

KRIS W. KOBACH
Secretary of State



Memorial Hall, 1st Floor
120 S.W. 10th Avenue
Topeka, KS 66612-1594
(785) 296-4575
www.sos.ks.gov

STATE OF KANSAS

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Senate Elections Committee

Statement of Secretary of State Kris Kobach in support of SB 37

Chair and Members of the Committee, I am here to explain the necessity of passing SB 37. It is a bill that clarifies what my office believed was already clear in existing Kansas law, but Shawnee County District Judge Hendricks determined was not clear enough – that the secretary of state has the authority to keep our proof-of-citizenship requirement intact for state and local elections if a federal court rules that the requirement is temporarily suspended for federal elections only. There are four compelling reasons to support this bill. I will begin, however, by describing how the requirement works.

HOW THE PROOF OF CITIZENSHIP REQUIREMENT WORKS

The proof of citizenship requirement went into effect on January 1, 2013. Under the Secure and Fair Elections (SAFE) Act a registering voter need not have his proof of citizenship with him when he fills out a registration card. He can take his time in submitting a document proving citizenship—up to 90 days. And if he wants to give himself another 90 days, he can just fill out another registration card .

Most of the people who register to vote now do so at the DMV. We have had great cooperation and coordination with the Kansas Dept. of Revenue in implementing the proof of citizenship requirement. Prior to the litigation brought against Kansas law by the ACLU, DMV personnel told the registering voters twice that they need to provide proof of citizenship if they didn't already do so at the DMV:

1. They tell the person orally that proof of citizenship is necessary before registration is completed.
2. They hand every person at DMV who registers a paper with information from the Secretary of State's office on how to provide proof of citizenship.

Then when the person goes home, he receives two more reminders:

1. First the county clerk sends the person a letter reminding him.
2. Second the clerk's makes a phone call to the individual.

So the person receives a total of four reminders. And completing one's registration by providing proof of citizenship is easy to do. There are thirteen documents that suffice to prove citizenship (the most common being a U.S. birth certificate, a U.S. passport, or a naturalization document). And there are five ways to provide one's proof of citizenship document to the county election office or clerk's office:

1. One can bring the document in to the county office, in person.
2. One can send a photo copy in.
3. One can fax it in.
4. One can scan it and email it in.
5. In many counties one can even take a picture with one's phone and text it in.

In other words, any person whose registration is incomplete can finish it from their living room couch at home and do it in a matter of minutes. The process is easy, and there's no impediment to getting it done.

You might also wonder what happens if a person doesn't have a birth certificate or passport or other document proving United States citizenship. If the person was born in Kansas, he or she can get a free one. The SAFE Act specifically provided for free birth certificates for the purpose of registering to vote. If not, then the person can submit other documentation to the state election board that supports the person's claim to citizenship.

In early 2014 we began providing additional assistance to help people complete their registrations. KDHE has birth certificate records for every person born in Kansas, and a substantial portion of the incomplete registrations are for people born in Kansas. After concluding a memorandum of agreement between the two agencies, we then began a monthly process of running the names of incomplete registrations against KDHE's records of Kansas born individuals. This has allowed tens of thousands of individuals to have their citizenship document verified by the State without any effort on their part. It is a basic practice of good government; if one agency of the State already has the citizenship document another agency of the State should be able to obtain it without any effort by the applicant.

We have a similar agreement in place with the Department of Vehicles at KDOR. If the DoV already has a citizenship document on file for the applicant, we can verify that document without the applicant having to do anything.

1. NONCITIZEN REGISTERING AND VOTING IS A SIGNIFICANT PROBLEM

The problem of noncitizens registering and voting in Kansas is a very significant one. It is very difficult to determine the exact number of noncitizens on our voter rolls because there is nothing in a voter's file in the State's database that indicates alien status. However, we do have some mechanisms that allow us to identify a small percentage of those noncitizens. One way is to match our voter rolls against the DoV's list of Temporary Driver's Licenses, which are only issued to noncitizens. A recent match of those databases identified 80 noncitizens on the voter rolls. We also learn of noncitizens who were on the voter rolls when they subsequently naturalize and re-register to vote. A large number of such noncitizens have been discovered in Sedgwick County, where the county election office attends every naturalization ceremony. In addition, we learn of noncitizens who attempt to register but admit that they are noncitizens when contacted by the relevant county election office regarding providing citizenship documents. Adding all of these together, we know of 115 specific noncitizens who either registered and got on Kansas's voter rolls before our proof of citizenship went into effect, or attempted to do so afterward. The attached spreadsheet from Sedgwick County provides details on 32 of these noncitizens.

But these 115 specific noncitizens are just the tip of the iceberg. The vast majority of noncitizens on our voter rolls cannot be identified using these methods. A statistical analysis of the Kansas voter rolls by an academic expert at Old Dominion University determined that the total number of noncitizens on the Kansas voter rolls could be more than 18,000.

The opponents of proof of citizenship always claim that no number is large enough to justify Kansas's law, because (for example) 18,000 is just one percent of the 1.8 million voters in Kansas. But that argument misses the point entirely. The question is: are there close elections in Kansas where 18,000 voters could make the difference and swing the election, or where just 18 voters could swing the election? The answer is yes. Looking just at congressional elections and state legislature elections alone, in the past twenty years there were a total of 40 elections decided by a margin of 100 votes or less. Of these, 35 were decided by a margin of 50 votes or less. Of these, 8 were decided by a margin of 10 votes or less. And there was one dead tie. When even a small handful of noncitizens vote, it can decide the outcome of a close election.

Regardless of these numbers, it also bears mentioning that every time a noncitizen votes, it effectively cancels out the vote of a U.S. citizen.

2. THE U.S. CONSTITUTION RECOGNIZES THAT THE STATES, NOT CONGRESS, DETERMINE WHO IS QUALIFIED TO VOTE.

SB37 is vitally important because it preserves a principal that is so important, the United States Constitution never would have been ratified without it. Article I, Section 2 states that electors in each State for the U.S. House of Representatives "shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature," and the Seventeenth Amendment adopts the same criterion for U.S. Senate elections. The States, not the federal government, determine who is entitled to vote. Without this guarantee, the Constitution never would have been ratified. As Alexander Hamilton put it: Prescribing voting qualifications, "forms no part of the power to be conferred upon the national government" by the Elections Clause, which is "expressly restricted to the regulation of the times, the places, and the manner of elections." *The Federalist No. 60* (A. Hamilton). The United States Supreme Court has recognized that not only do the States have the power to set the qualifications for voting, they also have the power to enforce those qualifications as they see fit: "Since the power to establish voting requirements is of little value without the power to enforce those requirements, ... it would raise serious constitutional doubts if a federal statute precluded a State from obtaining the information necessary to enforce its voter qualifications." *Arizona v. Inter Tribal Council of Arizona*, 133 U.S. 2247, 2258 (2013).

Unfortunately, Judge Hendricks's order turns the Constitution on its head. His decision led to the result that if a federal court's interpretation of a federal statute requires a State to allow a person (who refuses to provide proof of citizenship) to vote for federal elections, then the State must allow that person to vote in State elections too. That result is absurd. Kansas law says that if a person does not provide proof of citizenship, then he is not qualified to vote. K.S.A. 25-2309(1). SB 37 protects that crucial State authority during the period that any judicial injunction is in effect concerning voting federal elections.

3. THE MECHANISM OF A PARTIAL PROVISIONAL BALLOT IS EFFECTIVE

SB 37 preserves the integrity of our proof of citizenship requirement for state and local elections by using a tried and true method – the partial provisional ballot. This is the method stipulated already by state law for the situation that arises when a voter goes to the wrong polling place in his county: he is allowed to cast a provisional ballot, and the ballot is counted partially. Only the votes for offices that are consistent with his correct voting district are counted. This mechanism was used in 2014 for the exact purpose described by SB 37. At that time, voters who used the federal voter registration form (which is used very rarely) and failed to provide proof of citizenship were allowed to vote in federal elections but not state elections. Provisional ballots were issued to such voters, and the ballots were partially counted (for federal offices only). The process worked very smoothly.

4. KANSAS VOTERS FAVOR OUR PROOF OF CITIZENSHIP REQUIREMENT

A vote against SB 37 is a vote against Kansas's proof-of-citizenship requirement. Without SB 37, there is a huge loophole in our law. The opinion of Kansas voters on this subject is quite clear: Kansans overwhelmingly approve of our proof-of-citizenship requirement. A May 2016 scientific survey of 500 Kansans, conducted by Cole Hargrave Snodgrass & Associates found that 77% of Kansans support the proof-of-citizenship requirement, and only 14% of Kansans oppose it. 9% had no opinion. Kansans expect the Kansas Legislature to protect the integrity of our proof-of-citizenship law. That means applying it to State and local elections. And that means supporting SB 37.

SEDGWICK COUNTY, KANSAS, ALIENS WHO REGISTERED PRIOR TO 1/1/2013 OR WERE SUCCESSFULLY PREVENTED FROM REGISTERING AFTER 1/1/2013
(Amended February 2017)

Date original registration application submitted	Reg ID	Source of Registration	Current Citizenship Status	Date of Naturalization	Voted	Note
ALIENS WHO SUCCESSFULLY REGISTERED						
4/16/2003	4296515	DMV paper address change	Citizen	2/27/2015	No	Was registered for nearly 12 years prior to being a citizen. Was sent ballot for 4 elections but never voted. Sedgwick County Election Office discovered the fact that non-citizen had been registered when the individual re-applied at naturalization ceremony in Sedgwick County Kansas.
9/14/2004	1463509	Paper	Citizen	01/25/2016	Yes	Voted 3 times, GN2004, SP2007, GN2010. Voter called the Sedgwick County Election Office to request cancellation of registration and copies of registration documents upon request of immigration service officer during citizenship interview. She canceled her registration and then re-registered after being sworn in as a citizen.
10/12/2004	1447321	By Mail - Paper	Non-citizen	NA	Yes	Voted 4 times, GN2004, CG2005, SP2007, GN2008. Voter called Sedgwick County Election office because while applying to become a citizen of the United States she realized she had voted and was registered to vote here in Sedgwick County. She was requesting her voting history (she has voted 4 times) and a voter ID card along with a cancellation form. Her statement was that she "was a permanent resident of the U.S. and did not know she wasn't allowed to vote until after 2008 when one of her friends told her she couldn't, she then stopped voting. "
10/07/2006	5053234	Voter Registration Drive	Citizen	9/11/2015	No	Was registered for over 8 years before becoming a citizen. Sedgwick County Election Office discovered this fact when registering new citizens at naturalization ceremony.
10/15/2006	5055911	Voter Registration Drive - Paper	Citizen	1/16/2015	No	Was registered for over 8 years before becoming a citizen. Sedgwick County Election Office discovered this fact when registering new citizens at naturalization ceremony.

**SEDGWICK COUNTY, KANSAS, ALIENS WHO REGISTERED PRIOR TO 1/1/2013 OR
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(Amended February 2017)

Date	Registration Type	Citizen Status	Registration Date	Registered Before 1/1/2013 OR Prevented After 1/1/2013?	Notes
10/19/2006	Mandated Public assistance - Paper	Citizen	3/28/2014	No	Was registered for over 7 years before becoming a citizen. Sedgwick County Election Office discovered this fact when registering new citizens at naturalization ceremony.
10/2008	Voter Registration Drive-Paper	Non-citizen	N/A	Yes	Was registered for over 8 years. Voted 1 time, GN2008 and signed a petition for water fluoridation in August 2012. Sedgwick County Election Office received a call from applicant, stating that the applicant was applying to become a naturalized citizen. Applicant requested printouts of voter registration card, form to cancel registration, and a copy of Applicant's activity in order to complete naturalization application.
10/07/2008	Motor Vehicle Office-In Person	Citizen	4/8/2016	No	Was registered for over 6 years as a non-citizen. Registrant was cancelled through the NVRA process in January 2015 because registrant moved out of Kansas. Sedgwick County Election Office discovered the fact that non-citizen had been registered when the individual re-applied at naturalization ceremony in Sedgwick County Kansas.
12/22/2008	Motor Vehicle Office-In Person	Citizen	12/11/2015	No	Was registered for over 6 years before becoming a citizen. Sedgwick County Election Office discovered this fact when registering new citizens at naturalization ceremony.
1/26/2009	Motor Vehicle Office-In Person	Citizen	4/8/2016	Yes	Registered as a noncitizen in January 2009 and voted in the City/School primary election of 2009. Applicant was cancelled in 2009 with the following note, "According to SOS office, not US citizen." The registrant's alien status was discovered through SOS comparison of temporary driver's license list with voter rolls. The applicant was prosecuted and entered into a plea agreement with the DA. This history came to light when the individual applied to register at April 2016 naturalization ceremony.
8/25/2010	Motor Vehicle Office-In Person	Citizen	5/27/2016	No	Was registered for over 5 years before becoming a citizen. Sedgwick County Election Office discovered this fact when registering new citizens at naturalization ceremony.
8/30/2010	Motor Vehicle Office - In Person	Citizen	7/17/2015	No	Was registered for almost 5 years before becoming a citizen. Sedgwick County Election Office discovered this fact when registering new citizens at naturalization ceremony.

SEDGWICK COUNTY, KANSAS, ALIENS WHO REGISTERED PRIOR TO 1/1/2013 OR WERE SUCCESSFULLY PREVENTED FROM REGISTERING AFTER 1/1/2013

(Amended February 2017)

ALIENS WHO ATTEMPTED TO REGISTER						
6/5/2010	5381681	Motor Vehicle Office - In Person	Citizen	10/2/2015	No	Was registered for over 5 years before becoming a citizen. Sedgwick County Election Office discovered this fact when registering new citizens at naturalization ceremony.
12/27/2011	5484847	Motor Vehicle Office-In Person	Citizen	2/3/2017	Yes	Was registered for over 6 years before becoming a citizen. Voted 3 times, SPCW2012, GN2012, GN2014. Sedgwick County Election Office discovered this fact when registering new citizens at naturalization ceremony. Presented Valid Photo ID to election worker.
2/13/2013	5613774	DMV Online - Electronic	Non-citizen	NA	No	Sedgwick County Election Office contacted applicant via phone on 06/27/2013. He admitted that he was not a citizen.
8/20/2013	5637865	Motor Vehicle Office - In Person	Citizen	9/27/2013	No	Applicant attempted to register prior to becoming a citizen. Sedgwick County Election Office discovered this fact when registering new citizen at naturalization ceremony.
1/24/2014	5657157	Motor Vehicle Office - In Person	Non-citizen	NA	No	Applicant returned Proof of Citizenship notice with note saying that the applicant was not a citizen.
2/20/2014	5660352	Federal Form	Non-citizen	NA	No	Applicant attempted to register even though she was a noncitizen. Applicant signed affirmation of United States citizenship but failed to check boxes on the form. Sedgwick County Election Office called the applicant, and the applicant stated that she was not a United States citizen.
2/21/2014	5660218	Motor Vehicle Office - In Person	Non-citizen	NA	No	Applicant called Sedgwick County Election office in response to second notice requesting proof of citizenship to report that he is not a citizen. 04/21/2014.
3/4/2014	5662650	Motor Vehicle Office - In Person	Citizen	9/14/2014	No	Applicant attempted to register prior to becoming a citizen. Sedgwick County Election Office discovered this fact when registering new citizens at naturalization ceremony.
4/23/2014	5668920	Motor Vehicle Office - In Person	Non-citizen	NA	No	Applicant's niece called Sedgwick County Election office to report applicant is not a citizen, in response to notice requesting proof of citizenship. Sedgwick County Election office mailed a cancellation form, but hasn't received it back. Due to the notification not being from the applicant, this file was left pending as "incomplete." Has since been cancelled per K.A.R. 7-23-15.

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8/6/2014	5685971	Motor Vehicle Offices – In Person	Citizen	1/16/2015	No	Applicant attempted to register prior to becoming a citizen. Sedgwick County Election Office discovered this fact when registering new citizen at naturalization ceremony.
3/10/2015	5721438	Motor Vehicle Office - In Person	Citizen	12/11/2015	No	Applicant attempted to register prior to becoming a citizen. Application was cancelled per K.A.R. 7-23-15. Sedgwick County Election Office discovered this fact when registering new citizen at naturalization ceremony.
4/14/2015	5733764	Mandated Public Assistance Agency	Citizen	9/18/2015	No	Applicant attempted to register prior to becoming a citizen. Sedgwick County Election office discovered this when registering new citizens at naturalization ceremony.
6/12/2015	5735793	Motor Vehicle Office – In Person	Citizen	11/13/2015	No	Applicant attempted to register prior to becoming a citizen. Sedgwick County Election Office discovered this fact when registering new citizens at naturalization ceremony.
9/23/2015	5642186	Motor Vehicle Office - In Person	Non-citizen	NA	No	Applicant came into the Sedgwick County Election Office on 10/2/2015 to provide proof of citizenship, in response to proof of citizenship notice. Applicant provided a “Residential Alien” card. Sedgwick County Election Office asked if applicant was a U.S. Citizen. Applicant said No.
10/22/2015	5767727	Motor Vehicle Office – In Person	Citizen	3/25/2016	No	Applicant attempted to register prior to becoming a citizen. Sedgwick County Election office discovered this when registering new citizens at naturalization ceremony.
1/20/2016	5772434	Motor Vehicle Office-In Person	Non-citizen	NA	No	Applicant non-citizen applied to register on 1/20/2016. Applicant subsequently went to Sedgwick County Election Office to report that she is not a citizen after receiving a second notice from Election Office requesting proof of citizenship. Applicant claimed that her voter registration application was a mistake on the part of the DMV. Applicant proceeded to fill out cancellation request form. Applicant’s registration application has been cancelled, and notes have been left in file.
2/12/2016	5780239	Motor Vehicle Office-In Person	Non-citizen	NA	No	Applicant non-citizen applied to register on 2/12/2016. Applicant’s sister called the Sedgwick County Election Office to report that Applicant is not a citizen. Applicant completed a Voter Registration Cancellation form on 4/29/2016.

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ALIENS SUCCESSFULLY PREVENTED WHEN LAW WAS IN EFFECT SUBSEQUENTLY REGISTERED PURSUANT TO PRELIMINARY INJUNCTION						
8/20/2014	5686565	Motor Vehicle Office-In Person	Citizen	7/15/2016	No	
						Applicant attempted to register prior to becoming a citizen. Applicant was placed in suspense and was subsequently cancelled in compliance with KAR 7-23-15. In compliance with Preliminary Injunction, Applicant was placed back in Suspense/DMV Office-Federal Election Only on June 18, 2016. It was subsequently determined after naturalization ceremony that applicant was not yet a citizen when applicant registered. Applicant's registration completed pursuant to KSA 25-2309(r).
7/23/2015	5742082	Motor Vehicle Office- In Person	Citizen	8/19/2016	No	Applicant attempted to register prior to becoming a citizen. Applicant was placed in suspense and was subsequently cancelled in compliance with KAR 7-23-15. In compliance with Preliminary Injunction, Applicant was placed back in Suspense/DMV Office-Federal Election Only on June 18, 2016. It was subsequently determined after naturalization ceremony that applicant was not yet a citizen when applicant registered. Applicant's registration completed pursuant to KSA 25-2309(r).
1/28/2016	5773505	Motor Vehicle Office-In Person	Citizen	8/19/2016	No	Applicant attempted to register prior to becoming a citizen. Applicant was placed in suspense and was subsequently cancelled in compliance with KAR 7-23-15. In compliance with Preliminary Injunction, Applicant was placed back in Suspense/DMV Office-Federal Election Only on June 18, 2016. It was subsequently determined after naturalization ceremony that applicant was not yet a citizen when applicant registered. Applicant's registration completed pursuant to KSA 25-2309(r).