

February 7, 2017

To: Senator Elaine Bowers, Chair, Senate Committee on Ethics, Elections and Local Government

Re: Testimony Related to SB 37, Kansas Bifurcated (Two-Tiered) Voting System: **Opposition**

From: Marge Ahrens and Carole Neal, Co-Presidents, League of Women Voters of Kansas

**A. The bifurcated or two-tiered voting system devised by the Kansas Office of the Secretary of State is the latest step in a series of voter registration barriers, resulting in a complex set of lawsuits in which numerous courts have blocked parts of the requirement.**

1. The Kansas "Secure and Fair Elections Act (SAFE ACT) of 2011 requires in addition to a photo ID for voting, that all persons registering to vote after January 1, 2013 provide Documentary Proof of Citizenship (DPOC) in order to complete their registration. Numerous lawsuits have been filed against the Secretary of State SOS as the official of his Office in regard to the DPOC.

a. In 2015 the 10<sup>th</sup> Circuit Court of Appeals rules that the Proof of Citizenship requirement was not allowed on the federal voter registration form, and the Supreme Court of the United States denied Secretary Kobach's appeal. The League of Women Voters of Kansas and other organizations opposed the Secretary of State in this lawsuit.

b. The League of Women Voters of Kansas is currently one of five organizational plaintiffs in a case brought by the **Brennan Center for Justice** and others on our behalf in regard to the U.S Elections Assistance Commission (EAC) official's attempt to add proof of citizenship to the federal form, notwithstanding the prior rulings blocking the requirement. The official is a former Johnson County election commissioner who attempted to single handedly impose the requirement onto the federal form. Again, The court ruled against his action: the DC Circuit ruled 2-1 that federal forms not be altered to require documentary proof of citizenship in a preliminary decision. The case is ongoing.

c. In another federal case s filed on behalf of the League and others by the **American Civil Liberties Union** ("*Fish v. Kobach*"), a Federal District Court in Kansas City ruled in 2016 that **the SAFE ACT's DPOC requirement violated the National Voter Registration ACT** (NVRA) for individuals registering at offices of the Department of Motor Vehicles ("motor-voter") in a preliminary decision. The SOS appealed, and his appeal was denied in the Tenth Circuit

Court of Appeals 3-0 in summer, 2016. The ruling has preliminarily blocked the DPOC requirement for motor voter registrants.

i. After Secretary Kobach failed to provide notice to affected voters and forced them to vote a provisional ballot, Judge Julie Robinson scheduled a hearing on whether Secretary Kobach was in **contempt of court**. The day before the hearing –and more than four months after the court’s order -- Secretary Kobach finally agreed to provide proper notice to both federal form and motor voter registrants who were affected by the *Fish* and *EAC* cases and allow them a full ballot.

1. Judge Julie Robinson later ordered that the SOS notify all DMV and federal form registrants that they were to be allowed a full ballot without DPOC or be in contempt of court.

2. The Kansas Office of the Secretary of State devised a “**bifurcated**” or “**two-tiered**” voting system as a scheme to bypass those Federal Court decisions. The Office planned that those persons who had registered at their DMV or on the federal form, (estimated at @17,000 Kansans), would be disenfranchised for state and local portions of the ballot.

3. Judge Thiess of the Shawnee County District Court determined that the **SOS did not have the authority to create a two-tiered voting system** as devised.

4. The ACLU filed a **contempt of court** case against the Kansas SOS prior to the primary election of 2016 in relation to the **still remaining** bifurcated system. District Court Judge Hendrix determined that the SOS **must allow the thousands of Kansas DMV and the 192 federal form voter registrants to vote a full ballot** through the general election of November 8, 2016. He found that the miniscule accounts of undocumented persons registering to vote (@25 over 13 years in Sedgwick County) searched out by the SOS could not be compared with the thousands of citizens deprived of their right to vote a full ballot in the SOS’ two-tier voting system.

2. Following the November 8 general election, **the SOS retained those allowed to vote by court order**--those Kansas citizens who had registered to vote at the DMV or by using the Federal Form without DPOC --**on the “Suspense” or “Incomplete Voter Registration “ List**. A growing number of voter registrants who had begun the voter registration process using the Kansas form are included on the list. (The **combined list totaled nearly 22,000** on January 13, 2017 and is available online at LWVK.org. An attachment providing percentages by age of registrant and party affiliation on that list is supplied with this testimony.)

3. Through rulemaking in Fall, 2015 the **SOS extended the Office’s reach of authority to the full cancellation** of voter registrations which were on the suspense list longer

than 90 days. The SOS refuses to account for the number and identities of those cancelled registrations

4. In the 2015 Legislative Session the SOS sought and was **granted prosecutorial authority** over the entire state so that he might find cases of fraud to support the original fears promoted at the passage of the SAFE ACT in 2011.

**B. The Proposal of the bifurcated voting system would forbid 22,000 Kansas citizens the right to vote in state and local elections today. It would discourage and confuse the Kansas voter even more than the pervasive attitude of disenfranchisement present in Kansas already.**

**C. The responsibility to enforce the law by processing every required provisional ballot of those persons by hand would fall to financially strapped county governments without a reasonable defense for the expense except to prevent citizens from voting in state and local elections.**

**D. The SOS continues to cancel voter “incomplete” registrations and hunt down Kansas voters “felons” bringing the threat of police state action against the voter.**

**Conclusion:** SB 37 reflects the Office of the SOS’ defiance against State and Federal judges and the U. S Supreme Court. It denies the expense, complexity and entanglements of the law for the **Kansan**. The proposal demonstrates an embarrassing eagerness to establish and defend the **highest barriers to the vote** in the nation with no proof of their need, and extraordinary evidence of their hindrance to the exercise of the right to vote.

The SOS has stated that SB 37 “just fills a loophole” in State Law. In the face of League principles of protecting the vote for all, of citizen participation and transparency in government, SB37 tightens a stranglehold on the Kansas voter in an aggressive move against that very right. SB 37 asks the Legislature to throw many thousands of taxpayer dollars for SOS attorneys and adjudicated staff to defend what has been adjudicated to **be bad law**. (The next case, a combination of two filings by individual Kansans against the SOS, will be heard in Kansas City Federal District Court on March 3.)

In addition 105 counties in the state have incurred various amounts of extra expense in the implementation of the SAFE ACT to date. (One county had to request an additional \$30,000 more for its election budget to perform extra processing required by the SAFE ACT last year. ) **Should thousands of voters be limited to a provisional ballot under SB37, every county election office in the state will carry the burden of hand processing those ballots.**

## **Recommendations to the Senate Committee on Ethics, Elections and Local Government:**

1. Do not pass SB 37. It represents an extension and further restriction of Kansas election law which has already been tested and deemed to be illegal in relation to DMV, federal form registrants and the State Constitution.
2. Request an analysis of the **costs** to the budget of Office of the SOS, local governments, and individual citizens as well as those helping to Kansans register to vote should SB 37 be enacted. It will be expensive to all.
3. Request an analysis of the **benefits** of the SAFE Act.
4. Request a disclosure of the **costs of continuously defending** and appealing the Kansas election law. including SB 37, before state and federal courts should the legislature pass it into law.
5. Demand a list of the **cancelled** voter registration applicants to understand the demographics of those who have been cancelled for not supplying a DPOC.
6. **Establish a Kansas standard** for election law proposals that is **rooted in transparency and openness**. Support the belief that the power of a representative government belongs to **all** .0of its people. Demand that the Office of the Secretary of State establish practices which welcome voter registration and participation.
7. Repeal the SAFE Act. Lawsuits are expensive ways of rewriting law. Decisions to date **do not protect the right to vote for those registering on the Kansas form** and not yet supplying DPOC.
8. Consider Election Day Registration, semi-permanent mail in balloting and other means of adapting voting to the needs of Kansas citizens; the young, the elderly, the rich and the poor, the mobile, the rural and the urban citizen. **All the people**.

Respectfully Submitted,

**Marge Ahrens and Carole Neal, Co-Presidents**

**League of Women Voters of Kansas**

*The League of Women Voters of Kansas is a **non-partisan** volunteer organization established in 1920 directly out of the women's suffrage movement . Membership is open to women and men age 16 years or older. The League respects the rule of law. Kansas members have worked tirelessly to engage the young, the minority and the elderly in the vote before and since the*

*passage of the SAFE ACT in Kansas. We believe that the power in a government belongs to the people, and we work to protect the vote for all.*

## **SB 37: Opposition before Senate Committee on Ethics, Elections and Local Governments**

The League of Women Voters of Kansas

What is our horse in the race?

The League of Women Voters arose in 1920, and first nationally in Wichita, Kansas, out of the suffragette movement. Members had gained the right to vote for women and had promised to assist them forward with educating for the informed vote. Today League members/volunteers work the polls, observe the canvases, and sit in on public meetings wherever a League exists.

Out of that culture and determination, Kansas members testified in the Kansas Legislature against the adoption of the so-called "Secure and Fair Elections Act" in 2011. Of concern to the League were barriers to the vote, especially focused on someone impersonating another at the polls. There is no history of such a case in Kansas or nearly anywhere. Women and others would be required to do double work proving the legality of a change of name on their documents.

We believed that government issued photo ID would block minority and poor persons from the polls in particular. We knew from thirty years of volunteer voter registration efforts that persons signing their names on the existing Kansas voter registration form were already marking that they were citizens and attesting under penalty of perjury that they were the person so registering.

In implementation, the SAFE ACT became costly for citizen and volunteer alike. Persons born out of state had to purchase documents if not in hand in order to vote in Kansas. Volunteers could not successfully assist persons with their voter registration. It created thousands of **incomplete** voter registrations. It caused multiple lawsuits ongoing to this day.

1. Because the complexity of requirements did not allow completion of a registration on site of a registration event or promise the right to vote at the polls.
2. Because follow up to locate, purchase, order and copy a documentary proof were complexities without purpose, and involved costs of time, transportation and entanglements beyond the ability and patience of many.
3. Because securing "free" photo id or Kansas birth certificates would require the completion of multiple forms and take hours of effort on the part of each citizen and volunteer assisting.
4. Because once persons had begun a registration and had not supplied a DPOC, their ability to vote was lost.

5. Because 7% of citizens do not have photo id, including high percentages of poor, African American and Latinos.

6. Because up to 16% in the country do not have or cannot access documentary proof of citizenship.