



NEUTRAL - SB 149 - AMENDING THE REQUIREMENT TO PROVIDE DOCUMENTARY PROOF OF CITIZENSHIP TO REGISTER TO VOTE

Written Testimony of Nadine Johnson

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Madame Chairman, Members of the Committee,

Thank you for the opportunity to submit our neutral testimony concerning SB149. The ACLU of Kansas works to preserve and strengthen the constitutional liberties of every person in Kansas, including the right to vote. Although the drafting of SB 149 appears well-intentioned as a means to place the burden of providing documentary proof of citizenship for voter registration on the state, it fails to acknowledge the fallacy of the S.A.F.E. Act's documentary proof of citizenship requirement.

As written, the documentary proof of citizenship requirement is preempted by the National Voter Registration Act's mandate on the manner of verifying citizenship eligibility, by requiring more information than federal law presumes necessary for state officials to meet their assessment of an applicant's eligibility to vote.¹ And it is unconstitutional, as a violation of the Equal Protection Clause of the Fourteenth Amendment.

Currently, per federal court order, this requirement of the S.A.F.E. Act may not be enforced. Yet even if the decision in *Fish v. Kobach* is overturned, there are myriad less costly, less burdensome alternatives available to ensure the continuation of Kansas's longstanding record of extremely low voter fraud: Matching DOV lists, investigation of self-reported non-citizens called for jury service, utilization of the SAVE database, and training of DOV employees to help ensure that voter registration applications are not distributed to ineligible persons are but a few examples.

The documentary proof of citizenship requirement of the S.A.F.E. Act wreaked havoc on our state's eligible citizen voters and disenfranchised 35,314 Kansans. These voters were of all political stripes—Republican, Democrat, and unaffiliated. Were the law to be upheld, it remains a significant barrier to citizen participation in elections.

While any burden imposed with respect to proof of citizenship should certainly be on the state and not its citizens, placing this in the context of the flawed documentary proof of citizenship requirement is simply the wrong prescription to ensure the health of Kansas's democracy.

¹ NVRA's guidance permits State officials to require only a sworn attestation of citizenship - "the minimum amount of information necessary" to assess an applicant's eligibility. 52 U.S.C.A. § 20504(c)(2). Insofar as the requirement seeks to require more on the federal form, it is preempted.