

Chair Roers, Vice Barta and members of the Committee:

On behalf of the ACLU of North Dakota, I submit testimony in opposition to SB2157.

The right to vote is the cornerstone of our democracy and the fundamental right upon which all our civil liberties rest. The ACLU is committed to protecting and expanding North Dakotans' right and ability to vote. Because of this, we are wary this bill does not improve the quality and accessibility of voting in North Dakota and is an excessive response to issues raised during the past year's elections. Our testimony seeks to provide this hearing with the context that precipitated the drafting of this bill and a summary of our opposition.

During early voting of the June 2022 primary election, the ACLU of North Dakota received multiple reports over several days concerning people of color and New Americans having difficulties at the polls and in many cases, being turned away at polling locations in Fargo. These reports came from voters, and community members who had witnessed these issues.

- When ID bar codes were scanned, some voters (almost exclusively people of color) had a red box pop up on the screen of the poll pad that read "Not a US Citizen" despite the voter being a qualified elector meeting age, residency, and citizenship requirements.
- This led to reports of poll workers telling qualified electors they could not vote because they were not citizens and being turned away without the option of set-aside ballots (which any potential voter should be offered with verbal affirmation of age, residence, and citizenship).
- One American born woman of color who possessed a Real ID driver's license was flagged as a non-citizen when her ID was scanned at the poll book. (This is a separate issue, but important to also be included.)
- The poll pad citizen flag matter appears to have led to additional issues that were brought to the attention of the ACLU:
  - Several non-English speaking voters reported having difficulty accessing their right to lawful assistance.
  - In one reported instance, a translator was accused by an election worker of electioneering while lawfully assisting a non-English speaking qualified elector.
  - One voter of color reported bringing her passport along after hearing of issues. Despite her name and DOB matching on her passport and drivers license, the poll worker questioned the validity of her passport because in the opinion of the poll worker, the photo did not look like the voter. The voter was eventually allowed to vote.
- Community advocates alarmed by word of these reports went to the polling location at West Acres mall, the source of nearly all reported concerns, and confirmed to the ACLU that they witnessed people of color being turned away from the polls due to questions of citizenship and not being offered set-aside ballots.
- Citizens turned away at the polls reported that the news of this situation was spreading through the New American community and raised worries that qualified electors would not even bother attempting to vote for fear of being turned away or having to encounter unpleasant difficulties.



- Election officials sought to remedy this issue by requesting passports or citizenship papers which prompted a citizen complaint to the Cass County States Attorney's office requesting clarification. By the primary election day, the State's Attorney issued an opinion that proof of citizenship documents was not found in law and instructed poll workers to not ask for additional documentation beyond verbal affirmation of citizenship. Furthermore, the State's Attorney requested clarification from the Attorney General who eventually concurred with that opinion before the general election. (It is my understanding that this finding is the impetus of this bill.)
- Following the June primary election, Cass County officials stated that citizenship being flagged in poll pads was an issue of the Department of Transportation (DOT) database. With citizenship flags not being reported during the November general election, Cass County election officials stated that the DOT had remedied that issue.



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North Dakota has taken pride in voting being easy and accessible to all citizens by not having voter registration. Changes in election law should not create barriers, but rather make voting easier and more accessible. SB2157 adds burden and potential confusion for voters as well as containing language that may prove to have unintended consequences.

- Not everyone has a passport or ready access to their birth certificate.
- Birth certificates and current passports may not correspond with those who have changed names due to marriage or divorce.
- Simply adding a passport to the list of valid identification in Section 16.1-01-04.1 is not satisfactory because passports do not provide a residential street address.
- This bill may create a burden on every citizen to provide proof of citizenship at every election or potentially require people with long voting history to produce additional documents.
- There is a conflict in the bill's language Section 1.5 (page 2, lines 28 and 29) appears to state the need for proof of citizenship in order to qualify for marking a set-aside ballot. Section 2.3 indicates an elector who asserts citizenship without proof can mark a set-aside ballot which would be counted after the elector has proven citizenship.
- Because bureau of Indian affairs card numbers, tribal treaty card numbers, and tribal enrollment numbers are sensitive like a social security number, these should not be included for verification out of privacy concerns for tribal members.
- Verification with United States Citizenship and Immigration Services may prove cumbersome and come with additional cost and bureaucracy.
- Voters using a long-term care certificate to vote may not have access to a birth certificate, passport, or other satisfactory proof of citizenship.
- New requirements for the DOT may come with unforeseen cost and capacity issues not provided for in this legislation.
- Systemic additions to the DOT data base in informing the voter poll books may be creating a de facto voter registration system which would likely be more cumbersome and raise questions about potential compliance under the Voting Rights Act.
- Regardless of apparent resolution of DOT data base issues, concern remains based on the experience from the June 2022 primary election that citizenship verification in this bill may cause comparable confusion. Any change in

identification requirements must ensure implementation will not inadvertently cause unfair treatment of voters at the polls or dissuade voters from turning out to the polls.

Because voting is such a cherished and fundamental right and this bill is inherently flawed, the ACLU of North Dakota urges this committee to give SB 2157 a Do Not Pass recommendation.

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