



LEAGUE OF WOMEN
VOTERS
of
KANSAS

February 7, 2017

To: Senator Elaine Bowers, Chair, Senate Committee on Ethics, Elections and Local Government

Re: Testimony Related to SB 37, Kansas Bifurcated (Two – Tiered) Voting System: **Opposition**

From: Marge Ahrens and Carole Neal, Co-Presidents, League of Women Voters of Kansas

A. **The bifurcated or two-tiered voting system devised by the Kansas Office of the Secretary of State is the latest step in a series of voter registration barriers, resulting in a complex set of lawsuits in which numbers courts have blocked parts of the requirement.**

1. The Kansas “Secure and Fair Elections Act (SAFE ACT) of 2011 requires in addition to a photo ID for voting, that all persons registering to vote after January 1, 2013 provide Documentary Proof of Citizenship (DPOC) in order to complete their registration. Numerous law suits have been filed against the Secretary of State SOS as the official of his Office in regard to the DPOC.

a. In 2015 the 10th Circuit Court of Appeals rules that the Proof of Citizenship requirement was not allowed on the federal voter registration form, and the Supreme Court of the United States denied Secretary Kobach’s appeal. The League of Women Voters of Kansas and other organizations opposed the Secretary of State in this lawsuit.

b. The League of Women Voters of Kansas is currently one of five organizational plaintiffs in a case brought by the **Brennan Center for Justice** and others on our behalf in regard to the U.S Elections Assistance Commission (EAC) official’s attempt to add proof of citizenship to the federal form, notwithstanding the prior rulings blocking the requirement. The official is a former Johnson County election commissioner who attempted to single handedly impose the requirement onto the federal form. Again, The court ruled against his action: the DC Circuit ruled 2-1 that federal forms not be altered to require documentary proof of citizenship in a preliminary decision. The case is ongoing.

c. In another federal case filed on behalf of the League and others by the **American Civil Liberties Union (“Fish v. Kobach”)**, a Federal District Court in Kansas City ruled in 2016 that the **SAFE ACT’s DPOC requirement violated the National Voter Registration Act (NVRA)** for individuals registering at offices of the Department of Motor Vehicles (“motor-voter”) in a preliminary decision. The SOS appealed, and his appeal was denied in the Tenth Circuit Court of Appeals 3-0 in summer, 2016. The ruling has preliminarily blocked the DPOC requirement for motor voter registrants.

i. After Secretary Kobach failed to provide notice to affected voters and forced them to vote a provisional ballot, Judge Julie Robinson scheduled a hearing on whether Secretary Kobach was in **contempt of court**. The day before the hearing –and more than four months after the court’s order – Secretary Kobach finally agreed to provide proper notice to both federal form and motor voter

registrants who were affected by the *Fish* and *EAC* cases and allow them a full ballot .

2. In a scheme to bypass those Federal Court decisions, Secretary Kobach has invented an entirely new **“bifurcated” or “two-tiered”** registration and voting system. The SOS planned that those persons who had registered at their DMV or on the federal form, (estimated at the time of the August primaries as more than 17,000 eligible Kansas voters), would be disenfranchised for state and local portions of the ballot.

3. In early 2016, in a case filed by the ACLU on behalf of federal form registrants who were disenfranchised by this system, Judge Theis of the Shawnee County District Court declared that Secretary Kobach **did not have the authority to create this two-tiered voting system.**

4. In flagrant disregard of Judge Theis’ ruling, Secretary Kobach continued his attempts to impose his two-tiered system. The ACLU filed a new case against the SOS prior to the primary election of 2016 to block the illegal system. Shawnee County District Court Judge Hendricks held yet again, in a final ruling, that the Secretary did not have the authority to impose his bifurcated system. As part of his decision, he found that the miniscule accounts of undocumented persons registering to vote (@25 over 13 years) searched out by the SOS could not be compared with to the thousands of citizens deprived of their right to vote a full ballot. Prior to issuing his final decision, he determined that the SOS **must allow the thousands of Kansas DMV and Federal Form voter registrants to vote a full ballot, whether or not they provided DPOC**, through the general election of November 8, 2016.

5. Following the November 8 general election, **the SOS retained those allowed to vote by court order**—those Kansas citizens who had registered to vote at the DMV or by using the Federal Form without DPOC **—on the “Suspense” or “Incomplete Voter Registration “ List.** A growing number of voter registrants who had begun the voter registration process using the Kansas form are included on the list. (The **combined list totaled nearly 22,000** on January 13, 2017 and is available online at LWVK.org. An attachment providing percentages by age of registrant and party affiliation on that list is supplied with this testimony.)

6. Through rulemaking in Fall, 2015 the **SOS extended the Office’s reach of authority to the full cancellation** of voter registrations which were on the suspense list longer than 90 days. The SOS refuses to account for the number and identities of those cancelled registrations

7. In the 2015 Legislative Session the SOS sought and was **granted prosecutorial authority** over the entire state so that he might find cases of fraud to support the original fears promoted at the passage of the SAFE ACT in 2011.

B. The Proposal of the bifurcated voting system would forbid 22,000 Kansas citizens the right to vote in state and local elections today. It would discourage and confuse the Kansas voter even more than the pervasive attitude of disenfranchisement present in Kansas already.

C. The responsibility to enforce the law by processing every required provisional ballot of those persons by hand would fall to financially strapped county governments without a reasonable defense for the expense except to prevent citizens from voting in state and local elections.

D. The SOS continues to cancel voter "incomplete" registrations and hunt down Kansas voters "felons" bringing the threat of police state action against the voter.

Conclusion: SB 37 reflects the Office of the SOS' defiance against State and Federal judges and the U. S Supreme Court. It denies the expense, complexity and entanglements of the law for the Kansan. The proposal demonstrates an embarrassing eagerness to establish and defend the highest barriers to the vote in the nation with no proof of their need, and extraordinary evidence of their hindrance to the exercise of the right to vote.

The SOS has stated that SB 37 "just fills a loophole" in State Law. In the face of League principles of protecting the vote for all, of citizen participation and transparency in government, SB37 tightens a stranglehold on the Kansas voter in an aggressive move against that very right. SB 37 asks the Legislature to throw many thousands of taxpayer dollars for SOS attorneys and adjudicated staff to defend what has been adjudicated to be bad law. (The next hearing, a combination of two filings by individual Kansans against the SOS, will be heard in Kansas City Federal District Court on March 3.)

In addition 105 counties in the state have incurred various amounts of extra expense in the implementation of the SAFE ACT to date. (One county had to request an additional \$30,000 more for its election budget to perform extra processing required by the SAFE ACT last year.) **Should thousands of voters be limited to a provisional ballot under SB37, every county election office in the state will carry the burden of hand processing those ballots.**

Recommendations to the Senate Committee on Ethics, Elections and Local Government

1. Do not pass SB 37. It represents an extension and further restriction of Kansas election law which has already been tested and deemed to be illegal in relation to DMV, federal form registrants and the State Constitution.
2. Request an analysis of the costs to the budget of Office of the SOS, local governments, and individual citizens as well as those helping to Kansans register to vote should SB 37 be enacted. It will be expensive to all.
3. Request an analysis of the benefits of the SAFE Act.
4. Request a disclosure of the costs of continuously defending and appealing the Kansas election law. including SB 37, before state and federal courts should the legislature pass it into law.

5. Demand a list of the **cancelled** voter registration applicants to understand the demographics of those who have been cancelled for not supplying a DPOC.

6. **Establish a Kansas standard** for election law proposals that is **rooted in transparency and openness**. Support the belief that the power of a representative government belongs to **all** of its people. Demand that the Office of the Secretary of State establish practices which welcome voter registration and participation.

7. Repeal the SAFE Act. Law suits are expensive ways of rewriting law. Decisions to date **do not protect the right to vote for those registering on the Kansas form** and not yet supplying DPOC.

8. Consider Election Day Registration, semi-permanent mail in balloting and other means of adapting voting to the needs of Kansas citizens; the young, the elderly, the rich and the poor, the mobile, the rural and the urban citizen. **All the people.**

Respectfully Submitted,

Marge Ahrens and Carole Neal, Co-Presidents

League of Women Voters of Kansas

*The League of Women Voters of Kansas is a **non-partisan** volunteer organization established in 1920 directly out of the women's suffrage movement . Membership is open to women and men age 16 years or older. The League respects the rule of law. Kansas members have worked tirelessly to engage the young, the minority and the elderly in the vote before and since the passage of the SAFE ACT in Kansas. We believe that the power in a government belongs to the people, and we work to protect the vote for all.*

League of Women Voters of Kansas

Data Related to 1/13/2017 Suspense or Incomplete Kansas Voter Registration List

A.	Number	Age	% of Total
	75	90-100	0.343%
	303	80-90	1.384%
	686	70-80	3.134%
	1918	60-70	8.762%
	3270	50-60	14.939%
	3589	40-50	16.396%
	4305	30-40	19.667%
	5214	20-30	23.820%
	1165	18-20	5.322%
	<u>1293</u>	16-18	5.907%
	21889		

Party Affiliation	Number	% of Total
Democrat	4608	21%
Libertarian	331	2%
Republican	5578	25%
Unaffiliated	11371	52%
None	<u> 1</u>	
	21889	

List of Forms for Registering to Vote and Voting in Kansas

Under the SAFE ACT of 2011

1- **Application for Certified Copy of Kansas Birth Certificate** (Form VS-235 05/12)

http://www.kdheks.gov/vital/download/birth_fillable.pdf

2- **Affidavit of Person Requesting Free Certified Copy of birth Certificate** (from Kansas) (Form BCA)

<https://www.kssos.org/forms/elections/BCA.pdf>

3- **Website for citizens who were born in another state** for information on your state for a copy of your birth certificate (no free birth certificates)

<http://www.cdc.gov/nchs/w2w.htm>

3- **Certification Requesting Fee Waiver for Nondriver Identification Card** (DE-V1D1)

<https://www.kssos.org/forms/elections/IDCardFeeWaiver.pdf>

4- **List of required original documents** needed to apply for driver's license or identification card (Form DE 56a)

<http://ksrevenue.org/pdf/de56a.pdf>

5- **Kansas Voter Registration Application**

<https://www.kssos.org/forms/elections/voterregistration.pdf>

6- **Website for accepted proof of citizenship documents to register to vote:**

<http://www.gotvoterid.com/proof-of-citizenship.html#validdocs>.

7- **Affidavit of Evidence of U.S. Citizenship for voter registration application** - for differences in name or sex on proof of citizenship document (Form CDU) Does not apply for drivers license or non-driver ID - where original marriage, divorce, adoption or legal change certificates is required.

<https://www.sos.ks.gov/forms/elections/CDU.pdf>

8. **Link for the federal form:** https://www.eac.gov/voter_resources/register_to_vote.aspx

9. **Link for the affidavit required to get a free photo ID:** <https://www.sos.ks.gov/forms/elections/CDU.pdf>

(Not included above are forms required for Advance Ballots, Permanent Advanced Ballots and Request for Absentee Ballot.)