

**Testimony of the ACLU of Kansas and Western Missouri
In Opposition to HB 2437
March 15, 2012**

Thank you for the opportunity to submit testimony for the Senate Ethics and Election Committee's hearing on House Bill 2437. My name is Holly Weatherford and I am the Program Director for the ACLU of Kansas and Western Missouri. Founded in 1920, the American Civil Liberties Union (ACLU) is one of the nation's oldest civil rights organizations. I am submitting these comments on behalf of the nearly 2,000 ACLU members from across the state of Kansas.

The right to vote is protected by more constitutional amendments - the First, Fourteenth, Fifteenth, Nineteenth, and Twenty-Sixth - than any other right we enjoy as Americans. There are additional federal and state statutes which guarantee and protect voting rights, as well as declarations by the Supreme Court that the right to vote is fundamental because it is protective of all rights. The process to register to vote is the gateway to our democracy and our laws should ensure that the voter registration process allows all eligible voters to participate.

Across the country, the ACLU has defended our basic voting rights, and the organization has been involved in litigation against other states, most notably Arizona, regarding the violations presented by voter registration proof of citizenship laws. The law is unsettled on whether states can require proof-of-citizenship documentation beyond what the federal law requires. There is no reason why Kansas should rush the implementation and spend scarce resources when we could gain valuable insight from the 9th Circuit decision involving the Arizona law.

- Even though technically a 9th Circuit decision is not necessarily binding on the 10th Circuit, this legislature should take notice that circuits are disinclined to disagree with one another and create splits. Prost v. Anderson, 636 F.3d 578, 599 (10th Cir. 2011) ("We should be especially cautious when we risk creating or exacerbating a circuit split"); Andrews v. Chevy Chase Bank, 545 F.3d 570, 576 (7th Cir. 2008) ("Finally, we note that creating a circuit split generally requires quite solid justification; we do not lightly conclude that our sister circuits are wrong.").
- Former Supreme Court Justice O'Connor sat on the original 3-judge panel that ruled that the State of Arizona, with its stringent proof-of-citizenship requirements, violated the National Voter Registration Act.

Kansas is currently in the process of implementing the photo ID requirement and moving up the effective date of the citizenship requirement exacerbates there preexisting problems:

- Lack of funding: there is no identified funding source to educate the public and train poll workers. As a result, this law is an unfunded mandate to county election offices, whose budgets have been slashed over the past 2 years.
- Lack of adequate voter education and poll worker training already evident:
 - The Secretary of State's office has taken little initiative to educate voters about this new ID requirement. County election administrators' ability to educate their electorate and election workers is left to what remains in their local budgets. Adding yet another component is hardly likely to improve this situation.
 - There's little evidence to show that poll workers and election administrators are being adequately educated. Recently, when election administrators across Kansas were contacted to ask whether Veterans Administration cards could be used to vote, many responded that VA cards are considered employee cards, even though VA cards are used to obtain benefits.
- Voter confusion:
 - States have justified ballot access and voting restrictions citing the avoidance of voter confusion. We cannot allow the avoidance of voter confusion to be of diminished significance in the voter ID context. We must acknowledge the likelihood of confusing voters when changing the rules so fast and so much in one year's time.

- The Topeka Capital-Journal reported in late January that not only were voters confused about whether they could receive birth certificates for free, election administrators also lacked clarity.
- Both the Supreme Court and the 10th Circuit have recognized that preventing voter confusion is a legitimate state interest. Munro v. Socialist Workers Party, 479 U.S. 189 (1986); American Constitutional Law Foundation, Inc. v. Meyer, 120 F.3d 1092 (10th Cir. 1997).
- The Secretary of State's continuous changes the rules and administrative procedures only adds to the burden already on election administrators.
 - For example, even though the relevant election rules and regulations were just published in the Kansas Register, the Secretary of State is rumored to be developing an affidavit that would supplant a birth certificate for individuals born out-of-state. In addition to the incongruity in allowing an affidavit to prove identity in one circumstance but not for the purpose of voting, this shows that both the Secretary of State and county election officials are already facing numerous changes to implement within a very limited amount of time.
- The following facts and statistics further illustrate the importance of voter education, poll worker training, and thorough implementation of election laws.
 - Several years ago, the state of Arizona enacted a similar law requiring proof of citizenship for voting. The most noticeable effect of Arizona's law has been to prevent eligible U.S. citizens from registering to vote. Since 2006, some 37,000 registration applicants in Arizona have had their applications rejected for lack of citizenship proof. Since there were only 20 suspected instances of non-citizens voting in the previous 10 years, it is highly likely that the Arizona law is barring citizens from registering who simply lacked access to a passport, birth certificate or other required document.
 - In 2005, the American Association of People with Disabilities estimated that more than 3 million Americans with disabilities do not possess a driver's license or state-issued photo ID.
 - According to the American Association of Retired People (AARP), as many as 18 percent of Americans over age 65 do not have any photo ID, such as a driver's license or passport. Many of these same people also lack a birth certificate or other document that would satisfy SB 210.

Considering the unsettled legal landscape, coupled with the lack of resources available to implement this requirement in time to prevent voter confusion and disenfranchisement, we oppose HB 2437.

(Please see legislative/litigation activity chart on page 3)

Voter Suppression State Summary

last updated 3/13/2012

State	Legislative and Administrative Activity/Status	Litigation Activity/Status
AL	Legislation to require photo ID to vote and proof of citizenship to register passed, and is pending federal review under the Voting Rights Act.	ACLU intervened in challenge to constitutionality of Section 5.
AZ		<p><u>Gonzalez v. Arizona</u>: ACLU challenging proof of citizenship requirement to register; decision pending before 9th Cir.</p> <p>ACLU intervened in challenge to constitutionality of Section 5.</p>
FL	<p>Voter suppression legislation restricting voter registration, early voting and more passed, and is pending federal review under the Voting Rights Act. The ACLU is suing to prevent Florida from implementing the new law before it is pre-cleared and has moved to intervene in the United States District Court's review of the new law.</p> <p>In addition, a policy change by the Governor and his cabinet now makes it nearly impossible for people with past felony convictions to regain their voting rights.</p>	ACLU moved to intervene in court review of voter suppression law - case includes a challenge to the constitutionality of Section 5.
KS	Legislation to require photo ID to vote and proof of citizenship to register passed. Bill to move up effective date of proof of citizenship introduced.	ACLU considering challenge to proof of citizenship requirement and voter ID law.
MO	<p>Legislation to require photo ID to vote vetoed by Gov. Nixon in 2011, reintroduced in 2012.</p> <p>Ballot initiative to amend Constitution to permit photo ID to vote.</p>	<u>Aziz v. Mayer</u> . ACLU sued to challenge ballot initiative, which would amend state constitution to permit voter ID.
NC	<p>Legislation to require photo ID to vote pending (the bill was vetoed by Gov. Perdue, but the legislature could still override her veto).</p> <p>Citizenship database match enacted through administrative action.</p> <p>Voter suppression legislation ending same day registration, shortening early voting and eliminating Sunday voting defeated.</p>	ACLU intervened in challenge to constitutionality of Section 5.
PA	Legislation to require photo ID to vote passed.	Affiliate contemplating litigation.
SC	<p>Legislation to require photo ID to vote passed, and was denied preclearance by DOJ.</p> <p>Voter registration drive and proof of citizenship bills pending.</p>	ACLU intervened in state's lawsuit against DOJ for voter ID.