

2023 SENATE TRANSPORTATION

SB 2157

2023 SENATE STANDING COMMITTEE MINUTES

Transportation Committee
Fort Totten Room, State Capitol

SB 2157
1/19/2023

Relating to documentary proof of citizenship in elections and nondriver photo identification cards and operator licenses for noncitizens.

10:02 AM Chairman Clemens opened hearing.
Senators Present: **Paulson, Rummel, Larsen, Conley, Clemens**

Discussion Topics:

- Language
- Voter citizenship
- Amendments
- Native Americans enrollment
- Voting options
- Voter registration
- Voter system glitches

10:03 AM Michael Howe, Secretary of State, testified in favor. #14348

10:10 AM Donnelle Preskey, ND Association of Counties, verbally testified in favor.

10:12 AM Collete Brown, Spirit Lake Gaming Commission Executive Director, verbally testified in opposition.

10:27 AM Senator Lee introduced bill.

10:34 AM Sharnelle Seaboy, verbally testified in opposition.

10:38 AM Cody Schuler, Advocacy Manager for ACLU of North Dakota, testified in opposition. #14486

11:02 AM Carol Sawicki, League of Women Voters of North Dakota, testified in opposition #14438

11:08 AM Brad Schaefer, verbally testified neutrally.

Additional written testimony:
Nicole Donaghy #14483

11:10 AM Chairman Clemens closed hearing on 2157.

Nathan Liesen, Committee Clerk

2023 SENATE STATE AND LOCAL GOVERNMENT

SB 2157

2023 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee
Room JW216, State Capitol

SB 2157
2/3/2023

Relating to documentary proof of citizenship in elections; relating to nondriver photo identification cards and operator licenses for noncitizens.
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9:00 AM Chair Roers opened the hearing. Present: Chair Roers, Vice Chair Barta, Sen Cleary, Sen Estenson, Sen J Lee, and Sen Braunberger.

Discussion Topics:

- Voter qualifications
- Central voter file
- Passports
- Verbal affirmation

Sen Judy Lee, Dist 13, bill sponsor testifying in support with no written testimony.

Brian Newby, Sec of State Elections Division testified in support. #19042

Michael Howe, Secretary of State, testified in support with no written testimony.

Brian Newby answered questions.

Brad Schafer, Dept of Transportation, testified in a neutral position with no written testimony.

Cody Schuler, ACLU, Fargo, ND, testified via ZOOM opposed. #18981

Carol Sawicki, ND League of Women Voters, testified via ZOOM opposed. #18903

Additional written testimony:

Denise Dykeman, Minot, ND, opposed #18953, #18351

Susan Dingle, Bismarck, ND, opposed #18632

10:05 AM Chair Roers closed the hearing.

Pam Dever, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee
Room JW216, State Capitol

SB 2157
2/9/2023

Relating to nondriver photo identification cards and operator licenses for noncitizens.

9:22 AM Chair Roers opened the meeting. Present: Chair Roers, Vice Chair Barta, Sen Cleary, Sen Estenson, Sen J Lee, and Sen Braunberger.

Discussion Topics:

- Committee Action

Sen Lee moved a DO NOT PASS.

Sen Braunberger seconded the motion.

Senators	Vote
Senator Kristin Roers	Y
Senator Jeff Barta	Y
Senator Ryan Braunberger	Y
Senator Sean Cleary	Y
Senator Judy Estenson	Y
Senator Judy Lee	Y

VOTE: YES – 6 NO – 0 Absent – 0 Motion PASSED

Sen Braunberger will carry the bill.

9:24 AM Chair Roers closed the meeting.

Pam Dever, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2157: State and Local Government Committee (Sen. K. Roers, Chairman) recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2157 was placed on the Eleventh order on the calendar. This bill does not affect workforce development.

TESTIMONY

SB 2157

MICHAEL C. HOWE
SECRETARY OF STATE

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SECRETARY OF STATE
STATE OF NORTH DAKOTA
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BISMARCK ND 58505-0500

SENATE TRANSPORTATION COMMITTEE
SEN. DAVID CLEMENS, CHAIRMAN

SENATE BILL NO. 2157
JANUARY 19, 2023

TESTIMONY PRESENTED BY

MICHAEL HOWE, SECRETARY OF STATE

Chairman Clemens and members of the committee, I am Secretary of State Michael Howe and I am here to support the sponsor's intent behind Senate Bill 2157. This office firmly believes all citizens who are eligible to vote should be allowed to do so, and that clarification around voting and citizenship is needed.

While we do support the intent, the language of this bill creates a number of unintended consequences and may create a burden on every citizen to provide proof of citizenship at every election, or require sensitive documents be sent by mail to receive an absentee ballot. Birth certificates and passports often will not line up with women or others who have had name changes, thus potentially creating issues for individuals who have successfully voted in past elections.

We believe the ultimate objective of any legislation of this type is to support the North Dakota Constitution by ensuring only citizens vote in elections while also ensuring our citizens' accessibility to voting is not limited or difficult.

A legislative process to support that initiative should, in our view:

- Require proof of citizenship when the voter's status is reasonably in doubt, not every time the voter seeks to vote,
- Ensure that only North Dakota residents vote in our elections,
- Utilize existing processes within the DOT, and
- For voters who recently became citizens, encourage them to update their records with the DOT. Updating the record at the polls and not at the DOT may require these voters to again provide proof of citizenship at the next election.

The intent behind Senate Bill 2157 is admirable. We agree legislation is needed in this regard. Our office has been working collaboratively with the Attorney General's office and Representative Scott Louser on House Bill 1431, to address the issue of proving citizenship in the least burdensome way for all citizens who are eligible to vote. It is our preference that we work together for the best outcome on this issue, using House Bill 1431 as the vehicle for the citizenship effort.

I am happy to stand for any questions you may have and have my experts to support me in any specific process questions you may have.



TESTIMONY on SB 2157
from the
LEAGUE OF WOMEN VOTERS of NORTH DAKOTA
to the
Senate Transportation Committee
January 19, 2023

Chairman Clemens and members of the Senate Transportation Committee. My name is Carol Sawicki, and I am submitting this testimony on behalf of the League of Women Voters of North Dakota in opposition to Senate Bill 2157. We appreciate the opportunity to share our perspective.

The League of Women Voters of North Dakota is opposed to this bill for the following reasons:

1. North Dakota voters are already required to confirm that they are qualified electors to cast a ballot, and this bill would unnecessarily preempt that process and create barriers for eligible voters casting their ballot.
2. Voting is the backbone of our democracy, and this bill would undermine efforts to increase civic participation in North Dakota.
3. This bill would impact voters who cannot easily get updated identification or proof of citizenship due to financial burden, time burden, transportation burden, or the distance to or limited hours of the driver's license sites in rural areas.
4. This bill creates a chilling effect on diverse populations of voters in North Dakota and may deter eligible voters from casting a ballot even if they are US citizens.
5. This bill creates undue barriers to voting in communities across the state, not limited to:
 - a. New American and immigrant voters who would have an additional barrier of proving their citizenship while also opening them up to discrimination at the polls.
 - b. Voters in long-term care facilities who vote with [a long-term care certificate](#) and who may not have access to a birth certificate, passport, or other satisfactory proof of citizenship.
 - c. Voters who are serving in the military outside of the state.
 - d. Voters with disabilities and elderly voters who are unable to leave their homes in order to apply for the documents needed to prove their citizenship.
6. This bill would impact the accessibility of absentee voting and create more work for county election officials. When processing absentee ballots, county election offices simply check that the driver's license or nondriver's card number is in the pollbook, and they rely on the applicant's [absentee ballot application](#) signature attesting that they are a qualified elector. This bill may create an administrative burden on county election officials to gather further proof of citizenship before mailing absentee ballots, and many rural counties heavily rely on absentee ballots for their elections.
7. Noncitizens voting illegally is extremely rare, and The Heritage Foundation reports that there have been zero cases of ineligible voting or fraudulent use of absentee ballots in North Dakota ([The Heritage Center Voter Fraud Resource](#)).

8. This bill is unnecessary, since state law has a process to prosecute individuals who vote illegally. If an election official believes a person is not a qualified elector, the official may forward that voter's information to the state's attorney's office for review. An ineligible voter in a North Dakota election is committing a class C felony, punishable by up to five years in jail and a fine of up to \$10,000.
9. The bill would open the state up to litigation for creating an undue burden on voters. From [the ND Attorney General's October 2022 proof of citizenship opinion](#): "I caution that any legislative action to require voters to provide documentary proof of citizenship here in North Dakota will need to be guided by an analysis of the *Fish v. Schwab* opinion..." which set precedent in a case where a new Kansas state law required individuals to provide proof of citizenship documents when registering to vote. The courts ruled that the Kansas law violated the Equal Protection Clause and could not be enforced.

The League of Women Voters of North Dakota urges committee members to give SB 2157 a Do Not Pass recommendation. Requiring proof of citizenship documentation to vote is unnecessary, creates barriers to voting, and would open the state up to litigation. This bill is searching for a problem that does not exist in our elections.

Thank you for your attention. I welcome any questions that you might have.

Testimony submitted by Carol Sawicki, LWVND Board Treasurer, nodaklww@gmail.com.



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**Statement of Nicole Donaghy Regarding SB 2157
Executive Director of North Dakota Native Vote
January 19, 2023
Senate Transportation Committee**

Mr. Chairman and members of the Senate Transportation Committee, my name is Nicole Donaghy, I am an enrolled citizen of Standing Rock Sioux Tribe, and I am the Executive Director of North Dakota Native Vote. I am sending my testimony in opposition to SB 2157.

North Dakota Native Vote is a non-profit, non-partisan grassroots organization that initially formed in response to the 2018 US Supreme Court decision to uphold the voter identification law that had the potential to disenfranchise over 5,000 Native American voters in North Dakota. Our mission is to create and affect policy to promote equitable representation for the Native people of North Dakota. North Dakota Native Vote believes in free, fair, and accessible elections.

North Dakota Native Vote opposes this bill for multiple reasons.

- SB 2157 would create an undue hardship for qualified voters by creating redundancy in the electoral process; voters are already required to verify their identity through the Secretary of State and Department of Transportation.
- North Dakota already has one of the most complex election processes in the Union and this bill has the potential to adversely affect voter confidence by adding another requirement in voter identification, a de facto voter registration requirement.
- SB 2157 also creates extra processes for every election cycle for electors and poll workers by requiring electors to verify their citizenship every election cycle.
- SB 2157 contradicts the Brakebill Consent Decree entered by the State in 2020, which provides a process for tribal members who lack identification and residential addresses to vote. The Consent Decree was a result of the Legislature's prior attempts to curtail Native American voting rights.
- North Dakota Native Vote opposes the tracking of Native American enrollment and tribal identification numbers. These federally assigned numbers are utilized for tribal program qualifications and are also tied to Individual Indian Money accounts. Tribes must be consulted on how this bill would impact tribal member voters.

We are further concerned that the added requirement to verify qualified electors will be invalidated by a court. Over the years, citizenship requirements have been repeatedly rejected by



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the courts after States such as Kansas, Arizona, Alabama, and Georgia tried attempted to require documentary proof of citizenship to vote. In the most recent case, a Kansas court found the Kansas law unconstitutional in [Fish vs. Swab](#) (10th Circuit Court of Appeals, 2020). Kansas taxpayers ended up paying \$2 million in legal fees.

As I have done before, I again implore you to begin crafting laws that take into account the hardships faced by communities that choose to exercise their right to vote. Ignoring those hardships fails the obligations each of you must serve all of your constituents fairly and equitably.

We strongly oppose adoption of SB 2157.

Please feel free to reach out to me with questions at ndonaghy@ndnativevote.org

Senate Transportation Committee
SB2157
 January 19, 2023

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.

ACLU

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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.

Cody J. Schuler
Advocacy Manager
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WRITTEN TESTIMONY IN OPPOSITION
TO SB 2157

Senate Judiciary Committee on SB 2157

Date of Hearing: February 3, 2023

Denise Ann Dykeman 1840 12th St SW, Minot, ND 58701

My name is Denise Ann Dykeman. I am a resident of North Dakota, a parent, a practicing attorney, and a Lutheran. I am also a member of the League of Women Voters, North Dakota. I write in opposition to SB 2157 for the following reasons:

1. North Dakota voters are already required to confirm that they are qualified electors to cast a ballot, and this bill would unnecessarily preempt that process and create barriers for eligible voters casting their ballot.
2. Voting is the backbone of our democracy, and this bill would undermine efforts to increase civic participation in North Dakota.
3. This bill would impact voters who cannot easily get updated identification or proof of citizenship due to financial burden, time burden, transportation burden, or the distance to or limited hours of the driver's license sites in rural areas.
4. This bill creates a chilling effect on diverse populations of voters in North Dakota and may deter eligible voters from casting a ballot even if they are US citizens.
5. This bill creates undue barriers to voting in communities across the state, not limited to:
 1. New American and immigrant voters who would have an additional barrier of proving their citizenship while also opening them up to discrimination at the polls.
 2. Voters in long-term care facilities who vote with [a long-term care certificate](#) and who may not have access to a birth certificate, passport, or other satisfactory proof of citizenship.
 3. Voters who are serving in the military outside of the state.
 4. Voters with disabilities and elderly voters who are unable to leave their homes in order to apply for the documents needed to prove their citizenship.
6. This bill would impact the accessibility of absentee voting and create more work for county election officials. When processing absentee ballots, county election offices simply check that the driver's license or nondriver's card number is in the pollbook, and they rely on the applicant's [absentee ballot application](#) signature attesting that they are a qualified elector. This bill may create an administrative burden on county election officials to gather further proof of citizenship before mailing absentee ballots, and many rural counties heavily rely on absentee ballots for their elections.
7. Noncitizens voting illegally is extremely rare, and The Heritage Foundation reports that there have been zero cases of ineligible voting or fraudulent use of absentee ballots in North Dakota.
8. This bill is unnecessary, since ND state law has a process to prosecute individuals who vote illegally. If an election official believes a person is not a qualified elector, the official may forward that voter's information to the state's attorney's office for review. An ineligible voter in a North Dakota election is committing a class C felony, punishable by up to five years in jail and a fine of up to \$10,000.
9. The bill would open the state up to litigation for creating an undue burden on voters. From [the ND Attorney General's October 2022 proof of citizenship opinion](#): "I caution that any legislative action to require voters to provide documentary proof of citizenship here in North Dakota will need to be guided by an analysis of the *Fish v. Schwab* opinion..." which set precedent in a case where a new Kansas state law required individuals to provide proof of citizenship documents when registering to vote. The courts ruled that the Kansas law violated the Equal Protection Clause and could not be enforced.

Please Oppose Senate Bill 2157.

Denise A. Dykeman
1840 12th St SW
Minot, ND 58701

Please vote no on SB 2157. Proof of citizenship is an extra step in voting, and it is unnecessary and potentially discriminatory on the basis of color, presumed immigration status, presumed nationality or ethnicity or race. According to the federal Voting Rights Act, poll workers are not supposed to discriminate against potential voters on the basis of race or other protected classes.

Each time I read this bill or information provided on it, I am left with the question, “And how is the poll worker going to decide to ask a potential voter for proof of citizenship? Because I doubt that everyone coming in to vote will be asked to provide proof of citizenship. Generally, voters are asked to provide proof of residency, and generally voters use their ND driver’s license or their ND nondriver’s license issued by ND DOT. Additional acceptable forms of ID are a tribal government-issued ID, or a long-term care ID certificate.

If a person has a current North Dakota driver’s license with real ID, their citizenship had to be proven at the ND DOT licensing office in order to obtain real ID. Persons without real ID are the ones who might be asked to provide proof of citizenship. And some other forms of ID already are proof of citizenship: a tribal ID, for example. Persons of color, persons who don’t speak English well but are naturalized citizens, older people, and Native Americans are left if they don’t have a DL with real ID. It’s fairly obvious to me that the bill proposers are opposed to making it easy or possible for the aforesaid groups of people to vote. I would remind the proposers that undoubtedly one, two, three, or four generations back, their relatives very likely were immigrants, perhaps who didn’t speak English well, who nevertheless were allowed to vote, and generally, it was because the poll workers and others in line to vote knew them and their families—all possible in smaller towns, with less frequent moves, and with lower populations.

More to the point, there is an October 2022 ND Attorney General’s opinion about the inadvisability of requiring proof of citizenship to vote, and the fact that a Kansas law requiring people to provide proof of citizenship when registering to vote [something not required in North Dakota, but this bill requiring proof of citizenship at the poll is much the same thing] was unconstitutional because it violated the Equal Protection Clause of the U.S. Constitution. It is quite likely that if such a law is passed in North Dakota, various groups such as ACLU, the League of Women Voters, and others will sue to have the law declared unconstitutional, and it is quite likely that they will win. Mostly, then, the consequence of enacting this bill into law will be to create litigation and the expense of litigation, which will have to be borne by the state’s taxpayers [citizens and noncitizens alike], and to create confusion and chaos around elections, all unnecessary drama.

This proposal about asking for proof of citizenship is another way of saying that “some [people] are more equal than others,” a statement taken from George Orwell’s passionate outcry against totalitarianism and anti-democracy, [Animal Farm](#). I do not want North Dakota to go down the path to totalitarianism. It does not preserve the state and its people: it is a step toward destroying and despoiling what we have and who we are. **Vote no on SB 2157.**



Senate Bill 2157
Senate State and Local Government Committee
February 3rd, 2023

Chair Roers and members of the Senate State and Local Government Committee, my name is Carol Sawicki, and I am submitting testimony on behalf of the League of Women Voters of North Dakota in opposition to Senate Bill 2157.

#1. This bill is unnecessary.

- Noncitizens voting illegally in the United States is extremely rare, and further, The Heritage Foundation reports that there have been zero cases of ineligible voting in North Dakota.¹
- North Dakota voters are already required to attest that they are qualified electors before they receive a ballot, either by signing their absentee ballot application or verbally in person at the polls.
- State law has a process in place for prosecuting individuals who vote illegally. If an election official believes a person is not a qualified elector, the official may forward the voter's information to the state's attorney's office for review. Anyone convicted of voting illegally faces up to five years in jail and a fine of up to \$10,000.

Therefore, this bill is unnecessary because noncitizens have not been voting in our elections and if someone were to try in the future, there is already a process in place to prosecute that person.

#2. This bill would make it harder to vote in North Dakota.

- SB 2157 would impact voters who cannot easily get updated identification or proof of citizenship due to lack of time, money, or transportation, or even the limited hours of the driver's license sites in rural areas.
- This bill would also create a chilling effect on diverse populations of voters in North Dakota and may deter eligible voters from casting a ballot even if they are US citizens.
- This bill would create undue barriers for voters across the state, including, but not limited to:
 - New American and immigrant voters, who would have an additional barrier of proving their citizenship while also opening them up to discrimination at the polls.
 - Voters in long-term care facilities who vote with a long-term care certificate² and who may not have access to a birth certificate, passport, or other satisfactory proof of citizenship.
 - Voters with disabilities and elderly voters who are unable to leave their homes in order to apply for the documents needed to prove their citizenship.

¹ The Heritage Center Voter Fraud Map. <https://www.heritage.org/voterfraud/search?state=ND>

² <https://vip.sos.nd.gov/pdfs/Portals/Long%20Term%20Care%20Identification%20Certificate.pdf>

- If this bill passed, county election officials would need to ensure proof of citizenship requirements were met before mailing absentee ballots, making it harder for voters to receive a ballot.

Voting is the backbone of our democracy and passing this bill would serve to create barriers for eligible North Dakota voters and decrease civic participation in our state.

#3. Finally, this bill would open the state up to litigation.

- Numerous state laws that would require documentary proof of citizenship have been struck down in the courts because the requirement places an unreasonable burden upon voters, especially on voters of color.
 - In *Fish v. Schwab*, the Tenth Circuit struck down a documentary proof of citizenship law in Kansas because the state could not provide evidence to justify the burden it placed on individuals' right to vote.
 - In *Georgia Coalition for People's Agenda, Inc. v. Kemp*, a federal court in Georgia held that a documentary proof of citizenship requirement - imposed only on naturalized citizens based on outdated DMV data - created "a very substantial risk of disenfranchisement," and could not be justified in that case. In that case, Georgia's requirement has mired it in litigation for over four years. Recently, the court denied the State's motion for summary judgment and the case is moving toward trial.
 - In *League of Women Voters v. Harrington*, the federal district court in Washington, DC ruled that the implementation of documentary proof of citizenship laws in Alabama, Georgia, and Kansas violated federal law, and prevented them from going into effect.
 - In Texas and Florida, laws that used data from drivers licenses to verify voters' citizenship were struck down after thousands of naturalized citizens were incorrectly flagged for removal from the voter rolls.
 - And in Arizona, a documentary proof of citizenship law is currently the subject of ongoing litigation.

In every state where laws like this have been introduced, they have faced significant legal challenges, costing millions of dollars to litigate, and threatening to disenfranchise qualified voters. This bill is a costly solution to a problem that does not exist in our elections.

The League of Women Voters of North Dakota strongly urges committee members to give SB 2157 a Do Not Pass recommendation. Requiring documentary proof of citizenship to vote is unnecessary, makes it harder to vote, and would open the state up to costly litigation.

Thank you for your attention. I welcome any questions that you might have.

Testimony submitted by Carol Sawicki, LWVND Board Treasurer, nodaklwv@gmail.com.

WRITTEN TESTIMONY IN OPPOSITION
TO SB 2157

Senate State and Local Committee on SB 2157

Date of Hearing: February 3, 2023

Denise Ann Dykeman 1840 12th St SW, Minot, ND 58701

My name is Denise Ann Dykeman. I am a resident of North Dakota, a parent, a practicing attorney, and a Lutheran. I write in opposition to SB 2157.

This bill is unnecessary and discriminatory. North Dakota voters are already required to confirm that they are qualified electors to cast a ballot. North Dakota should be working to ensure increased access for voters. As a person of faith, and someone who cares about the future of the state and the United States, I believe strongly in welcoming immigrants. This is a nation of immigrants. The diversity of ideas that we all bring is what makes America great.

Please Oppose Senate Bill 2157.

Denise A. Dykeman
1840 12th St SW
Minot, ND 58701

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.



North Dakota

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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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**SENATE STATE & LOCAL
SENATOR KRISTIN ROERS, CHAIR**

**SENATE BILL 2157
FEBRUARY 2, 2023**

TESTIMONY PRESENTED BY

BRIAN NEWBY, SECRETARY OF STATE

Chairman Roers and members of the committee, for the record, Brian Newby, with the Secretary of State Elections Division.

The intent behind Senate Bill 2157 is admirable. We agree legislation is needed in this regard. Our office has been working collaboratively with the Attorney General's office and Representative Scott Louser on House Bill 1431, to address the issue of proving citizenship in the least burdensome way for all citizens who are eligible to vote. It is our preference that we work together for the best outcome on this issue, using House Bill 1431 as the vehicle for the citizenship effort. HB 1431 passed the North Dakota House 90-4 on Monday and is on its way to your chamber.

We did bring an amendment to SB 2157, that would make this legislation mirror HB 1431.

PROPOSED AMENDMENT TO SENATE BILL NO. 2157

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 16.1-01-04.1 of the North Dakota Century Code, relating to proof of citizenship.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-01-04.1 of the North Dakota Century Code is amended and reenacted as follows:

16.1-01-04.1. Identification verifying eligibility as an elector.

1. A qualified elector shall provide a valid form of identification to the proper election official before receiving a ballot for voting.
2. The identification must provide the following information regarding the elector:
 - a. Legal name;
 - b. Current residential street address in North Dakota; and
 - c. Date of birth.
3. a. A valid form of identification is:
 - (1) A driver's license or nondriver's identification card issued by the North Dakota department of transportation; or
 - (2) An official form of identification issued by a tribal government to a tribal member residing in this state.
- b. If an individual's valid form of identification does not include all the information required under subsection 2 or the information on the identification is not current, the identification must be supplemented by presenting any of the following issued to the individual which provides the missing or outdated information:
 - (1) A current utility bill;
 - (2) A current bank statement;

- (3) A check issued by a federal, state, or local government;
 - (4) A paycheck;
 - (5) A document issued by a federal, state, or local government; or
 - (6) A printed document containing all of the information required by subsection 2 issued by an institution of higher education for an enrolled student residing in the state and containing the institution's letterhead or seal, along with a student photo identification card issued by the institution and containing the student's photograph and legal name.
4. The following forms of identification are valid for the specified individuals living under special circumstances who do not possess a valid form of identification under subsection 3.
- a. For an individual living in a long-term care facility, a long-term care certificate prescribed by the secretary of state and issued by a long-term care facility in this state;
 - b. For a uniformed service member or immediate family member temporarily stationed away from the individual's residence in this state, or a resident of the state temporarily living outside the country, a current military identification card or passport; and
 - c. For an individual living with a disability that prevents the individual from traveling away from the individual's home, the signature on an absentee or mail ballot application from another qualified elector who, by signing, certifies the applicant is a qualified elector.
5. If an individual is not able to show a valid form of identification but asserts qualifications as an elector in the precinct in which the individual desires to vote, the individual may mark a ballot that must be ~~securely~~ set aside securely in a sealed envelope designed by the secretary of state. After the ballot is set aside, the individual may show a valid form of identification to either a polling place election board member if the individual returns to the polling place before the polls close, or to an employee of the office of the election official responsible for the administration of the election before the meeting of the canvassing board occurring on the thirteenth day after the election.

Each ballot set aside under this subsection must be presented to the members of the canvassing board for proper inclusion or exclusion from the tally.

6. If an individual presents a nondriver identification card issued under subsection 2 of section 39-06-03.1 or an operator's license issued under section 39-06-14, but asserts valid citizenship, the individual may mark a ballot that must be set aside securely in a sealed envelope designed by the secretary of state. After the ballot is set aside, the individual may show satisfactory proof of citizenship to either a polling place election board member if the individual returns to the polling place before the polls close or to an employee of the office of the election official responsible for the administration of the election before the meeting of the canvassing board occurring on the thirteenth day after the election. Each ballot set aside under this subsection must be presented to the members of the canvassing board for proper inclusion in or exclusion from the tally. After an individual has submitted satisfactory evidence of citizenship, the proper election official shall update this information in the central voter file. Satisfactory proof of citizenship under this subsection may be presented via paper or electronic means.
7. The secretary of state shall develop uniform procedures for the requirements of ~~subsection~~ subsections 5 and 6 which must be followed by the election official responsible for the administration of the election. "

Renumber accordingly.