

MINUTES OF THE ETHICS AND ELECTIONS COMMITTEE

The meeting was called to order by Chairman Terrie Huntington at 9:38 a.m. on March 10, 2011, in Room 159-S of the Capitol.

All members were present.

Committee staff present:

Mike Heim, Office of the Revisor of Statutes
Jill Shelley, Kansas Legislative Research Department
Jay Hall, Kansas Legislative Research Department
Ellen Martinez, Committee Assistant

Conferees appearing before the Committee:

Paul Degener, citizen, Topeka
Kris Kobach, Kansas Secretary of State
John F. Settich, Ph.D., Atchison (attachment)
Bob Harvey, AARP Kansas
Holly Weatherford, J.D., ACLU of Kansas and Western Missouri
Kari Ann Rinker, State Coordinator, Kansas National Organization for Women
Stephanie Mott, Board Member, Kansas Equality Coalition
Thomas Witt, Chairman, Kansas Equality Coalition
Glenda Overstreet, 1st Vice- President, Kansas State Conference of NAACP Branches
Ernestine Krehbiel, Kansas League of Women Voters
Richard Fry, November Patriots
Patrick Vogelsberg, Kansas County and District Attorney Association
Anne Byington, President, Kansas Association for the Blind and Visually Impaired
Representative Ann Mah, District 53, Kansas House of Representatives
Thomas Witt, Chairman, Kansas Equality Coalition
Brad Bryant, Deputy Assistant Secretary of State Elections and Legislative Matters

Others attending:

See attached list.

The Chairman opened the continuation of the hearing on **HB 2067 - Voter photographic identification requirements**.

Paul Degener, Topeka, spoke as a proponent. Illegal aliens are being encouraged to register to vote in Kansas; we need safer elections. ([Attachment 1](#))

Kris Kobach, Kansas Secretary of State, testified as a proponent. Of the 221 reports of voter crimes in Kansas, only 7 were prosecuted as these are considered low priority cases. This bill will increase the likelihood of prosecuting voter fraud, giving Kansas safer elections. It is patterned after the Indiana law. ([Attachment 2](#))

Derek Schmidt, Attorney General of Kansas, a proponent, provided written testimony only. ([Attachment 3](#))

Richard Fry, November Patriots, a proponent, provided written testimony only. ([Attachment 4](#))

John F. Settich, Ph.D., Atchison, testified as an opponent. Dr. Settich felt that it is very difficult to win an election through fraud and that this bill is unnecessary. ([Attachment 5](#))

Bob Harvey, AARP Kansas, testified as an opponent. By imposing complex rules for voter registration and absentee balloting tend to disproportionately prevent minorities, older persons and people with disabilities from voting or from having their vote counted. ([Attachment 6](#))

Holly Weatherford, J.D., ACLU of Kansas and Western Missouri, testified as an opponent. The right to vote is fundamental in the United States and this bill would prevent some from voting. This is an unfunded mandate and will be extremely high in costs. ([Attachment 7](#))

CONTINUATION SHEET

The minutes of the Ethics and Elections Committee at 9:38 a.m. on March 10, 2011, in Room 159-S of the Capitol.

Stephanie Mott, Board Member, Kansas Equality Coalition, testified as an opponent. **HB 2067** will cause transgender citizens not to be able to vote, as it is very difficult to update information on all of ID's required. ([Attachment 8](#))

Thomas Witt, Chairman, Kansas Equality Coalition, testified as an opponent. He asked the committee to consider an alternate bill, **SB 222 - Relating to voter identification**. ([Attachment 9](#))

Glenda Overstreet, 1st Vice- President; Kansas State Conference of NAACP Branches, testified as an opponent. The language of the bill will create unnecessary obstacles for legal and law abiding citizens from exercising their constitutional right to participate in the election process. ([Attachment 10](#))

Ernestine Krehbiel, Kansas League of Women Voters, testified as an opponent. The League of Women Voters would consider the cost of obtaining an approved ID would constitute a poll tax. It will create a large and expensive bureaucracy. ([Attachment 11](#))

Patrick Vogelsberg, Kansas County and District Attorney Association, an opponent, provided written testimony only. ([Attachment 12](#))

Anne Byington, President, Kansas Association for the Blind and Visually Impaired, an opponent, provided written testimony only. ([Attachment 13](#))

Kari Ann Rinker, State Coordinator, Kansas National Organization for Women, an opponent, provided written testimony only. ([Attachment 14](#))

There being no further testimony, the hearing was closed.

The Chairman thanked the conferees for appearing before the committee.

The next meeting is scheduled for March 11, 2011.

The meeting was adjourned at 10:35 a.m.

SENATE ETHICS AND ELECTIONS COMMITTEE GUEST LIST

Date: March 10, 2011

[illegible]

W. Paul Degener
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March 8, 2011

SUBJECT: HB 2067, Voter Photographic Identification Requirements

Good Morning Mr. Chairman and members of the committee.

My name is Paul Degener, I am here today as a concerned citizen in support of HB 2067.

In the past I have testified in opposition to providing driver's licenses to illegal aliens and in opposition to in-state tuition for illegal aliens.

This is not a matter of race, it is a matter of foreign born persons invading our country uninvited and illegally, it makes no difference the color of their skin, their native tongue or their country of origin.

They have come to this country illegally, they have broken our laws, they have brought with them diseases and violent vicious gangs, not to mention the deaths they have caused to U.S. Citizens.

Voting in our elections is not a right, it is a duty of every U.S. Citizen, not to be taken lightly, and it is our duty to do everything we can to insure that our ballot boxes are secure from fraudulent acts. We have been hearing for decades of dead people voting in Chicago and more recently the reported vote fraud in Arizona. Who is to say that the same things cannot happen in Kansas? Opponents of this legislation will tell you that we have no proof that there is voter fraud in Kansas. I say to them, you have no proof that there isn't voter fraud in Kansas. On the supposition that there is not a problem with voter fraud in Kansas, I guess it would be fair to say that we should do nothing even though there are apparent problems with our current voter registration and voting procedures until we can absolutely prove there is a problem.

We have all heard the phrase, "It is like closing the barn door after the horses are out". Well, the barn door is open and I am confident some of the horses have left the barn. Let's not wait until all of the horses are out, let's close the barn door now. We need to make our elections as safe and sound as we can, and now is the time.

In April and May of 2006, there were rallies held for illegal aliens on the south steps of this very building. I hope to show you that a large number of illegal aliens and their allies have no allegiance to this country. I attended those rallies as a spectator only. During the April 6th rally, they had several international flags on very nice flagstaffs along with many Mexican Flags. Amongst the international flags were flags from the Communist Countries of China, Viet Nam, North Korea, and Cuba and most interestingly the Hammer and Sickle Flag from the former USSR. There was one particularly interesting U.S. Flag, carried not on a nice flagstaff, but by the corners upside down by two individuals.

The other rally was held on May 1st, May Day, a Communist Holiday. As the rally was breaking up, now keep in mind, this was a rally held for and by illegal aliens. The master of ceremonies announced over the loud speakers, "Do not forget to register to vote and do not forget to vote". Now I would like someone to convince me that that this was not an attempt to ingrain in the minds of these illegal aliens that it is alright to vote in the United States even though you are here illegally.

I have enclosed a copy of a current voter registration form to my testimony. I would like to point out two things that grabbed my attention.

1. All it takes to register to vote is a sworn statement that you are a U.S. Citizen, no documentation to support this claim. If a person is willing to sneak across the border illegally, what would be the fear of making a false statement on a voter registration form? Additionally, they don't even have to have an interpreter; the forms are printed in Spanish and can be picked up by the carload at the election office. And some of these foreigners complain about being offended. I am offended.
2. Go down the left side of the registration form to # 3.
 - a. Select a means of Identification Number
 - b. The 4th selection: I do not have any of these numbers.
 - c. The form does require a naturalized citizen to provide a Naturalization Number.
 - d. However, if an illegal alien desires to vote and provides an illegally obtained driver's license and an address, he will not necessarily have to provide a naturalization number.

Now, that just makes me feel warm and fuzzy all over, knowing that our voter registration form lacks any kind of controls or means of identifying a registrant other than a name that may or may not be valid.

When voting, I have no problem showing my ID. Is it really that big of a problem? Many times while cashing a check at a business, you have to show your Photo ID. How many of us pull out our Dillon's Plus card, or our Lowe's, Home Depot, Best Buy or Dick's Sports card in order to receive a small bonus, that is if you go to the trouble of logging in to the respective web site and dream up yet another password?

Let's run a tight ship for Kansas and for the United States.

I only have one problem with this legislation.

Page 22:

Line 21 (i) The following persons are exempt from the photographic identification document requirements of this section:

Lines 34 and 35: (5) any voter whose religious beliefs prohibit photographic identification.

If they are foreigners and they came to this country, then they need to learn to assimilate. If they came to this country legally and to experience what is left of our freedoms, then they should have to live by our laws. If they are offended, I am sorry about that. I am offended as a result of multiculturalism and political correctness. But, then again, I am only a natural born U.S. Citizen, I guess that doesn't count.

Paul Degener

Instructions: To register to vote, you must be a U.S. citizen and a resident of the State of Kansas. You must have reached the age of 18 years before the next election. If you have been convicted of a felony, you must have received final discharge from imprisonment, parole, or conditional release. To change your name and/or address, you must have abandoned your former residence and/or name.

You can use this application to

Register to vote in Kansas, change your name or your address on your registration, affiliate with a political party, or change your party affiliation.

How to register to vote

Return your completed application to your county. Addresses are on the back of this application. Your county election officer will mail you a notice when your application has been processed.

Postmark this application by the 15th day before an election in order to be eligible to vote in that election.

If this form is incomplete, it may be rejected.

Notice to first-time voters

If you will be voting for the first time in this county, and do not provide an identification number as requested below, you must complete one of the following options.

A: Send a copy of a current, valid photo ID along with your application, or
B: Send a copy of a current utility bill, bank statement, paycheck, government check, or other government document that show your name and address. If these requirements are not met or, if the information you provide is not verified, you must provide identification the first time you vote in the county.

For further information

contact the Office of the Secretary of State,
 1-800-262-VOTE (8683) V/TTY
www.sos.ks.gov

tear off instructions and seal before mailing.


1 Qualifications Failure to answer both questions will result in rejection of application

Are you a citizen of the United States of America?

Yes ☐ No ☐

Will you be at least 18 years of age on or before Election Day?

Yes ☐ No ☐

 If you mark "NO" in response to either of these questions, do not complete this form.

2 Personal information (please print in blue or black ink)

Last Name First Name Middle Name Jr. Sr. II III IV

Date Of Birth month day year

Phone Number - -

Male ☐ Female ☐

Residential Address Kansas County City Zip

Mailing Address (if different from residential address) City Zip I have resided at the above address since month day year

3 Identification number (select one)

- ☐ Current Kansas driver's license # _____
- ☐ Nondriver's identification card # _____
- ☐ Last four digits of your social security # XXX-XX - _ _ _ _
- ☐ I do not have any of these numbers

Naturalization # (if applicable, provide this number in addition to one of the above) _____

These numbers will be used for administrative purposes only and will not be disclosed to the public. (K.S.A. 25-2309)

4 Party Affiliation (select one)

- ☐ Democratic
- ☐ Libertarian
- ☐ Reform
- ☐ Republican
- ☐ Not affiliated with a party

5 Registration Update (complete this section if you are already registered and are changing your name or address)

Previous Last Name Previous First Name Previous Middle Name

Previous Address County City State Zip


6 Signature

I swear or affirm that I am a citizen of the United States and a Kansas resident, that I will be 18 years old before the next election, that if convicted of a felony, I have had my civil rights restored, that I have abandoned my former residence and/or other name, and that I have told the truth.

Sign inside box

Date today month day year

Continue to step 7 

 Warning: If you submit a false voter registration application, you may be convicted and sentenced to up to 17 months in prison.

FOR OFFICE USE ONLY

glue strip

KRIS W. KOBACH
Secretary of State



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STATE OF KANSAS

Testimony of Secretary of State Kris Kobach

Before the Kansas Senate

Committee on Ethics and Elections

March 9, 2011

Regarding H.B. 2067

Madam chair and Members if the Committee, I present this testimony to you today in support of House Bill 2067, the Kansas Secure and Fair Elections (S.A.F.E.) Act, which passed the House by a vote of 83-36. H.B. 2067 is comprehensive measure designed to protect Kansas elections against voter fraud, while maintaining ease of participation for all eligible Kansas voters. In short, H.B. 2067 will ensure that in future Kansas elections, it is easy to vote but hard to cheat.

Voter Fraud in Kansas

Attached to this testimony is a chart of reported incidents of election fraud compiled by the Elections Division of the office of the Kansas Secretary of State. The data in this chart was collected during three different administrations and spans the period from 1997 through 2010. Many of the reported crimes in this chart were included a letter from Deputy Assistant Secretary of State Brad Bryant to Kansas legislators in February 2008. However, since that letter, three years of elections have occurred, and the office of the Kansas Secretary of State has received numerous additional reports from earlier election cycles.

At the outset, it must be made clear that *this report significantly understates the incidence of election fraud in Kansas. Until my administration took office in January 2011, there was no reporting system or process for receiving reports of election fraud.* The Secretary of State's office might learn about a reported case, or might not, depending upon whether the government entity receiving the report bothered to relay it to the Secretary of State. *The Secretary of State's office did not even begin attempting to collect information on election fraud until 2007. On top of that, until my administration took office, voters did not have a central place to report incidents of voter fraud.* As a result, the only cases that we know about are the ones observed by individuals who were willing to spend a significant amount of their time figuring out where to report election fraud. Finally, it must be remembered that many forms of voter fraud are never observed and never reported. For all of these reasons, it is reasonable to estimate that this report catalogs less than ten percent of the incidents of voter fraud that actually occurred.

With all of those caveats established, I offer to this committee the chart "Known Reported Incidents of Election Crimes, 1997-2010." The chart details more than 221 cases of reported election crimes. Those cases cover twenty counties, and include every corner of the state. Not surprisingly, the greatest number of cases come from the counties with the greatest population. But no geographic region of Kansas has been immune from voter fraud.

There is an additional figure that this committee should be aware of, which is not included in this chart. That is the following: a total of 62 aliens were discovered on Kansas voter rolls when driver's licenses issued to known aliens were cross-checked with Kansas voter rolls in 2009 and 2011. Those 62 cases were discovered by the Office of the Secretary of State by matching voter roll data with Kansas driver's license files of licenses issued to aliens since 2007. Those 62 cases come from only a small subset of aliens living in the state of Kansas—the

subset defined as lawfully present aliens who obtain a Kansas driver's license. That subset does not include lawfully present aliens who have not applied for a driver's license. And it does not include the tens of thousands of illegal aliens living in Kansas.

Of the known 62 aliens who registered, we are aware of five who actually voted—one of whom voted in five different elections. Therefore, on at least nine occasions, aliens voted in Kansas elections.

The Provisions of H.B. 2067

Current Kansas law criminalizes most forms of voter fraud at a relatively low level. But it does little else to minimize the risk of voter fraud. The Kansas legislature attempted to address this vulnerability to election fraud in 2008 by enacting a photo-ID bill. But that bill was vetoed by Governor Sebelius.

H.B. 2067 addresses Kansas's continuing vulnerability to voter fraud. The provisions of H.B. 2067 can be divided into three categories: (1) photo identification provisions, (2) proof of citizenship provisions, and (3) provisions to increase the prosecution of election crimes.

1. Photo identification provisions. H.B. 2067 requires voters to present a government-issued photo ID when voting in person at a polling place, whether on election day or in advance of election day. The acceptable forms of ID are listed in Section 15 of the bill, specifically in subsection (h)(1) of K.S.A. 25-2908 as amended. A short list of exceptions is found in subsection (i), including persons with a physical disability that makes it impossible for them to travel to a county or state office, and members of the uniformed services or merchant marine who are absent from their county of residence on election day.

Two aspects of the photo-ID provisions are important to note. First, an expired photo ID document may be used by any voter who is 65 years of age or older. Second, the state will provide a free non-driver ID (not a free driver's license) to any voter who signs an affidavit stating that he qualifies for various government programs for the needy or resides in a household whose income is 150 percent or less of the federal poverty level.

In addition, it should be noted that H.B. 2067 closes a loophole that is present in other states' photo-ID laws: it applies equivalent security provisions to ballots that are mailed in. In other states with photo-ID laws, absentee ballots are left unchanged—a situation that simply encourages individuals and organizations intent on committing voter fraud to use absentee ballots. H.B. 2067 closes this loophole by taking two steps. First, a voter requesting an absentee ballot must provide his Kansas driver's license or non-driver ID number on the absentee ballot application (or photocopy of qualifying ID if he does not possess one). Second, the relevant county election office must verify that the signature on the advance ballot application form matches the signature on file in the electronic record of the voter. This can be done extremely

easily and quickly. Indeed it is already being done in Kansas's largest counties—Johnson, Wyandotte, and Sedgwick Counties.

Photo-ID provisions have already been reviewed and sustained against constitutional challenge by the United States Supreme Court. In 2008, the Court issued its decision in *Crawford v. Marion County Election Board*, 553 U.S. 181, in which the Court voted 6-3 to uphold Indiana's photo-ID law.

2. Proof of citizenship provisions. H.B. 2067 also includes provisions requiring newly-registered Kansas voters to provide proof of citizenship at the time they register to vote. All currently-registered Kansas voters are exempted from this requirement in the bill. For most voters, the relevant document will be a birth certificate, a passport, a naturalization document, a driver's license if the license indicates citizenship, or a photocopy of any of these documents.

Arizona and Georgia already have similar provisions in their state statutes and have successfully implemented these provisions. Georgia has done so since November 2008. Arizona did so from January 2005 until October of 2010; the Arizona statute is currently in legal limbo due to two contradictory opinions yet to be reconciled by the Ninth Circuit of the U.S. Court of Appeals. Implementation will be even easier in Kansas, due to the fact that the Kansas Department of Motor Vehicles is already planning to begin scanning photocopies of birth certificates into Kansas driver's license holders' files. Within a few years, virtually all Kansas drivers who are U.S. citizens will have a digital copy of their birth certificate in the state's database, which will allow such individuals to satisfy the proof of citizenship requirement without actually furnishing a hard copy of the document.

Once these provisions are implemented, they will wipe out two forms of voter fraud in Kansas: the illegal registering and voting of alien voters, and the registration and voting of fictitious identities.

3. Provisions to increase the prosecution of election crimes. As the attached chart indicates, more than 221 incidents of voter fraud were reported between 1997 and 2010, but the vast majority of these cases were not investigated further. The cases were left by the wayside as county attorneys devote their limited time and resources to more pressing crimes. As a result, only seven cases even resulted in a prosecution, with all seven yielding a conviction. Some journalists have incorrectly reported that number as the total number of cases of voter fraud. That is incorrect. The number of convictions is relatively small because resources simply are not being devoted to the investigation of the vast majority of reported election crimes. That will change with the enactment of H.B. 2067.

H.B. 2067 increases the severity level of several crimes. For example, double voting, a crime that appears twenty times in the attached chart, is increased from a misdemeanor to a severity level 8, nonperson felony. In addition, voting without being qualified is expanded to clearly include voting by an alien, which is also elevated to a severity level 8, nonperson felony.

By increasing the severity level of the crimes, H.B. 2067 both increases the likelihood of prosecution and increases the deterrent effect of Kansas law.

H.B. 2067 also addresses the problem of inadequate resources at the county attorney level by providing for parallel prosecution authority to the Attorney General and the Secretary of State. At present, at least eight statewide agencies already have prosecution authority within their jurisdiction, including for example the Kansas Department of Labor, the Kansas Lottery, the Kansas Insurance Commission, and the Kansas Securities Commission. Such authority is usually conveyed through the statutory appointment of a special assistant attorney general to the agency. Alternatively it can be done through the assignment of prosecution authority to the agency itself. Attorney General Schmidt has expressed his preference that H.B. 2067 utilize the latter framework. The bill is drafted accordingly.

Answers to Critics of Photo-ID Laws

Critics of photo-ID laws have leveled a number of criticisms against H.B. 2067. These criticisms are based on either incorrect assumptions or faulty information. The most frequent criticisms are as follows.

1. The elderly will be unable to obtain new photo IDs when their current IDs expire. Section 12 of the H.B. 2067 specifically addresses this assertion. Any voter over the age of 65 may use an expired photo ID for the purposes of voting. In addition, an elderly voter who is physically unable to travel to a government office is exempted from the photo ID requirement entirely.
2. The poor will be unable to afford a photo ID or replace a lost birth certificate. Under H.B. 2067, the state will provide a free non-driver ID or a free replacement birth certificate to any voter signs an affidavit stating that he qualifies for various programs for the needy or resides in a household whose income is 150 percent or less of the federal poverty level.
3. The inconvenience of obtaining a photo ID will burden the right to vote. The Supreme Court has expressly rejected this argument. As Justice Stevens wrote in the *Crawford* decision, "For most voters who need them, the inconvenience of making a trip to the BMV, gathering the required documents, and posing for a photograph surely does not qualify as a substantial burden on the right to vote, or even represent a significant increase over the usual burdens of voting." 553 U.S. 181, 198.
4. Providing free non-driver IDs to the poor will be expensive. This argument rests on two fallacies: that there are a significant number of voters who lack photo IDs, and that it is expensive to the state to provide such IDs. According to the fiscal impact letter for H.B. 2067 provided by the Kansas Department of Revenue, "it is not expected that a significant number of free ID cards would be issued if this legislation is enacted." The statistics clearly support that conclusion. According to the 2010 census numbers received last week, the population of voting

age Kansas residents is 2,126,179. The number of unexpired driver's licenses or non-driver IDs that have been issued to Kansas residents of voting age is 2,156,446. Thus, virtually every voting age Kansan already has a photo ID. Indeed, it appears that a significant number of Kansas residents have both a driver's license and a non-driver ID. The second fallacy is that it is expensive to produce a non-driver ID for any poor person who qualifies. That is incorrect. The expense to the state is only \$8 per ID. The statistics simply do not support this argument.

Conclusion

In conclusion, consider the role of this body in protecting the foundations of our republic. A constitutional republic rests on two foundations. One is the Constitution itself. The other is the trust of the citizenry that elections are fair and that the will of the people is being conveyed securely through elections that are free from fraud. When that trust begins to break down, the foundation of the republic erodes.

As the United States Supreme Court stated in *Purcell v. Gonzalez*: "Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy. Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised." 549 U.S. 1, 2 (2006).

It is clear that Kansas voters perceive this threat and want the Kansas legislature to act. A January 18, 2011, statewide survey commissioned by KWCH and performed by Survey USA found that 78 percent of Kansas voters think that all voters should be required to show a photo ID when they vote, and 83 percent of Kansas voters think that newly-registered voters should have to provide proof of US citizenship when registering to vote. I urge this committee to respect the manifest will of the people of Kansas.

Thank you for your consideration of this important legislation.

Office of the Kansas Secretary of State

House Bill 2067—As Amended by House
Summary by Section

Section 1	Division of Motor Vehicles
Sections 2-6	Advance Voting
Section 7	State Election Board
Sections 8-10	Voter Registration
Sections 11-14	Election Crimes
Section 15	Voting at the Polls
Section 16	County Canvasses
Section 17	Office of Vital Statistics
New Section 17 (should be 18)	Prosecutorial Authority
New Section 18 (should be 19)	Election Crimes
Section 19 (should be 20)	Severability

Section 1

The Division of Motor Vehicles is required to provide a free identification card to any person who signs an affidavit saying that they receive public assistance or that their household income is 150% of the federal poverty level or less.

The Secretary of Revenue is authorized to adopt regulations to implement these provisions.

Section 2

ID Requirements for Advance Voters

- A voter applying for an advance ballot in person is required to provide identification the same as a voter who votes at the polling place on election day (see Section 15). The ID document must contain the voter's current name and photo.

- A voter applying for an advance ballot by mail is required to (1) provide on the ballot application form the voter's driver's license number (or nondriver's identification card number) or (2) provide a photocopy of an ID document such as a voter provides when voting at the polling place on election day.

- The voter may vote a provisional ballot if (1) they do not provide ID, or (2) if the name and address provided on the ballot application do not match the voter's registration records.

- The county election officer is required to verify each voter's signature on the ballot application. If it does not match, the election officer is required to attempt to contact the voter to obtain an updated signature. If unable to contact the voter, the election officer issues a provisional ballot.

- If an advance voter does not provide the driver's license number or a copy of an ID document, the county election officer is required to notify the person of their right to provide ID before the county canvass.

- Government offices in the state are required to provide free photocopies of ID documents for voters who need them.

- Language referring to "first time voters" is deleted because the bill's ID requirements apply to all voters, with certain exceptions.

- The Secretary of State is authorized to adopt regulations to implement the ID requirements.

Section 3 Advance Ballot Application Form

- A voter requesting an advance ballot by mail is instructed on the ballot application form to provide (1) the voter's driver's license or nondriver's identification card number or (2) a photocopy of a valid ID document.

- Language referring to first time voters is deleted.

- Language referring to the use of the last four digits of voters' Social Security numbers is deleted.

- Language referring to "HAVA type" ID documents is deleted.

- A voter requesting an advance ballot in person is required to provide a photo ID document the same as a voter voting at the polls on election day. Language detailing the types of ID documents is deleted because the in-person voter will be asked to provide ID by the person issuing the ballot.

- The Secretary of State may adopt regulations to implement the requirements of the section.

Section 4 Administering Advance Ballots

- Language referring to the use of Social Security numbers is deleted.

- Language referring to first time voters is deleted.

- In keeping with federal laws, county election officers are required to issue provisional ballots to voters who have not provided valid ID documents, rather than denying ballots.

Section 5 Advance Ballot Security

- A voter who has received an advance ballot by mail and who wishes to have another person mail or deliver the ballot to the election office is required to designate the delivery person *in writing*.

- Language referring to "sick and disabled" voters is replaced with language preferred by representatives of the disabilities community. The new language is consistent with other laws.

Section 6 Advance Ballot Security

- A voter wishing to receive an advance ballot by mail is required to sign the ballot application form for him/herself.

- The word "knowingly" is inserted in six places.

- A person designated to mail or deliver an advance voter's ballot to the election office is required to sign a statement saying that the person (1) has not exercised undue influence on the voter's decisions and (2) agrees to deliver the ballot as directed by the voter.

- The penalty for violating these requirements is increased from a class C misdemeanor to a level 9 nonperson felony. This is consistent with other laws and other aspects of this bill.

Section 7 State Election Board

The state election board is authorized to receive appeals from voter registration applicants who have difficulty meeting the requirement to provide proof of U.S. citizenship.

Section 8 Voter Registration

- Language referring to the universal federal voter registration application form is updated.

- Language referring to the process of assessing voter registration applicants' qualifications is updated to be more consistent with federal law.
- The Kansas voter registration application form is revised to include a checkbox for election officers to record whether each applicant has provided proof of U.S. citizenship.
- Current law is clarified to say that voter registration applications must be processed according to federal law and that registration is not denied if the applicant's qualifications are assessed.
- Each applicant for voter registration is required to provide evidence of U.S. citizenship. The applicant may provide evidence of citizenship in person or by mail.
- Thirteen types of documents are listed as valid evidence of U.S. citizenship, including driver's licenses, birth certificates, passports, naturalization documents and other federal documents.
- Detailed procedures are outlined for the state election board to assess voter registration applicants' evidence of U.S. citizenship when requested.
- Certain individuals are exempted from the requirement to provide evidence of U.S. citizenship: individuals registered to vote in Kansas before January 1, 2012, and persons registered in Kansas who move within the state.
- Documents provided as evidence of U.S. citizenship are kept confidential.
- The Secretary of State may adopt regulations to implement the provisions of this section.
- Applicants who are unable to provide evidence of U.S. citizenship at the time they submit registration applications may submit it at later times.

Section 9 Confidentiality of Voter Registration Records

Voter registration applicants' driver's license numbers and nondriver's identification card numbers are kept confidential.

Section 10 KDOR Employees Not Liable

Employees of the Department of Revenue are not liable for actions performed in sharing driver's license information with the Secretary of State.

Section 11 Election Crime

- The definition of election perjury is amended to include false statements on declarations, in addition to affidavits.
- The penalty is increased from a severity level 9 nonperson felony to a level 8.

Section 12 Election Crime

- The definition of voting without being qualified is amended to include voting by non-U.S. citizens.
- Language referring to voting more than once is deleted and included in New Section 18 (should be 19).
- The penalty is increased from a class A misdemeanor to a level 8 nonperson felony.

Section 13 Election Crime

The penalty for election tampering is increased from a level 8 nonperson felony to a level 7.

Section 14 Election Crime

- The definition of false impersonation of a voter is amended to include impersonation of fictitious persons.
- The penalty is increased from a level 9 nonperson felony to a level 8.

Section 15 Voting Procedure

- Each voter who votes at the polling place on election day is required to provide a valid photo ID.
- Language referring to first time voters is deleted because the requirements apply to all voters.
- Poll workers are instructed to (1) request valid photo ID from each voter as part of the voting process, (2) determine that the voter is the person depicted in the photo, and (3) write the poll worker's initials on the poll book.
- If a voter does not provide valid ID, or if the voter's name and address provided verbally does not match the poll book, he/she may vote a provisional ballot.
- The Secretary of State's authority to adopt regulations is limited to defining specific requirements of valid ID documents.
- A list of valid ID documents is provided, including driver's licenses, nondriver's identification cards, concealed carry weapon licenses, passports, government employee documents, military ID documents, student ID documents, and public assistance ID cards issued by government agencies. ID documents must contain the voter's name and photograph.
- Voters age 65 or older are permitted to use expired documents.
- Language is included specifying that ID documents are not required to contain the voter's current address.
- If a voter does not provide a valid ID document, he/she may vote a provisional ballot.
- Certain individuals are exempt from the ID requirements: permanent advance voters, overseas voters, and voters with religious objections who sign declarations.

Section 16 County Canvasses

Language referring to first time voters is deleted. The law states that county boards of canvassers shall not count ballots from voters who do not provide valid ID.

Section 17 Dept. of Health and Environment

- The Office of Vital Statistics is required to provide a free certified copy of a birth certificate to any person who signs an affidavit saying that they receive public assistance or that their household income is 150% of the federal poverty level or less.
- The Secretary of Health and Environment has the authority to adopt regulations.
- Knowingly signing a false affidavit is a class C misdemeanor.

Section 17 (should be 18) Prosecutorial Authority

The authority to prosecute election crimes is granted to county and district attorneys, the Attorney General and the Secretary of State.

New Section 18 (should be 19)

Election Crime

- The crime of voting more than once is separated from the crime of voting without being qualified (Section 12).
- The penalty for voting more than once is a level 8 nonperson felony.

Section 19 (should be 20)

Severability

If any section of the Act is determined to be unconstitutional, the remaining sections are still in effect.

2-12

OFFICE OF THE KANSAS SECRETARY OF STATE
KNOWN REPORTED INCIDENTS OF ELECTION CRIMES, 1997 - 2010

February 9, 2011

YEAR	JURISDICTION	DESCRIPTION OF VIOLATION	CRIMES ALLEGED	NUMBER OF CASES	ACTIONS TAKEN
2002	BOURBON	Ballots returned for advance voters with non-matching signatures.	Perjury, impersonation of a voter	Multiple	Unknown
1998	BOURBON	Mother voted for her son, forged signature	Perjury, forgery	1	Unknown
1998	BOURBON	Nursing home supervisor voted for other persons without their consent	Perjury, forgery	Multiple	Unknown
2006	BUTLER	Person voted twice	Double vote	1	Referred to county attorney
2002	CHEYENNE	Person voted in Kansas and Colorado	Double vote	1	Investigated by FBI, not pursued
2004	CLARK	Electioneering near an advance voting location	Electioneering	1	Convicted of 2 counts of Class B misdemeanors by state of KS
Multiple	DECATUR	Nursing home residents' ballots voted by adult children	Perjury, forgery	Multiple	Unknown
2004	DECATUR	Voters incapable of voting but ballots voted anyway	Perjury, forgery	4	Ballots challenged
Multiple	DECATUR	Ballots voted by wife, nephew, social worker of nursing home residents	Perjury, forgery	Multiple	Ballots challenged
2004	DOUGLAS	Party voter registration drive screened applications and did not deliver some	Voter registration suppression	Multiple	D.A. investigation
Multiple	ELLIS	Multiple ballots challenged each election due to nonmatching signatures	Perjury, impersonation of a voter	6	Ballots challenged
2008	FINNEY	Non US citizen registered and voted	Perjury, voting without being qualified	1	Referred to county attorney
2008	HARVEY	Person double voted three times in both HV and LY in 2006, 2008	Double vote	1	Referred to county attorney, not pursued
Multiple	JOHNSON	Advance ballots challenged every election due to nonmatching signatures	Perjury, impersonation of a voter	Multiple	Ballots challenged
Multiple	JOHNSON	Multiple examples of questionable ballots	Perjury, impersonation of a voter	Multiple	Ballots challenged
2010	JOHNSON	Voter registered at MO bar, voted in KS in 2006, 2008, 2010	Perjury, voting without being qualified	1	Referred to D.A.

OFFICE OF THE KANSAS SECRETARY OF STATE
KNOWN REPORTED INCIDENTS OF ELECTION CRIMES, 1997 - 2010

February 9, 2011

YEAR	JURISDICTION	DESCRIPTION OF VIOLATION	CRIMES ALLEGED	NUMBER OF CASES	ACTIONS TAKEN
2010	JOHNSON	Voter received advance ballot for which he did not apply. Another person filed application.	Perjury	1	No action taken
2010	JOHNSON	Persons voted advance in person, then voted at polls on election day	Double vote	3	Referred to D.A.
2008	JOHNSON	Non US citizen registered, voted in 2008	Perjury, voting without being qualified	1	No action taken
2008	JOHNSON	Person registered to vote in JO, WY same day and attempted to vote in both	Double vote	1	Provisional ballot, not counted
2008	JOHNSON	Registration applications received with KS address, MO zip codes	Perjury	20	No action taken
2008	JOHNSON	Person not registered, found another person's address on poll book, used that address to register and vote	Perjury, impersonation of a voter	1	Referred to D.A.
2004	KANSAS CITY	Persons voted in Missouri and Kansas	Double vote	3	Prosecuted by US Attorney, pled guilty to misdemeanor, convicted by federal government
2008	LYON	Non US citizen registered to vote	Perjury	1	Referred to county attorney, not pursued
2008	MONTGOMERY	Persons voted in KS and AZ	Double votes	2	Convicted by federal government of Title 18 U.S.C. 242, Deprivation of Rights Under Color of Law
2004	NEMAHA	Person voted in both Nemaha and Shawnee counties	Double vote	1	Convicted of misdemeanor by state of KS
2010	OSAGE	Person under felony sentence registered to vote	Perjury	1	Referred to law enforcement, no charges
2002	OSAGE	Nursing home assistance when voter not aware	Perjury, forgery	1	No action taken
2006	POTTAWATOMIE	Multiple advance ballots mailed to apartments where voters did not live, ballots were voted	Perjury, forgery	7	Referred to law enforcement, not pursued
2006	POTTAWATOMIE	Advance ballot voted by voter who no longer resided in KS, but in France	Perjury, forgery	1	Referred to law enforcement, not pursued

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OFFICE OF THE KANSAS SECRETARY OF STATE
KNOWN REPORTED INCIDENTS OF ELECTION CRIMES, 1997 - 2010

February 9, 2011

YEAR	JURISDICTION	DESCRIPTION OF VIOLATION	CRIMES ALLEGED	NUMBER OF CASES	ACTIONS TAKEN
Multiple	SEDGWICK	Ballot applications signed by parent, spouse or relative	Perjury	Multiple	Provisional ballots not counted
2006	SEDGWICK	Parent voted for college student by power of attorney	Perjury, impersonation of a voter	1	Provisional ballot not counted
2006	SEDGWICK	Candidates and poll watchers intimidated voters by asking voters who they were and who they voted for	Voter intimidation	Multiple	No action taken
2010	SEDGWICK	Non U.S. citizen registered, voted in 2000, 2002, 2004, 2006, 2008	Perjury, voting without being qualified	1	Dept. of Homeland Security contacted county election office. Not pursued.
2009	SEDGWICK	Non US citizens registered; 1 voted	Perjury, voting without being qualified	8	Referred to D.A.
2009	SEDGWICK	Non-matching signature on an advance ballot envelope	Perjury, forgery	1	Provisional ballot not counted
2006	SEDGWICK	Intimidation of poll workers	Disorderly election conduct	Multiple	Referred to law enforcement
2006	SEDGWICK	Candidate paid \$50-\$75 to deliver 20 votes each	Election bribery	Multiple	No action taken
2006	SEDGWICK	Electioneering by a candidate at a polling place	Electioneering	1	Referred to D.A.
2011	SEWARD	Non U.S. citizen registered to vote	Perjury	1	Registration canceled
1997	SEWARD	Employer bused employees, including alleged non-citizens, to register to vote at election office	Perjury	Multiple	No action taken
2005	SHAWNEE	Advance ballots picked up and delivered to a campaign P.O. Box and never delivered to election office	Advance voting suppression	Multiple	No action taken
2005	SHAWNEE	Campaign workers picked up voted ballots, did not deliver to election office	Advance voting suppression	4	Referred to law enforcement, not pursued
2005	SHAWNEE	Tyler Towers, Jackson Towers, Polk Plaza voted ballots picked up but not delivered	Advance voting suppression	Multiple	No action taken
2005	SHAWNEE	Ballots taken to dark room and flashlight used to see how they were voted	Advance voting suppression	Multiple	No action taken

2-15

OFFICE OF THE KANSAS SECRETARY OF STATE
KNOWN REPORTED INCIDENTS OF ELECTION CRIMES, 1997 - 2010

February 9, 2011

YEAR	JURISDICTION	DESCRIPTION OF VIOLATION	CRIMES ALLEGED	NUMBER OF CASES	ACTIONS TAKEN
2005	SHAWNEE	Voters had their voted ballots taken from mail box	Advance voting suppression	Multiple	No action taken
2008	SHAWNEE	Person voted in both Kansas and Kentucky	Double vote	1	KS US attorney plans to prosecute
2005	SHAWNEE	Person voted in both city and county on consolidation question	Double vote	1	Investigated but not prosecuted
2002	SHERMAN	Person voted in both Kansas and Colorado	Double vote	1	Investigated by FBI, not pursued
Multiple	WYANDOTTE	Nurse's aides voted ballots for residents without their consent	Perjury, forgery	Multiple	Provisional ballots not counted
Multiple	WYANDOTTE	Spouse voting for spouse	Perjury, impersonation of a voter	Multiple	Provisional ballots not counted
2010	WYANDOTTE	Felons voted. Provisional ballots were not counted	Voting without being qualified	17	Referred to D.A., under investigation
2010	WYANDOTTE	Persons not registered. Signed affidavits claiming residency in Wyandotte	Perjury	4	Referred to D.A., under investigation
2010	WYANDOTTE	Persons attempted to vote more than once	Double vote	4	Referred to D.A., under investigation
2008	WYANDOTTE	Non US citizens registered; 1 voted	Perjury, voting without being qualified	3	Referred to D.A.
2008	WYANDOTTE	Advance ballot applications signed by campaign worker, not voter	Perjury	25	No charges filed
2004	WYANDOTTE	Advance ballot application filed without voter's knowledge	Perjury	1	No action taken
2002	WYANDOTTE	Fraudulent advance ballot applications	Perjury	50	Referred to D.A.
			TOTAL REPORTS	221+	



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Written Testimony Presented to the House Elections Committee
By Attorney General Derek Schmidt
January 31, 2011

Mr. Chairman, members of the committee, thank you for the opportunity to provide this testimony on House Bill 2067.

My testimony is focused on New Section 15 of the legislation related to jurisdiction to prosecute criminal violations of the statute. I appreciate that Secretary of State Kobach consulted with me on options regarding this language prior to introduction of the bill.

I support the language of New Section 15 in its current form. The current language presents two policy issues to the legislature:

First, it grants the attorney general original jurisdiction to prosecute voting crimes. I support this provision, which strengthens the hand of my office in these types of cases.

Second, it also grants original jurisdiction to the Secretary of State to prosecute voting crimes. I have no objection to this provision. There is precedent in other areas of the Kansas Statutes for granting authority to bring prosecutions to state officials other than the attorney general. The Securities Commissioner, for example, has independent authority to bring criminal or other enforcement actions for violations of the securities law.

As the bill is worked, my request would be that the legislature not reshape this model in New Section 15 to instead create a circumstance of shared responsibility for individual attorneys. There are examples elsewhere in the Kansas Statutes of attorneys who are appointed by the attorney general but actually work within other state agencies. On the whole, I have concerns about this model and I would ask that the legislature not use this instance to create another circumstance where it is employed.

Thank you for your consideration.

Ethics and Elections Committee
Attachment 3
Date 3-10-11



Testimony
Of
Richard D. Fry
On The
Secure and Fair Elections Act
HR 2067
Before the
Senate Ethics and Elections Committee
Senator Terri Huntington, Chairman
Wednesday, March 9, 2011, 9:30 a.m.

"...in close or disputed elections, and there are many, a small amount of fraud could make the margin of difference. And second, the perception of possible fraud contributes to low confidence in the system...."

Baker – Carter Commission on Federal Election Reform p. 10

The ignorance of one voter in a democracy impairs the security of all.

John F. Kennedy

http://groups.yahoo.com/group/November_Patriots/

"Informed Voters, Informing Voters"

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Executive Summary

Kansas legislators cannot fulfill their oath of office to “support” the Kansas constitution without complying with the requirements of the Kansas constitution. The Kansas Constitution mandates (“shall”) that the legislature will enact laws which will require “conclusive” proof that a prospective voter is: 1. A U.S. Citizen, 2. Eighteen years of age, and 3. A Resident in the district in which he / she wants to vote.

This constitutional mandate is not based on whether or not Kansas has a voter fraud “problem” or not (one may assume its purpose is to prevent such), if foreign nationals are voting or not, the cost of imposing such requirements etc. This mandate is a non-negotiable duty imposed upon the legislators by the constitution.

The only other consideration for this mandate is that the statute requiring “conclusive” proof of voter eligibility comply with the federal Constitution. The substantial equivalent of the SAFE Act has been tested in federal court and its text and its objectives have been found to be Constitutional.

The Kansas legislator has failed in its duty to require the “conclusive” proof safe guard in the Kansas electoral process. It is time for Kansas to come to terms with the present day reality of voter fraud and leave the “honor system” behind.

The single most predominate type of voter fraud is voter impersonation including voting by foreign nationals. This type of fraud is perpetuated and facilitated by the “honor system” which Kansas and many of her sister states employ. The single most effective tool to fight both is to require a photo id to vote and to require voter registrants to prove citizenship when they register to vote.

The Secure and Fair Elections Act, HR2067, offers a straight forward and effective means to resolving these serious problems with the current Kansas electoral system and should be enacted as soon as possible. In addition the Secretary of State should initiate a program of no tolerance for election crimes and vigorously push for the prosecution of these crimes to the fullest extent of the law. The citizens’ right to fair and honest elections, the corner stone of our Republic, deserves nothing less.

Constitutional Mandate for Legislators Conclusive Proof of Citizenship

The Kansas Constitution mandates that the Kansa Legislature establish laws by which prospective voters establish by conclusive evidence they are qualified to vote. The Kansas Constitution sets the requirements for state electors (voters) as follows:

1. Citizens of the United States,
2. Eighteen years of age,
3. Resides in the voting area in which he or she seeks to vote

Kansas Constitution Article 5, §1.¹ The Kansas Constitution requires that the state's laws regarding elections for President and vice President follow the federal law regarding such.²

The Kansas Constitution also mandates ("shall") that the legislature safe guard Kansas elections by requiring "proofs" of the right to vote:

*"The legislature **shall** provide by law for proper **proofs of the right of suffrage.**"*

Kansas Constitution Article 5, §4. "Proofs" means conclusive evidence that some fact is true.³

This is a duty to which all Kansas legislators have taken an oath of office to fulfill.⁴

¹ Kansas Constitution Article 5, §1

Every citizen of the United States who has attained the **age of eighteen** years and who **resides in the voting area in which he or she seeks to vote** shall be deemed a qualified elector. Laws of this state relating to voting for presidential electors and candidates for the office of president and vice-president of the United States shall comply with the laws of the United States relating thereto.

² Kansas Constitution Article 5, §1

³ Proofs:

1. Conclusive evidence- evidence or an argument that serves to establish a fact or the truth of something.
2. Test of something- a test or trail of something to establish a whether it is true.
3. State of having been proved – the quality or condition of having been proved.

Encarta Dictionary (3/7/2011)

The current election laws fall far short of requiring **conclusive proof** of U.S. citizenship and residence. The SAFE Act will bring Kansas law into compliance with the requirements of the Kansas Constitution and will bring the Kansas legislators in to compliance with their oath of office.

Voter Fraud by Foreign Nationals as an Indicator of Voter Fraud in General

In some situations voter fraud by foreign nationals is easier to detect including due to self reporting that would not occur with a citizen. However, voter fraud by foreign nationals can give an indication of the level of, and easy of committing, voter fraud in general.

A 2008 report estimates that the total number of non-citizens registered to vote in the 2008 election was between 1.2 million and 2.7 million.⁵ It is believed that voting by illegal aliens is likely growing at least at the rate of the illegal alien population in general. ⁶

In **Arizona**, they have turned away thousands of non-citizens including almost three thousand who attempted to register to vote when they applied for a driver's license.⁷ Following **Arizona's** passing a proof of citizenship law to get a driver's license it had 2177 non -citizens with a special non-citizen driver's licenses attempt to register to vote

⁴ **75-4308. Oath required for public officers and employees.** Before entering upon the duties of his or her office or employment, each person to be employed by the state or any agency thereof or by any county, city or other municipality of the state including any school, college or university supported in whole or in part by public funds collected under any tax law of the state or any municipality thereof shall be required to subscribe in writing to the oath set out in K.S.A. 54-106.

History: L. 1968, ch. 106, § 1; July 1.

54-106. Form of oath to be taken by officer. All officers elected or appointed under any law of the state of Kansas shall, before entering upon the duties of their respective offices, take and subscribe an oath or affirmation, as follows:

"I do solemnly swear [or affirm, as the case may be] that I will support the constitution of the United States and the constitution of the state of Kansas, and faithfully discharge the duties of _____. So help me God."

History: G.S. 1868, ch. 72, § 6; Oct. 31; R.S. 1923, 54-106.

⁵David Simcox, How Many Non-Citizen Voters? Enough to Make a Difference, at 8 The Social Contract Press (October 2008)

⁶ Hans A. von Spakovsky, Illegal Immigrants Are Voting in American Elections, The Cutting Edge, (August 4, 2008)

⁷ New law could give illegals right to vote.

and turned away another 30,000 because they could not prove citizenship.⁸ More than 38,000 voter registration applications were thrown out as of 2008 since the state passed its requirement for proof of citizenship to register to vote in 2004.⁹

The District Attorney for Maricopa county **Arizona** testified that he indicted 10 persons from a list of potential jurors who were registered to vote but admitted to the court they were not U.S. citizens.¹⁰ All of them had sworn on their voter registration that they were U.S. citizens and four of them had actually voted. He had another 142 case under investigation.¹¹

A 2008 study by The Center of Immigration Studies indicated that in **California** there are approximately 500,000 – 700,000 non-citizens that were registered to vote from 2000-2007.¹² This is approximately three percent (3%) of the total “voter population” of California.¹³ The study found that the “majority” of these illegal registrants were in the Los Angeles County congressional districts.¹⁴

In southern **Florida** they had an alien not only vote but run for the state legislature.¹⁵

Following a 1982 investigation into voter fraud in Chicago, **Illinois**, a prosecutor estimated that 10% of all the votes casted were fraudulent and fraud occurred in all precincts.¹⁶ The chief means of voter fraud was voter impersonation.¹⁷

The grand jury found that aliens were another source of fraudulent votes and noted the aliens participated “...so that they can obtain documents identifying them as U.S. citizens... and used the voters’ cards to obtain a myriad of benefits, from social security

⁸ Hans A. von Spakovsky, Illegal Immigrants Are Voting in American Elections, The Cutting Edge, (August 4, 2008)

⁹ Ian Urbina, Voter ID Battle Shifts to proof of Citizenship, www.newyorktimes.com, (05/12/2008)

¹⁰ Hans A. von Spakovsky, Illegal Immigrants Are Voting in American Elections, The Cutting Edge, (August 4, 2008)

¹¹ Hans A. von Spakovsky, Illegal Immigrants Are Voting in American Elections, The Cutting Edge, (August 4, 2008)

¹² New Study Shows Non-Citizens are Registering to Vote, KCBA Fox 35 (kcba.com) (October 7, 2008)

¹³ Id New Study Shows Non-Citizens are Registering to Vote,

¹⁴ Id New Study Shows Non-Citizens are Registering to Vote,

¹⁵ Hans A. von Spakovsky, Illegal Immigrants Are Voting in American Elections @3, The Cutting Edge, (August 4, 2008)

¹⁶ Hans A. von Spakovsky, Where There’s Smoke, There’s Fire: 100,000 Stolen Votes in Chicago, The Heritage Foundation (April 16, 2008)

¹⁷ Hans A. von Spakovsky, Where There’s Smoke, There’s Fire: 100,000 Stolen Votes in Chicago, The Heritage Foundation (April 16, 2008)

to jobs in the Defense Department” and some tried to get a U.S. passports with their voter registration cards.¹⁸

The federal Seventh Circuit Court in the challenge to **Indiana’s** photographic voter identification law noted “the extreme difficulty of apprehending a voter impersonator” unless the impersonator and the real voter arrive at the poll at the same time.¹⁹ This type of voter fraud has been described as “nearly impossible for election officials to detect...” or “...difficult or impossible to detect...” with the resources the election officials typically have for their use.²⁰

One of the voters used by the League of Women Voters to demonstrate the Indiana law kept people from voting was a lady who was turned away because she tried to vote using a Florida driver’s license.²¹ As it turned out she was registered to vote in another state where she owned a house.

As a **Kansas** poll watcher in the 2008 general election I challenged a person who was using a Missouri’s driver’s license as her identification. The election judge indicated to me that photo identification was simply to prove the prospective voter was who they said they were and not as proof of residency. The lady was allowed to cast a regular ballot rather than a provisional ballot.

In Bexar County **Texas**, it was discovered that 303 illegal aliens had been able to register to vote and at least 41 had voted in various elections. ²² These non-citizens voters were discovered in part when they started showing up for jury duty. The juries were selected from the voter rolls in Bexar County.

In 1984 a voter fraud conspiracy was discovered in Brooklyn, **New York**, which had been going on for 14 years.²³ It had affected elections in two Congressional, three New

¹⁸ Hans A. von Spakovsky, Where There’s Smoke, There’s Fire: 100,000 Stolen Votes in Chicago, The Heritage Foundation (April 16, 2008)

¹⁹ Hans A. von Spakovsky, Stolen Identities, Stolen Votes: A Case Study in Voter Impersonation, The Heritage Foundation (March 10, 2008)

²⁰ Hans A. von Spakovsky, Stolen Identities, Stolen Votes: A Case Study in Voter Impersonation, pp.1,7,8, The Heritage Foundation (March 10, 2008)

²¹ Hans A. von Spakovsky, Stolen Identities, Stolen Votes: A Case Study in Voter Impersonation, The Heritage Foundation (March 10, 2008)

²² Jim Forsyth, Exclusive: Hundreds of Non Citizens Have Registered to Vote in Bexar County, 1200 WOAI News Radio. (May 16, 2007)

²³ Hans A. von Spakovsky, Stolen Identities, Stolen Votes: A Case Study in Voter Impersonation, The Heritage Foundation (March 10, 2008)

York State Senatorial and four Assembly elections. ²⁴ The techniques used were to facilitate voter impersonation.²⁵

One of the procedures that made this fraud easier was the use of mail in ballots which had been used in New York since 1976, prior to the 1993 federal mandated mail in registration of the National Voter Registration Act (NVRA).²⁶ During this period New York had a signature verification law which proved inadequate to detect the fraud. This voter fraud scheme could not have been successful had a voter photo identification law been in place.²⁷

Eight of the 19 9-11 terrorists were registered to vote in **Virginia** or Florida. ²⁸

Rafael Resendez-Ramirez, an illegal alien better known as the "Railway Killer" voted in Missouri in the 1988 elections. (He was also a convicted felon)²⁹

History of Voter Fraud

Non-citizen, including illegal alien, voting in U.S. elections is not a new phenomenon but it is a growing phenomenon. Sometimes politicians or political parties directly or indirectly facilitate this practice. One expert has concluded, **"Those who ignore the implications of non-citizen registration and voting either are willfully blind to the problem or may actually favor this form of illegal voting"**. ³⁰ The objective facts support this conclusion.

The providing of non-citizens, including illegal aliens, with driver's license has facilitated non-citizens and illegal aliens appearing on voter rolls in greater numbers.³¹ Illegal aliens who want to work in the United States have a significant incentive to

²⁴ Hans A. von Spakovsky, Stolen Identities, Stolen Votes: A Case Study in Voter Impersonation, The Heritage Foundation (March 10, 2008)

²⁵ Hans A. von Spakovsky, Stolen Identities, Stolen Votes: A Case Study in Voter Impersonation, The Heritage Foundation (March 10, 2008)

²⁶ Hans A. von Spakovsky, Stolen Identities, Stolen Votes: A Case Study in Voter Impersonation, The Heritage Foundation (March 10, 2008)

²⁷ Hans A. von Spakovsky, Stolen Identities, Stolen Votes: A Case Study in Voter Impersonation, The Heritage Foundation (March 10, 2008)

²⁸ Hans A. von Spakovsky, Illegal Immigrants Are Voting in American Elections, The Cutting Edge@3 , (August 4, 2008)

²⁹ John Gibson, Winning the Bet, Foxnews.com (April12, 2006)

³⁰ Hans A. von Spakovsky, Illegal Immigrants Are Voting in American Elections, The Cutting Edge, (August 4, 2008)

³¹ Non-Citizen Voting In Federal Elections, Federation for American Immigration Reform (FAIR) , (November 2003) ("With driver's licenses made available by several states to aliens (bout legal and illegal), it seems likely that voter rolls now contain large numbers of non-citizens-enough in close elections to change the outcome if those aliens illegally vote....")

obtain a voter registration card.³² A 1986 federal statute permits employers to accept a voter registration card to establish an employee's employment eligibility.³³ This was the initial employment verification system implemented by the federal government i.e., the I-9 system. In some states it is still in use in conjunction with the E-Verify system. The I-9 system has been very ineffective in preventing illegal aliens from securing jobs.

With a voter registration card and a social security card, the employee (illegal alien) can prove work eligibility.³⁴ Some have called the issuance of driver's license to illegal aliens a "stealth amnesty".³⁵

The Honor System

Some experts characterize the system used to prevent non-citizens from voting as an "honor system".³⁶

In **California** one who signs a registration card without meeting all the requirements can be charged with perjury.³⁷ But as noted by a Monterey County election worker, there is no provision or means for the election officials to verify the statements on a voter registration card.

Illinois has a similar system. The DePage County Clerk acknowledged that they have no choice but to accept the word of the person who is registering as to their citizen status.³⁸ A Cook County election official confirmed that they have choice but to accept a voter registrant's word they are "legal".³⁹

A **Maryland** election official noted that they had no way to check if someone "was in the country legally or otherwise."⁴⁰

Virginia only requires a statement on the registration form that a person is a citizen.⁴¹

³² Jon Dougherty, New law could give illegals right to vote, Free Republic (September 30, 2003)(Voter registration cards can be used to establish worker eligibility and can help get driver's license)

³³Id. Non-Citizen Voting In Federal Elections

³⁴Id. Non-Citizen Voting In Federal Elections

³⁵ Id Capturing the Illegal Alien Vote

³⁶ David Simcox, How Many Non-Citizen Voters? Enough to Make a Difference., at 8 The Social Contract Press (October 2008)

³⁷ Id New Study Shows Non-Citizens are Registering to Vote,

³⁸ Fran Eaton, Can illegal immigrants register to vote? Illinois Review (08/14/2006)

Cal Skinner, Registering Latinos in DuPage County, (08/22/2006)

³⁹ The Question remains: Who verifies who's qualified to vote? Illinois Review (06/28/2008)

⁴⁰ Christina Bellatoni, When Illegals Vote , The Washington Times, (10/12/2004)

Washington election officials note that besides requiring voter registrants to sign a pledge on the voter registration form, there was no way to prevent an illegal alien from registering to vote. ⁴²

In fact, all the **Kansas** County Election Officers (CEO) I talked to said they had to accept as “true” the assertion on the voter registration form including that the registrant was a U.S. citizen.⁴³ Several noted that even if they wanted to try to verify that someone was a citizen they did not have the physical means to do so let alone the authority. None of the CEOs were aware of an audit of any type or at any time having been done on the registration forms to verify if they were truthful.

One Officer told me they simply had to rely on the warning about making false statements, which is on the form, to deter a non-citizen from registering. If a third party did not tip them off they would not, could not, question the statements on the voter registration form. Another noted to me “we are not investigators, that is not our job...”

Requiring Voters to Use Photo ID is the Best Method to Prevent Impersonation Voter Fraud

Requiring voters to present photographic identification at the polls can prevent voter impersonators, people registering in multiple states and stop non-citizens from voting (if the state does not issue driver's licenses to non-citizens.)⁴⁴ The 1984 New York grand jury investigating the 14 year voter fraud conspiracy, recommended requiring photographic identification as did the bipartisan Baker – Carter Commission on Federal Election Reform. ⁴⁵ The basis for the Baker –Carter recommendation was “in close or disputed elections, and there are many, a small amount of fraud could make the margin of difference. And second, the perception of possible fraud contributes to low confidence in the system....”⁴⁶

⁴¹ Christina Bellatoni, When Illegals Vote , The Washington Times, (10/12/2004)

⁴² Christina Bellatoni, When Illegals Vote , The Washington Times, (10/12/2004)

⁴³ R. D. Fry, Discussion with Election Officers / offices in Leavenworth, Wyandotte, Johnson and Salina Counties in Kansas (October 13-14, 2008)

⁴⁴ Hans A. von Spakovsky, Stolen Identities, Stolen Votes: A Case Study in Voter Impersonation, The Heritage Foundation (March 10, 2008)

⁴⁵ Hans A. von Spakovsky, Stolen Identities, Stolen Votes: A Case Study in Voter Impersonation, The Heritage Foundation (March 10, 2008)

⁴⁶ Hans A. von Spakovsky, Stolen Identities, Stolen Votes: A Case Study in Voter Impersonation, The Heritage Foundation (March 10, 2008)

Kansas' Unique Style of Voter Fraud

From mid 2003 through mid 2007 the Kansas Department of Revenue- Division of Motor Vehicles (DOR – DMV) created a “waiver program” by which it would waive the requirement for a driver’s license applicant to provide a social security number if the applicant would provide a written statement (the form was conveniently provided by the DMV) stating they did not have and could not get a social security number. This statement describes a foreign national, as a citizen that does not have a social security number can get one.

Under the Kansas law in effect during the “waiver program” period the DMV was to verify that applicants for driver’s licenses were “legally present” in the United States. However, the DOR-DMV did not verify legal presence for those who applied for driver’s license under the “waiver program”.

In testimony before the Senate Federal and State Affairs Committee on January 24, 2008 the Secretary of Revenue, Joan Wagon, testified that as of that time there was 50,000 driver’s license in the hand of individuals who could not prove they were legally present in the country.⁴⁷ Secretary Wagon’s plan to deal with the 50,000 license in the hands of foreign national was t let it work itself out through attrition over the next six years i.e., through 2014.

During a subsequent in person meeting with Secretary Wagon, she confirmed what I suspected i.e., official Kansas identification cards were also given out under the “waiver program”. Such fact necessarily increases the number of official Kansas identity documents in the hands of foreign nationals.

Subsequent to this meeting I meet with then state Senator Huelskamp. Senator Huelskamp indicated his understanding the number of outstanding driver’s licenses in the hands of those who could not prove legal presence was 70,000. As such it is reasonable to assume the total of outstanding identity documents in the hands of foreign nationals was 70,000+ to 100,000+.

I learned of these outstanding driver’s license in the hands of “illegal’s” shortly after Secretary Wagon testified before the Senate Federal and State Affairs Committee and began tracking it down to verifying the facts of such. I contact the DMV several times and did verify that in fact the “waiver program” did occur and such data was still on the DMV’s data base and those who received driver’s licenses under the “waiver program” could be sorted out as their data field for a social security number would either be blank of have a special code.

⁴⁷ Carl Manning, Kan. Law to Affect Driver’s licenses, Associated Press (1/25/2008)
Minutes of the Senate Federal and State Affairs Committee for 1/24/2008 (approved 2/14/08)

I contacted the Secretary of State's Office several times and was told that they had heard this "rumor about illegals being issued driver's licenses before" but in fact there was "no such list" of these illegals. (My inquiry was regarding foreign nationals not illegals.)

A written request was sent to the Secretary of State, Ron Thornburg, among others, on October 14, 2008 providing him with details of our findings and requesting him to compare the "waiver program" data against the voter rolls to see if any of the foreign nationals had registered to vote. Secretary Thornburg did not response to this request nor did any of the other elected officials who were copied on the request.

We finally did get an in person meeting with Secretary Thornburgh in mid February 2009 in Leavenworth, Kansas. At this meeting the Secretary agreed to look into the issue. We provided him a detailed description of the data he needed to secure from the DOR-DMV.

Several weeks later I followed up with the Secretary of State's Office (SOS) to learn they had done nothing as the Secretary of Revenue (SOR), Joan Wagon, was refusing to release the "waiver program" data to them. I then began requesting help from various Senators and Representatives to secure these documents from the DOR-DMV for the SOS.

I was only able to get one freshman Representative to assist me in this effort. Finally after months of delay the SOR did release some data to the SOS. Unfortunately Secretary Wagon still refused to release documents from the "waiver program" but rather provided data for the period from the time the waiver program ended, June 2007 until the current time (March or Aril 2009).

According to the SOS the provided documents were from a new program of the DOR to provide driver's license to foreign national who were in the country legally, most to attend college. I was later told that an audit of the data revealed that about thirty of the individuals may have committed voter registration fraud and "less than ten" may have voted illegally. I was later told that 6 criminal referrals had been made to country attorneys. However the SOS refused to reveal to what counties the referrals were made and how many referrals went to any county.

To this date, to my knowledge, the "waiver program" data of about 100,000 records has never been compared to the voter rolls to see if an individual shows up on both. This would be probable cause to believe any such individual committed multiple state and federal crimes including felonies. Such crimes would include perjury, false declaration of citizenship, voter registration fraud, voter fraud and voting by a noncitizen.

Conclusion

The reality is that voter fraud does occur in Kansas as it does in most if not all of the other states. The other consistent factor Kansas has with most of the other states is that voter fraud is denied by certain factions within the government and certain politically oriented groups.

Over the last two prior administrations of the Secretary of State's Office, has been a willful denial of an obvious problem including corruption and lawlessness in the Kansas electoral system. Not only has this caused a lack of confidence by the citizens in the electoral system, but a distrust of those charged with ensuring the fair, honest and open elections in Kansas.

It is even more distressing that a prominent state agency and agency head, The Department of Revenue and Secretary of Revenue, have been instrumental in facilitating a unique type of voter fraud by providing 70,000 to 100,000+ foreign nationals with Kansas driver's licenses and official state identification cards from 2003 into 2007. Through the use of these official documents some of these foreign nationals have committed voter registration fraud, voter fraud and no doubt some have committed welfare fraud.

The reality of the situation is not lost on the majority of the citizens, who as a result, in the words of the Carter Baker Commission, develop a "... low confidence in the system..." as well as a distrust and disrespect for those public officials who attempt to deceive them about the real facts of the problem and those who are charged with securing fair elections but have fallen woefully short of even attempting to restore a level of integrity to the electoral process.

The current "honor" system in Kansas does not fulfill the mandate of the Kansas constitution for the legislature to provide a law requiring conclusive proof of voter eligibility including U.S. citizenship. As long as the current system remains the Kansas legislators are in breach of their oath of office to support the constitution.

The SAFE Act goes a long way toward remedying both the lack of confidence in the process and the disrespect for the public officials who have failed to uphold their oath of office. The only acceptable argument against a law requiring conclusive proof of voter eligibility is that such law is not in compliance with the U.S. Constitution. That is a non-issue with the bill under consideration.

The SAFE Act must be passed.

For the sake of Liberty,

Richard D. Fry

Other Available Information:

For publications on this same or a related subject please see the following at www.groups.yahoo.com/group/November_Patriots/ :

About the

November Patriots

Who are the November Patriots?

The November Patriots are a grassroots association of nonpartisan citizen voters who believe “we the people” are losing our liberties and our Great Republic to a group of political and commercial interests that put their own interest and desires above those of the American citizen and this Great Republic.

Mission Statement

The November Patriots’ Mission is to promote a more open, representative and responsive political environment in the United States.

Action Statement

The November Patriots will achieve this mission by:

1. Educating the public on the political process at all levels,
2. Motivating the public to take a more active role in the political process,
3. Informing the public of issues and / or governmental actions which may have implications for the open, representative, and responsive nature of the political process in the United States,
4. Monitoring political activities at all levels and intervening in an appropriate manner when necessary.

About the Witness

Mr. Fry has been active in the grass roots liberty movement for about four years and is currently active at the state and national level. He founded the government watch dog and citizen education group the **November Patriots**. In addition to being the Kansas Volunteer Coordinator for the **Tenth Amendment Center**, he serves as the Director of Operations for the **Coalition of Citizens Advocacy Groups** (CCAG), the National Deputy Director of the **FIRE Coalition**, General Counsel for the **Patriot Coalition**, a state advisor to **F.A.I.R.**, and the Assistant State Representative of **Independence Caucus**, among other responsibilities.

He has testified before legislative committees in both Kansas and Missouri including on voter fraud and identification, global identifications systems and the infamous Missouri Information Analysis Center (MICA) a fusion center i.e., a federalized state law enforcement center, and has advocated with legislators at the state and national level.

He practiced law in the area of civil litigation for about 17 years before devoting his full time to advocating for a return to Constitutional governance and citizen advocacy on a pro bono basis.

He received his Juris Doctor in 1988 and his MBA in 1989 from the University of Kansas.

Testimony by John F. Settich, Ph.D.
Delivered To the Committee on Ethics and Elections
Kansas Senate, Thursday, March 10, 2011 at 9:30 a.m.
In Opposition to H.B. 2067

Good Morning, Ladies and Gentlemen.

I am John F. Settich, a voter in Atchison, Kansas. Today I express my opposition to House Bill 2067.

I am a professor of political science and a practitioner of the political arts.

Whether the game is politics or poker, the aim of cheating is to win.

The goal of any person who would engage in fraudulent registration or voter impersonation would be to win an election.

There is no evidence that a modern American election has been "stolen" by these types of voter fraud.

House Bill 2067 is a solution in search of a problem.

I base my testimony on academic research and on my personal history of more than 40 years activism in voter registration and get out the vote.

My research on vote fraud began by studying nearly 4,000 state representative contests in 38 states in 2006 on the theory that these districts are small and, thus, could be stolen by voter impersonation or fraudulent registration.

I demonstrate that it is infeasible and essentially impossible to steal an election with such fraud, even when the vote totals are small.

My paper is attached, I encourage you to read it.

Uncontested elections cannot be stolen.

Forty-one (41) percent of the Kansas House of Representatives, won election in 2010 with 100% of the vote. These 51 seats had no contest.

In the Kansas Senate 6 members had no challenge in 2008 and 8 in 2004.

District boundaries are often drawn with partisan electoral intent, making it less likely for political upsets, whether by fraud or honest means.

Second, Elections near the top of the ticket cannot be stolen, the numbers are too big!

On the blue handout I show the top of the ticket Republican winners in Kansas this past November. Their margins were impressive!

It would have taken nearly 50,000 fraudulent votes to have beaten the new 3rd district Congressman.

An army of 181,000 impersonators would have been necessary to defeat the new Republican Secretary of State!

These elections are completely out of reach for such vote fraud.

Third. If you plan to steal elections, then get a big prize.

Winning a few state house seats would not be worth the effort. Go for majority control of one or both houses, especially just before redistricting!

I developed a detailed plan that Kansas Democrats might have used to seize the majority by vote fraud.

I do not advocate stealing elections, but I wanted to show how impossible it would be.

This is probably the most complete plan for vote fraud that you will ever see. Genuine conspirators don't document their plans on paper.

Fourth, it is essentially impossible to target elections that would be close enough to steal through fraud.

I tried and could not do it...

On the handout I have a chart that shows 13 Kansas House seats that Republican candidates won in 2006 by narrow margins, 3 percent or less.

Only 2 of the 13 showed real signs of vulnerability in 2004. Four were uncontested Republican victories that year and one Democrat had no opponent.

The 9 members of this committee have been candidates in 14 general election contests since 2004. Your average margin of victory was 6,311.

If you exclude Dr. Reitz's 24 vote victory, the average approaches 7,000.

How could conspirators enroll fraudulent voters in districts that they did not know would be within reach? And, why would they send hundreds of phony voters to polling places when the closeness of the race was unknown?

Fifth, it would require extraordinary organizational skills and lots and lots of money to perpetrate a fraud worth conducting.

Sixth, how would the conspirators avoid detection?

If 500 to 1,000 phony voters were mobilized, the secret of the conspiracy would not last long.

Finally, it has not been done!

The best known modern case spanned the period 1968 through 1982 in Kings County, NY (Brooklyn).

The grand jury found evidence of fraudulent practices in 2 Congressional primary elections, 4 primary elections in state Assembly districts and 3 primary elections for State Senate and 2 elections for the state Democratic party committee.

The grand jury only found that the fraud affected the outcome of one election: for a member to the state Democratic committee.

The Brooklyn irony is at the heart of my research: being successful at vote fraud is very, very difficult, even for those who engage regularly in this dark art.

It is one thing to cheat; it is quite another matter to win by means of cheating.

Any fool with a mask, a gun and a getaway plan can rob a convenience store, but the crime of stealing elections in this way would be much more complicated than a midnight stickup.

Summary:

Cheating aims at winning. Big elections cannot be stolen with voter impersonation and fraudulent registration, the numbers are too daunting.

There's no evidence that an election has been stolen by fraudulent voters in Kansas or anywhere else in modern times.

Kansas and America needs more active, attentive voters, not fewer.

If enacted, HB 2067 is likely to reduce the number of lawful voters, thus diminishing our democracy.

These changes would frustrate ordinary people and disenfranchise Kansans.

Thank you.

Specifying a Model of Political Infeasibility for Voter Fraud in State Representative Elections

By
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Abstract

I present an analytical model that challenges the assumptions underlying recent legislative activism that has created what I describe as an excessive system of protection against voter fraud. The data set includes all 3,858 state representative contests in 38 states in the general election of 2006. Partisan control of state legislatures yields one of the most valued prizes in politics: the ability to re-district both the state legislature itself and the U.S. House of Representatives. This model shows that in order fraudulently to elect a single member of a state house of representatives there must be both an elaborate conspiracy and a deep trough of corruption. I argue that it is essentially impossible to create such a conspiracy or to manipulate such a thoroughly corrupt system in the dozens of precincts necessary to create a winning majority for a single house member.

Prepared for presentation at the 2009 annual meeting of the Midwest Political Science Association, April 2-5, 2009, Chicago, IL.

Introduction

"Both Republicans and Democrats are corrupt. The motto of the Democratic Party is: 'Anything to get in.' The motto of the Republican Party is: 'Anything to stay in.'"

William Randolph Hearst, American Publisher, April, 1907

There are three plausible explanations for voter fraud in America: mischief, mistake and malice. Some persons may choose to impersonate a voter with some mischievous intent, never expecting to affect the outcome of the election. Others make the mistake that several thousand Florida voters seemed to have made when they intended to vote for Al Gore in the presidential contest of 2000 and voted instead for Pat Buchanan. The most serious instance of fraud would be the voter who would enter a conspiracy with others to upset the ordinary democratic order by systematically denying a lawfully cast majority of votes to one candidate or by fraudulently delivering votes to other candidates not lawfully earned by normal processes. The mischievous fraud is a kind of petty crime against the democracy. I argue that the mistaken vote is the product of misinformed ignorance and not damaging to the system because these tend to be randomly distributed and not determinative of any election outcome. Malicious fraud represents a danger to the democracy, if implemented. Those who seek to create a fraudulent voting conspiracy risk failure, detection and criminal prosecution because such an enterprise must include many individuals to deliver enough votes to affect the outcome of the election

I hypothesize that perpetrating a successful fraud is so complex, absent corrupt collaboration with election officials, that it could not and, apparently, has not been achieved in any federal election through fraudulent registration and voting by unqualified voters in modern American history. Therefore, my argument continues, recent state legislation that seeks to impose stringent controls on voter identification, constitutes an impairment on the American democratic election process.

In the Spring, 2008 seminar I offered an upper division special topics course on Election Law and Regulation; seven students enrolled, all political science majors or minors. The students reviewed all state house elections in 2004 and in 2006 in our original sample of 10 states. Our first class session was the day after the Supreme Court heard oral arguments in the cases that animated the research. The Court did us the courtesy of issuing its written opinion essentially on the last class day of our semester.

I would like to acknowledge the contributions of Jimelle Austin, Justin Carroll, Joan Cinotto, Luke Hendrixson, Stash Holmes, Tara McLanhan and Andrew Wales, all undergraduates at Benedictine College who enrolled in this special topics research course in the Spring, 2008 semester during which this project began.

Supreme Court and State Legislatures

On April 28, 2008 the Supreme Court of the United States announced its opinion in the case of *Crawford, et al. v. Marion County Election Board, et al.* (No. 07-21) and a companion case, *Indiana Democratic Party, et al. v. Rokita, Secretary of State of Indiana, et al.* By a margin of 6-3 the majority of the Court upheld an Indiana statute (SEA, 2005) that requires citizens voting in person to present government-issued identification cards. Justice Stevens wrote for the majority. Justice Souter and Justice Ginsburg joined in a lengthy dissent to the majority. Justice Breyer dissented separately.

On decision day, the *Washington Post* (Barnes, 2008) summarized the conflict in *Crawford* in these terms: "The Supreme Court ruled today that states may require voters to present photo identification before casting ballots, upholding a Republican-backed measure that proponents say combats voter fraud and opponents believe discourages voter participation." Among the states with some requirement for voter identification, Indiana's was the most restrictive at the time of the decision (Ibid).

The Help America Vote Act (Public Law 107-252) mandated that all states require identification from first-time voters who registered by mail and did not provide verified identification with their mailed application. (National Conference of State Legislatures, 2008). Shortly before the November, 2008 general election, the National Conference of State Legislatures posted on its web site a summary of which states had enacted statutes that had "broader voter identification requirements than what HAVA mandates" (Ibid) Appendix A summarizes that NCSL posting. However, this appendix does not detail the methods employed by each of the states or the status of those laws. Some had been toughened since enactment, others suspended or amended by litigation. The NCSL report provides that complete summary on its website.

This research does not set out to evaluate the direct effects of how these state laws may either impede democratic participation or protect from fraudulent patterns of voter impersonation. I do offer an analysis and a model that attempts to fill the void of evidence with a logical model. Proponents of restrictive voter identification laws have not established that voter impersonation fraud is now widespread. Theirs is a conditional argument in which they portray such abuses as potential assaults on the integrity of American elections.

One underlying oddity of the recent Supreme Court decision is that it stipulates that neither the petitioners nor the respondents created any empirical evidence in the record that showed that a single instance in person voter impersonation at a polling place has actually occurred in Indiana (*Crawford, op. cit.*). Nor did either side create a credible record that a single individual resident of Indiana had been denied the opportunity to cast a ballot in person because of the requirement to produce a photographic

identification card. This latter observation is true, in part, because 2008 would be the first election in which this Indiana law would be enforced.

A Brief Review of American Vote Fraud and Protections

The Constitution (Article I, § 4; Amendment X; *inter alia*.) provides roles for both the states and the central government in how American elections will be conducted. The history of election laws expands and contracts with events. In the period of Reconstruction, the Congress passed the Enforcement Acts (Donsanto and Simmons, 2007) and later repealed them in 1894. Civil rights legislation in the 1960s provided specific protections for voters from abuses by state election officials. The modern criminal federal statutes (42 U.S.C. §§ 1973i(c), 1973i(e), 1973gg-10) identify violations connected with false voter registration, multiple voting and fraudulent elections when federal candidates appear on the ballot (*Ibid*).

In May, 2007 the U.S. Department of Justice issued the 7th edition of its Federal Prosecution of Election Offenses (Donsanto, *op. cit.*). This 326-page volume follows the 6th edition, published in 1995. The authors describe it as a handbook to guide U.S. Attorneys in prosecutions with a somewhat puzzlingly admonition. U.S. Attorneys and field offices of the Federal Bureau of Investigation may only conduct preliminary investigations into election fraud. However, consultation with the Public Integrity Section of the U.S. Department of Justice in Washington, D.C. is required before any such federal officials may file charges or present evidence to a grand jury. (*Ibid*, p 17 *et seq.*) A cynical view might be that such required consultation would be a useful tool to selectively enforce these offenses for full political advantage. A more generous view would be that these offenses are so inimical to the democracy that their prosecution should be centralized and coordinated to assure maximum enforcement effect. Donsanto and Simmons (*Ibid*, pp 2-5) describe these types of federal election crimes: election fraud; patronage crimes; campaign finance crimes and civil rights crimes.

The offenses described hereafter in this paper may be prosecuted under one or more of the sections of the Federal Code cited above, so long as a federal candidate is on the ballot. Fraudulent registration or voting, for example, may be prosecuted under the National Voter Registration Act (so-called Motor Voter, 42 U.S.C. §§ 1973gg-10) as a felony with a maximum term of imprisonment of five years. These offenses typically are also subject to jurisdiction of election laws in the states. However, both state and federal prosecutors have limited resources to conduct such investigations and to successfully prosecute such offenders.

There is an old aphorism that seems to fit: "The plural of anecdote is not data." There are periodic media reports and some from apparently authoritative organizations as well (von Spakovsky, 2008; Talley, 2007; and Langholz, 2008) that allege vote fraud, especially in false registration and voter impersonation. A recent and high profile case occurred in the 1997 Miami mayoral primary where vote fraud was alleged and

conspirators were convicted. (Minnite and Callahan, 2003) As a municipal election, those convictions were conducted under the laws of the state of Florida.

Another historic and often-cited case of voter impersonation and fraudulent registration (von Spakovsky, op. cit.) spanned the period 1968 through 1982 in Kings County, NY (Brooklyn). The grand jury in this case found evidence (NY Supreme Court, 1984) of fraudulent practices in two Congressional primary elections in 1976 and in 1982 as well as four primary elections in three state Assembly districts and three primary elections for State Senate and two elections for state (Democratic party) committee in two different districts. Among all of these elections with alleged illegal practices, the grand jury only found that the fraud affected the outcome of one election for a member to the state Democratic party committee. The Brooklyn irony is at the heart of this research paper: being successful at vote fraud is very, very difficult, even for those who allegedly engage regularly in this dark art. It is one thing to cheat; it is quite another matter to win by means of cheating.

Another body of evidence suggests that there are remarkably few convictions for such offenses and very few charges filed either at the state or federal level (EAC, 2007; Minnite and Callahan, 2003; Hershey, 2009; Davidson, 2009). It may be that there are few such documented criminal cases of elections stolen with fraudulent votes either because prosecutors are inattentive and ineffective or it may be that there are very few such instances.

The Search for a Prize Worth Stealing and A Research Approach

The question remains: how could conspirators engineer a successfully fraudulent election and what prize would be worth pursuing? U.S. Senate contests involve millions of votes, depending on the size of the state. Elections for the U.S. House of Representatives typically involve hundreds of thousands of votes in general elections. Governors, mayors of big cities, constitutional officers of states and even state senate elections turn on thousands of votes. Stealing one of these elections necessarily would involve thousands of fraudulent voters. The best prize may be the most accessible one, in terms of votes cast in each election: seats in state houses of representatives.

Partisan control of state legislatures offers America's two political parties one of the grandest of all prizes: the ability to draw district lines for both the legislature and of the apportioned seats in the U.S. House of Representatives. Other executive offices, such as governor and attorney general are important, but as statewide elections, there are fewer opportunities to commit vote fraud successfully. Similarly, county and municipal elections usually involve more precincts and more total votes cast than those in state legislative districts. With fewer votes in a state legislative race, there is theoretically a higher likelihood that fraud could affect the outcome. For these two important reasons, I chose state house of representative district elections as our unit of analysis. Each of these states in our sample uses the single-member district format.

I chose the general election of 2006 for two reasons: first, all of the data were available when I began the project and second, as a non-presidential election year, it would offer data unaffected by the large national phenomena that often mask trends in "down ballot" races.

Hypotheses and the System of Categories

H₁ Most elections for seats in the state house of representatives cannot be stolen through voter fraud because they are unevenly competitive.

In order to test this hypothesis, I created four categories to analyze elections in state houses of representatives. I reasoned that these categories would enable us to estimate the likelihood of creating a successful fraud for state representative elections. The data in Table 1 below represent Indiana state house elections in 2006. Because Indiana has 100 seats in the House, the raw numbers also express the percentages. Indiana was part of our original sample, in part, because it was the state with the stringent voter identification law tested by the Supreme Court of the United States.

Table 1. Indiana House of Representative General Elections in 2006

Indiana State House General Elections in 2006	Democratic	Republican	Total	Estimated Likelihood Of Winning Through Fraud
Category 1: Uncontested	19	11	30	Impossible
Category 2: Incumbent in 2004 Elected with a Margin of $\geq 10\%$	20	21	41	Very difficult
Category 3: Incumbent in 2004 Elected with a Margin of $< 10\%$	12	6	18	Possible
Category 4: Open Seat in 2006	4	7	11	Best chance
TOTAL	55	45	100	

The sum of categories 1 and 2 for Indiana is 71 seats. These, I suggest, would be impossible or difficult to steal through voter fraud. Our analysis included a comparison of the names of the candidates between 2004 and 2006 so that we could validate whether incumbents were defending their seats and, also, whether the 2006 election was an open seat contest. This model proposes that only 29 seats would be vulnerable to theft by fraud. Stealing a seat from an incumbent whose margin was 7, 8 or 9 percent in 2004 (Category 3) would probably be difficult, but conceivable. My analysis assumes that all candidates have average funding and similar qualifications and no scandals or advantages that might create a significant political imbalance.

Thirty seats in the Indiana House of Representatives were uncontested in 2006. Nineteen Democrats and 11 Republicans were elected without a challenge. There are several obvious explanations for this phenomenon. First, the districts might be drawn with such an overwhelming partisan advantage that no challenger could hope to succeed. Second, there might be an organic weakness in the ability of both state party organizations to recruit and fund candidates for these offices. Third, there might be a corrupt bargain between the party organizations to allow some seats on both sides to go without challenges for the sake of preserving resources. (See Future Research)

Our original sample was somewhat difficult to gather and manage, relying on a manual, item-by-item examination of hundreds of elections for two election cycles. The students calculated margins and compiled the data in the four categories. Later I acquired the data set from The Almanac of State Legislative Elections 3rd edition (Lilley et al., 2008). These data, in Excel™ format, enabled me to examine trends in all states for the 2006 legislative general elections. This data set, however, did not have the names of the candidates, so my system of categories shrank to three, since I could not identify which were open seat elections.

Despite the completeness of the Almanac data set, not all states fit into this analysis. I eliminated Nebraska because of its unicameral form. States that do not have single-member districts in their lower house also fell out of the sample. Those are: Arizona, Maryland, New Hampshire, New Jersey, North Dakota, South Dakota, Vermont, Washington and West Virginia. Essentially all of Louisiana's data was missing; it too was eliminated. Finally, Virginia held its election in 2005, thus it was not included because it fell out of the time frame of November, 2006. In Oklahoma only 48 of its 99 seats were elected in 2006. All of those data remained in the analysis, as did the partial data from Florida where 67 of the 120 seats were on the 2006 general election ballot.

The first finding from this larger data set of 38 states seems to validate my first hypothesis. In 2006 no voter impersonation fraud could have stolen these uncontested elections. Table 2 shows that 1,340 state house elections in 33 states were uncontested in 2006, a full 38% of the 3,464 seats in these states. Five other states (Hawaii, Oklahoma, Oregon, New York and Minnesota) had no uncontested winners.

Table 2. States with Uncontested Elections in 2006 for State Representative

State	Total Seats	Democrats	Republicans	TOTAL	% All State Representatives
GA	180	58	71	129	72%
SC	124	35	53	88	71%
MA	160	94	13	107	67%
WY	60	8	29	37	62%
AL	105	36	24	60	57%
MS	122	49	20	69	57%
KY	100	34	22	56	56%
NM	70	29	10	39	56%
NC	120	32	31	63	53%
IL	118	34	25	59	50%
RI	75	31	6	37	49%
AR	100	30	19	49	49%
TN	99	24	24	48	48%
ID	70	8	23	31	44%
DE	41	9	7	16	39%
WI	99	24	13	37	37%
IN	100	17	16	33	33%
PA	203	33	33	66	33%
KS	125	21	19	40	32%
MO	163	35	17	52	32%
AK	40	6	6	12	30%
NV	42	8	3	11	26%
TX	150	21	17	38	25%
FL*	67	5	10	15	22%
CT	151	17	15	32	21%
IA	100	11	10	21	21%
CO	65	11	2	13	20%
UT	75	1	11	12	16%
MT	100	11	4	15	15%
OH	99	4	6	10	10%
CA	80	4	0	4	5%
ME	151	4	0	4	3%
MI	110	2	0	2	2%
TOTAL	3,464	746	559	1,305	

* Florida, only 67 of 120 House seats were up for election in 2006

Considering these data in Table 2, a theorist might ask which holds the greatest potential danger to the vitality of a democratic republic: A democracy in which more than 700 state representatives of both parties in the first 10 states shown above are elected without an opponent or one in which a fraction of the electorate fails to produce a government issued identification card at the polling place?

Election margins of 10% or more are generally regarded as convincing. Table 3 shows that nearly 1,000 state representatives in some of America's most populous states crushed their opposition in the general election of 2006. In California, for example, the vote advantage for winners with more than 10% of the total vote ranged between 20,000 and 45,000. No voter impersonation fraud could override such margins. In the much smaller state of Maine such 10% and greater victories converted to 700 to 1,500 vote margins. One hundred fraudulent voters, each voting seven times in a single state house district would be needed to overcome even the narrowest margin.

Table 3. 2006 General Election Results Where Contested State Representative Seats Yielded the Winners Margins of 10% or more

State	Seats	Democrats	Republicans	Total	% All
CA	80	39	21	60	75%
MI	110	47	26	73	66%
OR	60	23	12	35	58%
CT	151	67	21	88	58%
UT	75	8	35	43	57%
OH	99	33	17	50	51%
MN	134	49	18	67	50%
MT	100	18	28	46	46%
IA	100	31	13	44	44%
PA	203	53	34	87	43%
NY	150	63	0	63	42%
CO	65	14	13	27	42%
ME	151	43	17	60	40%
IL	118	27	17	44	37%
KS	125	13	33	46	37%
MO	163	23	36	59	36%
IN	100	22	13	35	35%
TX	150	31	21	52	35%
TOTAL	2,134	604	375	979	

Table 3 is slightly truncated. It only reports those states where 35% or more of all the state house seats were carried by margins of 10% or more in 2006. See Appendix B for all values in Category 2. The data from category 1 and 2 account for 71% (2,756) of all 3,858 state house seats elected in the sample of 38 states. This paper proposes, in a detailed plan that follows, that winning any of these elections cannot be achieved through voter impersonation fraud because of the sheer scale of vote margins to overcome.

Success in a fraudulent election will most likely depend on mobilizing such faux voters in political areas where a relatively small number of votes may change the result of an election. Category 3 in my analysis identifies such electoral contests.

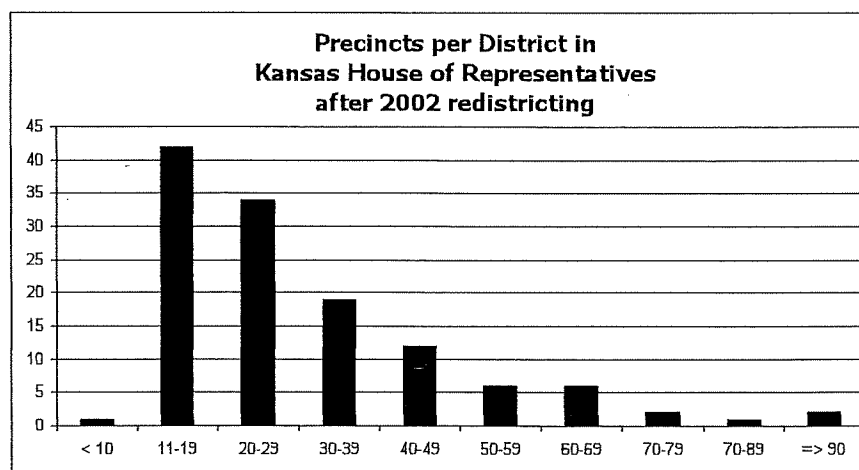
H₂ Seats in the state house of representatives can best be stolen through voter fraud in districts where the margins of victory have historically been the most narrow.

Those seats in category 3 represent just 29% (1,102 seats) of all of the 3,858 seats in the 38 states in this sample. See Appendix C. More than one-half (58%) of all the seats in the New York Assembly fell into category 3 (margins of victory less than 10% in 2006). New York has a vigorous multi-party system that resulted in 35 plurality victories in 2006, most (27) of those were Republican wins. The New York Democrats shut out the Republicans in Category 2 victories with 63 wins by margins of greater than 10% while the Republicans had none of that scale. Those narrow Republican Category 3 victories fell generally in the range of 1,000 to 5,000 votes. It may be mathematically possible to steal such elections in New York, with a robust conspiracy, although Brooklyn Democrats failed to do so during nearly 15 years of trying.

Close elections may be subject to theft by vote fraud, if they are known in advance to likely be separated by a few hundred votes. That is a mighty and apparently unsupportable assumption as I show later in my attempt to target Kansas districts to steal. Winning by corrupt voting depends on manipulating narrow margins. This starts at the level of precincts.

Precincts are the smallest political units in America. County election officers and executives (commissioners) establish the boundaries of precincts, usually including equivalent numbers of registered voters. These tend to be rather constant over long timeframes, changing only when demography demands because of population growth or decline in areas within counties. Many counties aggregate precincts into larger bundles, such as wards or townships. Using the state of Kansas as an example (Chart 1, below)), there are 3,777 precincts included in the 125 state representative districts (Galligan, 2008). The mean number of precincts is 30; the median is 24 per district.

Chart 1. Number of Precincts in Kansas State House districts



In order to validate hypothesis 2, I must find a set of narrowly contested state house districts with as few precincts as possible, so that a successful fraud might achieve victories in those districts. I have chosen Kansas because it does not have an onerous identification card requirement and because of my familiarity with its political dynamics.

Targeting the Kansas State House Districts for the Fraud: A logical proof and a predictive challenge

One would assume that it would be rather straightforward to choose which districts should be targeted for the 2010 fraud. There are many factors that create close elections, only a few of which are predictable. The thirteen state house districts shown in Table 4. below are those that Kansas Republicans won in 2006 by the narrowest of margins, ranging from less than 1% to only 3%.

Table 4. Comparing vulnerable GOP winners in 2006 with past outcomes

GOP winners in 2006			Same District in 2004			Same District in 2002		
District	Margin '06	% Win	Winner	Margin '04	% Win	Winner	Margin '02	% Win
91	373	3%	REP	2,505	14.0%	REP	670	5.0%
9	355	2%	REP	7,856	100.0%	REP	5,875	100.0%
23	190	2%	REP	565	3.0%	REP	299	3.0%
24	592	2%	REP	8,110	100.0%	REP	5,909	100.0%
39	427	2%	REP	10,900	100.0%	REP	6,717	100.0%
65	142	2%	REP	1,890	15.0%	REP	1,276	15.0%
54	237	1%	REP	3,081	14.0%	REP	464	3.0%
59	219	1%	REP	8,136	100.0%	REP	5,653	100.0%
69	156	1%	REP	33	< 1%	REP	5,185	100.0%
81	102	1%	REP	2,618	15.0%	REP	1,467	11.0%
114	133	1%	REP	1,206	6.0%	DEM	670	5.0%
72	34	< 1%	DEM	7,160	100.0%	DEM	463	3.0%
112	43	< 1%	REP	607	4.0%	REP	5,392	100.0%
9 of 13 victories by < 250 votes			1 of 12 victories by < 250 votes			0 of 11 victories by < 250 votes		

The 2006 results for these 13 districts show Republican vulnerabilities, since their victory margins were so narrow. However, examining these same 13 districts in the preceding 2004 election shows that only one, the 69th district, was very close, just 33 votes. In that year four of those were uncontested Republican victories and four others were 14-15% wins. Another four were in the range of 3-6%, but the vote margins in those Republican victories were between 565 and 1,206 votes. One of these potential targets in 2010 was an uncontested Democratic win that turned into a Republican win in 2006.

When appraising these districts as potential fraud targets in 2010, they seem less attractive in the off-year 2002 elections when none of the 11 Republican victories that year were by margins of less than 250 votes. The 2006 thirteen districts may be targets for the 2010 vote fraud, but the margins needed to win may be beyond the ability of the conspiracy to deliver. The process of targeting must be more complicated than a simple examination of raw votes and winning margins.

Further complicating this process of targeting in the 2010 elections, the Kansas Democrats must hold the narrow victories they achieved in 2008 and in 2006, presumably without the benefit of the fraudulent voters. It seems rather clear that a conspiracy should not be wasted in the defense of incumbent seats. Yet, in that 2006 election, there were five narrow victories for the Democratic candidates, each with a margin of less than 250 votes. The actual margins of victory in those five seats were: 3, 50, 159, 164 and 189 votes. Four of those wins came at the expense of Republican incumbents. The fifth was one that had previously been held by an uncontested Democrat whose 2006 defense victory margin was just 189 votes.

Therefore, it seems that identifying 20 house seats for fraud-induced Democratic victories in 2010 would probably be selected with an elaborate calculus that may include the following terms, each weighted, as appropriate.

1. An open seat without an incumbent Republican defender may be a very good target.
2. Some proxy indicator for Democratic voting tendencies, such as ballots cast for President Obama in November, 2008.
3. Districts with the lowest density of identified Republican voters, outnumbered by Democrats and Unaffiliated voters, those without a history of voting in primary elections where they are "branded" by Kansas election law with the party whose ballot they vote.
4. Districts with a past history of electing a Democratic member to the Kansas House of Representatives.
5. Districts with known, significant demographic changes, such as recent and large in-migration of likely Democratic voters, such as Latinos.
6. Districts in which the rivalry between conservative and moderate Republicans typically creates spirited and divisive primary election contests, especially for the State House seats.
7. Districts in which Republican incumbents are known or suspected weak candidates without ample measures of achievement, charisma or financing.
8. Districts in which a popular Democratic personality, such as a successful mayor or seasoned and highly visible public figure, may be available to make the race for the State House.

If a conspiracy is to succeed, it depends on the very difficult proposition that the leadership team will choose 20 districts where the margins will be narrow enough to be

subject to winning through this rather limited infusion of fraudulent votes. Assuming an average, yet ambitious plan, of each faux voter casting 12 ballots in this election, the 500 enlisted voters will only yield 6,000 votes, spread into 20 districts at an average of 300 votes per district.

Furthermore, even well designed voter preference polls would not help in this targeting, because the fraudulent voters must be registered into certain precincts and legislative districts. They cannot be mobilized late in the process, after the registration deadline, into areas that seem competitive only late in the campaign. Additionally, such preference polls are expensive tools that would drive the cost of the conspiracy much higher, even if reliable pollsters were available.

This analysis calls the fraud infeasible, in large part, because of the near impossibility to identify 20 districts where such few votes will create winning margins for the conspiracy. Close elections are apparent in a post election analysis, but rarely so evident in advance. Nonetheless, what follows is my proposed plan for this fraud, assuming that Hypothesis 2 can be satisfied.

The Plan for Creating a New Democratic Majority in the Kansas House of Representatives in the General Election of November, 2010 through Fraudulent Voter Registration and Illegal Voter Impersonation

Overview

In the general election of November, 2008, the Republican Party held its majority in the Kansas House of Representatives. The legislators sworn in January, 2009 were 77 Republicans in number and only 48 elected in the Democratic Party. That is a 15-member margin for the Republicans (62% Republicans and 38% Democrats). The Kansas House of Representatives consists of 125 members. A simple majority is 63 members.

This section is part of a paper that posits the political infeasibility of voter fraud in state representative elections. The purpose of this part is to outline the details of the fraud that would be necessary to restore Democrats to the political majority in the Kansas House of Representatives. Obviously, there are many ways for the Democratic Party in Kansas to achieve this goal legally, with the consent of Kansas voters. This paper is not a call to action that proposes vote fraud. Rather, the author seeks to demonstrate the practical impossibility of successfully creating, executing and achieving a complicated fraud with a politically vital purpose, i.e. placing the minority party into majority control of a state house of representatives.

The Kansas legislature is as good an example as a researcher might choose. The Kansas legislative districts, as in most states, are drawn by the political majority with an eye toward preservation of their political species, i.e. Republican partisans. The

historic norm has been to re-draw district lines after the national decennial census and reapportionment of the U.S. House of Representatives. This model of fraud ripens at just the right time (November, 2010) so that Democrats might restore district lines that would favor their election for the ten years that follow. A central theme of this paper is that every vote fraud ought to have a valuable goal. One would not reasonably risk imprisonment after conviction for vote fraud for immaterial aims. In the larger political scheme winning one state representative election might be satisfying, but if that purloined victory only changes the partisanship of one vote out of 125 in a legislative body, the political gain is very slight.

Reversing the political polarity of the Kansas House of Representatives would be a major achievement, whether lawfully or fraudulently attained. This model outlines a plan for conspirators who seek Democratic victories. This paper assumes that neither Democrats nor Republicans are more organically inclined toward fraud than the other. The political identity of the present majority in the Kansas House is merely a fact.

Assumptions and Conditions Precedent to the Conspiracy

This model for massive vote fraud depends on a set of assumptions and conditions precedent. The fraud outline that follows makes brief citation of some of these. A further exposition of these assumptions and conditions will contribute context to the fraud model.

1. **The goal is worth having.** The majority party has all of the natural advantages of winning roll call votes, appointing chairmen and members to committees and drawing district lines that favor their own. Also, these victories may advance party aims in electing more constitutional officers or in creating a stronger partnership with a governor of the same party.
2. **The goal cannot be achieved through lawful means.** Kansas Democrats have recruited candidates, financed state House campaigns and failed to gain the majority they seek. The party preferences of voters are not likely to change spontaneously or even because of persuasive campaign appeals. Politically rigid district lines defend Republican legislators and frustrate Democratic victories.
3. **Incumbent Democratic Party leadership would neither approve nor perpetrate such fraud.** Political party leaders have long-term investments in their careers. They are unlikely to choose directly such unlawful options because if their roles were detected, their careers would probably end ignominiously. Additionally, discovery of criminality would inevitably hurt other Democrats now holding or soon seeking higher office.
4. **Plausible deniability is possible.** Party leaders and the actual candidate-beneficiaries should be insulated from knowledge about or participation in the fraud

plan. If this can be achieved, then their political futures can survive fraudulent election or disclosure of the fraud plan. If it is impossible to create and maintain such a firewall of ignorance and isolation, then a cohort of future political officeholders will be tainted and discharged from the political system.

5. **The corps of the conspiracy will be discreet.** When one person holds a secret, it may remain unknown to others. When two or more persons know such forbidden facts, the chances for preserving the secret diminish. The more numerous the cognoscenti, the more certain that the conspiracy will be uncovered. This fraud depends necessarily on recruitment and mobilization of hundreds of persons. The risk of discovery will be profound, even if each fraudulent voter is uninformed of the architects and principal builders of the fraud. Prosecutors historically unravel conspiracies by working their way up the chain of culpability through plea bargains with low-level operatives.
6. **The conspirators target the proper districts to perpetrate the fraud.** As this paper asserts elsewhere, the research appeal of state house district contests is their relatively small number of precincts and votes cast. In order to achieve a net gain of 15 seats in the Kansas House of Representatives, the conspirators must choose their targeted legislative districts very, very carefully. They will not want to choose a district they might win with a lawful, effective campaign. They want to select a district with high predictability in its voting patterns and turnout. The conspirators should also choose districts where the fewest fraudulent votes will have the biggest impact on the outcome: choose a district where 400 votes will bring victory; avoid those that would require 4,000 or more votes. These districts, to the extent possible, should also be geographically manageable. Many districts include several counties with small populations and distances measured in one hundred or more miles within the district borders. Fraud in those districts would be more difficult to execute successfully.
7. **The conspirators have the requisite skills to succeed.** This criminal enterprise requires extraordinarily sophisticated knowledge about election laws, political geography and processes and logistics sufficient to succeed. Any fool with a mask, a gun and a getaway plan can rob a convenience store, but this vote crime will be much more complicated than a midnight stickup. The team at the top of the conspiracy would likely require a group of persons with differentiated talents that are complementary. The conspiracy requires the creation of false identities, the production of fraudulent documents, the training of the faux voters, the supervision and transportation and payment of the corps of crooked voters and the maintenance of a reporting and communications system that will be encoded and protected.
8. **The conspirators are motivated to succeed.** Assuming, as this paper does, that the direct beneficiaries (minority political party or the candidates elected

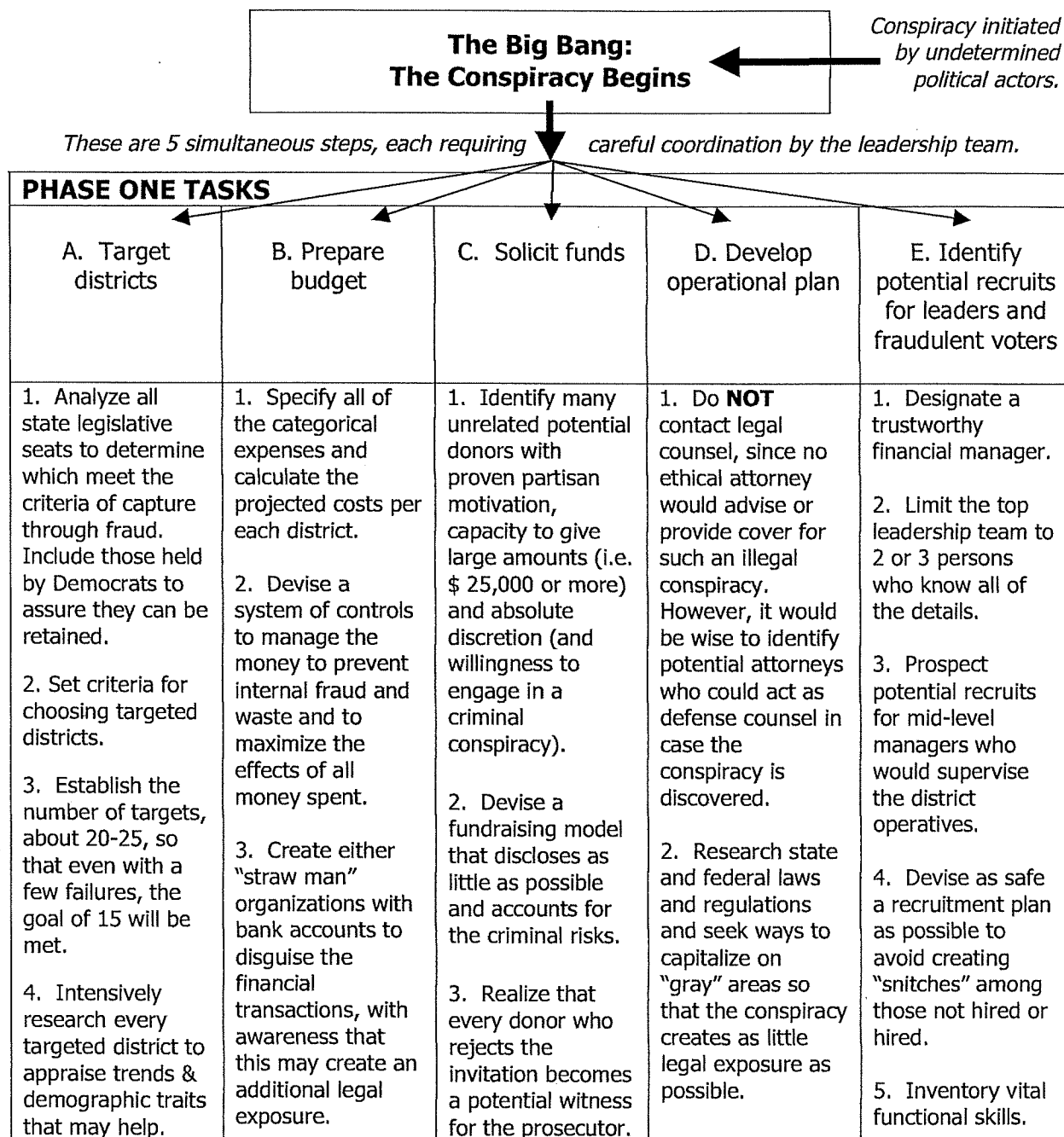
through the fraud) have not engineered or approved the plan, there must be someone who wants this plan to succeed. The list of capable suspects to perpetrate the fraud is rather short. Raw political operatives who run campaigns often make lots of money with risk only to their reputation for winning, rather than the threat of imprisonment. Unethical operatives might take work for hire, but they would not likely initiate the conspiracy. One or more interest groups might combine to create the conspiracy, but the risks are probably too great, especially considering that the goal depends on success in multiple simultaneous events. A political vendetta might explain the motivation of the chief conspirator. A person with "nothing to lose" might create a conspiracy of this sort. However, in a late or post career phase of life, this person probably failed in elections or other public events, thus rendering him unlikely to be successful in a complicated, hidden scheme. The candidates are few for conspirator-in-charge.

9. There are resources available to underwrite the fraud. This is a very, very big problem for potential conspirators. During political seasons money becomes committed early and is usually scarce throughout. In order to finance this fraud, conservative estimates range from \$ 500,000 to \$ 2,000,000. Even with mediocre state campaign finance laws, it would be impossible to hide such expenditures in lawful campaign spending. Therefore, the entire revenue and expenditures would have to be hidden. Except for funds from illegal enterprises, the author cannot identify donors who could create this large flood of money. To maintain the security of the conspiracy it would be best to have a few donors with large amounts. That condition makes the funding doubly difficult. Another resource with obvious impact is time. The duration required for a successful conspiracy and the synchronized execution of dozens of steps complicate this fraud. The author acknowledges, but does not further describe the significant impact of this scarce resource.

10. The conspiracy would evade discovery by the media, law enforcement and political opponents. This is an era in which whispers and malapropisms become headline news in minutes. All of these actors (media, law enforcement and political opponents) tend to be attentive to activities that are out of the norm. Nonetheless, the conspirators actually have a slight advantage in this circumstance. State legislative electoral contests rarely attract much media attention. Nor, would law enforcement ever imagine that someone would be so bold as to attempt to win 15-20 state legislative seats on a single day. Yet, if the conspiracy were discovered after the election, the candidate-beneficiaries would likely be denied their seats in the Kansas House of Representatives. Therefore, the temporary advantage for the conspirators would dissolve disastrously after the fact.

The Details of the Conspiracy

The outline that follows attempts to identify the milestones and critical path that the conspirators would take to create a new political majority in the Kansas House of Representatives. The foregoing section obviates the need for rationale expressed at each step below. Yet, at some points, the author adds observations that emphasize the criticality of the assumptions and conditions precedent. And, in other places, the author offers commentary related to the feasibility of the individual step on the path.



PHASE ONE TASKS (continued)				
A. Target districts	B. Prepare budget	C. Solicit funds	D. Develop operational plan	E. Identify potential recruits for leaders and fraudulent voters
<p>5. Create a data base, secure web site or other electronic means to transmit and report information.</p> <p>6. Secure computerized maps of districts and precincts and specify needed vote counts in every precinct in the targeted districts.</p> <p>7. Secure official computer file of registered voters.</p> <p>8. Develop likely addresses for fraudulent voters, such as high density apartments or college campuses.</p> <p>9. Select targeted precincts with reasonable proximity to each.</p> <p>10. Assess historic and likely voter turnout efforts by regular party organizations and candidates to learn how their efforts might "provide cover" for the fraudulent voters.</p>	<p>4. Prepare contingent budgets in the event that fundraising falls short of idealized revenue.</p> <p>5. Establish credit or payment terms with key vendors.</p> <p>6. Identify alternative sources for key products and services, such as identification cards and other vital documents.</p> <p>7. Conduct preliminary "market analysis" to calculate how much it will cost to secure the services of each fraudulent voter. That is to say: how little can you pay each person to engage in this conspiracy and to vote on election day multiple times as directed with the false identities provided.</p> <p>8. Determine the best method for safeguarding the anticipated large flow of cash, i.e. safe or lock box.</p>	<p>4. This plan should not be launched until it is clear that donations will yield sufficient funds to execute all phases of the plan. Therefore, at the earliest possible moment, donations should be solicited and received. The launch should probably occur when about one-half of the budgeted funds are in hand and the balance is relatively assured. The time frame for this is critical because of the time that will be needed for all other steps in the plan.</p> <p>5. Ask & receive.</p> <p>6. Identify "crisis donors" with the capacity to give a second time or to give for the first time late in the plan, in the event that cash falls short after implementation has begun.</p> <p>7. Ask again.</p>	<p>3. Create a management security system to maintain a firewall among the highest levels of the conspiracy and among district team leaders. They should not know each other. The "middle management" layer should operate on a "need to know basis" only.</p> <p>4. Create a complex and dense firewall between the conspirators and the candidates and the Party so that they will have plausible deniability in case the conspiracy is uncovered.</p> <p>5. Develop a top management team model that is strategically and tactically sound, with sufficient skills so they will not have to seek outside help after the plan begins.</p> <p>6. Mobilize a communications network & test it.</p>	<p>6. All hires should be of two types: either highly skilled (those who can make false identification cards and other such tasks) or low skilled (those who are willing to follow directions and register and vote fraudulently in the precincts targeted).</p> <p>7. The district operatives should have energy, a lack of curiosity and a willingness to follow orders.</p> <p>8. Avoid hires of persons with criminal arrests or convictions, misdemeanor or felony.</p> <p>9. It might be easier to hire bands of persons, i.e. college roommates, but the conspiracy is less likely to break apart if the fraudulent voters are strangers each to the other.</p> <p>10. Promise full payment only after all voting is done.</p>

PHASE TWO TASKS: MOBILIZATION

Phase Two begins with the presumption that all of the following are accomplished:

1. *The top management team is in place.*
2. *The middle level management team is in place, trained and committed.*
3. *The fundraising is sufficient to finance all phases of the conspiracy.*
4. *All safeguards against discovery have been set reliably in place.*
5. *The budget and money disbursement system is intact, tested and well managed.*
6. *The House districts and targeted precincts have been well chosen.*
7. *Key vendors are committed and available as needed.*
8. *The data system is reliable and secure.*
9. *The communications systems are reliable and secure.*
10. *There appears to be a sufficient reservoir from which to recruit the necessary fraudulent voters.*

Budgeting and fundraising activities continue in the background, supporting the conspiracy. Steps related to these categories now appear in the Operations heading.

A. Program Operations	B. The Political Environment
1. It may be possible for each fraudulent voter to achieve 5 to 10 false registrations and to vote as many times on election day, especially if advance voting can be used without mailing applications to addresses that will be false. The team needs to calculate the exact goal to minimize the number of voters required. Fewer fraudulent voters costs less money and will reduce the likelihood of leaks.	1. The conspirators will have no direct control over this vital fact: every Democratic House candidate in the targeted districts must be credible and run campaigns of sufficient intensity that a victory is plausible. If one gets arrested for driving under the influence of alcohol, her legitimate voters will probably not materialize and the fraudulent voters will not be enough to make up the difference.
2. Management will probably not give any specific briefing to the voters on the criminal consequences of their actions, although since federal candidates will be on the ballot, federal charges are possible, if the U.S. attorney gets involved in prosecution. In all things, the less the voters know, the better.	2. On the other hand, if the Republican opponent implodes, the fraud effort may not be needed in such numbers as planned. Therefore, it may be well to "double register" fraudulent voters in neighboring districts and precincts so that they can be re-directed, as the contests evolve.
3. The ratio of fraudulent votes cast to anticipated legitimate votes for the Democratic candidates must be very carefully determined for each district and every precinct and the plan must allow for a late day surge of fraudulent voters in areas where the Republican turnout seems high.	3. This would be tempting, but it must be avoided. Top and middle level conspirators must NOT lead a double life, working legitimately in other political campaigns at the same time as they are leading this conspiracy. It will dilute their energies and it may cost bona fide elections that are not tainted.
4. The fraudulent voters must be well trained to pull the right false identification cards from their pockets in the right polling place. A stupid mistake here could spoil the entire plan. Drill. Drill. Drill.	4. Fraudulent voters must have rudimentary political knowledge about the candidates on the ballot and the precincts in which they will be voting.
5. The fraudulent documents must be of the highest quality. This is absolutely vital. The names, addresses and identities must be carefully crafted. Hairstyles and clothing and appearances of the fraudulent voters should not be the same on each of their false identification documents.	5. Extra fraudulent votes will not seem untoward if the county election official has not systematically purged the registration records because of the rules in the Help American Vote Act. These counties are relatively ideal for this fraud, because the turnout will never come really close to 90%.

PHASE TWO TASKS: MOBILIZATION (continued)	
A. Program Operations	B. The Political Environment
6. The fraudulent voters must be diverse: by gender, age, race and every other dimension so as to avoid easy detection by alert authorities. They also must be matched to the demography of the district and precincts.	6. The fraudulent voters should vote for all or nearly all offices every time they vote. If they do not, they will create a suspicious pattern of ballots on which only Democratic state house candidates are marked.
7. The fraudulent voters must have somewhat randomized schedules for casting their votes, but always at times when the lines are the longest and the elections judges are likely most distracted by the lawful voters.	7. The leadership team must monitor the progress of all races so that, if necessary by turns of political conditions, they may cancel the operation in selected precincts or even in entire districts if necessary.
8. The fraudulent voters must ABSOLUTELY NOT know how many districts have been targeted, which districts are targets or what is the eventual goal of the plan. They must have plausible deniability so that the conspiracy does not unravel if one or several of them are apprehended.	8. The leadership team must resist the temptation to intervene in the public and lawful phase of the campaign. They must have no direct or indirect contacts on fundraising, opposition research, get out the vote strategies or any other phase of the campaigns of the candidate-beneficiaries.
9. The fraudulent voters must get their own transportation to the polls on election day. It would attract attention and arouse suspicion if rented mini-vans unloaded voters at regular intervals during the day. Someone would notice.	9. The leadership team must be completely aware of any involvement by interest groups that may affect individual district campaigns. These might include unions, such as teachers' groups or industry associations that might create an uneven balance in the house campaign in a single or in several districts.
PHASE THREE TASKS: IMPLEMENTATION <i>At this point all phases have blended into pure operations: getting tasks accomplished as planned, although, again fundraising and money management will continue in the background until the last voter is paid and the last faux vote cast on election day. The time line is critical in this last phase, so a column appears that counts down to Election Day (E-Day).</i>	
Time: Either Days left until the Election or Hours on Election Day.	Tasks to Perform and Considerations in their Implementation
E-Day – 35	1. Final recruitment of voters should be complete within the next 10 days including their training and credentialing and registration in high priority districts and precincts.
E-Day – 30	2. Make final appraisal of targeted districts and precincts to develop final calculation of manpower (voters) required. The goal is a net gain of 15, holding all incumbent seats.
E-Day – 25	3. Final, final recruitment of the last of the voters, including a few extra in every precinct to account for absence or unreliability.
E-Day – 35-20	4. Issue faux credentials and precinct voting assignments to the last of the recruits.
E-Day – 20	5. Begin advanced voting in precincts where possible, by voting at the election office.
E-Day – 18	6. Review logistics of getting all voters to all precincts within time frames allotted.
E-Day – 16	7. Review final roster of all voters, since registration closes in 2 days, making adjustments as necessary.
E-Day – 14	8. Voter Registration Closes: All voters must be enrolled in all targeted precincts.
E-Day – 13	9. Calculate final payroll requirement to pay on election day.

Time: Either Days left until the Election or Hours on Election Day.	Tasks to Perform and Considerations in their Implementation
E-Day – 12	Complete and submit final batch of advanced voting applications for a fraction of all the fraudulent votes intended for delivery. This may be difficult if the given addresses for the fraudulent voters are impossible delivery addresses. But, if they give the addresses of relatives or other confederates, then it may work.
E-Day – 11	Final tracking and routing of the polling places where the faux voters will be casting their ballots. This work will seal the expected vote count and will also include the planning for the last minute delivery of extra voters should the count of legitimate voters exceed expectations. These addresses and routes should be customized for every fraudulent voter as his or her shopping list for the day, including times during which they should vote in every indicated precinct. This should not be left to chance or to their choice.
E-Day – 10	A final plan for coordination and communication should be set and tested: cell phones, walkie-talkies, computers, transportation planning, reporting systems, contingency plans and the like. This will involve the entire leadership team.
E-Day – 9	A final accounting should be prepared for the cash that will be needed on Election Day for paying the voters, the leadership and their expenses. Arrangements should be finalized with the treasurer to make cash disbursements to the leaders on E-Day – 1.
E-Day – 8	The leadership team should meet to assess the feasibility of the overall plan. If incumbent Democrats are faring poorly or have abandoned their races or if a Republican tide is developing, then the theft of 15-20 House seats will not be sufficient to achieve a majority. This is the last possible moment to abandon the project altogether. This decision must be made consciously and carefully.
E-Day – 7	During this day and the next three days, the leadership team must inventory every single fraudulent voter and judge whether he or she will perform as planned and expected on Election Day. It will be unacceptable to fail because 5 or 10 voters in one district reneged on their bargain. Discipline and drilling are vital at this time.
E-Day – 6	The leadership team must review the published and otherwise available reports about election integrity efforts by county attorneys, U.S. attorneys, local police, local authorities of every type and the media. The team must be aware of the presence and, to the extent possible, the identities of such election monitors and their likely paths of activity and the training they have had. Avoiding detection depends on knowing this.
E-Day – 5	The leadership team must hold one, final contingency planning meeting to cover every possible twist of fate: including arrest; interference by local party officials or candidate representatives; inclement weather; voting machine failures; or any other development.
E-Day – 4	The leadership team will deliver to each faux voter his or her itinerary for Election Day. These should be coded and safely discarded, so as not to create concrete evidence if the conspiracy is discovered. The announcement (orally, not in writing) will also tell each voter-conspirator the location and time of the final payment for services rendered.
E-Day – 3	The leadership team will meet and divide the cash for disbursement on Election Day. This is the last time the team will meet together as a group. Their disbursement, by the designated captain, will occur on E-Day + 1 to be sure that each has discharged all duties assigned and without failure. There will be cash incentives or penalties for failure to perform as bargained.
E-Day – 2	All of the leadership team will again drive the routes assigned to their voters and assess any barriers. Each will also call all voters to build excitement about their work to come.

Time: Either Days left until the Election or Hours on Election Day.	Tasks to Perform and Considerations in their Implementation
E-Day – 1	This is the final day for mobilization calls to voters and problem-solving or dispatching extra voters to critical precincts. This is the time to charge cell phones, pack extra batteries, check computers and set the cash in envelopes with encoded names for each of the faux voters; secure the cash. The leadership team should also have a final report on all of the advanced ballots that were voted in every district possible.
E-Day Polls open + 1 hour	First call to team leaders from voters about early ballots cast: when, where and without complication, as planned.
E-Day Polls open + 3 hours	Second calls to team leaders from voters. First telephone or computer conference among leadership team, reporting incidents and progress. Include assessment of legitimate voter turnout as compared with anticipated turnout in every targeted precinct and state legislative district. The lower the turnout, the more valuable the ballots will be by the faux voters. This is a critical indicator all day long.
E-Day Polls open + 5 hours	Third calls to team leaders. They will pass along incident reports and begin to make adjustments to mobilize extra voters, as needed.
E-Day Polls open + 7 hours	Fourth calls to team leaders. The fraudulent voters should be nearly in place to cast their last two ballots for the day. If any precincts or districts must be abandoned, this will be the last hour for the top captain to decide on such a course and to order the mobilization of voters to other precincts where they are also credentialed, against such a contingency. Second telephone or computer conference with the leadership team.
E-Day Polls open + 9 hours	Fifth calls to team leaders. This will give the team captains their last opportunity to calculate whether every fraudulent ballot can be voted in the remaining hours. Drivers can be mobilized at this time to speed the falsely credentialed voters from place to place to complete their rounds.
E-Day One hour before polls close	Hour in which all voters call their final ballots and problems, if any, to the team leaders. These last minutes of mobilization, compared with voter turnout, may decide elections in selected districts. This is the last, critical hour of the project.
E-Day The Hour that Polls Close	Team leaders stand by to get full precinct-by-precinct, candidate-by-candidate total votes, preferably from the election judges on-site, but, if necessary, at the election office when the tally is posted.
E-Day Two hours after the polls close	Pay voters and return to leadership team meeting site for de-briefing.
E-Day Four hours after the polls close	The results should be known in most districts by this hour and projected from those not yet confirmed.
E-Day Plus One: The Day After	Team leaders report to designated locations for their cash payments.
E-Day Plus Two:	The highest circle of those who conceived and financed the fraud will discuss their achievements and then will disperse after having destroyed all paper and electronic records of the enterprise.

Summary and Conclusion of the Plan

Stealing 15-20 state representative races in a single general election through voter impersonation and fraud is a most ambitious enterprise. The author submits that such a conspiracy is infeasible. The level of detail outlined in the plan presented here is necessary, but probably not sufficient to achieve the goal. Failure is inevitable for many logical reasons: the funds would be far too difficult to raise; the likelihood of discovery is very high with so many persons involved; and the technical skills required are enormous, from targeting the selected seats and precincts to the production of false identities. Finally, it is implausible that one or a few persons could create and mobilize such a vast and successful conspiracy.

A Draft Budget for a Fraudulent Takeover of the Kansas House of Representatives by the minority party in the fall of 2010

Assumptions: Twenty contests for state representative would be targeted. The modal number of precincts is 17 for each state representative district. The goal is to win a net of 15 seats, while holding all incumbent positions. All fraudulent voters, therefore, would be spread among 300-350 precincts. Every fraudulent voter would vote a total of 12 times in person or in advance. Depending on the historic margins in each state representative race, the contribution of the fraudulent voters to each winning margin would only range between 300 and 500 votes.

Item	Number	Rate	Extension	Notes
Fraudulent voters	500	\$ 400	\$ 200,000	Each will vote 12 times.
Leadership captains	50	\$ 2,500	\$ 125,000	average 2 per district
Conspirators Circle	4	\$ 10,000	\$ 40,000	Highest level of leaders.
The Leader	1	\$ 20,000	\$ 20,000	
Transportation aides	80	\$ 100	\$ 8,000	includes gas expenses
Documents specialists	5	\$ 2,500	\$ 12,500	
ID Cameras, etc	4	\$ 5,000	\$ 20,000	
ID & document supplies	600	\$ 10	\$ 6,000	
Gasoline, meals, etc	500	\$ 100	\$ 50,000	
Phones & computers	55	\$ 250	\$ 13,750	rental or reimbursement
Printing (maps, etc)	600	\$ 7	\$ 4,200	
Bonus Pool for Performance			\$ 25,000	
Miscellaneous gratuities	50	\$ 250	\$ 12,500	Paid to landlords, others who will assist in the conspiracy.
TOTAL			\$536,950	

Conclusion and Summary

Who is protecting whom from what and at what costs to the democratic processes of our republic? I have attempted to counter arguments that prevailed in the Crawford case with data from the 2006 general elections for state representatives in 38 states and with a workable, although infeasible, model of an ambitious plan of voter fraud aimed at seizing control of the Kansas House of Representatives. The majority of the Supreme Court ratified arguments without empirical evidence. In the Crawford case and, apparently, in the deliberations of the Indiana legislature, there was not even a serious model of fraud or any evidence of recent elections that were upset by voter impersonation fraud. Rhetoric and sophistry seemed to have prevailed both in the Indiana capital and the Supreme Court chambers. If there is no effective, election-stealing fraud in Indiana, then why must voters be protected from phantoms that do not exist?

I agree that the Help American Vote Act created a mandate that states enact protections against fraud. Many states have already done so. The insidious side of this phenomenon is that no one counts or observes those who choose not to vote because they are ill informed or anxious about not being able to meet some identification card requirement at the polling place. Some voters may stay home because they cannot find the receipt that the county election official sent them as a record of their registration, despite the fact that they do not need such evidence. No one keeps a record of those who do come to the polling place on election day and are turned away by confusion or misdirection by an election judge.

One man's plan to safeguard the polling booth is another's design to suppress voters who are unsophisticated. The evident and technologically feasible solution is to require a biometric federal identification card for everyone living in the United States. Only those without legal status would refuse to get such identification. Civil libertarians on the political left and right would probably shout down this proposal at first light.

I do concede that there are much simpler ways to affect a fraudulent election, including tampering with software or widespread voter suppression or corruption of high or lower level election officials, but I have restricted this analysis to voter impersonation. I believe that my research and analysis is persuasive of my general proposition because such an elaborate model for voter fraud has not previously been publicly produced or scrutinized for feasibility.

The public policy literature is rife with examples of laws and regulations adopted for partisan political effect, rather than a truthful conviction that the solution befits the problem. My paper advances, but cannot wholly complete the process of critique and debunking that the worst of these voter identification laws deserves. I hope that I have advanced this debate, at least a little, with my analysis and model.

Future Research

I always advise my students to be alert to what they might find on their way toward learning about something else altogether. Often I abide my own advice and I have done so in this project.

State house elections may serve as the canary in the coal mine to alert us to systemic weaknesses in state party organizations. As I argue above, the prize, stealing partisan control of one half of a state legislature, is certainly worth having, from a partisan point of view. These are some of the questions this study has raised in my mind.

1. What variables explain the extraordinary uncompetitive environment in some states, characterized by very high rates of uncontested state representative elections?
2. What variables explain the highly competitive political environment in other states where the majority of state house seats are vigorously challenged?
3. Do apparently uncompetitive states have truly weak political parties?
4. What are the historic (10-20 year) trends in competitiveness in state house elections?
5. To what extent do national political forces affect voter preferences in state house elections?
6. How many investigations by local and state prosecutors never ripen into criminal charges for vote fraud? How many do go to trial and what have been the outcomes?
7. How many persons have truly been charged, tried and either acquitted or convicted of such charges by federal prosecutors?
8. Have federal prosecutors truly developed devious models to anticipate what various types of fraud might occur in the electoral process itself. These would include software manipulation, systematic rigging of electronic voting machines, corruption by entire panels of precinct election judges for a fraudulent purpose, voter suppression in it many forms, patterned disqualification of advance ballots to benefit specific candidates, training in subtle methods of fraudulent voting by candidate or political party committees for corrupt purposes, and a dozen other schemes intended to win elections.
9. Has anyone in the modern era ever tried the bold strategy I propose to steal an entire house of a state legislature? If not, why not?
10. Finally, back to my central argument: If fraud, like errors in multiple regression models, is randomly distributed and there are no feasible means to steal an elected office through voter impersonation fraud; should states be compelled by the federal government to enlarge, not reduce the number of persons who vote in American elections?

I plan to explore and expand my inquiry in pursuit of the answers to these questions in the years to come.

Appendix A. State Requirements for Voter Identification (October, 2008)

States that Request Photo Identification		States that Require Identification (photo not required)	
Florida	Georgia	Alabama	Alaska
Hawaii	Indiana	Arizona	Colorado
Louisiana	Michigan	Connecticut	Delaware
South Dakota		Kentucky	Missouri
		Montana	North Dakota
		Ohio	South Carolina
		Tennessee	Texas
		Virginia	Washington

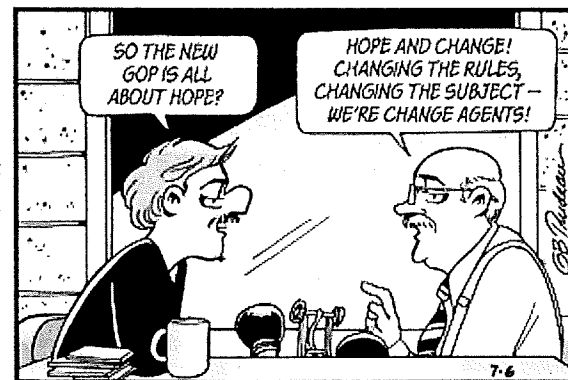
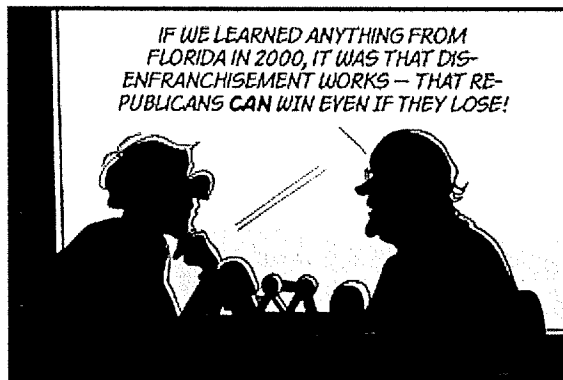
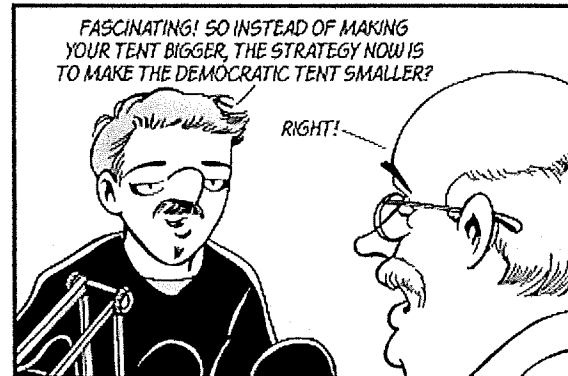
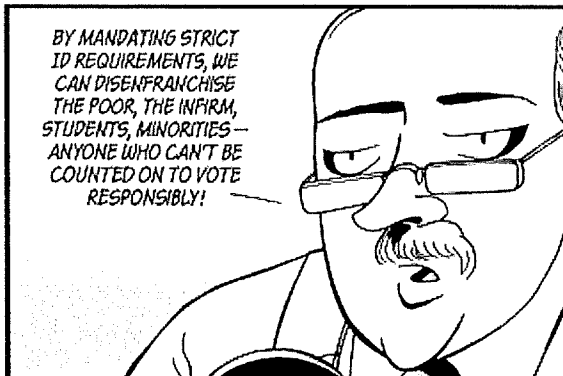
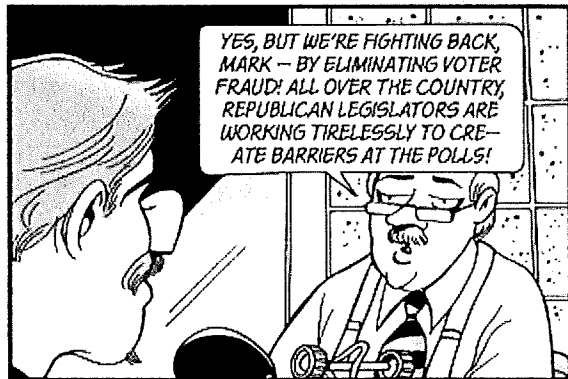
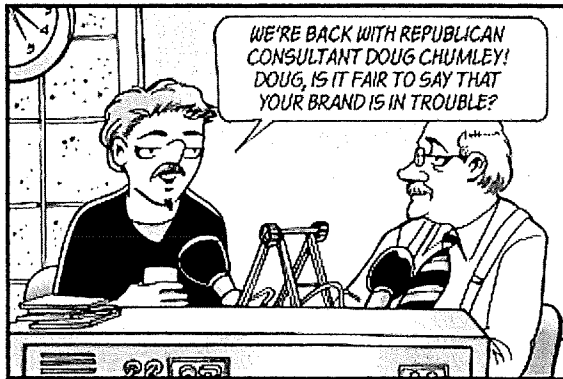
Note: Appendix B appears on the following page, requiring the entire vertical space of the page.

Appendix B. Summary of State Representative Victories with margins => 10% in 2006

STATE	# REPS	DEM	REP	TOTAL	% ALL
CA	80	39	21	60	75%
HI	51	32	2	34	67%
MI	110	47	26	73	66%
OR	60	23	12	35	58%
CT	151	67	21	88	58%
UT	75	8	35	43	57%
OH	99	33	17	50	51%
MN	134	49	18	67	50%
MT	100	18	28	46	46%
IA	100	31	13	44	44%
PA	203	53	34	87	43%
NY	150	63	0	63	42%
CO	65	14	13	27	42%
ME	151	43	17	60	40%
IL	118	27	17	44	37%
KS	125	13	33	46	37%
MO	163	23	36	59	36%
IN	100	22	13	35	35%
TX	150	31	21	52	35%
TN	99	23	11	34	34%
NV	42	10	4	14	33%
FL	67	10	12	22	33%
DE	41	6	7	13	32%
ID	70	2	19	21	30%
AL	105	20	11	31	30%
MS	122	17	19	36	30%
RI	75	21	0	21	28%
AK	40	4	7	11	28%
OK	48	11	16	27	27%
WI	99	14	12	26	26%
NC	120	21	10	31	26%
MA	160	35	2	37	23%
WY	60	6	7	13	22%
SC	124	9	15	24	19%
KY	100	16	3	19	19%
GA	180	8	25	33	18%
NM	70	7	4	11	16%
AR	100	11	3	14	14%
TOTAL	3,907	887	564	1,451	

Appendix C. Summary of State Representative Victories with margins < 10% in 2006

STATE	# REPS	DEM	REP	TOTAL	% ALL
ME	151	42	43	85	56%
MN	134	36	31	67	50%
FL	67	8	22	30	45%
AK	40	7	10	17	43%
OR	60	8	17	25	42%
NV	42	9	8	17	40%
TX	150	17	43	60	40%
OH	99	9	30	39	39%
CO	65	14	11	25	38%
MT	100	20	18	38	38%
WI	99	9	27	36	36%
IA	100	12	23	35	35%
IN	100	12	20	32	32%
MO	163	13	39	52	32%
MI	110	9	26	35	32%
KS	125	13	26	39	31%
DE	41	3	9	12	29%
NM	70	6	14	20	29%
UT	75	11	9	20	27%
ID	70	9	9	18	26%
KY	100	11	14	25	25%
PA	203	17	33	50	25%
RI	75	10	7	17	23%
NC	120	15	11	26	22%
HI	51	7	4	11	22%
OK	48	7	14	21	21%
CT	151	21	10	31	21%
CA	80	5	11	16	20%
TN	99	7	10	17	17%
AR	100	14	3	17	17%
WY	60	3	7	10	17%
MS	122	9	8	17	14%
AL	105	6	8	14	13%
IL	118	5	10	15	13%
GA	180	7	11	18	10%
SC	124	7	5	12	10%
MA	160	11	4	15	9%
TOTAL	3,757	429	605	1,034	



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The Roster of Republican Winners in the Kansas General Election of 2010

Office Contested	% of total vote by Winner	Vote Margin by the Winner	Total Votes for all candidates in this contest
U.S. Senator	71%	366,204	837,692
US Rep 1	74%	98,213	192,886
US Rep 2	63%	63,446	205,975
US Rep 3	58%	46,053	233,285
US Rep 4	58%	45,432	203,383
Governor	63%	260,594	838,790
Sec'y State	59%	180,999	829,513
Atty Gen'l	55%	109,157	834,704
Treasurer	59%	140,380	823,028
Cmsn Ins	100%	674,573	676,143

Vote Fraud Cannot Overturn House Seats That Are Unopposed !

In the November, 2010 general election for 125 members of Kansas House of Representatives, a total of 51 seats (41 % of the total) were uncontested. There were 37 Republicans who had no opponents and 14 Democrats who had no opposition. No amount of fraudulent registration or voter impersonation could have upset those 51 representatives.

In 2008, there were no contests in 47 seats (38% of the total: 25 GOP and 22 DEM). In 2006 there were no contests in 41 seats (33% of the House: 20 GOP and 21 DEM). In 2004, a whopping 57 seats had no contest (46% of all the House: 38 GOP and 19 DEM).

Is it possible to target Representative Districts to Capture by Fraud? Did 2004 Results show that these seats would be close enough to steal in 2006?

District	2010 Election Results				2008 Election Results				2006 Election Results				2004 Election Results				2002 Election Results		
	WINNER	MARGIN	% WIN		WINNER	MARGIN	% WIN		WINNER	MARGIN	% WIN		WINNER	MARGIN	% WIN		WINNER	MARGIN	% WIN
91	GOP	1,909	27.5%		GOP	2,121	23.1%		GOP	373	3%		GOP	2,505	14%		GOP	670	5%
9	GOP	5,934	100.0%		GOP	2,222	23.9%		GOP	355	2%		GOP	7,856	100%		GOP	5,875	100%
23	GOP	432	7.9%		DEM	1,149	13.3%		GOP	190	2%		GOP	565	3%		GOP	299	3%
24	DEM	1,219	17.7%		DEM	1,255	11.5%		GOP	592	2%		GOP	8,110	100%		GOP	5,909	100%
39	GOP	2,486	23.7%		GOP	380	2.3%		GOP	427	2%		GOP	10,900	100%		GOP	6,717	100%
65	GOP	636	15.3%		GOP	582	8.9%		GOP	142	2%		GOP	1,890	15%		GOP	1,276	15%
54	GOP	1,798	20.8%		GOP	1,803	15.3%		GOP	237	1%		GOP	3,081	14%		GOP	464	3%
59	GOP	3,502	47.7%		GOP	851	8.7%		GOP	219	1%		GOP	8,136	100%		GOP	5,653	100%
69	GOP	1,627	27.9%		GOP	452	5.9%		GOP	156	1%		GOP	33	< 1%		GOP	5,185	100%
81	GOP	2,996	40.3%		GOP	1,057	10.9%		GOP	102	1%		GOP	2,618	15%		GOP	1,467	11%
114	GOP	4,911	100.0%		GOP	7,601	100.0%		GOP	133	1%		GOP	1,206	6%		DEM	670	5%
72	GOP	1,747	24.5%		GOP	40	0.5%		GOP	34	< 1%		DEM	7,160	100%		DEM	463	3%
112	GOP	1,128	19.5%		GOP	480	6.1%		GOP	43	< 1%		GOP	607	4%		GOP	5,392	100%
Wins by < 250 votes = 0					Wins by < 250 votes = 1				Wins by < 250 votes = 9				Wins by < 250 votes = 1				Wins by < 250 votes = 0		

The Answer is NO! Only one of the 13 (district 69) was close in 2004, but it had been 100% for the GOP in 2002. The 2004 vote counts did not mark any of the other 12 districts as close enough to steal through fraud.

State representative districts are probably the most likely target for vote fraud, because the total vote count is so small. And, the number of precincts is small enough. However, the districts are drawn with careful attention to political features so theft through voter impersonation would be infeasible.

It is far more difficult than one would imagine to identify districts to target for theft by vote fraud!

Research by: John F. Settich, Ph.D. Atchison, Kansas 2011
presented to the Kansas Senate Committee on Ethics & Elections 10 March 2011



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March 8, 2011

The Honorable Terri Huntington, Chairwoman
Senate Ethics and Elections Committee

Reference: HB 2067 Voter ID Requirements.

Good morning Chairwoman Huntington and members of the Senate Ethics and Elections Committee. My name is Bob Harvey and I volunteer for AARP Kansas. While I currently serve as a member of the AARP Kansas Diversity Council, I have also served as a member of the AARP National Policy Council, a volunteer body which recommends national policy to the AARP Board of Directors. I am an attorney and a retired judge

AARP is a nonprofit, nonpartisan membership organization dedicated to making life better for people 50 and over. AARP has more than more than 340,000 members in Kansas. We provide information and resources and engage in legislative, regulatory and legal advocacy. Thank you for allowing us the opportunity to present our written comments in opposition to HB 2067.

The right to vote is the most basic of all political rights. Over the last several years, the American public has become aware of the many inconsistencies that exist in voting systems throughout the country and which compromise the integrity of the election process. Overall, voting mechanisms lack uniform standards, and in many locations, they have failed to keep pace with new technologies. Of particular concern are the unnecessary, complex rules for voter registration and absentee balloting and physical and other barriers to voting in-person. These impediments to exercising the franchise tend to disproportionately prevent minorities, older persons and people with disabilities from voting or from having their vote counted. And as we all know, the overall rate of voter participation in the U.S. is woefully low, especially when compared to other industrial democracies. User-friendly voting and voting procedures would encourage larger numbers of Americans to vote. In order to ensure that more Americans participate in the electoral process, people's confidence needs to be restored by an election system that is fair, accurate, accessible and secure.

AARP has a longstanding commitment to full citizen participation in the democratic process at the federal, state and local levels. For that reason, AARP has supported electoral reform at the federal level -- i.e., enactment of the National Voter Registration Act (NVRA), the Help America Vote Act (HAVA), the Bipartisan Campaign Reform Act (BCRA), and reauthorization of the Voting Rights Act (VRA). AARP also conducts

Ethics and Elections Committee

Attachment 6

Date 3-10-11

extensive voter education efforts in each of the 53 U.S. states and territories in which it has offices.

Congress passed HAVA in 2002, requiring states to meet uniform standards in federal election technology and administration. One result of these reforms is that states are required to develop and maintain centralized voter lists, offer provisional ballots, permit voters to verify and correct their ballots, and meet accessibility requirements for voters with disabilities.

HAVA imposes more stringent voter-identification requirements for voters casting a ballot for the first time after having registered to vote by mail. This provision – intended as an anti-fraud measure – could discourage participation by otherwise-eligible low-income, minority, foreign-born and older voters. Ultimately, the success of the law in allowing all eligible citizens the opportunity to vote and have their vote accurately counted depends on state implementation laws and administrative procedures.

VOTER ID REQUIREMENTS

As the states have become more active in addressing access to the ballot in recent years, AARP attorneys have represented citizens – a great many of whom are aged 50+ – who could become disenfranchised. AARP also has participated in various advisory capacities, at both the federal and state levels, to support citizen empowerment through meaningful opportunity to exercise the franchise.

We believe that “photo ID” voting requirements unnecessarily limit rather than expand citizen participation in the electoral process, and the Supreme Court acknowledged that in-person voting fraud is a “problem” that exists barely, if at all.

In the jurisdictions that have embraced strict “photo ID” policy, state statutes or ballot initiatives have sought to enact laws that elevate proof requirements for voters to register (AZ) and/or to vote in person (GA and AZ). These laws are based on assertions of voter fraud. This assertion heightens tensions among all voters. The new state laws and implementing rules, we believe, could significantly limit opportunities to register and/or vote. Many persons who are qualified to vote, but do not have ready access to documents – such as birth certificates, driver’s licenses and passports – that have never been deemed necessary in the past, may lose the fundamental right to vote.

AARP is particularly concerned that such rules will prevent many eligible older voters, voters with disabilities (who may be unable to obtain the requisite photo or citizenship ID) and low income voters (who may not be able to afford such ID) from exercising their right to vote. Such laws adversely affect older voters who (1) no longer drive and do not need licenses; (2) do not now travel or never did and therefore have no passport; or (3)

are persons without birth certificates (e.g., Southern blacks or some Native Americans who were not allowed in white hospitals that provided documentation). On behalf of older Americans who have largely shaped the values of our democracy, we urge great care to ensure that the basic right to vote is not undermined in an overbroad effort to address unproven allegations of voting abuse.

The need for voter ID laws is understandable, but overly stringent barriers to voting are questionable. There is very little evidence of actual in-person voter fraud. The problem in this country is not people trying to vote who shouldn't -- it's all the people who can vote, but don't. Many people don't vote because of rules that make it too complicated, too difficult, or too costly to go to the polls. We need laws that make it easier to vote, not harder. Just imagine, you're 75 years old, you've been going to your local polling place for a half century, and suddenly you're asked to prove who you are with a new photo ID. The ID will cost extra money to obtain. If you do not have or cannot find your birth certificate — necessary to prove you are a citizen — you may have to spend up to \$200 to get a replacement copy. For someone on a fixed income, this is an unnecessary cost, and it should not be necessary for you to prove your identity after having gone to the same polling station for decades. We think that there are less punitive alternatives to address alleged in-person voter fraud.

Further, the potential for poll worker confusion and selective enforcement of voter ID rules are great — especially given recent and historic voting rights abuses. In many instances, poll workers are not adequately trained in advance to fully grasp the nuances of such requirements as:

- which IDs are acceptable;
- who should be asked for their IDs;
- what is proper protocol for attending to persons lacking proper ID; and
- who is responsible for ensuring voter access to a provisional ballot or alternative voting opportunity?

Leaving the decision to subjective interpretation may result in racial and other forms of profiling at the polling place.

Even casting a provisional ballot can be a barrier to voting. Provisional ballots have been suggested as a “compromise” that is equivalent to casting a ballot, but provisional ballots are valid only when counted — and many are not.

AARP believes that voter ID requirements and provisional ballots should be tools to promote honest and effective elections, but should not present administrative, financial or other barriers to the right to vote. Effective remedies legislators could consider include:

- sworn vouching statements to affirm in-person voter identity;
- thorough, advance training of poll workers to ensure each voter understands how

- to cast a ballot that will be counted;
- requirements to provide, in advance of elections, free voter ID to registered voters and new registrants for whom the financial and administrative cost of an official ID is burdensome;
 - procedures that encourage and promote maximum participation in the electoral process by expanding the range of voting times, locations and means (e.g., by offering in-person, vote-by-mail, early and secure online voting); and
 - repeal of unreasonable identification requirements that discourage or prevent certain classes of citizens from voting.

Therefore, AARP Kansas opposes HB 2067 and respectfully requests your opposition to this proposed legislation.

Thank you.

Resources:

The Policy Book, AARP Public Policies 2009

Testimony of the ACLU of Kansas and Western Missouri

Regarding HB 2067 - Safe and Fair Elections Act

March 9, 2011

**Holly Weatherford, J.D.
ACLU of Kansas and Western Missouri**

Ethics and Elections Committee

Attachment 7

Date 3-10-11

Background:

Voter fraud has recently become more widely discussed in Kansas, primarily due to claims made during the November 2010 election. As a result, the most wide reaching, restrictive voter ID law in the nation (HB 2067 - the Safe and Fair Elections Act) has been put forward as a solution to voter fraud in the state.

The ACLU does not wish to downplay the seriousness of voter fraud when it occurs. As an organization that holds the right to vote as sacrosanct, we recognize that safe and fair elections are of the utmost importance. However, legislation proposed to that end should take into account the nature and size of the problems facing elections in Kansas. Laws aimed at protecting elections should therefore be based on rigorous research and a thorough understanding of the issues so as not to unnecessarily burden the government or individual voters. The Safe and Fair Elections Act fails to meet this standard, however laudable its goal of protecting the electoral process may be.

What is actually known about voter fraud in Kansas suggests that the proposed legislation is an unnecessarily radical solution to whatever problem may exist. In the midst of a \$550,000,000 budget shortfall, Kansas cannot afford to spend millions of dollars on a bill based on incomplete and anecdotal evidence. This is particularly true of the Safe and Fair Elections Act, which introduces greater bureaucratic burdens on both the state government of Kansas and on individual voters than any comparable law in the nation.

I. The Prevalence of Voter Fraud:

More research is needed before the frequency of voter fraud in Kansas can be stated with a degree of certainty. This is a point conceded even by proponents of the Safe and Fair Elections Act, including the bill's author Kris Kobach (1). Unfortunately this research has not yet been conducted, despite the fundamental importance of this data to the formulation of any voter fraud legislation. New, systematic research on voter fraud seems particularly vital in that existing data, as inadequate as it may be, strongly suggests that voter fraud is too rare in Kansas to warrant radical new legislation.

While no comprehensive study has been undertaken, available statistics suggest that the national rate of voter fraud is very low. For example, rigorous scrutiny of elections in Washington and Ohio found voter fraud rates of just 0.0009% and 0.00004% respectively (2)(3). The Brennan Center for Justice points out that this is roughly the same rate at which Americans are struck and killed by lightning (4).

Another study commissioned by the federal Election Assistance Commission in 2006 concluded that the prevalence of voter fraud nationwide is at best uncertain (5). However, according to the New York Times, even that conclusion downplayed findings from within the study showing there is little evidence of widespread voter fraud (ibid).

These studies echo the results of a large scale effort to fight voter fraud launched by the Bush administration in 2002. Between 2002 and 2007, that program resulted in only 120 charges and 86 convictions nationwide, or roughly one confirmed case per state every three years (ibid). While these are national statistics, no compelling evidence has been put forward to suggest that voter fraud in Kansas is more common than elsewhere in the nation.

In fact, the available data regarding voter fraud in Kansas strongly resembles national statistics. Over the last decade leading up to the November 2010 elections, there have been 20 alleged cases of voter fraud in Kansas and 7 convictions (6)(7). During that same period, 5,286,081 votes were cast in general and midterm elections in the state. According to these official figures, the rate of confirmed fraud in Kansas is equivalent to (or lower than) elsewhere in the nation: roughly 0.00015%.

It's possible that fraud is under-reported in Kansas, as is contended by some proponents of voter ID legislation. However, a comprehensive list of voter fraud complaints compiled in 2008 by the Secretary of State's office fails to support that conclusion. The report documents all unverified complaints involving voter fraud between 1998 and 2008 (including "mere allegations and complaints of wrongdoing"). The list is not limited to formal reports, but includes complaints received by any authority in the state. Many of these complaints pertain to activities that are not illegal, and only a relatively small fraction involves allegations of fraudulent votes being cast. However, even this very inclusive report lists few potential irregularities over ten years, with roughly 90% of the counties in Kansas failing to report a single complaint (8). Strangely, it is this report that has been put forward by proponents of the Safe and Fair Elections Act as proof of the need for new legislation.

This report and similar evidence that has been presented in favor of the Safe and Fair Elections Act does not represent the kind of systematic research needed to pass effective legislation. The first reason for this is that these reports are unconfirmed, uninvestigated, and lacking in meaningful detail. These reports gloss over important facts to the point that the information contained in the testimony can be meaningless or even misleading. Take, for example, one of the very first reports listed in the testimony recently presented by the Secretary of State. It reads simply, "Mother voted for her son, forged signature." This case was addressed in slightly more detail in the original 2008 report that it was drawn from, which stated that the woman in question left a polling place to drive to where her son was going to college nearby to obtain his signature. The controversy arose when a poll worker wasn't sure she was gone long enough to reach her son and return. No further investigation was conducted to verify whether the woman was in fact gone long enough to reach her son, or if, for example, her son met her part way, nor was the woman asked to comment. Moreover, it was never alleged that the woman in question was attempting to do anything more than help her son cast a legitimate ballot. The evidence presented in favor of the Safe and Fair Elections Act is saturated with problems like this, concerning both the truthfulness of the allegations and the nature of the alleged voting irregularity.

The second major shortcoming with the evidence presented in favor of the Safe and Fair Elections Act is that the bill does not reflect this data in the ways in which it addresses voter fraud. For example, where the original 2008 report by the Secretary of State's office fails to list a single complaint pertaining to non-citizens voting, the Safe and Fair Elections Act addresses it at length. Moreover, despite the fact that no instances of voting under an assumed name are mentioned by that report, this is a primary focus of the Safe and Fair Elections Act. To address voter fraud effectively, more information is needed than simply the number of unconfirmed complaints of election irregularities. What's necessary is verified data and thoughtful analysis.

In an op-ed for the Wichita Eagle, Kris Kobach responded to opponents of his bill who pointed out that there have only been seven convictions for voter fraud over the past decade with the statement, "Apparently seven is not enough" (9). While Secretary of State Kobach meant the statement ironically, the obvious answer is that eight is in fact not enough when considering wide reaching, admittedly radical, and expensive legislation. With no compelling deadline, there is more than enough time to investigate the problem systematically, and to use this research as the basis for a more effective and fiscally responsible bill.

II. Cost

There are a variety of costs associated with voter identification laws; these include the provision of free IDs to voters, voter education, new training of poll workers, additional poll workers needed to compensate for the slower voting process, and restructuring and expanding existing government entities to accommodate new bureaucratic duties. While a fiscal note regarding the Safe and Fair Elections Act has been produced, it addresses very few of these real costs incurred by other states who have enacted voter identification laws. This is particularly troubling because the proposed legislation in Kansas is correctly touted as the largest bill of its kind in the nation. It seems inevitable that the Safe and Fair Elections Act would introduce a number of costs above what other states have encountered in implementing voter identification laws.

The extremely brief fiscal note produced for the Safe and Fair Elections Act lacks in research and meaningful detail. Because of this, it dramatically underestimates what the bill would (or should) cost; either the true cost of the proposed legislation won't be revealed until it's already in place, or the effort to restructure Kansas' elections will be massively underfunded. In contrast to this fiscal note, Missouri's Committee on Legislative Research conducted a thorough study that estimated the cost of implementing a voter identification law in that state to be roughly \$14,000,000 over three years (10). In addition to these state funds, the report concluded that such a law would cost local governments an additional \$4,100,000 or more (ibid). These figures reflect extensive analysis of not just the obvious costs of such a bill, but the overall impact on the structure and workload of the state government.

The fiscal note produced for the Safe and Fair Elections Act not only fails to offer comparable analysis, but minimizes or ignores the obvious costs of voter identification laws. For example, this note fails to provide even a rough estimate of the cost of providing free identification cards or birth certificates, stating that those who want them already have them. This has not been the case in other states, where the cost of free identification has approached up to nearly \$500,000 within the first year (11).

Regardless of whether or not this expense can be minimized, the provision of free identification constitutes only a minor fraction of what comparable laws have cost other states. The report omits more substantial costs like voter education, which is vital when election laws change; other states have found it necessary to spend \$1,500,000 or more on this alone (12). In fact, given the radical nature of the Safe and Fair Elections Act, one would expect the cost of voter education to rise.

The fiscal note is also silent on the necessity of expanding and restructuring Kansas' government to accommodate the bill's new duties and burdens. This is somewhat perplexing; it seems paradoxical to tout the Safe and Fair Elections Act as the largest bill of its kind, yet to deny that it will be necessary to expand Kansas' government when other states with more modest laws have needed to do so. For example, Missouri's Committee on Legislative Research concluded that it would be necessary to add over 100 people throughout the state government to support a much smaller law in that state (13). In addition to this, the committee recommended that roughly \$200,000 be set aside in anticipation of overtime for existing employees (ibid). Moreover, it was found that 7,210 additional poll workers would be necessary to ensure that elections continued to run smoothly (ibid). Elsewhere, Oklahoma State Election Board Secretary Michael Clingman estimated that his department would have to spend roughly \$90,000 per election training new election officials alone (14).

The laws discussed above are far more moderate in scope than the Safe and Fair Elections Act. Those laws did not transform and expand the Secretary of State's office with a wide variety of new duties and powers, nor did they require that voters prove their citizenship with certain government issued documents when registering, nor did they require the maintenance of a new system for reporting voter fraud, nor did they require that sworn written statements be verified when ballots are dropped off by someone other than the voter, nor did they require that state offices make copy machines available to all Kansans for the purpose of photocopying IDs. These are only a handful of the new duties, both big and small, that the Safe and Fair Elections Act would impose on the state government of Kansas. To claim that these duties can be assumed without substantially restructuring and expanding a variety of government agencies, particularly the Secretary of State's office, is unrealistic in the extreme.

It's worth noting that, while the figures discussed above may seem high, they by no means represent a ceiling on what the Safe and Fair Elections Act would or should cost Kansas. The legislation proposed in this state is far more restrictive and wide reaching than Missouri's voter identification law, and would require a more extensive restructuring of Kansas' government. It seems reasonable, if not inevitable, that the Safe and Fair Elections Act would cost Kansas more than the roughly \$18,000,000 estimated in Missouri. The only alternative would be to cut corners and do a tremendous disservice to the very elections the Safe and Fair Elections Act is meant to protect.

The Safe and Fair Elections Act is touted as the biggest bill of its kind, but biggest doesn't mean best when discussing new legislation. The enormity of the bill is more experiment than necessity. Conducting research into the nature and frequency of voter fraud in Kansas would allow for a more targeted bill, one designed to meet the needs of the state effectively and without waste. Kansas currently faces a \$550,000,000 budget shortfall, and it seems likely that public services in the state will suffer for it. Now is not the time to pass massive, expensive legislation without first thoroughly evaluating what is necessary and effective.

III. Nature and Size of the Bill

Voter identification laws have long been controversial, and those on both sides of the issue have become entrenched in their position. To rehash these arguments here would likely be unproductive under normal circumstances. However, to do so in regard to the Safe and Fair Elections Act would be particularly inappropriate in that it would downplay the unique and experimental nature of this legislation. Unfortunately, what makes this bill unique isn't an innovative approach to election security, but rather the nature and number of restrictions it places on elections.

Some of the provisions of the bill, while uncommon in the extreme, are not altogether unique. For example, requiring a birth certificate (or comparable document) to prove citizenship when registering to vote has been tried once in Arizona. However, the precedent set by Arizona's law makes the inclusion of this requirement baffling; that aspect of Arizona's law was recently struck down by the 9th Circuit for unduly burdening the voters of that state (15). Within the few years that it applied, that law resulted in 30,000 rejected registration application (ibid). Election officials in Arizona have been repeatedly quoted as saying that these applications were largely (if not universally) rejected due to bureaucratic technicalities rather than foul play (16). Unsurprisingly, this requirement also attracted numerous law suits, and the state is still litigating the issue.

Even beyond its disastrous history, the inclusion of this provision seems strange; it's unclear what problem this requirement is meant to address. There's no data suggesting that non-citizens are voting beyond a few extremely rare cases, generally involving a misunderstanding of the law rather than criminal intent. This is true nationally as well as locally (17). There has been only one such case prosecuted in Kansas' recent history; in that case, a Desert Storm veteran cast a ballot in the mistaken belief that his service made him eligible to vote.

Systematic research, sound data, and compelling evidence should be a prerequisite to such a dramatic proposal, particularly when that proposal has such a problematic history. While proponents of the Safe and Fair Elections Act have put forward a small handful of allegations regarding five non-citizens voting, this hardly seems like a sound basis for amending Kansas' law so drastically. Moreover, while 54 non-citizens were found to have been registered to vote in Kansas (as proponents of the bill point out), it was discovered that this was a result of a bureaucratic error at the DMV rather than an attempt at fraud. Because of their training under the Motor Voter Act, some DMV employees mistakenly asked a number of legally present non-citizens to register to vote when applying for a temporary driver's license. It should be noted that by registering for this license, these non-citizens made their ineligibility to vote clear. This would seem to be a counterintuitive first step in a conscious attempt at voter fraud.

Another experimental aspect of the Safe and Fair Elections Act is the requirement that mail-in ballots be accompanied by a driver's license number, a non-driver identification card number, or alternatively two photocopied documents (one of which must be government issued photo identification). Similar laws around the nation generally lack this strict requirement, and with good reason: it seems to undercut the logic of offering the option of voting through the mail.

Many of those who choose to vote through the mail are people who find it difficult to travel to a polling place; this includes people who may not necessarily meet the uncertain standards that would excuse them from this provision. To some extent, it is specifically because some people lack the means to travel that these ballots are offered. It seems logical to assume that many (if not most) of those who lack the means to travel also lack a

valid driver's license. It also follows that those who are unable to travel to a polling place would also find it difficult to travel to a DMV to obtain identification, or to travel to a government office where they would be able to make photocopies of another form of identification.

Much like the provision regarding proof of citizenship, this aspect of the bill seems to burden voters without adding to the security of Kansas' elections. It's unclear how a driver's license number is more convincing proof of identity than, for example, a social security number (which is allowed under Kansas' current law). It's also unclear what problem this requirement is meant to address; there has never been a verified case of voter fraud in Kansas' recent history (or perhaps ever) involving voter impersonation. Before this requirement is signed into law there should be an empirical basis for doing so, as well as an assessment of what impact this may have on Kansas' legitimate voters.

The Safe and Fair Elections Act is bloated with provisions like these that have little actual value in helping to make Kansas' elections more secure. These new requirements wouldn't make the state tougher on voter fraud. Rather, they would serve only to make elections in Kansas cumbersome, both for the government and for individual voters. While voters in Kansas have made election security a priority, the Safe and Fair Elections Act does not reflect that interest as it should. The goal of ensuring the integrity of Kansas' elections would be far better served by a well-considered, targeted bill based on systematic research.

IV. Conclusion

All parties involved in this debate desire the same results: secure elections that run smoothly and afford all eligible voters a fair chance to make their voices heard. The way to achieve this goal is not through sloganeering or insinuation on either side, but through a systematic evaluation of what problems exist and a cost/benefit analysis of whatever solution is put forward.

The Safe and Fair Elections Act is not the product of this process. With no comprehensive or reliable research having been conducted on voter fraud in Kansas, a fruitful and objective policy discussion is impossible. Because we lack this basic foundation of information, we find ourselves faced with a lumbering behemoth of a bill, one that attempts to fix every problem with Kansas' elections both real and imagined. As a result, Kansas may end up tossing out the baby with the bathwater, with cumbersome, expensive, and ineffective laws. With no compelling deadline, there's time to give Kansas the efficient, effective, fiscally responsible election security it deserves. The way to make Kansas a leader in election security is not to make the biggest law, but rather the best tailored and most effective.

Sources:

- (1) Kris Kobach, Wichita Eagle Op. Ed. "Voter fraud is a reality in Kansas"
- (2) Borders v. King County, No. 05-2-00027-3 (Wash. Super. Ct. Chelan County June 24, 2005), available at <http://www.secstate.wa.gov/documentvault/694.pdf>.
- (3) Spencer Overton, commissioner on the Carter-Baker Commission on Federal Election Reform, available at <http://www.stealingdemocracy.com/facts.cfm#8>
- (4) Brennan Center for Justice, available at <http://www.truthaboutfraud.org/pdf/Policy%20Brief%20on%20the%20Truth%20About%20Voter%20Fraud.pdf>
- (5) New York Times, "In 5 Year Effort, Scant Evidence of Voter Fraud," available at: http://www.nytimes.com/2007/04/12/washington/12fraud.html?_r=2&pagewanted=all
- (6) The Pitch, quoting the Secretary of State's office, available at http://blogs.pitch.com/plog/2009/05/kris_kobach_tells_us_why_hes_r.php
- (7) Kris Kobach, "Voter fraud is a reality in Kansas"
- (8) Brad Bryant, former Kansas Secretary of State, memo to Kansas Legislative Research Department Feb. 20, 2008
- (9) Kris Kobach, "Voter fraud is a reality in Kansas)
- (10) Missouri Committee on Legislative Research, fiscal note on proposed voter ID bill, available at: <http://www.moga.mo.gov/Oversight/OVER06/fishtm/4947-25T.ORG.htm>
- (11) Number based on lost revenue and the cost of increased work volume: <http://www.indystar.com/article/99999999/LOCAL19/61023042/Election-Guide-Indiana-s-voter-ID-law>
- (12) Georgia Secretary of State Karen Handel, available at: <http://thedemocracydefenseleague.com/news/voter-photo-id-few-problems-seen/>
- (13) Missouri Committee on Legislative Research, fiscal note
- (14) Oklahoma Election Board Secretary Michael Clingman, as quoted by NewsOK.com, available at: <http://newsok.com/article/3214560>
- (15) Reuters, available at: <http://www.reuters.com/article/2010/10/26/us-usa-elections-arizona-idUSTRE69P4T920101026>
- (16) Chris Roads, Pima County Deputy Recorder & Registrar of Voters, available at: <http://www.npr.org/templates/story/story.php?storyId=4991732>
- (17) New York Times, "In 5 Year Effort, Scant Evidence of Voter Fraud"



Our mission is to end discrimination based on sexual orientation and gender identity, and to ensure the dignity, safety, and legal equality of all Kansans.

www.KansasEqualityCoalition.org • 6505 E. Central #219 • Wichita, KS 67206 • (316) 260-4863 • fax (316) 858-7196

Testimony of Stephanie Mott, Kansas Equality Coalition

Senate Committee on Ethics and Elections

March 9, 2011

Testimony in Opposition to HB2067

Good morning Madame Chair and members of the Committee. Thank you for the opportunity to speak to you. My Name is Stephanie Mott. I am a member of the board for Kansas Equality Coalition, which advocates for fair treatment for gay, lesbian, bisexual and transgendered Kansans, and am also the executive director of the Kansas Statewide Transgender Education Project. I am a transsexual woman. I am here today to talk about existing barriers to voting for transgender people in Kansas, and about how this proposed legislation will make those barriers even more difficult to face, even to the point of causing many transgender individuals to be unable to vote.

When I was in transition, my identification said Steven, although I already looked like Stephanie. When I voted in November, 2008, the election worker publicly challenged my identity. I was required to announce, in clear hearing of everyone in the room, that I was transsexual. Then I was required to explain what that means. The picture on my driver's license looked like me, and my name matched how I was registered to vote, but I was in danger of not being allowed to vote because I am transgender.

If this measure becomes law, people like me will be required to show a birth certificate to register to vote. My birth certificate still says "Steven" and "Male". My driver's license now says "Stephanie" and "Female." I can change my name for about \$30. However, for me to amend my birth certificate, I must complete several years of medically supervised transition, which will ultimately cost more than \$20,000. Because a name change is among the first steps in this long process, my legal name and gender will not match my birth certificate for an extended period of time. Under the provisions of HB2067, I fear that I, and others in my situation, will be disenfranchised.

Of those who have transitioned gender, only one-fifth (21%) have been able to update all of their IDs and records with their new gender. One-third (33%) of those who had transitioned had updated none of their IDs/records. Only 59% reported updating the gender on their driver's license/state ID, meaning 41% live without ID that matches their gender identity. Forty percent (40%) of those who presented ID (when it was required in the ordinary course of life) that did not match their gender identity/expression reported being harassed, 3% reported being attacked or assaulted, and 15% reported being asked to leave.¹

I choose to vote, because I feel that it is worth that chance of being publicly outed. I know of many other transgender people, however, who are afraid that they will be met with questioning, suspicion and resistance: for them, the bar is already too high. I urge this committee not to erect even more barriers to voting in Kansas, and to reject the birth certificate provisions of this bill.

Thank you for your time. I am willing to stand for questions.

¹ National Center for Transgender Equality/National Gay and Lesbian Taskforce
http://transequality.org/PDFs/NTDSReportonHealth_final.pdf

Ethics and Elections Committee
Attachment 8

Date 3-10-11



Our mission is to end discrimination based on sexual orientation and gender identity, and to ensure the dignity, safety, and legal equality of all Kansans.

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Testimony of Thomas Witt, Chair, Kansas Equality Coalition
Senate Committee on Ethics and Elections
In Opposition to HB2067 / In Support of SB222
March 10, 2011

Good morning Madame Chair and members of the committee. I am here today to speak in opposition to HB2067, and with qualified support for SB222, and I thank you for the opportunity to do so.

My name is Thomas Witt. I am Chair of the Kansas Equality Coalition, which works to eliminate discrimination based on sexual orientation and gender identity. In the five years since we formed, we have organized eleven chapters around the state and have nearly 2000 members.

You have heard the testimony of Stephanie Mott, which is essentially the same testimony she gave in the House Committee on Elections. At the conclusion of her House testimony, one of the Representatives on the committee asked Ms. Mott if her gender transition were a personal choice; fortunately, that line of questioning was shut off by the chair as being inappropriate and personal. After the hearing adjourned, however, the representative inferred that people similarly situated to Ms. Mott may have to accept disenfranchisement as a cost of that so-called choice, merely because sorting out the birth certificate issue will create a barrier too high to overcome.

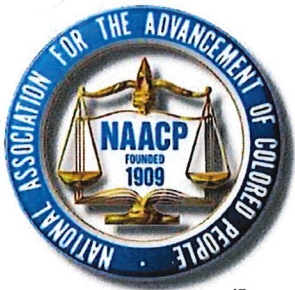
Article 5 of the Kansas Constitution only disenfranchises its citizens who are under a current sentence for felony conviction. Sadly, the birth certificate provisions of this bill will create a second class of Kansans disenfranchised by law.

The House amended HB2067 in an attempt to address the issues raised by Ms. Mott and others concerned about the documents required for voter registration. While we are pleased that the House made an effort to repair HB2067, we don't believe the underlying flaws of HB2067's voter registration requirements can be fixed with a balloon or two. The House amendments are cumbersome, and will still put people such as Ms. Mott in a position of having to publicly reveal intimate details about their personal, private medical history. Such revelations will certainly place transgender Kansans at the same risk of discrimination and bias as Ms. Mott experienced in the House hearings on this bill.

It appears to us that the alternative bill, SB222, might be a better candidate in which to address the issue surrounding birth certificates for transgender voters. Currently, amendments to birth certificates are regulated by K.A.R. 28-17-20. Should any bill requiring birth certificates as proof of citizenship be enacted, those administrative regulations present too high of a barrier for many transgender Kansans to overcome. We respectfully ask the Chair's permission to work with the Office of the Revisor to prepare a balloon for either HB2067 or SB222, should this committee decide to take action on either. Our proposal would more clearly allow for persons in transition to amend birth certificates, thereby removing a barrier to voter registration so high it will certainly result in the unconstitutional disenfranchisement of Kansas voters.

Thank you for your time and attention. I am happy to stand for question

Ethics and Elections Committee
Attachment 9



The Kansas State Conference of NAACP Branches

829 N. Market St. Wichita KS 67207 – (316) 541-1305

"101 Years. Speaking Truth to Power"

Testimony concerning HB2067

03/10/11

Kevin Myles
President

Glenda Overstreet
1st Vice-President

Nathaniel McLaughlin
2nd Vice-President

Lavonta Williams
Secretary

Kenya Cox
Asst Secretary

Renee Wiggins
Treasurer

Loris Jones
Glinda Theus
Phil Black
Sandra Rankin
Education

Darrell Pope
Dr. Charles Coleman
Legal Redress

Glenda Overstreet
Victor Newson
Erlene Goff-Lewis
Political Affairs

Wandra Minor
Membership

Dr. Mildred Edwards
Health

Rev. Joe Clark
Bishop Jeanette James
Rev. Ben Scott
Religious Affairs

Renee Wiggins
Kevin Myles
Communications

Stephanie Franklin
Parliamentarian

Cedric Patton
Youth Works

Wandra Minor
ACT-SO

Leneer Barber
Virgina Sewing
Elaine Guillory
Sandra Beverly
Executive Committee

Chairman Huntington, Vice Chair Schmidt, and members of the Senate committee on Ethics and Elections...

My name is Kevin Myles and I am the President of the Kansas State Conference of the NAACP, representing more than 2,000 registered voters throughout the State of Kansas.

We are here to voice our opposition to HB2067, the proposed Voter ID bill. To be clear, we are not opposed to efforts to ensure the integrity of our voting system in principle, we are opposed to the specific plans that the Secretary has put forth. We offered testimony in opposition to the bill when it was heard in the House Elections committee, and while some amendments were made prior to its passage, our principle objection remains the same.

The Secretary's proposed bill requires that an Election Officer certify a person's immigration status at the time of registration. Now that's not particularly onerous, but the language in Section 8, subparagraph L, parts 1 through 13; specifies that their status must be confirmed by submission of a physical drivers license, birth certificate, or passport, etc., or by a photo-copy of said documents. The original language stated that an application for voter registration would be rejected if not accompanied by these documents. The revised language that you are now considering states that the application will be accepted however the applicant will not be added to the voter registration rolls unless their application is accompanied by these same documents.

What this means is, if a group or organization such as the NAACP or the League of Women Voters wanted to set up a table to register people to vote at a fair or a community forum, *as both organizations have done for more than 50 years*, unless the unregistered prospective voters happened to have a photo copy of their Birth Certificate in their pockets, they could not be registered.

We understand, that the intent of the revised language was to allow applicants to submit their applications and documents at different times. However, that goal is also inherently problematic and is neither permitted by nor provided for in the actual language of 2067. The amended text found on page 20, section 8, and subparagraph L, reads, "**The county election officer or secretary of state's office shall accept any completed application for registration, but an applicant shall not be registered until the applicant has provided satisfactory evidence of United States citizenship. Evidence of United States citizenship as required in this section will be satisfied by presenting one of the documents listed in paragraphs (1) through (13) of subsection (I) in person at the time of filing the application for registration or by including a photocopy of one of the following documents with a mailed registration application.** After a person has submitted satisfactory evidence of citizenship, the county election officer shall indicate this information in the person's permanent voter file. Evidence of United States citizenship shall be satisfied by providing one of the following, or a legible photocopy of one of the following documents."

The language of 2067 is clear that in order to prove citizenship, documents must be provided in person at the time of registration, or by including the paper documents with the application. If neither requirement is met, the application will be accepted but the citizen will not be added to the voter registration roll.

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Attachment 10

Date 3-10-11

If the intent was to allow citizens to submit their documents at a later time, even more questions are raised. What would happen to applications submitted without these paper documents? Would they be entered into a new State database? If so, neither the database nor the procedure is described in the bill or accounted for in the fiscal note. Would citizens be notified that their applications had been received yet they were still ineligible to vote? Would they be given instructions on how to correct their applications? If so, the process has not been described in the bill or accounted for in the fiscal note. How would the State manage and account for the receipt of 'loose documents', to include pages of passports, birth certificates, immigration documents, driver's license photos, and ex cetera? Would they also be placed into some newly created centralized database? How would they be matched up with Voter Registration applications? How would discrepancies be handled? Will this require staffing or FTE's? None of these issues are addressed in the bill or accounted for in the fiscal note. And lastly, how would the security of people's private data be maintained when the Secretary's office would ask them to send photocopies of their most private and sensitive data through the regular mail? Who would have access to the documents? After they were examined, how would they be handled? Who would assume liability in the event of lost documents or identity theft issues? None of these considerations were made in the framing of the bill or fiscal note.

For the record, the Kansas State Conference of the NAACP supports the language that you will hear later as included in SB222, which would allow for the verification of citizenship at the time of registration through a query of a persons drivers license number or the last four digits of their social security number *upon the State's development of those abilities*. This in fact is the practice in place in other locations where proof of citizenship is desired. The requirement to send paper copies with registrations as is mandated in 2067 would effectively eliminate citizen group's ability to register voters through traditional get-out-the-vote type initiatives and/or door-to-door canvassing. If the language was correctly amended to reflect an intent that prospective registrants could submit their documents at some later time, the bill would still have a similar effect in that the bill does not require that any citizen be notified prior to their arrival at the polls of their ineligibility to vote, it provides for no new processes or databases to manage incomplete applications, no personnel to manage any new procedures, no instructions or guidance on how sensitive personal documents are to be secured or disposed of, and NO funding to address any of these concerns. What is left is a system where constituent groups could go out and register voters, but those voters may not find out until Election Day whether or not they would be allowed to vote.

The use of Driver's License and or social security numbers is a uniform and common practice that facilitates on-site registrations while still protecting people's personal data - But native born American citizens from Kansas, low income persons who would typically be registered in a traditional get-out-the-vote type drive or initiative would no longer be allowed to register using their driver's license or social security number as is currently permissible in EVERY OTHER STATE in the Nation. This "Paper Copy" requirement - *which would be the only one of its kind in the Nation* - would allow for legal and eligible voters to be excluded from the voter registration rolls; not for fraud, not for ineligibility, but for failure to comply with a newly created administrative hurdle; one that solves NO problems, one that serves no necessary purpose, and one that provides no additional information that could not be provided under current statute with some relatively minor administrative changes.

When you consider the fact that the language in this bill will create unnecessary obstacles for legal and law-abiding citizens and may prevent otherwise qualified voters from exercising their constitutional right to participate in our elections: we ask you to reject this bill.

Respectfully,



Kevin Myles
President; Kansas State Conference of NAACP Branches



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LEAGUE OF WOMEN VOTERS; PUBLIC ADVOCACY FOR VOTER PROTECTION

The League of Women Voters of Kansas Urges the Senate Ethics and Election Committee to Defend the Election Process for All Citizens. Do Not Pass H2067

This is the official statement of the League of Women Voters of the United States

"For over 90 years, the League of Woman Voters has led the fight to protect the voting process from unnecessary impediments and restrictions all across the country. We continue this work today through our Public Advocacy for Voter Protection project, which is designed to prevent the disenfranchisement of eligible citizens, particularly underserved populations," said Elizabeth McNamara, national president of the League of Women Voters of the United States.

Chair Huntington and Committee Members:

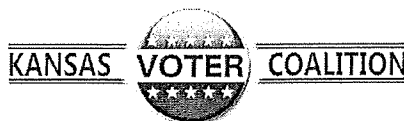
I am Ernestine Krehbiel, President of the League of Women Voters of Kansas. I am here today to speak in strong opposition to HOUSE Bill 2067. I represent the League of Women Voters of Kansas and the League of Women Voters of the United States.

The League of Women Voters Education Fund's (LWVEF) Public Advocacy for Voter Protection Project has been created to help bolster the League's capacity for continuing and expanding its critical state-based advocacy in order to prevent the disenfranchisement of eligible citizens, particularly underserved populations. Measures such as this bill have the potential for disenfranchising more Americans than any Election Day problems we have seen in the past.

The right to vote and to have that vote counted fairly and accurately is one of the most important constitutional rights we have; it guarantees all other rights.

Americans can be forgiven for believing that voter fraud is threatening the integrity of our elections. It is being trumpeted widely by those apparently who are ignorant of the facts or who choose to play loosely with the truth. Fortunately, Barnard College political science professor Lorraine Minnite's report, *The Politics of Voter Fraud*, takes a hard look at the issue. Minnite finds that voter fraud, defined as the intentional corruption of the electoral process by a voter, is extraordinarily rare. Her statistics show that Americans are twice as likely to be hit by lightning than to have their vote cancelled out by a fraudulently cast ballot. Bill 2067 is aimed at stopping only one kind of fraud—voter impersonation. Out of approximately ten million votes cast in elections in Kansas since 2005, there has NEVER been case of fraud by voter impersonation.

At a time when legislators are trying to pass a state budget it is irresponsible to add this unnecessary legislation that requires your time and might even require raising taxes to get funds for this enormous increase in government bureaucracy and creates a work and financial burden to your counties. Why is Kansas thinking of moving to the equivalent of a government "pass card" for our citizens? . The Kansas



Ethics and Elections Committee

Attachment 11

Date 3-10-11



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legislature should be in the business of encouraging full participation of our citizenry in free and fair and re-countable elections, not developing ways to limit the right to vote.

OVER 230, 000 NEW KANSAS VOTERS ANNUALLY: The US Census says that 14% of our citizens move EACH YEAR. This would mean that annually of our 1,675,384 Ks. voters, 14% of voters would be new to Kansas and would have to have the proof of citizenship.

PHOTO VOTER ID PROVIDED FREE BY THE STATE OF KANSAS LEST IT BE CONSIDERED A POLL TAX (the US courts have ruled). Those 14% of new voters would have to be furnished BOTH a birth certificate and a photo ID. . THAT IS 234,553 NEW VOTERS, (using 14% of the 1,675,384 numbers from the last election).

COST OVER FOUR MILLION DOLLARS: Using the calculations from the Brennan Center for Law and Justice, the Kansas Secretary of State's costs to implement the Voter Photo ID portion of the law would be \$834,000 the first year and a minimum of \$161,200 annually thereafter. That is ONE MILLION DOLLARS in the first two years alone for only the Photo Voter ID part ONLY. The costs include lost revenue from elimination of fees for DMV-supplied photo ID cards, additional training for poll workers, a statewide voter education program and new voter ID cards that include a photo.

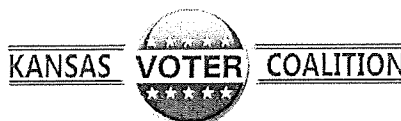
The estimate is likely to be quite low. For VOTER ID ALONE, it has cost Indiana \$13 million in the first three years.

The KS Voter ID law when you add the cost of the state-furnished birth certificate is something NO OTHER STATE HAS TRIED. I did the math for those over 234,000 new voters' birth certificates at the current cost which in Ks. is \$15 each. That is \$3,518,306 more for the birth certificates. That is **THREE AND A HALF MILLION DOLLARS** in addition to the **ONE MILLION DOLLARS** cost for the state furnished Photo Voter ID.

MORE WORK AND COST FOR COUNTIES: Is the state going to pay for free birth certificates also of all indigent citizens born in other states? Imagine the expansion of government you would be creating—a bureaucracy of 105 VOTER PANELS in every county to determine standards for who qualifies for free certified birth certificates from OTHER STATES. .

This does not count the cost to increased expenditures in counties for increased staff and training for election officials. Data from Maryland shows that the cost to its counties ranged from \$34,117 to more than \$95,000 – and again, I remind you, that this figure is for handling the VOTER PHOTO ID ALONE as no other state requires documentation of citizenship.

At a time when state courts are being required to have furlough days, when school boards are reluctantly making plans to cut teachers throughout each of your districts, and mental health and crime prevention programs are being eliminated, it makes no sense for taxpayers to be forced to pay for this costly, unnecessary and suppressive legislation.





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This bill is an extremely expensive solution to a non-existent problem but there are some using fear to build public support for laws about Photo ID and citizenship documentation that would make it more confusing and difficult to register and to vote but in no way would make our elections safer.

As you can see, over \$3 million for the documentation and \$1 million for Voter Photo ID dwarf's the secretary's estimate; he said he only needed the \$100,000 from Help America Vote Act for implementing this law.

We urge this committee to reject this and similar legislation that wastes the taxpayers' money and we ask that you get back to addressing the real issues affecting citizens of the state – jobs, the budget and the economy. I'm sure you do not need to be reminded of the budget **shortfall** of approximately half a billion dollars.

WILL THIS BILL KEEP SOMEONE FROM "GAMING THE SYSTEM"?

Here is the convoluted irony.

CURRENTLY TO REGISTER TO VOTE. This is on the Voter registration form plus signing as the affidavit under penalty of law saying you are telling the truth.

- Enter your current Kansas driver's license number
 - nondriver's identification card number. If you do not have either one, enter the
 - last four digits of your social security number.
 - Send a **copy** of a current, valid photo ID along with your application, (have you seen what college kids can do with fake photo ID's)
- or
- Send a copy of a current utility bill,
 - bank statement,
 - paycheck,
 - government check, or other government document that shows your name and address.

TO GET A BIRTH CERTIFICATE IN KANSAS

What one must show to get a birth certificate – **ANY TWO OF THE FOLLOWING**

- Social security number
- Bank statement with current address
- Car registration or title with current address
- Utility bill with current address
- Pay stub (must include your name, social security number plus name and address of business)

So if I get a birth certificate showing a pay check and a utility bill won't I be showing the same basic information that NOW what I must show to vote? Won't I then take my birth certificate to go register to vote and go get a state provided VOTER Photo ID at the DMV and then show that ID at the polls. How





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does this extra step using the identical information help keep someone from voting fraudulently who is intent on cheating?

The birth certificate system is no more sacrosanct either in Kansas or other states and therefore this mumbo jumbo merely discourages those who are less likely to be able to jump through the hoops.

There is no such thing as a free voter ID or birth certificate from the state. The tax payers will pay for this with our taxes as well as indirect costs for citizens who must go to the trouble to apply for the ID and get the birth certificate. And we will ALL pay potential costs of defending this discriminatory law in the courts.

IS COST OF COURT CHALLENGE BUDGETED IN?

In order to meet a court challenge, the on-line registration and the mail in voting advances of the last few years will be reversed. There could be no League of Women Voter registration drive at the new citizenship ceremonies at the US Federal Court House, no registration drives for 18 year old high school seniors or to help golden aged citizens get a proper address on their voter registration at senior centers or nursing homes. All volunteer registration drives would be halted and it would fall entirely on the counties of Kansas to increase their staffs AND their staff education. There would have to be massive voter education via TV and all other media and public venues. . The cost includes informing voters, administrative costs, hiring and training staff and other necessary expenses

. In October 26, 2010, US Court of Appeals for The Ninth Circuit, in a 2-1 decision, held that Arizona's requirements for proof of citizenship for voter registration violated the National Voter Registration Act. Even with careful and deliberate planning, however, some states have incurred significant litigation costs. It would be fiscally responsible for Kansas to budget for potential litigation costs, if the state passes legislation requiring photo IDs to vote. Not factored in are the considerable costs of legal challenges that Kansas could incur

ARE YOU SURE THAT THIS BILL 6027 WOULD NOT VIOLATE EITHER THE NATIONAL VOTER REGISTRATION LAW (1993 MOTOR VOTER LAW) OR THE HELP AMERICA VOTER ACT?

In that Federal law, it states that every state agency, EVERY agency, from marriage license bureaus to Medicaid must offer its clients the right to register to vote right there. This is what that Federal law says the agency workers are to ask: "If you are not registered to vote where you live now, would you like to apply to register to vote here today?" The current laws are working very well and our budget will be better off.

The US Constitution in Article VI: paragraph 2 states that "This Constitution, and the Laws of the United States and all treaties... shall be the supreme Law of the Land and the Judges in every State shall be bound thereby..." Is this proposed state law violating the National Voter Registration Act and that clause of the constitution?





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Photo ID requirements represent the most serious threat in decades to our historic progress in ensuring the right of every eligible American citizen to vote. Research by the Brennan Center for Law and Justice shows that these demands encourage racial and ethnic discrimination at polling places, limit voter turnout, and prevent eligible voters from participating in our democracy. In fact, they do very little to combat the demonstrably rare instances of a voter impersonating someone else at the polls. Indeed, as I said above, there have been no prosecuted cases in our state of such impersonation. This legislation is genuinely a solution in search of a problem.

The sheer number of people who could be disenfranchised by this legislation is daunting. Are you aware that approximately one million Kansas women have married names that do not match their birth certificates even should they send for that to show at voter registration? For them, further documentation looms in order for them to vote just because of this bill.

The women of the US had to fight hard for the vote and it was just 90 years ago that that happened. Any proposal that raises barriers to voting is something that ALL Americans should stand against. At least 18% of Kansans over 65 -- that is 64,400 of our neighbors in Kansas such as your parents or your elderly constituents, do not have valid photo identification. They may have moved to a retirement community or a nursing home so their old driver's license does not match. Many will not even be able to get birth certificates because they were born at home. The elderly population in Kansas is going up annually -- a jump of 50% has been the estimate in a little over 10 years. Will that on going annual cost to implement this law -- \$161,000 -- keep going up and STILL not make our elections any safer or better? In Kansas in 2006 our population that was disabled was 55,542 people. Ultimately, this requirement would disenfranchise the very people who currently must work the hardest to vote at all. The burden will be greatest for those people -- the elderly, low-income, minority and handicapped -- for whom it is most costly and inconvenient to take off work, get transportation, and stand in line to apply for documentation.

The evidence establishes that current anti-fraud voting laws work.

I strongly encourage you to do the ethical thing by opposing legislation that is a fear-based, not a fact-based. Instead, focus on improving polling operations, including training and recruitment of poll workers, and making voting more efficient, re-countable, secure, and accessible. Thank you for your consideration.

The right to vote and to have that vote counted fairly and accurately is one of the most important constitutional rights we have; it guarantees all other rights. We urge the Kansas legislature to be in the business of encouraging full participation of our citizenry, not developing ways to limit the right to vote.

I speak for over 700 members and local Leagues in Kansas as well as the United States League of Women Voters.

1. Oppose ID and Documentary Proof of Citizenship
2. Improve Administration of Statewide Voter Database Systems
3. Guard Against Undue Restrictions on Voter Registration
4. Improve Polling Place Management
5. Improve Poll Worker Training and Strengthening Poll Workers





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Appendices

1. National Voter Registration Act Sec. 1973gg-5 VOTER REGISTRATION AGENCIES

(a) Designation

(2) Each State shall designate as voter registration agencies -

(A) all offices in the State that provide public assistance; and

(B) all offices in the State that provide State-funded programs primarily engaged in providing services to persons with disabilities.

(3)(A) In addition to voter registration agencies designated under paragraph (2), each State shall designate other offices within the State as voter registration agencies.

(B) Voter registration agencies designated under subparagraph (A) may include -

(i) State or local government offices such as public libraries, public schools, offices of city and county clerks (including marriage license bureaus), fishing and hunting license bureaus, government revenue offices, unemployment compensation offices, and offices not described in paragraph (2)(B) that provide services to persons with disabilities; and

....

(i) Distribution of mail voter registration application forms in accordance with paragraph (6).

(ii) Assistance to applicants in completing voter registration application forms, unless the applicant refuses such assistance.

(iii) Acceptance of completed voter registration application forms for transmittal to the appropriate State election official.

(B) If a voter registration agency designated under paragraph (2)(B) provides services to a person with a disability at the person's home, the agency shall provide the services described in subparagraph (A) at the person's home.

...

(I) specifies 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;

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2. States following Help America Vote Act (hava) requirements

23 states and the District of Columbia currently have the minimum HAVA ID requirements - first-time voters who register by mail and do not provide ID verification with their registration must show ID before voting. (CA, DC, ID, IL, IA, ME, MD, MA, MN, MS, NE, NV, NH, NJ, NY, NC, OR, RI, UT, VT, WV, WI, WY)

18 states require ID for all voters. Photo and non-photo ID accepted in these states. (AL, AK, AZ, AR, CO, CT, DE, KY, MO, MT, NM, ND, OH, SC, TN, TX, VA, WA)

4 states require all voters show photo ID. Voters without the proper ID will be offered provisional ballots. (FL, GA, IN, OK The Oklahoma law takes effect July 1, 201)

4 states request all voters show photo ID. Voters without the proper ID can sign affidavits and cast regular (non-provisional) ballots. (HI, LA, MI, SD)

2 states require ID of all first-time voters. Photo and non-photo ID accepted in these states. (KS, PA)

Source: Pew Center on the States:





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<http://www.pewcenteronthestates.org/uploadedFiles/voterID.laws.6.08.pdf>

3. FEDERAL LAW SAYS VOTER CARD NOT TO BE USED FOR OTHER PURPOSES

Pub. L. 104-132, title IX, Sec. 902, Apr. 24, 1996, 110 Stat. 1317, provided that: "Notwithstanding any other provision of law, a Federal, State, or local government agency may not use a voter registration card (or other related document) that evidences registration for an election for Federal office, as evidence to prove United States citizenship." Similar provisions were contained in section 117 of H.R. 2076, One Hundred Fourth Congress, as passed by the House of Representatives on Dec. 6, 1995, and as enacted into law by Pub. L. 104-91, title I, Sec. 101(a), Jan. 6, 1996, 110 Stat. 11, as amended by Pub. L. 104-99, title II, Sec. 211, Jan. 26, 1996, 110 Stat. 37.

4. Secretary of State budget for next year

Budget for the Office of the Secretary of State

	FY 2010 Actual	FY 2011 Gov. Est.	FY 2012 Base Budget	FY 2012 Gov.Rec.
	\$7,044,986	\$8,102,198	\$6,759,609	\$6,759,609
HAVA	\$2,578,365	\$3,427,333	\$2,177,119	\$2,177,119

32% of the Secretary's budget is HAVA money that cannot be spent on this project leaving \$4,582,490

5. THE US CONSTITUTION

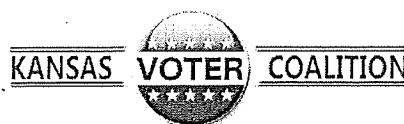
PREAMBLE : We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, **promote the general Welfare, and secure the Blessings of Liberty** to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article I....

Section. 8. Paragraph 1: The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and **provide for the common Defense and general Welfare of the United States;** but all Duties, Imposts and Excises shall be uniform throughout the United States;

...

Section. 8. Paragraph 18: To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.





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Article VI

Paragraph 2: This Constitution, and **the Laws of the United States** which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, **shall be the supreme Law of the Land**; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.





Kansas County & District Attorneys Association

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March 10th, 2011

**Testimony in opposition to New Section 17 (formerly new section 15)
of HB 2067
Kansas County and District Attorney Association**

Honorable Chair Huntington and members of the committee:

The Kansas County and District Attorney Association opposes the current form of new section 17 (formerly new section 15) of HB 2067.

First, there is no current authority by statute (KSA 75-401 et. seq.) for the Secretary of State to prosecute any action in any form. Therefore, this section is a significant expansion of the Secretary of State's power. This expansion of power is unnecessary and redundant given that county and district attorneys already have, "the duty [...] to appear in any court having jurisdiction within the county and prosecute or defend on behalf of the people all actions and proceedings, civil or criminal, in which the state or the county is a party or interested." K.S.A. 19-702(a); See also K.S.A. 22a-104(a) (similar duties of the district attorney). Giving independent authority to the Secretary of State to prosecute local crimes provides unnecessary overlap of duties and resources.

Additionally, as written, the proposed language would create the need for separate investigatory and prosecutorial personnel within the Secretary of State's office. This increase and devotion of resources appears again, to be unnecessary and wasteful given that there are already officials more appropriately positioned and resourced to deal with such matters. If such concurrent authority exists in other agencies, there usually is the appointment of a special assistant attorney general. Absent such concurrent authority, the traditional approach is for the attorney general to consult with and advise county attorneys, when *requested* by the county attorney, in all matters pertaining to the county attorney's official duties. See K.S.A. 75-704.

In conclusion, the KCDA believes that any prosecutorial power to enforce this legislation should remain with the local county or district attorney. Crimes that are considered in this legislation are no different from all of the other crimes

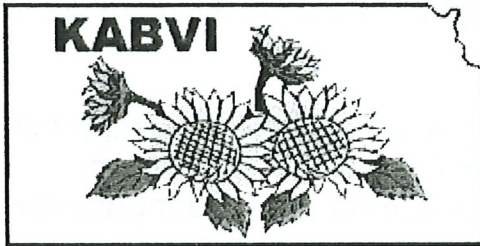
Ethics and Elections Committee
Attachment 12
Date 3-10-11

currently being prosecuted by our local county and district attorneys. If the situation requires, the county or district attorney will request the advice and consultation of the attorney general on the crimes suggested by this legislation.

Therefore, if this committee decides to work H.B. 2067, the KCDA request that the bill be amended to strike new section 17 (formerly new section 15), and leave the power to prosecute these crimes with the county and district attorneys.

Respectfully submitted,

Patrick Vogelsberg
Kansas County and District Attorney Association



Kansas Association for the Blind And Visually Impaired

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March 9, 2011

TESTIMONY CONCERNING HOUSE BILL 2067 – OPPOSITION AS CURRENTLY DRAFTED

The Kansas Association for the Blind and Visually Impaired (KABVI) is concerned about any occasion of voter fraud. We have fought long and hard over many years to insure that qualified Kansas voters who are blind and visually impaired have equal access, and opportunities to vote which are not restricted by their visual impairments. The progress made in these areas has at last allowed the voting process to remain private, independent, and verifiable for us.

Our Organization, at its annual meeting last fall, modified a position we have taken previously concerning voter identification. We have in the recent past opposed an identification requirement for voters at polling places because some of our blind members and associates are well known in their communities, do not travel by air, and thus, given that they can not get a drivers' license, have not seen the need to have a Kansas photo identification card. Getting such an identification card requires considerable planning, expense and effort for someone who may not have transportation to a drivers' license examining center.

KABVI now no longer opposes mandatory photo identification at the polling places. Our membership felt that all blind citizens should be encouraged to obtain and maintain photo identification, not just for

voting, but because it is an obligation of sighted Kansans to have such identification.

We therefore did not expect to be opposing any voter identification bill introduced. We must oppose House Bill 2067, however, as written, because it goes much further than simply requiring photo identification at the polls. In our view, this bill needs a great deal of amending; and indeed, might benefit from a total re-write.

Some of the other provisions of the Bill quite clearly discriminate against blind and visually impaired voters. For example, the Bill provides that, if a person is only seeking the Kansas photo identification card for purposes of voter registration, then there will be no charge for the identification, provided that the applicant meets certain means tests. For a Kansas citizen who does not have a drivers' license, and who only requires a photo identification card so that they can vote, but who also does not meet the means test provisions, the charge for the photo identification card clearly constitutes a fee for voting. Paying a fee to vote has never been a part of voter requirements in this State, and has been struck down as illegal in States where any such fees, no matter how subtly imposed, have been required. This is a bad precedent for Kansas to set. If a photo identification is going to be required to vote at the polls, it should not be an item one has to pay for. Means testing in order to receive a free photo identification means that some citizens will end up paying a fee to vote.

This Bill also requires a rigorous identification protocol for individuals wishing to vote by mail, or to receive an advanced ballot. With the strengthened voter registration requirements, including the obligation to provide photo identification to register to vote, requiring the identification for the first time advanced voter seems redundant. It also would require additional arrangements for transportation and readers' services for most blind voters just to obtain the advanced ballot. Offering the free use of a Xerox machine at the election office is almost laughable. The costs in both money and effort are not related to the cost of one Xerox copy. They are related instead to the efforts of locating the required documents, which are not provided to citizens who are blind in accessible format, and to transportation costs. With the strengthened security added to the voter registration process, no real security will be added to the process by requiring the extra identification steps in order to vote an advanced ballot. Members on the House side proposed use of a cell phone to photograph documents and email them to the appropriate authority as a solution to

transportation costs. Given the potential of identity theft using electronic media to transmit documentation is not a viable solution.

The person whom the Bill is attempting to target is the dishonest person who would obtain someone else's advance voting rights through fraudulent representation. Yet what the Bill, as currently drafted, actually does is puts the honest citizen, advanced voter on trial, not someone intending to commit voter fraud.

The new signature verification requirements in the Bill also have this same impact. Many individuals who are blind, visually impaired, or otherwise disabled, do not have the ability to affect a signature in the traditional sense. Many individuals who acquire a disability subsequent to registering to vote are going to experience profound changes in their signatures as a result of acquired disability or disabilities. The Bill seems to maintain the definitions of a signature in Section (7) of 2010 Sup. K.S.A. 25-2309, crafted a few years ago by a coalition of people having disabilities in which KABVI participated. The new signature requirements appear to create conflicts with this existing signature language. We strongly believe that existing statutory language is quite adequate concerning signatures.

Lastly, there is a hypocritical aspect to this Bill in regard to a section of existing law which is not changed. The Bill continues to make it a crime for a person assisting a disabled voter to exercise "UNDUE" influence. The term "undue" is an equivocation. It is not measurable, and it makes this aspect of the law more difficult to prosecute. Any influence whatsoever from a third party assisting a disabled person to vote is completely and totally unacceptable. It is ironic in the extreme that a bill that alleges to eliminate voter fraud still makes it legal to exercise influence over a disabled voter, just so long as that influence is not "undue."



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March 08, 2011

To: Members of the Senate Ethics and Elections Committee
FR: Kari Ann Rinker, State Coordinator
Kansas NOW
RE: HB 2067 Opponent

Today, I respectfully submit to you testimony in opposition to House Bill 2067. A voter and elections bill may seem like an unusual issue for a women's rights organization to become involved with, but Kansas NOW recognizes that the provisions contained within this bill will disenfranchise many women, primarily those women of low income, seniors and women who have gone through name changes. Kansas NOW also believes that the money spent on this measure would be better spent assisting women and families in need.

This bill will create obstacles to these women by requiring extensive documentation from them to prove that they own their names and their citizenship. It will virtually eliminate door to door, mobile registration and advance voting drives, causing too many obstacles to practically implement such an effort. These drives allow busy women, women with limited transportation availability, the elderly and disabled to exercise their guaranteed right to vote with an ease that they may not experience in other aspects of their lives. Making their right to cast their vote as convenient as possible is a good thing. This is not something to be feared or reviled.

Kansas NOW sees no fault in the current system that couldn't be changed incrementally or administratively.

- Non-incremental policy proposals are unpredictable in their consequences. We should avoid the practice of ignoring important possible consequences of possible public policies, as well as the values attached to the neglected consequences.
- This bill fails to meet the tenets of plausibility and utility. Page 20 beginning with line 12, states that photocopies of citizenship documents and photo ID be mailed in with voter registration cards. This creates a system where multiple documents are required for what should be a simple registration process. No other state requires this drastic measure.

Ethics and Elections Committee

Attachment 14

Date 3-10-11

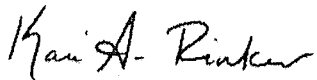
- The bill's many exceptions and exemptions make this attempt at reform a political shell game, indicating the suspicious nature of many of its provisions. The exemption for current registered Kansas voters found on page 22 line 31, questions the very need to address a fraud problem stated (but not yet proven) to exist.
- The extensive hearing process (described on page 22 line 4 of the bill) required if proof of citizenship is not deemed to have met muster could be considered grounds for legal action, as it creates extensive barriers to a person's constitutionally guaranteed right to vote.

Then there is the cost of the legislation. We should not be considering such a costly and unnecessary proposal, during a session in which the Governor's proposed budget has dropped a program such as Early Head Start. A program that provides necessary services to infants and toddlers and low income pregnant women. The fiscal note for the bill is as disgraceful as the bill itself, falling significantly short of the real costs associated with these changes.

- While a less evasive voter ID bill was budgeted at a cost of \$14 million for the first three years by the state of Missouri and Indiana spends millions each year, the Kansas fiscal note gives a cost to the state of \$13,500 for two fiscal years (excluding costs passed along to counties). This simply does not make sense.

The questions that have been posed to Secretary Kobach regarding his pet project have been answered with generalizations and anecdotes that do not allow for reasonable and factual examination of the proposed legislation. Due to this complete lack of data to correspond with said need for voter reform, true fiscal costs associated with this measure, potential for costly litigation against the state, and the barriers placed between women and their constitutionally guaranteed right to vote, I strongly urge this committee to reject HB 2067.

Respectfully Submitted,



Kari Ann Rinker
State Coordinator