registration Act's public disclosure provision. Section 8(i) of the NVRA provides "public access to a broad scope of information that shows how a state makes voter eligibility determinations" and includes records that "show the *results* of the [registration and list maintenance] process and activities put into place." *Project Vote v. Kemp*, 208 F. Supp. 3d 1320, 1336-40 (N.D. Ga. 2016). Provisional ballot voting is inextricably linked to registration and list maintenance in Kansas. In order to cast a provisional ballot, a voter must first complete a registration form. K.S.A. § 25-409(b); K.A.R. § 7-46-2(D). Therefore, county election officials would be required under the NVRA to disclose the names of all voters who registered as a condition of casting a provisional ballot. *See Project Vote/Vote for Am. Inc. v. Long*, 682 F.3d 331, 336 (4th Cir. 2012) (the NVRA mandates disclosure of registration applications). A list of names of purged voters who cast a provisional ballot after being removed from the rolls would similarly be open to inspection under the NVRA. *See*, *e.g.*, *Truth the Vote v. Hosemann*, 43 F. Supp. 3d 693, 723 (S.D. Miss. 2014) (purged voter information open under the public disclosure provision). In sum, the legislature would not prohibit disclosures that are mandated under federal law.

[6] Indeed, Defendant appears to concede at least that HAVA does not prohibit disclosure of the names of provisional ballot voters—but rather merely the reasons for which their ballot was rejected. Mem. in Opp. at 10.

change of address as some deeply personal information meriting protection. *See Mah*, 2012 U.S. Dist. LEXIS 163248, at *9. Indeed, were this to be persuasive then the list of regular ballot voters and their home addresses, registration status, and whether or not they voted in a given election would likewise need to be protected—and yet these are active voter lists and registration lists that the Defendant's office and local election offices must disclose on a regular basis. *See* K.S.A. §25-2320(a) (noting that election officials must make available for public inspection "the voter registration books, active voter lists and other lists of voters required to be kept"); *see also* Kansas Election Standards 2019, Chapter I, at I-11 (noting that voter registration data is even available for purchase and that home address and other personal information can only be redacted for demonstrated safety reasons).[7] Regardless, the Court in *Mah* established that HAVA Section 302(a) only ever meant to protect information about a ballot, and not about the voter who cast the ballot. The reasons a ballot is not counted have to do with the voter themselves (i.e. registration status, home address, possession of identification, polling place where voting was attempted, etc.) and not the specific contents of their ballot—as the Secretary of State's own examples show. *See Mah*, 2012 U.S. Dist. LEXIS 163248, at *9 ("The plain language of the statute protects 'access to information about an individual provisional ballot.' It does not protect information 'about the individual casting the ballot'").

Defendant's purported apprehensions can no more justify a barrier to provisional ballot voter lists than his reliance on a provision about a telephone access system.[8] This Court should

[7] Kansas Election Standards 2019, Chapter I, is available at: https://www.sos.ks.gov/elections/19elec/2019-Kansas-Election-Standards-Chapter-I-Voter-Registration.pdf.

[8] It is also particularly perplexing that the Secretary of State chooses to harp on the telephone access system that is meant to inform voters about whether or not their ballot counted, when the Secretary of State gives the voter "credit" in the online system for voting a provisional ballot even when their vote clearly did not count supposedly to help the voter avoid the "public embarrassment" of not having their vote count. *See* Mem. in Opp. at 22. The only embarrassment is that fully 29,000 voters in the last general election did not have their vote count as a result of state election procedures (*id.* at 25)—and because of the state's generosity in giving them voting "credit" they may not even realize they have been disenfranchised. This is the very purpose of Plaintiffs' demand for these public records.

therefore reject Defendant's invitation to disregard its own precedent and the persuasive authority of every other court concluding that HAVA Section 302(a) cannot prevent disclosure of provisional ballot voter lists.

B. Defendant Fundamentally Misinterprets the Unauthorized Vote Disclosure Statute, K.S.A. 25-2422, Which Clearly Does Not Bar Disclosure of Provisional Ballot Voter Names.

Defendant surprisingly agrees with Plaintiffs' reading of K.S.A. 25-2422, which is that there is no specific prohibition on the disclosure of provisional ballot voter lists contained in the statute. Instead, the parties agree there are only two criminal prohibitions under the statute: (1) "Disclosing or exposing the contents of any ballot"; and (2) "[Disclosing or exposing] the name of any voter who cast such ballot." *See* Mem. in Opp. at 11. There are only two ways to read these prohibitions—conjunctively or disjunctively. Either it is a felony election crime to disclose the contents of a person's ballot (i.e. for whom they voted) and their name in conjunction with such ballot, or it is its own crime merely to disclose the name of any person who has voted in an election. Of course, only the first interpretation is at all viable.

K.S.A. 25-2422 arises from Kansas' adoption of the Australian ballot law in 1893, which converted contentious *viva voce* elections into a secret ballot system whereby whom a voter cast a ballot for was protected by law and was a criminal offense to disclose. Indeed, the very first criminal vote disclosure law was enacted at that time. *See* L. 1893 Ch. 78 Sec. 27 (making it a criminal offense for anyone to request a voter show their ballot or how they voted); *id.* Sec. 25 (noting that secret ballots could only be opened in court in the event of an election contest).[9] This

[9] Both are included in Exhibit G affixed hereto. The Kansas Supreme Court had drawn attention to the need for protecting the secrecy of the ballot itself, and for punishing unauthorized disclosure via the Australian Ballot Law. *See Lemons v. Noller,* 144 Kan. 813, 829, 63 P.2d 177 (1936) ("[T]he law "reaches effectively a great class of evils, including violence, intimidation, bribery, and corrupt practices, dictation by employers or organizations, the fear of ridicule and dislike, or of social or commercial injury,—all coercive and improper influence, of every sort, depending on a knowledge of the voter's political action. Voting according to a bargain or understanding is especially aimed at").

is therefore the plain import of K.S.A. 25-2422—to protect the disclosure of how a voter voted by publicly sharing their ballot along with their name.

By contrast, a list of the names of voters in an election has and has always been a matter of public record—including whether a person is registered to vote, and whether they have actually voted in a given election. *See* K.S.A. §25-2320(a) (requiring public inspection of all voter lists). Defendant's alternate, disjunctive reading of K.S.A. 25-2422 would make every single one of these lawfully mandated disclosures a crime. This is non-sensical and has already been rejected by the Tenth Judicial District:

> The overriding purpose of K.S.A. 25-2422 is evident. It is to protect the long-recognized right of ballot secrecy, not the fact that one has voted. Voter secrecy has been interpreted as being embedded in the Kansas Constitution at Article 4, § 1. *Sawyer v. Chapman*, 240 Kan. 409, 412- 413, 729 P.2d 1220 (1986) (noting the ballot secrecy does not apply to party affiliation). Further review of the statute underscores that the purpose of K.S.A. 25-2422 is not to hide a voter's name, but to prevent election officials from disclosing how the voter actually voted or even to attempt to learn how the voter might have voted. This is evident from subsection (a)(2) which prohibits "inducing or attempting to induce any voter to show *how the voter marks or has marked the voter's ballot*."

Hammet v. Metkser, 18CV5173, Order on Cross Motions for Summary Judgment, at 7 (Johnson Cty. Dist. Ct. Jan. 31, 2019) (ordering public disclosure or provisional ballot voter lists notwithstanding K.S.A. 25-2422) (emphasis in original).[10] Regardless, Defendant's textual and legislative history arguments are independently unavailing.

i. Defendant's Textual Interpretation of the Statute Ignores the Basic Rules of English Syntax.

Defendant's plain reading analysis ends in the flat declaration that K.S.A. 25-2422(a)(1) prohibits disclosure of the "name of any voter who cast such ballot." *See* Mem. in Opp. at 12. But words matter, and especially determiners. The statute does not prohibit the disclosure of the names of voters who cast "a ballot" or "any ballot"—it prohibits the disclosure of the name of

[10] Decision available at: https://shawneemissionpost.com/wp-content/uploads/2019/02/18CV05173_16289378.pdf.

the voter casting "*such* ballot." Linguistically, a determiner like the word "such," "occurs together with a noun or noun phrase and *serves to express the reference of that noun or noun phrase in the context*. Determiners are words placed in front of a noun to make it clear what the noun refers to." *See* Mohd. Nageen Rather, TEACHING OF ENGLISH, at 92 (2018) (emphasis added).[11]

"Such ballot" therefore refers back to the very first instance of the word "ballot" in the statute. *See* K.S.A. §25-2422(a)(1) ("disclosing or exposing *the contents of any ballot*, whether cast in a regular or provisional manner, or the name of any voter who cast *such ballot*") (emphasis added). The statute therefore prevents disclosure of the name of any voter, but *only* in conjunction with the specific contents of their ballot. This is the statutory reading that Plaintiffs have advanced and the only reading consistent with the basic principles of English syntax. *See, e.g., State v. Toliver*, 306 Kan. 146, 153 (Kan. 2017) (holding the court will apply the natural construction of language unless the legislature provided a contextual indication to the contrary).[12]

Defendant claims that Plaintiffs have somehow mischaracterized or ignored the express wording in the statute. Mem. in Opp. at 12. But it is Defendant who implies into the statutory language a provision that no longer exists by reading in a prohibition on disclosing the manner in which a person voted—provisional or regular— that the legislature removed seven years ago. *See* Mem. in Supp. at 16-17 (noting that K.S.A. §25-2422 used to contain a prohibition on disclosure of "the manner in which the ballot has been voted" before 2013).

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[11] Available at: https://books.google.com/books?id=E_NQDwAAQBAJ&printsec=frontcover&hl=fr&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false.

[12] This is also the reading that ranking minority member Representative John Carmichael advanced in discussing K.S.A. §25-2422 in 2018. *See* Mem. in Supp. at 20 ("it's not a secret who votes in elections in America and it shouldn't be a secret who votes, the secret is *how* did you vote?"). The names of voters should only be withheld from disclosure to the extent that sharing a voter's name reveals whom they voted for in an election.

Furthermore, Defendant's reading of K.S.A. §25-2422 would necessarily close the list of regular ballot voters as well as provisional ballot voters. *See* Mem. in Opp. at 11 (conceding that under Defendant's position "the statute could be interpreted to prohibit the disclosure of names of voters casting regular ballots); *see also* K.S.A. §25-2422(a)(1) (stating that the ballot disclosure prohibition applies with equal force regardless of "whether cast in a regular or provisional manner"). Defendant purports that K.S.A. §25-2320, which publicly opens "voter registration books, active voter lists, and other lists of voters required to be kept," makes the lists of regular voters available to the public despite his interpretation of K.S.A. §25-2422. Mem. in Opp. at 11. But if K.S.A. §25-2320 de-felonizes disclosure of the names of regular voters, it must do the same for provisional voters. As Plaintiffs explained at length in their opening brief, lists of provisional ballot voters are also "lists of voters required to be kept" under K.S.A. §25-2320 and are therefore likewise open to disclosure. Mem. in Supp. at 7-10.

Plaintiffs agree that the Court must reconcile K.S.A. §25-2422 with the express requirement that voter lists be open to public inspection. *See State ex rel. Morrison v. Oshman Sporting Goods Co. Kansas*, 275 Kan. 763, 768 (Kan. 2003) (court must construe "provisions of an act or acts, *in pari materia*" and bring them into workable harmony if possible) (internal citation omitted). However, there is simply no principled way to treat regular ballot lists and provisional ballot lists differently under the statute. Defendant has attempted to force this reading of K.S.A. §25-2422 to bar disclosure of provisional voter names, Mem. in Opp. at 11-12, and yet would seem to have no similar concern about potential felony exposure when his office discloses regular ballot lists. That interpretation is absurd.

ii. <u>Defendant Obfuscates a Legislative History that Could Not Be More Decisive in Demanding the Public Disclosure of Provisional Ballot Voter Lists.</u>

Defendant's scattershot attempt at discussing the legislative history of K.S.A. §25-2422 from 2013 to present is as confusing as it is inaccurate. Most notably, Defendant dismisses the

very words of the legislative proponents of these changes who have declared their intention to have provisional ballot voter lists open to the public. Mem. in Opp. at 13-16.

All parties agree that prior to 2013, the public was not permitted to know who voted a regular and who voted a provisional ballot in a given election. In other words, the public problematically had no right to know whose vote counted in an election (regular versus provisional)—only who had gone and attempted to vote. *See* L. 1993 Ch. 291, Sec. 208 (prohibiting disclosure of "the manner in which the ballot" was voted).

In 2013, Secretary Kobach advocated for a change in K.S.A. §25-2422 to ensure that no one—not even a candidate on the ballot through a court process—could receive access to provisional ballot voter lists until after the final election canvass. The result of this amendment was to effectively prevent candidates, voters, and members of the public from learning whose votes counted until after it was too late to do anything about it. *See* SB 177 (as initially introduced on Feb. 12, 2013) ("The name of any voter who has cast a ballot shall not be disclosed from the time the ballot is cast until the final canvass of the election by the county board of canvassers").[13] At the same time, however, in the final bill the Legislature removed the language prohibiting the public disclosure of whether a ballot was ultimately counted as provisional or regular. *See* SB 177 (as amended by Senate Committee on Feb. 27, 2013) (showing the deletion in text); 2013 Summary of Legislation at 34, KAN. LEG. RESEARCH DEP'T (2013) (accounting for the difference and noting that the bill "eliminate[d] from the condition disclosure of the manner in which the ballot has been voted"); *see* Mem. in Opp. at 12 (conceding that there are no longer three prohibitions in K.S.A. §25-2422, but now merely two).[14] The final result of the 2013 amendments was therefore that

[13] Bill available at: http://www.kslegislature.org/li_2014/b2013_14/measures/documents/sb177_00_0000.pdf.
[14] Summary of Legislation available at: http://www.kslegresearch.org/KLRD-web/Publications/SummaryofLegislation/2013_summary_of_legislation.pdf.

separate provisional and regular ballot voter lists became a disclosable public record, but that they could not be disclosed at all until after the election canvass.[15]

Finally in 2018, K.S.A. §25-2422 was once again changed to remove the pre-canvass barrier to receiving provisional and regular ballot voter lists. *See* 2018 Kan. Sess. Laws 732, L. 2018, ch. 87, § 2 (marking the deletion of the following language: "The name of any voter who has cast a ballot shall not be disclosed from the time the ballot is cast until the final canvass of the election by the county board of canvassers").[16] The very purpose of this amendment was to give the public access to the list of regular and provisional ballot voters *before* the final election canvass—to ensure that all votes that should count do, and all those that should not do not. The comments of legislators at the time only confirm this interpretation. Representative Carmichael stated that: "this reopens so that *all of us know* who participated in the election. That is what it's about."[17] Representative Miller likewise highlighted the need for this public disclosure before the canvass: "And you have a very short time frame to discover those things and prove them up and if you don't even have access to the names of the people who voted, which aren't going to already be public, that makes it very difficult to do in honest contest."[18]

In other words, even if the statute is ambiguous—which it is not—the legislative history "of these enactments reflects changes that have allowed greater access to provisional voter names." *See Hammet*, Order on Cross Motions for Summary Judgment, at 10. It would also make no sense to lift a time bar on the disclosure of regular and provisional ballot voter lists if those lists distinguishing counted voted from uncounted votes are never to be disclosed at all. *See id.* at 9-10,

[15] The names of advance mail ballot voters were exempted from the post-canvass requirement and were therefore always to be made available. *See* SB 177 § 1(c) ("Nothing in this section shall prohibit the disclosure of the names of persons who have voted advance ballots").
[16] 2018 Session Laws available at: https://www.kssos.org/pubs/sessionlaws/2018/2018_Session_Laws.pdf.
[17] Hearing Before the H. Comm. on Judiciary, 87th Leg., 2018 Sess., at 5:28:51-5:29:00 (Kan. March 20, 2018).
[18] *Id.* at 5:25:42-5:26:39.

citing State v. Fisher, 304 Kan. 242, 268, 373 P.3d 781 (2016) ("we do not interpret statutes in such a manner as to render portions superfluous or meaningless").

Defendant's haphazard arguments to the contrary must be rejected. Mem. in Supp. at 13-14. First, as discussed at length above, the Legislature's prohibition on disclosing the names of both provisional and regular ballot voters only exists to protect a voter from being identified with how they voted on their ballot—it does not and cannot prohibit the disclosure of provisional or regular ballot voter lists. Second, as the Tenth Judicial District notes the pre-canvass time restriction enacted in 2013 only emphasizes the expectation that ultimately both provisional and regular ballot lists would indeed be disclosed for every election. *Hammet*, Order on Cross Motions for Summary Judgment, at 10. Third, the advance mail ballot disclosure provision only confirms that previously when time restrictions were at play, advance mail ballots were not subject to such restriction. But if the provision is given Defendant's meaning—it would allow only the disclosure of advance mail ballot voter lists and disallow disclosure of the lists of regular ballot and provisional ballot voters who voted in person. "This would create an unusual disconnect in how certain voters are treated." *Id.* at 8. Fourth, the linguistic change in the statute from "court of competent jurisdiction" to "court of competent jurisdiction in an election contest" to which Defendant cites changes nothing. Mem. in Opp. at 14. It merely clarifies what has always been the case—that a voter's specific ballot contents can only be disclosed by an election judge without violating the law if a candidate with standing approaches the court for an election contest. This court procedure for election contests was never, and has never, been linked to KORA.

Finally, Defendant's half-hearted attempt at construing the legislative committee discussions regarding K.S.A. §25-2422 is likewise unconvincing. In fact, instead of crediting the Legislature's expressed concerns with having provisional and regular ballot voter lists be secret,

the Defendant chooses to dismiss those concerns altogether. Mem. in Opp. at 16. This is not how legislative history analysis works. Regardless, the three members of the committee discussing the 2018 amendments to K.S.A. §25-2422 speak exactly to the heart of an ongoing problem that Defendant refuses to acknowledge: if there is no way to know whose vote has counted and whose vote has not counted (regular versus provisional ballot voter lists), then it is impossible to know whether certain voters were unduly disenfranchised or whether other voters were unduly authorized to cast a regular ballot. Defendant is confident that such mistakes will not occur or will otherwise be caught by election officials and therefore that public disclosure is unnecessary. Respectfully, both the Legislature and the public have reasons not to be confident.[19] The legislative history is therefore demonstrably in line with the disclosure of provisional ballot voter lists.

iii. More than 60 Counties in Kansas and the Only Court to Consider the Question Have Declared—Contrary to the Secretary of State's Assertion—That the Unauthorized Vote Disclosure Act Cannot Bar Disclosure of Provisional Ballot Voter Information.

As previously described, Kansas' largest county is already bound by court order to provide the names of provisional ballot voters and the reasons their votes were not counted—which is the same information Plaintiffs seek here. *See Hammet*, Order on Cross Motions for Summary Judgment, at 13. But additionally, more than 60 county election officials across the state of Kansas have voluntarily provided this information to Plaintiffs notwithstanding K.S.A. §25-2422. *See* Petition Ex. F ¶ 5. Defendant does not indicate whether he sincerely believes that election officials—some of whom are under his direct control in Kansas' larger counties (K.S.A § 19-3419)—are guilty of a felony offense for voluntarily sharing this information. This unlikely result

[19] *See* Roxana Hegeman, *Ballots tossed over signatures mostly from same Kansas homes*, ASSOCIATED PRESS (Apr. 16, 2019), *available at* https://apnews.com/99f1205ae9be4d71b01d23de0ab5e91a ("So when the 82-year-old Republican learned from an Associated Press reporter that the ballot he mailed in advance of the 2018 primary was not counted because his signature didn't match his voter record, Bailey said he was 'really incensed.' 'What makes me feel bad is that they didn't advise me,' Bailey said").

would come as a shock to election officials who now could face serious criminal charges for merely providing the public with information about election integrity and enfranchisement in Kansas.

C. Disclosing Provisional Ballot Data Does Not Violate Voters' Rights to Informational Privacy.

Defendant Schwab argues that the Fourteenth Amendment prohibits disclosure of provisional ballot voter data because: (1) the reasons for voting provisionally could be embarrassing; (2) the requested data includes multiple fields of personally identifiable information; and (3) the manner in which the information is collected—one-time personal conversations—creates a reasonable expectation privacy. As a preliminary matter, the concerns Defendant cites do not apply to every piece of information included in the provisional ballot data report. When a record contains personally identifiable information or other material not subject to disclosure, the government is required to "delete the identifying portions of the record and make available to the requester any remaining portions which are subject to disclosure." K.S.A. 45-221(d). To the extent that disclosure of the reason a voter cast a provisional ballot violates the Fourteenth Amendment, Defendant Schwab is required to redact that information and provide the other requested data. If disclosure of the combination of the 12 data fields violates voters' privacy interests, Defendant Schwab could withhold the data fields in the report that are within the ambit of constitutional protection and disclose the rest. In short, many of Defendant's concerns about informational privacy would be abated if he complied with KORA subsection 221(d).

Nevertheless, the specific data Defendant Schwab seeks to withhold is not closed by the Fourteenth Amendment. While individuals have an informational privacy interest in sensitive and personal information, "not every embarrassing fact that one would prefer to keep quiet falls into this category." *DuPont v. City of Biddeford*, No. 2:11-cv-00209, 2011 U.S. Dist. LEXIS 123531, at *8 (D. Maine Oct. 24, 2011); *see also Leiser v. Moore*, 903 F.3d 1137, 1141 (10th Cir. 2018)

(reasoning that unauthorized government disclosure of confidential medical information does not necessarily violate Fourteenth Amendment where plaintiff was not suffering from an "opprobrious" condition). Even if a voter were embarrassed that they had to cast a provisional ballot because they changed residences or forgot to register, subjective embarrassment does not implicate their right to informational privacy.[20] Further, even categories of information that are innately sensitive are not per se entitled to Fourteenth Amendment protections. *See*, *e.g.*, *Leiser*, 903 F.3d at 1141 (finding inmate did not have a clearly established expectation of privacy in cancer diagnosis). If medical information is not per se entitled to Fourteenth Amendment protections, moving residences or forgetting to register certainly do not reach the mark. Defendant Schwab cites *Mah* in support of his assertion that moving because of a breakup or forgetting to register could cause a voter embarrassment. Mem. in Opp. at 19. However, these were not findings of fact by the Court but merely recitations of then-Secretary Kobach's unsuccessful arguments in favor of closing the names of provisional ballot voters. The court neither adopted nor gave credence to these "embarrassment" hypotheticals and it certainly did not find that this information would be entitled to protection under the Fourteenth Amendment. *See Mah*, 2012 U.S. Dist. LEXIS 163248, at *6.

Defendant Schwab's argument that a voter has a reasonable expectation of privacy in the combination of requested data fields in the provisional ballot report has slightly more support. To the extent that the combination of voter data requested could facilitate identity theft or financial fraud, it could implicate a constitutional right to privacy. However, Defendant Schwab does not

[20] And as noted above, change of address and failure to register are also life circumstances that would reveal themselves from the disclosure of active voter lists and voter registration lists. Would Defendant Schwab assert the disclosure of these public lists also violates the Fourteenth Amendment? Again, the only privacy interest Defendant Schwab appears to be interested in is that of his office—which might otherwise be forced to reveal just how many citizens have their votes thrown out every year in Kansas elections for entirely curable reasons. *See supra* note 18 (noting voters' anger directed toward the government at learning that their votes did not count in a prior election cycle).

indicate which data fields would give rise to that risk. He simply argues that Plaintiffs are requesting more types of voter information than were disclosed by his office in *Moore v. Kobach*. This argument misunderstands *Moore*. The issue was not that the Secretary of State disclosed too many types of voter information but rather that he disclosed partial social security numbers with other information that "is alarming and potentially financially ruinous." *Moore v. Kobach*, 359 F. Supp. 3d 1029, 1050 (D. Kan. 2019) (quoting *Greidinger v. Davis*, 988 F.2d 1344, 1354 (4th Cir. 1993)). Plaintiffs have not requested partial SSN but rather voting-specific data such as whether a person's ballot was counted and, if not, the reason their ballots was not counted. Certainly, Defendant is not arguing that the disclosure of benign information such as voter registration ID and voting district information could be used for fraudulent purposes. Even if the specific combination of information Plaintiffs requested created a risk of exposure, Defendant could easily remove any risk by redacting or deleting partial SSN or other fields that might serve as a skeleton key for identity theft.

Finally, Defendant Schwab's argument that the manner in which the information is collected creates an expectation of privacy has been expressly rejected. Both the Supreme Court and Tenth Circuit have held that the state cannot create an informational privacy interest through its own assurances. *Paul v. Davis*, 424 U.S. 693, 713 (1976) (law prohibiting disclosure of arrest did not create reasonable expectation of privacy); *Mangels v. Pena*, 789 F.2d 836, 840 (10th Cir. 1986) ("any limited assurances of confidentiality offered…do not make a difference in this case…any disclosed information must itself warrant protection under constitutional standards").

III. PLAINTIFFS WILL SUFFER IRREPARABLE HARM IF AN INJUNCTION DOES NOT ISSUE.

Courts have consistently recognized that a plaintiff is irreparably harmed by a delay of timely access to open records which have been requested to provide information to the public in

advance of a specific, timebound event. *See*, *e.g.*, *Wash. Post v. U.S. Dep't of Homeland Sec.*, 459 F. Supp. 2d 61 (D.D.C. 2006) (granting a preliminary injunction where the records concerned White House visitor logs and where midterm elections were occurring shortly); *Elec. Privacy Info. Ctr. v. U.S. Dep't of Justice*, 416 F. Supp. 2d 30, 40-41 (D.D.C. 2006) (holding "public awareness of the government's actions is 'a structural necessity in a real democracy.' Not only is public awareness a necessity, but so too is *timely* public awareness") (quoting *Nat'l Archives and Records Admin. V. Favish*, 541 U.S. 157, 172 (2004)); *Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246 (D.D.C. 2005) (granting expedited processing of records where the records concerned the monitoring of federal elections and certain provisions of the Voting Rights Act were set to expire); *Elec. Frontier Found. v. Office of the Dir. of Nat'l Intelligence*, 542 F. Supp. 2d 1181, 1186 (N.D. Cal. 2008) (irreparable harm from delay in disclosure of information available under FOIA to inform public debate on issue being investigated in Congress). In particular, the denial of information sought in order to inform the public in advance of an impending election constitutes an irreparable harm. *Wash. Post.*, 459 F. Supp. 2d at 75.

More generally, KORA itself recognizes the inherent time sensitivity in an open records request. K.S.A. 45-220(a) (explaining purpose of the Act is to ensure "timely" access to records). Section 218(d) requires public agencies to "act upon records requests *as soon as possible*, but not later than the end of the third business day following the date that the request is received." K.S.A. 45-218(d). Further, KORA provides "if access to the public record is not granted immediately, the custodian shall give a detailed explanation of the cause for further delay and the place and earliest time and date that the record will be available for inspection. These timely disclosure mandates apply regardless of whether the requester has a specific time-sensitive need for the information.

Accordingly, because KORA recognizes the intrinsic time-sensitivity of access to public records, a delay in disclosure causes an irreparable harm for each day the information is denied.

Here, Plaintiffs are seeking provisional ballot reports for the specific purpose of providing information to members of the public prior to an impending election. Plaintiffs seek to notify individuals who voted provisionally—specifically those who voted by advance mail and had their ballot converted to a provisional status due to a defect—that their vote did not count in 2018. Plaintiffs purpose of providing this information is to ensure the voter does not have to cast a provisional ballot in the 2020 election. For instance, if a voter was directed to cast a provisional ballot because they lacked a valid photo ID, Plaintiffs would notify the voter of the reason they had to vote provisionally and explain how to obtain a free voter ID before the upcoming August 4th primary. Because Plaintiffs' mission is to maximize the number of votes that count in the 2020 primary election, the requested data will be more or less moot if he receives it after August 4.

Defendant makes much of the fact that Plaintiffs did not request the information when it first became available in November 2018. However, Defendant fails to explain or cite any legal precedent in support of his assertion that a petitioner must make an immediate request as soon as information is available in order to claim irreparable harm. Plaintiffs had no way of knowing that Defendant would make them wait more than 300 days for a response if they requested the information nearly a year before August 4, 2020. Moreover, Plaintiffs had two practical reasons for making their requests in September 2019. First, they were not aware of the scope of the provisional ballot problem and the need for their notice and cure program when the records first became available. Second, Plaintiffs' notice and cure program will be more effective if it is carried out in the months before the election. Voters are more likely to take the steps to fix a problem that might prevent their vote from counting the closer they are to an election when voting is top of

mind. Because Plaintiffs did not intend to engage in notice and cure work until the months immediately preceding the August 2020 primary, they had a significant head start when they requested the information in September 2019.

Finally, Defendant argues that Plaintiffs' plan to request identical information in the future cannot justify irreparable harm because KORA permits access only to existing records. Plaintiffs are interested in receiving a binding order from this Court that would obviate the need for emergency litigation for provisional ballot data reports between the August 4, 2020 primary and county canvasses beginning on August 10, 2020. However, they are not citing this as a factor contributing to irreparable harm. Additionally, the benefit of having a determination on the merits prior to the next election is better suited for the public interest prong of this inquiry.

IV. THE BALANCE OF HARMS TIPS IN FAVOR OF PLAINTIFFS.

Defendant argues that the harm he will experience exceeds that of Plaintiffs' because it will be time-consuming to redact the partial SSN information that would be generated as part of the provisional ballot report and because voters will be deterred from casting provisional ballots after they are contacted by a nongovernmental organization offering them voting assistance. To Defendant's first point, partial SSN information fields need not be redacted, the data field can simply be deleted prior to disclosure. Plaintiffs are requesting an exported spreadsheet of provisional ballot voter data which is a pre-programmed function in ELVIS. Once the spreadsheet is exported Defendant could remove the SSN data field in less than 30 seconds by simply deleting the column. As to the second concern, voter information is generally open to the public and nongovernmental organizations alike. Defendant is not harmed by the various parties who use voter information obtained from his office to contact voters. Indeed, his office acknowledges that

such data is sold by election officials.[21] By Defendant's logic, he should be able to exempt from disclosure voter registration lists—which are expressly open under Kansas statute—because contact from the various nongovernmental organizations that use the list may deter future registrations. This speculative harm is inconsistent with Kansas's general rule that voter records be open to the public and does not support his claim that the balance of equities favors the Defendant.

V. THE PUBLIC INTEREST FAVORS PLAINTIFFS

Defendant has no original arguments that the public interest disfavors Plaintiffs' requested injunction. Instead, he reasserts his argument that the disclosure of provisional ballot voter reports—which have been disclosed by more than 60 county election officials—is a felony. He also insists that contact from Plaintiffs' through their planned notice and cure program will deter voters from casting provisional ballots in the future. As discussed more fully above, neither argument has any support.

Conversely, the public interest favors disclosure because it would enhance citizen participation, provide the public with important information to facilitate the democratic processes, uphold precedent, and obviate the need for emergency litigation in the four business days between the August 4, 2020 election and the primary canvass.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court order the release of the names of provisional ballot voters from the 2018 General Election to Plaintiffs and order such other relief as the Court deems just and proper.

[21] *See* Kansas Election Standards 2019, Chapter I, at I-11.

Dated: July 10, 2020

Respectfully submitted,

/s/ Lauren Bonds

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of July, 2020, I electronically filed the foregoing with the Clerk of the District Court's electronic filing system which will serve all registered participants and a copy was also served by email to counsel for the Kansas Secretary of State, Garrett Roe (garrett.roe@ks.gov) and Clay Barker (clay.barker2@ks.gov).

/s/ Zal K. Shroff
Zal K. Shroff

Exhibit G

STATE OF KANSAS.

SESSION LAWS OF 1893,

PASSED AT THE TWENTY-FIFTH REGULAR, THE SAME BEING THE EIGHTH BIENNIAL SESSION OF THE LEGISLATURE OF THE STATE OF KANSAS.

DATE OF PUBLICATION OF VOLUME, MAY 18, 1893

TOPEKA.
PRESS OF THE HAMILTON PRINTING COMPANY:
EDWIN H. SNOW, State Printer.
1893.

CHAPTER 76.

FRANKLIN COUNTY TO ISSUE WARRANTS TO COMPLETE COURT HOUSE.

AN ACT to authorize the board of county commissioners of Franklin county to issue time warrants on the court-house fund of said county in order to complete the court house therein on or before October 1st, 1893.

Be it enacted by the Legislature of the State of Kansas:

Issue warrants. SECTION 1. That the board of county commissioners of Franklin county is hereby authorized and empowered to issue time warrants payable out of the court-house fund of said county, to an amount sufficient to complete the court house for said county according to the original plans and specifications therefor on or before the first day of October, A. D. 1893.

Interest. SEC. 2. The said warrants may be issued by said board for the purpose above specified as the same may become necessary from time to time, and such warrants shall be paid as soon as sufficient funds therefor are collected into the treasury of said county pursuant to the provisions of chapter ninety-four of the acts of the legislature of Kansas for the year 1891, approved March 2d, 1891, and the said warrants shall bear interest not to exceed 7 per cent. per annum.

SEC. 3. This act shall take effect and be in force from and after its publication in the official state paper.

Approved March 9, 1893.

Published in the official state paper April 19, 1893.

CHAPTER 77.

CORRUPT PRACTICES AT ELECTIONS.

AN ACT to prohibit the corrupt use of money and corrupt practices at elections.

Be it enacted by the Legislature of the State of Kansas:

Promises. SECTION 1. Any person who shall lend or give any money or other valuable thing to any other person to induce him to cast his vote either for or against any candidate for public office; or any person who shall lend or give any money or other valuable thing to any other person to induce him to refrain from voting or to remain away from the polls; or any person who shall lend or furnish any money or security therefor to any other person or persons to be used for any of said purposes; or any person who shall knowingly refund or make good to any person or persons any money expended for any of said purposes; or any person who shall directly or indirectly give or procure to be given or promise to give any money, gift or reward, or any office, place or employment upon any engagement, contract, agreement, or understanding, that the person to whom or for whose benefit such gift or promise shall be made, shall, by himself or any other person procure, or endeavor to procure or work for, the election of any person to any public office at any election, shall be punished by a fine Penalty. of not less than one hundred dollars or more than one thousand dollars, or by imprisonment in the penitentiary for not more than two years, or both.

SEC. 2. It shall be unlawful to hire, or to lend or pay or promise to pay any money, or to give or promise to give anything of value to any person to work at the polls on any election day in the interest of any party, or any ticket, or any candidate or candidates. It shall be unlawful to lend or pay or promise to pay any money, or to give or promise to give anything of value to any person for work or services on election day, in endeavoring to influence or procure any other person or persons to come to or remain away from the polls. It shall be unlawful to lend or pay or promise to pay any money, or to give or promise to give anything of value to any person for work or services on election day in endeavor-

ing to influence or procure any other person or persons to vote or refrain from voting for any candidate or candidates.

Liquors or cigars.

SEC. 3. It shall be unlawful for any candidate for public office to distribute or give away any intoxicating liquors or cigars on election day; or at any time to authorize or employ any person to distribute, or give away any intoxicating liquor or cigars for him or in his interest or behalf on election day; or to procure or pay for, directly or through any other person, any intoxicating liquors or cigars to be so distributed or given away, or which shall have been so distributed or given away on election day.

SEC. 4. It shall be unlawful for any candidate at any time to give away any intoxicating liquors with intent to influence the vote of any person or persons; or to employ or authorize any other person to give away any such liquors with such intent; or to purchase, procure or pay for, directly or through another person, any such liquors to be given away with such intent; or to pay for, either before or after election, any such liquors which shall have been given away with such intent.

SEC. 5. All acts forbidden to be done by any such person in the interest, or on behalf, of any candidate for office shall be equally unlawful if done to influence the vote of any person or persons for or against any proposition to amend the constitution, or any proposition to vote bonds for any public purpose or in aid of any enterprise, or any proposition for subscription to the stock of any corporation; and any person so offending shall be punished by a fine not exceeding $500, or by imprisonment not exceeding two years, or by both.

Penalty.

SEC. 6. All acts forbidden to be done by any candidate shall be equally unlawful if done by any member or officer of any state, district, county, city, ward, or township committee, or of any club, organization, or association, designed to promote, or engaged in promoting the success or defeat of any party, or the election or defeat of any candidate to a political office; and any member of such committee, club, or other organization, who shall pay or personally authorize the payment of any money to any person for any purposes forbidden in this act, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding one year.

Detailed statement.

SEC. 7. Every person who shall be a candidate at any election for any state, county, municipal, or district office, shall within thirty days after such election, make and file with the

county clerk of the county in which said candidate resides, a detailed statement of all moneys loaned, expended, paid, or promised to be paid by him, or by any one to the best of his knowledge and belief in his behalf, in attempting to secure or in any manner in connection with, the election to such office. Such statement shall show the name of every person, committee, club, or other organization, to whom any payment or loan has been made, and the name of every person, committee, club, or other organization to whom or to which any money, compensation, or pecuniary reward of any kind has been promised, for any article furnished, or services performed ou account of, or in connection with said election, and also the amounts so paid, or loaned, or promised to be paid. Said statement shall be verified before some officer empowered to administer oaths, and the form of said verification shall be as follows: "I, ———, do hereby solemnly swear that the foregoing is a full and true statement of the expenses incurred by me or by anyone in my behalf, to the best of my knowledge and belief, to secure my election to the office of ——— in the year ———; and I further solemnly swear that I have not expended or loaned, in the campaign for said office, directly or indirectly, nor have I authorized any other person, for or on my behalf, to expend or loan, directly or indirectly, nor have I promised or obligated myself, directly or indirectly, to pay any money or give any other thing of value for any of the objects or purposes forbidden by the act of the legislature entitled 'An act to prohibit the corrupt use of money and corrupt practices at elections.'"

Oath.

File statement with county clerk.

SEC. 8. Every state, district, county, city, ward, or township committee, or any club, organization or association designed to promote, or engaged in promoting the success or defeat of any party, or the election or defeat of any candidate or candidates to political office, shall have a treasurer, and shall cause to be kept a detailed account of all moneys, or property, or other thing of value, received by it, and of the manner in which the same shall be expended; and within thirty days after any election at which state or municipal or county or district officers, or members of congress are chosen, the treasurer of any such committee, club or other organization, which shall have expended money, or property, or other thing of value, in the campaign preceding such election, or in any way in connection with the same, shall file with the

county clerk of the county in which such committee, club or other organization has its headquarters, a statement of all its receipts and expenditures, showing in detail from whom said moneys, or property, or other thing of value, were received, to whom said moneys, or property, or other thing of value, were paid, for what specific purposes each payment was made, and the exact nature of the service rendered in consideration thereof. Any person not a member of any such committee, club, or organization, who collects or disburses funds, or property, or other thing of value, exceeding five dollars in the aggregate for the purpose of promoting the election or defeat of any candidate or candidates, shall file and verify a statement of the same kind required to be filed by treasurers of committees.

SEC. 9. Any member of any committee, club, or other organization described in section 8, who shall receive or disburse any moneys, or property, or other thing of value, for political campaign purposes in connection with any election set forth in said section shall forthwith furnish the treasurer of such committee, club, or other organization a detailed statement of all moneys, or property, or other thing of value, received or disbursed by him, or he shall verify and file an individual account, as above provided for persons not members of any such committee, club, or other organization; and such treasurer shall include such statement in his statement required by said section. No member of any committee, club, or other organization described in section 8 shall receive or disburse any moneys, or property, or other thing of value, for political or campaign purposes, or in connection with any election, unless the committee, club, or other organization of which he is a member shall first have chosen a treasurer to keep its accounts as provided in said section.

SEC. 10. Statements filed by the treasurer of any committee, club, or other organization, required by this act to be filed, shall be verified before some officer authorized to administer oaths, and the form of said verification shall be substantially as follows: "I, ———, treasurer of———, do solemnly swear that the foregoing is a full and true statement of all receipts and of all expenditures of the said —— in connection with the campaign preceding the election held on the —— day of ———, to the best of my knowledge and belief." The statement filed by any other person than a

Oath.

candidate or the treasurer of a committee, club, or other organization, shall be verified before some officer authorized to administer oaths, and the form of said verification shall be as follows: "I, ———, do solemnly swear that the foregoing is a full and true statement of all moneys, or property, or other thing of value, received by me, and of all moneys expended by me, in connection with the campaign preceding the election held on the ——— day of ———."

Oath.

SEC. 11. Any person who willfully makes any false statement in any sworn statement required by this act shall be deemed guilty of perjury, and shall be punished as provided by law for such offenses.

False statement.

SEC. 12. Any person elected to any office who shall be proven in a contest of such election or in any other manner provided by law to have violated any provisions of this act shall forfeit his office, and said office shall be declared vacant and shall be filled in the manner provided by law for filling vacancies occasioned by death or resignation.

Contest election.

SEC. 13. Any person violating any provision of this act for which a penalty is not herein specially prescribed, shall be punished by a fine not exceeding five hundred dollars, or less than ten dollars, or by imprisonment not exceeding one year, or less than ten days, or both.

Penalty.

SEC. 14. This act shall not be deemed to prohibit voluntary work for or on behalf of any candidate for public office, nor shall it prevent the necessary expenditure of money for public meetings, printing, postage, telegraphing, office rooms for actual *bona fide* use by political committees, with fuel and light therefor, music, stationery, livery, clerical assistance in committee work, flag, transparencies, compensation and expenses of public speakers; but all expenses for any such purposes, either by committees or by candidates, shall be set forth in the respective statements herein provided for.

Voluntary work.

SEC. 15. It shall be the duty of the county clerk to indorse on each statement filed with him pursuant to this act, the date of the filing thereof, and to preserve the same among the public records of his office.

SEC. 16. This act shall take effect and be in force from and after its publication in the official state paper.

Approved March 11, 1893.

Published in the official state paper March 30, 1893.

CHAPTER 78.

AUSTRALIAN BALLOT LAW.

AN ACT to provide for the printing and distribution of ballots at the public expense, and for the nomination of candidates for public offices; to regulate the manner of holding elections; and to enforce secrecy of the ballot, and to provide for the punishment of the violation of this act.

Be it enacted by the Legislature of the State of Kansas:

Printing and distribution of ballots.

SECTION 1. All ballots cast in elections for national, state, district and county officers, in this state, after the taking effect of this act, and all ballots cast in township and city elections after said date, shall be printed and distributed at public expense. The printing and distribution of ballots and all other expenses connected with or growing out of the provisions of this act shall be paid for by townships, and cities of the first and second class, and it shall be the duty of the county commissioners of each county to apportion such expense among the townships and cities of the county in proportion to the vote cast at the last preceding general election in each township and city. It shall be the duty of the proper officers of each township and city of the first and second class to issue and pay warrants to cover expenses incurred under the provisions of this act in the same manner as all other township and city warrants are paid under existing statutes.

Instruction to voters.

SEC. 2. The printing and distributing of ballots and cards of instruction to voters, as hereinafter described, for any general election, shall be at the expense of the county, and shall be provided for in the same manner as other county election expenses; and the printing and distributing of ballots for use in city elections shall be at the expense of the city or town in which such election shall be held. The term "general election," as used in this act, shall apply to any election held for the choice of national, state, judicial, district, county or township officers, whether for the full term or for the filling of a vacancy. The term "city election" shall apply to any municipal election held in a city or incorporated town.

Conventions, etc.

SEC. 3. Any convention of delegates, primary, caucus, or meeting of qualified voters, as hereinafter defined, and individual electors to the number and in the manner hereinafter

specified, may nominate candidates for public office, whose name shall be placed upon the ballots to be furnished as hereinafter provided.

Certificate of nomination.

SEC. 4. Any convention of delegates, primary, caucus or meeting representing a political party, may, for the state or division thereof, or municipality for which the convention, primary, caucus or meeting is held, as the case may be, by causing a certificate of nomination to be duly filed, make one such nomination for each office therein to be filled at the election. Every such certificate of nomination shall state such facts as are required in section 6 of this act, and shall be signed by the presiding officer and by the secretary of the convention, caucus or meeting, who shall add to their signatures their places of residence. Where such nomination is made by a primary election, the certificate shall be signed by the board of canvassers, to which the returns of such primary are made. Such certificate shall be sworn to by them to be true, to the best of their knowledge and belief, and a certificate of an oath shall be annexed to the certificate of nomination.

SEC. 5. Nominations for candidates for any office to be filled by the voters of the state at large may also be made by nomination papers, signed in the aggregate for each candidate by not less than five hundred (500) qualified voters of the state. Nominations of candidates for office to be filled by the electors of a county, district or other division less than a state, may be made by nomination papers, signed in the aggregate for each candidate by not less than twenty-five (25) qualified voters of such county, district or division. Nominations of candidates for offices to be filled by the electors of a city, town, precinct or ward may be made by nomination papers signed in the aggregate for each candidate by not less than ten (10) qualified voters of such city, town, precinct or ward. Each elector signing a certificate shall add to his signature his place of business and post-office address.

SEC. 6. All certificates of nomination, or nomination papers, shall, besides containing the names of the candidates, specify as to each: First, the office to which he was nominated; second, the party or political principle which he represents, expressed in not more than five (5) words; third, his place of residence, with street and number thereof, if any. In case of electors for president and vice president of the

United States, the names for the candidates for president and vice president may be added to the party or political appellation.

SEC. 7. Certificates of nomination, and nomination papers for the nomination of candidates for offices to be filled by the electors of the entire state, or any division or district greater than a county, shall be filed with the secretary of state not more than sixty (60) days and not less than thirty (30) days before the day fixed by law for the election for which the candidates are nominated. All other certificates for the nomination of candidates shall be filed with the county clerk of the respective counties, not more than sixty (60) days and not less than twenty (20) days previous to the day of such election: *Provided,* That certificates of nomination and nomination papers for the nomination of candidates for the offices in cities shall be filed with the clerks of the cities not more than forty (40) days and not less than ten (10) days previous to such election.

Candidate withdrawn.

SEC. 8. Any person whose name has been presented as a candidate may cause his name to be withdrawn from nomination by his request in writing, signed by him and acknowledged before an officer qualified to take acknowledgment of deeds, and filed with the secretary of state not less than fifteen (15) days, or with the clerk of the county or city not less than eight (8) days previous to the day of election, and no name so withdrawn shall be printed upon the ballots. All certificates of nomination, and nomination papers, when filed, shall be open, under the proper regulation, to public inspection, and the secretary of state, and the several county clerks, and city clerks, having charge of the nomination papers, shall preserve the same in their respective offices for not less than two years and six months after the election.

County and city clerks.

Candidate dies.

SEC. 9. In case a candidate who has been duly nominated, under the provisions of this act, dies before election day or decline the nomination, as in this act provided, or should any certificate of nomination be held insufficient or inoperative by the officers with whom they may be filed, the vacancy or vacancies thus occasioned may be filled by the political party or the persons making the original nominations; or, if the time is insufficient therefor, then the vacancy may be filled, if the nomination was by convention, primary, or caucus, in such manner as the convention, primary or caucus had previ-

Vacancy filled.

ously provided; or in case of no such provisions, then by the regularly-elected or appointed executive or central committee representing the political party or persons holding such convention, primary meeting, or caucus. The certificates of nominations made to supply such vacancy shall state, in addition to the facts hereinbefore required by this act, the name of the original nominee, the date of his death or declination of nomination, or the fact that the former nomination had been held insufficient or inoperative, and the measures taken in accordance with the above requirements for filling a vacancy, and it shall be signed and sworn to by the presiding officer and the secretary of the convention, primary, or caucus, or by the chairman and secretary of the duly-authorized committee, as the case may be.

SEC. 10. The certificates of nomination and nomination papers being so filed, and being in apparent conformity with the provision of this act, shall be deemed to be valid, unless objection thereto is duly made in writing. Such objections or other questions arising in relation thereto in the case of nomination of state officers or officers to be elected by the voters of a division less than the state and greater than a county, shall be considered by the secretary of state, auditor of state and attorney general, and the decision of a majority of these officers shall be final. Such objections or questions arising in the case of nominations for officers to be elected by the voters of a county or township, shall be considered by the county clerk, clerk of the district court and county attorney, and the decision of a majority of said officers shall be final. Objections or questions arising in the case of nominations for the city or incorporated town officers shall be considered by the mayor and clerk, with whom one councilman, chosen by a majority of the councilmen, shall act, and the decision of a majority of such officers shall be final. In any case where objection is made, notice shall forthwith be given to the candidates affected thereby, addressed to their place of residence as given in the nomination papers, and stating the time and place, when and where such objections will be considered.

Secretary of state and attorney general.

Final decision.

SEC. 11. When such certificate is filed with the secretary of state, he shall, in certifying nominations to the various county clerks, insert the name of the person thus nominated to fill vacancy in place of the original nominee; and in the event

Secretary of state.

that he has already sent forward his certificate, he shall forthwith certify to the clerks of the proper counties the name and description of the person so nominated to fill the vacancy, the office he is nominated for, with the other details mentioned in certificates of nomination filed with the secretary of state; he shall immediately certify the name so supplied to the authorities charged with the printing of the ballots. The name so supplied for the vacancy shall, if the ballots are not already printed, be placed on the ballots in place of the name of the original nominee; or, if the ballots have been printed, new ballots, whenever practicable, shall be furnished.

Ballots.

Ballots.

SEC. 12. Whenever it may not be practicable to have new ballots printed, it shall be the duty of the election officer having charge of the ballots to place the name so supplied for the vacancy upon each ballot issued before delivering it to the voter; the name so supplied may be placed upon the ballots either by affixing a paster, or by writing or stamping the name upon the ballot; and to enable this to be done, the officer with whom the certificates of nominations are to be filed, shall immediately furnish the name of such substituted nominee to all judges of election within the territory in which such nominee may be a candidate: *Provided*, That in all cases where the certificates of nomination or nomination papers are filed with the secretary of state he shall be required only to immediately furnish the name of such substituted nominee to the county clerks within said territory, and it shall then be the duty of the county clerk to furnish such information to the judges of election as hereinbefore stated.

Secretary of state.

SEC. 13. Not less than fifteen (15) days before an election to fill any public office, the secretary of state shall certify to the county clerk of each county within which any of the electors may by law vote for the candidates for such office, the name and residence of each person nominated for such office, as specified in the certificates of nomination or nomination papers filed with the secretary of state.

Ballot.

SEC. 14. The names of all candidates to be voted for in each election district or precinct shall be printed on one ballot; all nominations for any political party or group of petitioners being placed under the party appellation or title of such party or group, as designated by them in the certificates of nomination or petitions, or, if none be designated, then under some suitable title, and the ballot shall contain no other

names, except that, in case of electors for president and vice president of the United States, the names of the candidates for president and vice president may be added to the party or political organization. If a constitutional amendment or other public measure is submitted to a vote, such questions shall be printed upon the ballot after the list of candidates, and words calculated to aid the voter to answer any question submitted to a vote may be added, such as "Yes," "No," or the like. On the back or outside of the ballot, so as to appear when folded, shall be printed the words "Official ballot," followed by the designation of the polling place for which the ballot is prepared, the date of election, and a *fac simile* of the signature of the clerk or other officers who has caused the ballot to be printed. The ballots shall be on plain white paper, through which the printing or writing cannot be read. The party appellation or title shall be printed in capital letters, not less than one-fourth of an inch in height, and immediately below such party appellation or title shall be printed the following statement: Electors will make a cross mark, thus (X) in the square at the left of the name of the candidate for whom they wish to vote. The names of the candidates shall be printed in capital letters, not less than one-eighth nor more than one-fourth of an inch in height. And at the beginning of each line in which the name of a candidate is printed, a square shall be printed, the sides of which shall not be less than one-fourth of an inch in length. The list of candidates for the several parties and groups of petitioners shall be placed in separate columns on the ballots, in such order as the authorities charged with the printing of the ballots shall decide. Each of the columns containing the list of candidates including the party appellation shall be separated by a distinct line.

Constitutional amendment.

Official ballot.

Kind of paper.

How printed.

Separate columns.

PEOPLE'S PARTY.	REPUBLICAN.	DEMOCRATIC.
For Governor.	*For Governor.*	*For Governor.*
A. J. WESTFALL.	H. C. WHEELER.	HORACE BOIS.
For Lieutenant Governor.	*For Lieutenant Governor.*	*For Lieutenant Governor.*
JOHN COOPER.	G. GAMMIL.	J. KINNE.
For Justice of the Peace.	*For Justice of the Peace.*	*For Justice of the Peace.*
JOHN MAXON.	TOM SMITH.	CHAS. GLICK.
PERRY HALL.	WM. FELT.	FRED. BLAIR.

(And continuing in like manner as to all candidates to be voted for at such elections.)

Printing of ballots.

SEC. 15. For all elections to which this act applies, the county clerks in their respective counties shall have charge of the printing of the ballots for all general elections, and shall furnish them to the judges of such elections. Ballots shall be printed and in the possession of the officer charged with their distribution at least five (5) days before the election, accompanied by exact copies of said ballots printed on paper of any color other than white, for the inspection of candidates and their agents. If any mistakes be discovered, they shall be corrected without delay. The officers so charged with the printing of the ballots shall cause to be delivered to the judges of election, at the polling place of each voting precinct, not less than twelve (12) hours before the time fixed by law for the opening of the polls therein, one hundred (100) ballots of the kind to be voted in such precinct for every fifty (50) votes or fraction thereof cast therein at the last preceding election for state officers. Such ballots shall be put up in separate sealed packages of fifty ballots each, with marks on the outside clearly designating the polling place for which they are intended, and the number of ballots inclosed, and

Ballots delivered.

Sealed packages.

receipt therefor shall be given by the judge or judges of election to whom they are delivered, which receipt shall be preserved by the officer charged with the printing of the ballots. The officer or authorities charged with the printing and distributing of the ballots shall provide and retain at his or their offices an ample supply of ballots in addition to those distributed to the several voting precincts, and if at any time on or before the day of election the ballots furnished to any precinct shall be lost, destroyed or exhausted, before the polls are closed, on written application, signed by a majority of the judges of such precinct or signed and sworn to by one of such judges, he shall immediately cause to be delivered to such judges, at the polling place, such additional supplied ballots as may be required, and sufficient to comply with the provisions of this act.

Ballots lost.

SEC. 16. Whenever a public measure is proposed to be voted upon by the people, such amendment or other public measure shall be printed by designated title upon the ballot, preceded by the words: "Shall the following amendment be adopted?" Two spaces shall be left on the left-hand margin, one for votes favoring the public measure, to be designated by the word "Yes," and one for votes opposing the measure, to be designated by the word "No," as in the form herein given. Shall the following be adopted:

Form of ballot for amendment.

	YES.
	NO.

Here insert the designated title to proposed public measure.

The elector shall designate his vote by a cross mark, thus (X).

SEC. 17. The officer or officers, whose duty it is to have the ballots printed, shall prepare full instructions for the guidance of voters at such election, after obtaining ballots, as to the manner of marking them and the method of gaining assistance, and as to obtaining new ballots in place of those accidentally spoiled; and they shall cause the same, together with the copies of sections 22, 23, 24, 25, 26, 27, 28, 29, of this act, to be printed in large clear type, on cards, to be called cards of instruction; and such officer or officers shall furnish to the judges of election a sufficient number of such cards of instruction to enable the judges of election to comply with the provisions of this act.

Judges of election.

SEC. 18. The judges of election shall cause not less than one of such cards to be posted in each voting booth or apartment provided for the preparation of ballots, and not less than four (4) of such cards to be posted in and about the polling place upon the day of election. The county clerk shall cause to be published prior to the day of election in at least two newspapers, if there be so many published in such county, representing the political parties which cast at the preceding general election the largest and next largest number of votes, a list of all the nominations made as herein provided and to be voted for at such election, as near as may be in the form in which they shall appear upon the general ballot: *Provided*, That publication by the county clerk shall shall not be required for or applied to the election of township or municipal officers.

Election boards.

SEC. 19. Election boards shall be composed of three judges and two clerks; the judges of elections of their respective precincts shall have charge of the ballots and furnish them to the voters, as hereinafter set forth. No more than two judges and not more than one clerk shall belong to the same political party or organization: *Provided, always*, There be one or more electors qualified and willing to act as such judge or clerk, and belonging to and a member or members of opposite parties: *Provided further*, That where two or more parties holding political views diametrically opposed to each other unite and vote the same ticket, they shall be deemed and held to constitute one party under the provisions of this act. It shall be the duty of the mayor of every city, by and with the consent of the council thereof, at least five days before the day of any election, to designate and appoint five persons in each voting precinct in such city, who shall be qualified electors thereof, three of whom shall be appointed and act as judges and two as clerks of elections. Said mayor shall cause said judges and said clerks to be notified in writing of their appointment, and they shall each appear before the clerk of such city, at least one day before the day of election, and take and subscribe an oath to faithfully and honestly perform their duties as such judges and clerks.

Judges and clerks.

And it shall be the duty of the township trustees of every township, at least five days before the day of any election, to proceed in like manner to appoint and notify five persons for each voting precinct in his township, three to be appointed and to act as judges and two

as clerks of election, and all to be duly-qualified electors of the precinct for which appointed. One of said judges and one of said clerks to be appointed by said mayor and trustee, as aforesaid, shall be taken from the political party that polled the largest number of votes at the last preceding general election in said precinct, and one of said judges and one of said clerks, from the political party that polled the next largest number of votes at the last general election aforesaid, and the remaining judge from the political party that polled the next largest vote at the last general election aforesaid. And if any of said judges or clerks shall fail or refuse to appear and serve at the proper time and place, or from any cause become disqualified, then the electors present shall select from their number, *viva voce*, such persons from the political parties as herein designated to fill such vacancies. Said judges shall designate one of their number whose duty it shall be to have charge of the ballots and to furnish them to the voters in the manner herein provided. All judges and clerks to be appointed by the township trustee as hereinbefore provided shall at least one day before election appear before such township trustee and shall take and subscribe an oath to faithfully and honestly discharge his duties as such clerk or judge, and said township trustee is hereby authorized to administer oaths for such purpose: *Provided*, In cities having a commissioner of elections, such commissioner shall in all cases select the judges and clerks of election from different political parties, in like manner as is herein provided for the mayor and council of other cities, who shall be notified and qualify, and vacancies shall be filled as provided for hereinbefore.

Places to hold elections.

SEC. 20. It shall be the duty of the township trustee, and of the mayor and clerk of incorporated cities, to provide suitable places in which to hold all elections provided for by this act, and to see that the same are warmed, lighted, and furnished with proper supplies and conveniences, including a sufficient number of booths, shelves, pens, penholders, ink, blotters, and pencils, as will enable the voter to prepare his ballot for voting, and in which voters may prepare their ballots screened from all observation as to the manner in which they do so. A guard rail shall be so constructed and placed that only such persons as are inside said rail can approach within six (6) feet of the ballot box and of such voting booths. The arrangements shall be such that the voting

Booths.

booths can be reached only by passing within said guard rail. They shall be in plain view of the election officers, and both they and the ballot boxes shall be in plain view of those outside of the guard rail. Each of said booths shall have three sides inclosed, one side in front, to open and shut by a door swinging outward or to be inclosed with a curtain. Each side of each booth shall be seven (7) feet high, and the door or curtain shall extend to within two (2) feet of the floor, which shall be closed while the voter is preparing his ballot; and such booths shall be well lighted. Each booth shall be at least three (3) feet square, and shall contain a shelf at least one (1) foot wide, at a convenient height for writing. No person other than election officers and challengers allowed by law, and those admitted for the purpose of voting, as hereinafter provided, shall be permitted within the guard rail, except by the authority of the election officers to keep order and enforce the law. The number of such voting booths shall not be less than one (1) to every sixty (60) voters, or fraction thereof, who voted at the last preceding general election in the precinct. The expense of providing booths and guard rails and other things required by this act shall be paid in the same manner as other election expenses. Said booths shall be constructed of any material that will form a screen from public view and render the voter free from observation while marking his ballot, and said booths shall be deposited with the township trustee or city clerk, to be preserved for future use. In all cases where it is not otherwise practicable, in precincts outside of cities, an election may be held in the public school building, and all damage to the building or furniture shall be a just claim against the township.

Number of booths.

SEC. 21. Any person desiring to vote in precincts where registration is required, shall give his name, and, if required to do so, his residence, to the judges of election, one of whom shall thereupon announce the same in a loud and distinct tone of voice, and if such name is found on the register of voters by the officer having charge thereof, he shall likewise repeat said name, and the voter shall be allowed to enter the space inclosed by the guard rail as above provided. One of the judges designated by the election board shall give the voter one, and only one ballot, on the back of which said judge shall indorse his initials and shall keep at least ten ballots

Judge's initials.

constantly so indorsed, in such manner that they may be seen when the ballot is properly folded, and the voter's name shall be immediately checked on the registry list. At all elections where registration is required, if the name of any person desiring to vote at such election is not found on the register of voters, he shall not receive a ballot until he shall have complied with the law prescribing the manner and conditions of voting by unregistered voters. If any person desiring to vote at any election shall be challenged, he shall not receive a ballot until he shall have established his right to vote in the manner provided by law. Besides the election officers, not more than one voter in excess to the whole number of voting booths provided shall be allowed in said inclosed space at one time. This section shall apply to and govern, where applicable, all persons desiring to vote in precincts where registration is not required.

Election officers.

SEC. 22. On receipt of his ballot, the voter shall forthwith, and without leaving the inclosed place, retire alone to one of the voting booths so provided, and shall prepare his ballot by making in the appropriate margin or place a cross (X) to the left of the name of the candidate of his choice for each office to be filled, or by writing in the name of the candidate of his choice in a blank space on said ticket, making a cross (X) to the left thereof; and in a case of a public measure submitted to the vote of the people, by making in the appropriate margin or place a cross (X) against the answer he desires to give. Before leaving the voting booth the voter shall fold his ballot in such a manner as to conceal the names of the candidates and marks thereon, and so that the printed indorsement and initials of the judges thereon may be seen by the election board. The number of the voter on the the poll books or register list shall not be indorsed on the back of the ballot, unless the vote shall have been challenged and the voter sworn a second time, as now provided by law. He shall mark and deposit his ballot without undue delay, and shall quit said inclosed place as soon as he has voted. No voter shall be allowed to occupy the voting booth already occupied by another, nor remain within said inclosed space more than ten minutes, nor to occupy a voting booth more than five minutes, in case all of said voting booths are in use and other voters waiting to occupy the same. No voter, not an election officer, shall, after having voted, be allowed to

Voter.

enter said inclosed space during said election. No person shall take or remove any ballot from the polling place before the close of the polls. No voter shall vote, or offer to vote, any ballot except such as he has received from the judges of election in charge of the ballots. Any voter who may, by accident or mistake, spoil his ballot, shall, on returning said ballot to the election judges, receive another in place thereof.

Voter.

Any voter who, after receiving an official ballot, decides not to vote, shall, before returning from within guard rail, surrender to the election officers the official ballot which has been given him; and a refusal to surrender such ballot shall subject the person so offending to immediate arrest and the penalties affixed in section 27 of this act.

Voter.

SEC. 23. Any voter who may declare upon oath that he cannot read the English language, or that by reason of any physical disability, he is unable to mark his ballot, shall, upon request, be assisted in marking his ballot by two of the election officers of different political parties, to be selected from the judges and clerks of the precinct in which they are to act, to be designated by the judges of election of each precinct at the opening of the polls. Such officer shall mark the ballot as directed by the voter and shall thereafter give no information regarding the same. The clerks of elections shall enter upon poll lists, after the name of any elector who received such assistance in marking his ballot, a memorandum of the fact. Intoxication shall not be regarded as a physical disability, and no intoxicated person shall be entitled to assistance in making his ballot.

Intoxicated persons.

Every person entitled to two hours on election day.

SEC. 24. Any person entitled to vote at a general election in this state, shall, on the day of such election, be entitled to absent himself from any service or employment in which he is then engaged or employed for a period of two hours, between the time of opening and closing the polls, and such voter shall not, because of so absenting himself, be liable to any penalty nor shall deduction be made on account of such absence from his usual salary or wages: *Provided, however*, That application for such leave of absence shall be made prior to the day of election. The employer may specify the hours during which said employé may absent himself as aforesaid. Any person or corporation who shall refuse to an employé the privilege hereby conferred, or shall subject an employé to a penalty or deduction of wages because of the

Penalty.

exercise of such privileges, or who shall in any manner attempt to influence or control such voter as to how he shall vote, by offering any reward, or by threatening his discharge from employment, or otherwise intimidating him from a full and free exercise of his right to vote, or shall, directly or indirectly, violate the provisions of this section, shall be deemed guilty of a misdemeanor and be fined in any sum not less than fifty (50) dollars or more than one hundred (100) dollars.

Mark ballot.

SEC. 25. If a voter marks more names than there are persons to be elected to an office, or fails to mark the ballot as required by other section of this act, or if for any reason it is impossible to determine the voter's choice for an office to be filled, his ballot shall not be counted for such office. No ballot without the official indorsement shall be allowed to be deposited in the ballot box, and none but ballots provided in accordance with the provision of this act shall be counted.

Defective ballot.

Ballots not counted shall be marked "Defective" on the back thereof, and the ballots to which objections have been made by either of the judges or challengers, shall be marked "Objected to" on the back thereof, and a memorandum signed by the judges, stating how it was counted, shall be written upon the back of each ballot so marked, and all ballots marked "Defective," or "Objected to," shall be inclosed in an envelope, securely sealed, and so marked and indorsed as to clearly disclose its contents. All ballots not used, and all that have been spoiled by the voter while attempting to vote, shall be returned by the judges of election to the officer or authority charged with the printing and distribution of the ballots, and a receipt taken therefor, and shall be preserved for six months. Such officer shall keep a record of the number of ballots delivered for each polling place, the name of the person to whom, and the time when delivered, and he shall also enter upon such record the number and character of the ballots returned, with the time when, the person by whom they are returned. When the canvass shall have been completed as now provided by law, the clerks shall announce to the judges the total number of votes received by each candidate; at least one judge of the election shall then proclaim in a loud voice the total number of votes received by each of the persons voted for, and the office for which he is designated, as announced by said clerks, and the number of votes for and

the number of votes against any proposition which shall have been submitted to the vote of the people; when counting the ballots the judges shall fold each ballot, and string closely upon a single piece of flexible wire or cord, all ballots which have been counted by them except those marked "Defective" or "Objected to," unite the ends of such wire or cord in a firm knot, seal the knot with sealing wax in such manner that it cannot be untied without breaking the seal, inclose the ballots so strung in an envelope, and securely seal such envelope with sealing wax in such manner that it cannot be opened without breaking the seal, and return said ballots, together with the package with the ballots marked "Defective," or "Objected to," in such sealed packages or envelopes, to the proper clerk, from whom the same were received, and such officer shall carefully preserve such ballots for two years and six months, and at the expiration of that time shall destroy them by burning, without previously opening the package or envelope. Such ballots shall be destroyed in the presence of the official custodian thereof, and two electors of approved integrity and good repute, and members respectively of the two leading political parties. The said electors shall be designated by the chairman of the board of county commissioners of the county in which such ballots are kept: *Provided*, That if any contest of the election of any officer voted for at such election shall be pending at the expiration of said time, the said ballot shall not be destroyed until such contest is finally determined. In all cases of contested elections the parties contesting the same shall have the right to have such ballots opened, and to have all the errors of the judges in counting or refusing to count any ballots corrected by the court or body trying such contest; but such ballots shall be opened only in open court, or in an open session of such body, and in the presence of the officer having the custody thereof.

Seal up ballots.

Ballots destroyed.

Electioneering.

SEC. 26. No person whatever, shall do any electioneering or soliciting of votes on election day within any polling place, or within one hundred (100) feet of any polling place. No person shall interrupt, hinder or oppose any voter while approaching the polling place for the purpose of voting. Whoever shall violate the provisions of this section shall be punished by a fine of not less than twenty-five (25) dollars nor more than one hundred (100) dollars, or imprisonment for not less than ten (10) days nor exceeding thirty

Penalty.

days (30), or by both fine and imprisonment, for each and every offense; and it shall be the duty of the judges of election to enforce the provisions of this section.

SEC. 27. Any person who shall, except as herein otherwise provided, mark or fold his ballot so as to be distinguished, or allow his ballot to be seen by any person with an apparent intention of letting it be known how he is about to vote, or who shall make a false statement as to his inability to mark his ballot, or any person who shall interfere or attempt to interfere, with any of the voters when inside said inclosed space, or when marking his ballot, or who shall endeavor to induce any voter, before voting, to show how he marks, or has marked his ballot, or any ballot, any character for the purpose of identifying said ballot, shall be punished by a fine of not less than twenty-five dollars ($25) nor more than one hundred dollars ($100), or by imprisonment for not less than ten (10) days, nor exceeding thirty (30) days, or by both fine and imprisonment; and it shall be the duty of election judges to enforce the provisions of this section.

Destroy lists.

SEC. 28. Any person who shall, prior to any election, willfully destroy or deface any list of candidates posted in accordance with the provisions of this act, and who during an election shall willfully deface, tear down, remove or destroy any card of instruction or specimen ballot, printed and posted for the instruction of voters, or who shall during the election willfully remove or destroy any of the supplies or conveniences furnished to enable voters to prepare their ballots, or shall willfully hinder the voting of others, shall be punished by a fine of not less than ten dollars ($10) nor more than one hundred dollars ($100), or imprisonment for not less than ten (10) days nor exceeding thirty (30) days, or by both fine and imprisonment.

Penalty.

Destroy certificate or ballot.

SEC. 29. Any person who shall falsely make or willfully destroy any certificate of nomination, or nomination papers, or any part thereof, or any letter of withdrawal, or file any certificate of nomination or nomination papers, knowing the same, or any part thereof, to be falsely made, or suppress any certificate of nomination, or nomination papers, or any part thereof, which have been duly filed, or forge or falsely make the official indorsement on any ballot, or substitute therefor any spurious, counterfeit ballot, or make, use, circulate, or cause to be made or circulated, as an official ballot, any paper

printed in imitation or resemblance thereof, or willfully destroy or deface any ballot or willfully delay the delivery of any ballots, shall be punished by a fine of not less than one hundred dollars ($100) and not exceeding one thousand dollars ($1,000), or by imprisonment in the penitentiary not less than one year and not exceeding five years, or both fine and imprisonment.

Neglect of duty.

SEC. 30. Any public officer upon whom a duty is imposed by this act who shall willfully neglect to perform such duty, or who shall willfully perform it in such a way as to hinder the object of this act, or shall disclose to any one, except as may be ordered by any court of justice, the contents of any ballot, as to the manner in which the same may have been voted, shall be punished by a fine of not less than fifty dollars ($50) nor more than one thousand dollars ($1,000), or by imprisonment in the penitentiary for not less than one year and not exceeding five years, or by both fine and imprisonment.

Penalty.

Bill published

SEC. 31. It shall be the duty of the secretary of state, with the aid and advice of the attorney general, to cause ten thousand (10,000) copies of this act to be printed immediately, in pamphlet form, with all necessary forms and instructions to assist the election officers to carry it into effect, and to distribute the same among the county clerks of the several counties of the state.

SEC. 32. At all elections to which this act applies, the polls shall be opened at 8 o'clock on the morning and shall be closed at six o'clock in the evening.

SEC. 33. All acts and parts of acts inconsistent with this act are hereby repealed.

SEC. 34. This act shall take effect and be in force from and after its publication in the official state paper.

Approved March 11, 1893.

Published in the official state paper April 19, 1893.

CHAPTER 79.

ELECTIONS IN OSAWATOMIE TOWNSHIP.

AN ACT to authorize the citizens of Osawatomie township, in Miami county, to hold their elections at some place situated within the corporate limits of the city of Osawatomie.

Be it enacted by the Legislature of the State of Kansas:

Place.

SECTION 1. That the citizens of Osawatomie township, in Miami county, Kansas, are hereby fully authorized and empowered to hold the elections of said township at such building in said city of Osawatomie as may be designated by the sheriff of said county in his proclamation of election. The citizens of said Osawatomie township are hereby fully authorized and empowered to vote at any and all elections held by said township at the place designated by said sheriff in said proclamation and such voting and such election shall be as legal in all respects as if such voting place were located outside of the corporate limits of the city of Osawatomie and within the limits of said Osawatomie township.

SEC. 2. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 9, 1893.

CHAPTER 80.

FEES AND SALARIES—MIAMI COUNTY.

AN ACT fixing the fees and salaries of the county officers of Miami county, Kansas, herein named.

Be it enacted by the Legislature of the State of Kansas:

Treasurer.

SECTION 1. That the several officers of Miami county herein named shall receive the following sums for their services per annum: The treasurer of Miami county shall be entitled to and receive, as full compensation for his services, the sum of two thousand two hundred and fifty dollars; the county clerk, seventeen hundred dollars; the county attorney,

County clerk.
County attorney.