

Chair Clemens, Vice Chair Conley 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 serves two purposes:

1. To provide this hearing with the context the precipitated the drafting of this bill;
2. A brief summary of our opposition.

During early voting of the June 2022 primary election, the ACLU of North Dakota received multiple reports over several days of voting issues 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 US Citizenship, age, and residency 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 aside ballots.
- It was reported that some non-English speaking voters were having difficulty accessing their right to lawful assistance.
- In one instance a translator was accused by an election worker of electioneering while lawfully assisting a non-English speaking qualified elector.
- One American born woman of color who possessed a Real ID drivers 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.)
- Community advocates alarmed by word of these reports went to the polling location that was the source of nearly all these 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.
- 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 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. Furthermore, the State's Attorney requested clarification from the Attorney General who eventually concurred with that opinion.



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- Following the June primary election, Cass County officials stated that citizenship being flagged was an issue of the Department of Transportation database. With citizenship flags not being reported during the November general election, Cass County election officials stated that the DOT had remedied that issue.

North Dakota had taken pride in voting being easy and accessible to all citizens by not having voter registration. Changes in election law should make voting easier and more accessible. SB2157 adds burden and potential confusion for voters.

- This bill would potentially require people who have voted their entire lives in this state to have to produce additional documents.
- Not everyone has a passport or ready access to their birth certificate.
- 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 Department of Transportation may come with unforeseen cost and capacity issues not provided for in this legislation.
- Continuing using the DOT data base to inform the voter poll books (with the additions found in this bill) will likely make it a de facto voter registration system (but likely more cumbersome).

Additionally, 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 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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