



August 13, 2013

By Facsimile (785) 291-3051 and U.S. Mail

The Honorable Kris Kobach
Kansas Secretary of State
Memorial Hall, 1st Floor
120 SW 10th Avenue
Topeka, KS 66612-1594

Re: National Voter Registration Act Compliance

Dear Secretary Kobach,

On behalf of the NAACP Kansas State Conference; the Lawrence and Douglas County League of Women Voters; Equality Kansas, Inc.; private citizens including: Sharon Bade, Aaron Belenky, and Scott E. Jones; and all similarly situated persons and organizations, we write to notify you that Kansas is not in compliance with the National Voter Registration Act of 1993¹ (the “NVRA”) in several respects. These violations are no trivial matter. Your failure to comply with the NVRA has prevented thousands of Kansans from registering to vote, as over one-third of all voter registration applications submitted in Kansas since January 1, 2013²—or nearly 14,000 total voter registration applications as of August 12³—are in “suspense.” Many of these

¹ 42 U.S.C. §§ 1973gg *et seq.*

² Associated Press, “One-Third of Kansas Voter Registration Applications Held Up,” *Kansas City Star*, June 24, 2013, available at <http://www.kansascity.com/2013/06/24/4310962/one-third-of-kansas-voter-registration.html>.

³ Fred Mann, “Many Kansans ‘In Suspense’ Over Voter Registration Intend to Submit Proof of Citizenship,” *The Wichita Eagle*, Aug. 11, 2013, available at <http://www.kansas.com/2013/08/11/2937322/many-kansans-in-suspense-over.html#storylink=cpy>

citizens had previously been registered to vote or have voted in recent elections.⁴ The NVRA includes a private right of action in the event that a state fails to correct its noncompliance after its chief election official has received due notice. We urge you as Kansas's Secretary of State to take immediate steps to bring the state into compliance with federal law.

First, Kansas is in violation of the NVRA's requirement that

[e]ach State motor vehicle driver's license application (including any renewal application) submitted to the appropriate State motor vehicle authority under State law shall serve as an application for voter registration with respect to elections for Federal office unless the applicant fails to sign the voter registration application.⁵

Thousands of individuals who have fully complied with Kansas requirements for driver's license applications and renewals, however, have not been permitted to register to vote. In many cases, this has occurred because proof of citizenship documents, which are required under Kansas law for first-time driver's license applicants, have not been transferred from the Division of Vehicles to election officials for voter registration purposes.⁶ The failure of Kansas to register to vote these valid driver's license applicants—who have inarguably fully complied with all legal requirements for both driver's license applications and voter registration—clearly violates the NVRA's requirement that “[e]ach State motor vehicle driver's license application . . . shall serve as an application for voter registration with respect to elections for Federal office.”⁷

Furthermore, notwithstanding Kan. Stat. Ann. § 25-2309(1), which provides that a voter registration applicant in Kansas “shall not be registered until the applicant has provided satisfactory evidence of United States citizenship,” the NVRA does not require that individuals applying for or renewing a driver's license provide documentary proof of citizenship in order to register to vote. The statute clearly provides that

[t]he voter registration application portion of an application for a State motor vehicle driver's license . . . shall include a statement that—

- (i) states each eligibility requirement (including citizenship);
- (ii) contains an attestation that the applicant meets each such requirement; and
- (iii) requires the signature of the applicant, under penalty of perjury.⁸

⁴ “Kansas views on voting law, special session, gambling fund, rain,” *The Wichita Eagle*, Aug. 12, 2013, available at <http://www.kansas.com/2013/08/12/2934145/kansas-views-on-voting-law-special.html#storylink=cpy>

⁵ 42 U.S.C. § 1973gg-3(a)(1).

⁶ See “One-Third of Kansas Voter Registration Applications Held Up,” *supra* note 2.

⁷ 42 U.S.C. § 1973gg-3(a)(1).

⁸ 42 U.S.C. § 1973gg-3(c)(2)(C).

No additional documentary proof of citizenship is required beyond this attestation, as the voter registration application portion of an application for a State motor vehicle driver's license "may require only the minimum amount of information necessary to . . . enable State election officials to assess the eligibility of the applicant and to administer voter registration and other parts of the election process."⁹ In light of the eligibility attestation requirement provided by statute, any additional documentary proof of citizenship clearly exceeds the minimum amount of information necessary to enable State election officials to assess the eligibility of the applicant.

This has particular significance in the context of driver's license renewals, which do not require documentary proof of citizenship in Kansas.¹⁰ Given that "any renewal application" for a driver's license "shall serve as an application for voter registration,"¹¹ individuals engaging in a valid driver's license renewal under Kansas law who wish to register to vote must be permitted to do so without being forced to provide additional documentary proof of citizenship. Additional documentary proof of citizenship requirements that the state itself deems unnecessary for driver's license renewals clearly exceed the minimum amount of information necessary to assess the eligibility of a voter registration applicant.

Second, Kansas is in violation of the NVRA's requirement that "[e]ach State shall accept and use the mail voter registration application form prescribed by the Federal Election Commission."¹² As you are undoubtedly well aware, this provision relates to Kansas's obligation to utilize the federal mail voter registration application form, a form that includes an attestation, subscribed to under penalty of perjury, that an applicant meets a State's voting requirements, including United States citizenship.

As the Supreme Court's recent decision in *Arizona v. Inter-Tribal Council of Arizona, Inc.*¹³ makes clear, the NVRA "precludes [a state] from requiring a Federal Form applicant to submit information beyond that required by the form itself."¹⁴ "[A] state-imposed requirement of evidence of citizenship not required by the Federal Form is inconsistent with the NVRA's mandate that States accept and use the Federal Form."¹⁵ No additional documentary proof of citizenship beyond the attestation may be required before an applicant utilizing the federal form shall be registered to vote. Thus, the Court held that the Arizona law at issue, which required

⁹ 42 U.S.C. § 1973gg-3(c)(2)(B)(ii).

¹⁰ See Kansas Department of Revenue, *Renewing Your Kansas Driver's License*, available at <http://www.ksrevenue.org/renewingdl.html>.

¹¹ 42 U.S.C. 1973gg-3(a)(1).

¹² 42 U.S.C. § 1973gg-4(a)(1).

¹³ 133 S.Ct. 2247 (2013).

¹⁴ *Id.* at 2260.

¹⁵ *Id.* at 2257 (citation omitted) (internal quotation marks omitted).

that certain voter registration applicants using the Federal Form provide additional documentary proof of citizenship before becoming registered to vote, violated the NVRA.

Kan. Stat. Ann. § 25-2309(l), like the Arizona statute struck down in *Inter-Tribal Council*, provides that a voter registration applicant in Kansas “shall not be registered until the applicant has provided satisfactory evidence of United States citizenship” by submitting additional documentary evidence of citizenship such as a birth certificate or passport. In contravention of the Court’s clear holding that “a State must accept the Federal Form as a complete and sufficient registration application,”¹⁶ the Kansas statute provides that an applicant “shall not be registered” and therefore will not be permitted to cast a regular ballot until “[a]fter a person has submitted satisfactory evidence of citizenship” in the form of additional documentary evidence.¹⁷

This statute (and your office’s continued enforcement of it) with respect to applicants using the federal form clearly violates the NVRA. In a recent op-ed piece, you asserted that the Kansas “law requires election officers to accept the federal form, even if it is not accompanied by proof of citizenship. That means all of the information on the form is accepted as accurate, and a voter record is created in the state’s database. However, the voter’s registration is in ‘suspense’ status until proof of citizenship is received.”¹⁸ At best, your gloss on the Kansas statute describes a distinction without a meaningful legal difference from the Arizona statute invalidated in *Inter-Tribal Council*. Indeed, the Court rejected—at some length—the notion that it was sufficient that a State “merely . . . receive the [federal] form willingly and use it *somehow* in its voter registration process.”¹⁹ Rather, “every eligible voter [must] be assured that if he does what the Federal Form says, he will be registered.”²⁰

Third, Kansas is in violation of the NVRA’s requirement that “[t]he chief State election official of a State shall make the forms described in subsection (a) of this section available for distribution through governmental and private entities.”²¹ Upon information and belief, your office has not made available the federal mail voter registration form described in 42 U.S.C. § 1973gg-4(a)(1), and government entities throughout Kansas—including, but not limited to, county elections offices, statutorily-designated voter registration agencies,²² and your office’s

¹⁶ *Inter-Tribal Council*, 133 S.Ct. at 2254.

¹⁷ Kan. Stat. Ann. § 25-2309(l).

¹⁸ Kris W. Kobach, “Kris W. Kobach: Kansas’ Voter law isn’t the same as Arizona’s,” *Wichita Eagle*, June 29, 2013, available at <http://www.kansas.com/2013/06/29/2867983/kris-w-kobach-kansas-voter-law.html>.

¹⁹ *Inter-Tribal Council*, 133 S.Ct. at 2254.

²⁰ *Id.* at 2255 n.4.

²¹ 42 U.S.C. § 1973gg-4(b).

²² 42 U.S.C. § 1973gg-5.

own website—generally do not distribute the Federal Form. This is no trivial matter given the relative simplicity of the Federal Form and its requirements in comparison to the Kansas state form, and the number of Kansans whose voter registrations are currently trapped in bureaucratic purgatory.

Fourth, your office is in violation of its responsibility to coordinate the state's responsibilities under the NVRA.²³ Your office has clearly failed to ensure compliance with the NVRA throughout the state with respect to the treatment of voter registration applicants using the federal form.

Given that approximately 14,000 Kansans have been denied their right to register to vote, your recent statement that you “don’t think it’s a major problem”²⁴ is extremely troubling. Moreover, although your office has asserted that the status of many of these registrations may be resolved at some unspecified point in the future, you have as of yet provided no timetable or plan for addressing the staggering number of voter registration applications that have been placed in suspense (notwithstanding the fact that the Division of Vehicles has already apparently spent \$40 million on this issue).²⁵

Voters who have complied with the requirements to register to vote as set forth under the NVRA should be registered immediately and permitted to vote in the next elections. And all voters currently in suspense should be permitted to resolve their voter registration status without further bureaucratic hurdles, by having an opportunity to use the federal mail voter registration form, as contemplated by the NVRA.

We are willing to work cooperatively with you to assist with developing a plan that will quickly bring the state into compliance with the requirements of the NVRA. We look forward to receiving your response to this letter, including a timeline and plan for achieving and sustaining compliance with the NVRA in Kansas. Moving forward, we hope you will ensure that, consistent with Kansas's obligations under federal law, all Kansas citizens have an opportunity to register to vote without having to navigate unnecessary bureaucratic hurdles.

If, however, you fail to take steps to remedy the state's violations of the NVRA, we are prepared to initiate litigation. In that regard, please be advised that this letter serves as notice of violations of the NVRA pursuant to 42 U.S.C. § 1973gg-9(b), thus allowing us to file suit at the conclusion of the statutory 90-day waiting period if the violations have not been fully remedied.

²³ 42 U.S.C. § 1973gg-8.

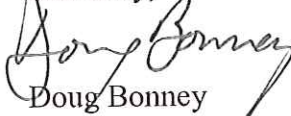
²⁴ Brent D. Wistrom, “12,000 Kansas Voters Still in Limbo over Proof of Citizenship,” *Kansas City Star*, July 16, 2013, available at <http://www.kansascity.com/2013/07/16/4347724/some-kansas-voter-registrations.html#storylink=cpy..>

²⁵ See “One-Third of Kansas Voter Registration Applications Held Up,” *supra* note 2.

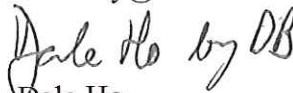
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Should you have any questions or concerns, please feel free to contact Doug Bonney, Chief Counsel and Legal Director, ACLU of Kansas and Western Missouri, at (816) 994-3311; or Dale Ho, Director of the ACLU Voting Rights Project, at (212) 549-2693.

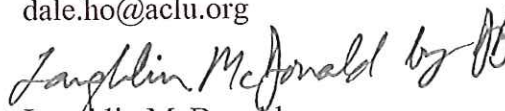
Sincerely,



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cc: The Honorable Derek Schmidt,
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The Honorable Nick Jordan,
Kansas Secretary of Revenue (by fax & mail)